



## 8 Steps to a Successful Secondment

Secondments benefit employees by offering valuable career development opportunities, with the chance to make new contacts and gain experience within a different setting. They also benefit employers who may need the flexibility of obtaining the services of professional staff for an urgent or interim period only.

Complications can arise where an employee is seconded via another firm or agency to a completely different employer. In effect, a secondment amounts to a three-way arrangement between the employee, his or her agency or original employer, and the host employer. There may be issues – for example – around managing responsibilities, work permits, protecting business interests and deciding who retains overall control of the employee.

Here are 8 steps employers can take to protect themselves, whether they are the employee's original employer or the host employer.

### **1. Put the secondment agreement in writing.**

With the potential complications and disputes that can arise, it is important that the terms between the three parties are put in writing as evidence of what has been agreed.

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**2. Make it clear that the seconded employee's original employer or agency retains control over the employment relationship.**

The idea behind a secondment is that the original or former employer 'lends' the secondee to the host, but remains his or her employer. This way, the employee's continuous service is preserved, the original employer retains control over the employment relationship, and the secondee remains bound by common law duties and obligations, such as the duty of fidelity, to the original employer.

However, in rare cases, the employment relationship is deemed to transfer to the host, possibly because the original employer has surrendered control over the secondee. To avoid ambiguity and disputes, employers should include a clause in the secondment agreement making clear that the secondee will remain employed by the original employer. Practical arrangements should also reflect this ongoing arrangement.

**3. Spell out the terms and conditions that will apply during the secondment.**

Employees may agree new terms and conditions to reflect the secondment arrangement, which should be put in writing. Original and host employers in a secondment arrangement also need to agree the practical arrangements around how salary and benefits will be paid and granted, and how costs will be met and reimbursed. Usually the employee's original employer will pay him or her and the host will reimburse it.

**4. Make the procedure for dealing with absence clear.**

Should an employee on secondment report sickness absence to his or her original employer or to the host? Which employer should authorise annual leave and what is the position around covering work if the secondee goes on maternity or other family-related leave during the course of the secondment? Original and host employers should agree in advance how they will deal with different kinds of absence, and make clear to the secondee his or her obligations in this respect.

**5. Put in place procedures for dealing with appraisals, discipline and grievance.**

Managing appraisals and disciplinary and grievance procedures may present practical challenges for employers in a secondment arrangement. While the original employer should retain direct control, it is likely to need input from the host. The original employer should make sure that there is a clause in the agreement that makes clear the host's obligations.

**6. If you are the host employer, ensure that the secondment agreement provides for compliance with your instructions and policies.**

A secondee is likely to remain the employee of his or her original employer while on secondment, and the usual duties employees owe to their employer (such as the duty to obey reasonable instructions) will continue to apply. However, for the secondment to be a success, the host needs the secondee to follow its day-to-day instructions and comply with its policies, (for example around data protection, bribery risks and dignity at work). The secondment agreement needs to provide for this.

**7. Protect your confidential information and intellectual property.**

A secondee is likely to have access to the host and original employers' confidential information. Both employers may have concerns about disclosures to the other party. Hosts will want to retain intellectual property rights developed during the course of a secondment. Employers should therefore ensure that secondment agreements include clauses protecting their interests.

**8. Provide for how the secondment will end.**

Will the employee be able to return to his or her old job when the secondment ends? In what circumstances will either employer or the secondee be able to terminate the secondment arrangement early? Employers setting up a secondment arrangement need to ensure that they provide for how the secondment will end, and ensure that the secondee's position is clear from the outset.

If an employee freely accepts a secondment in the knowledge that there is no job guarantee at the end of it, and provided that the original employer follows a fair procedure, the risk of a successful unfair dismissal claim is minimised.

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