

Employment

Contractual issues with employees working abroad

In the modern global economy, with even some small companies having international offices, it is becoming common practice for employees to spend some time working abroad. This is often necessary for performance of an employee's specific role, such as liaising with international clients, supervising supply chains or overseas production. What employers need to ensure before sending an employee abroad is that they are not breaching their employment contract.

Employees are entitled to receive a statement of their employment particulars, commonly referred to as an employment contract, within two months of starting work. This sets out the main terms of employment and must include certain provisions such as the employee's name, pay, hours of work, etc. One thing that must also be included is the employee's "place of work" and this is of particular relevance if an employee is expected to work outside the UK.

Employment contracts will usually state an employee's normal place of work and this is often the company's office or commercial premises in which they are based. In addition to this, many contracts of employment contain a clause which entitles the employer to move the employee to a different place of work, known as a 'mobility clause'. If an employee has a mobility clause in their contract and they receive a reasonable request from their employer to work elsewhere, an employer may be entitled to dismiss an employee who refuses. If an employer expects their employee to work abroad then it is important that this clause extends to cover working outside the UK.

Moreover, if an employee is required to work outside the UK for more than one month, the written particulars of employment must also include:

- (i) the period for which they will work outside the UK,
- (ii) the currency in which remuneration is to be paid while they are working outside the UK,
- (iii) any additional remuneration payable, and any benefits to be provided to, by reason to being required to work outside the UK, and
- (iv) any terms and conditions relating to return to the UK.



Ideally, all of this information will be included in the employment contract when the parties entered into it at the outset. However, when parties enter into the initial contract, it is not always clear to the parties whether or not the employee will be required to work abroad making it difficult to include such a provision. However, once it becomes clear that an employee will be working abroad, the company should confirm this in writing before the employee leaves for the assignment. Otherwise, the company would be breaching the contract by insisting that an employee be required to work abroad without a contractual provision which enables them to do so.

Furthermore, even if you know that they will be required to work abroad, the overall period of the assignment may not be clear at the outset or may be subject to change. So, what you may find is that an employee who is initially asked to work abroad for 1 month, this could overrun and turn into a 2-3 month assignment. If that is the case, once the 1 month is up, the employee could refuse to carry on with the assignment and insist on returning home. If the company then tried to resist, you would be in breach of contract to which the employee could respond by resigning and claiming constructive dismissal. Consequently, you want to ensure that your estimated time for the assignment is as accurate as possible but also allows some additional time in case it overruns.

If you would like advice on drafting contracts or additional written agreements for employees working abroad, please contact our employment team.

Steven King
Solicitor
E: steven.king@3hr.com



This newsletter is designed to provide general information only. It does not constitute legal or other professional advice and thus should not be relied on. Definitive advice can only be given with full knowledge of all relevant facts. If you would like to discuss any aspect further, please contact us.

3HR Corporate Solicitors Limited is a Solicitors Practice, authorised and regulated by the Solicitors Regulation Authority, No: 597935.
3HR Benefits Consultancy Limited is authorised and regulated by the Financial Conduct Authority. Firm Reference Number: 556015

The registered office of both 3HR Corporate Solicitors Ltd and 3HR Benefits Consultancy Ltd is New Broad Street House, 35 New Broad Street, London EC2M 1NH. Mainline Tel: 0207 194 8140 Web: www.3hr.com