

Secondment FAQs

Secondments can allow businesses to share skills with another business, or to donate skills and experience to a charitable organisation. Both the employer and the host organisation need to consider the practical arrangements and legal liabilities for the secondment.



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Bill advises on all aspects of taxation affecting charities, including VAT, PAYE, corporation tax and gift aid.

Sarah Bull and Bill Lewis considers secondments from the perspective of both employer and host organisation

When might a secondment be appropriate?

Secondments can be used for a variety of reasons. Sometimes they are used in the context of a group structure whereby one member of the group is unable to employ staff, so another member of the group will take on the burden of the employment relationship and the employee will be seconded to the non-employing entity. Occasionally secondments come about where the host organisation is having time donated to it by another organisation (typically in a charity/private organisation context). Finally, secondments can be useful as a purely commercial arrangement between businesses to share skilled employees.

What documents do you need?

You will need to have a secondment agreement in place, which will set out the legal liabilities of each party and also the practical arrangements for the secondment. The agreement can either be tri-partite (seconded, employer and host organisation) or an agreement between the employer and the host organisation. Usually, it is not necessary for the seconded to be a party to the agreement since there will rarely be obligations placed on the seconded in the agreement. However, it may be useful to show the employee a copy of the agreement so that the terms are clear for all parties.

What basic terms should the secondment agreement contain?

There are certain terms which are fundamental to any secondment agreement: the duration of the agreement; the amount of time the seconded will commit to the secondment; the payment that the host organisation will pay to the employer; who will manage the seconded during the secondment and how disciplinary or grievance issues will be dealt with; mutual indemnities in respect of any acts/omissions of the employer or the host organisation that lead to claims by the seconded; and how each side may terminate the agreement including

in what circumstances. Finally, if the seconded is likely to create any works during their secondment agreement, the host organisation should ensure that any intellectual property rights in those creations are assigned to it.

Will the employee enter into an agreement?

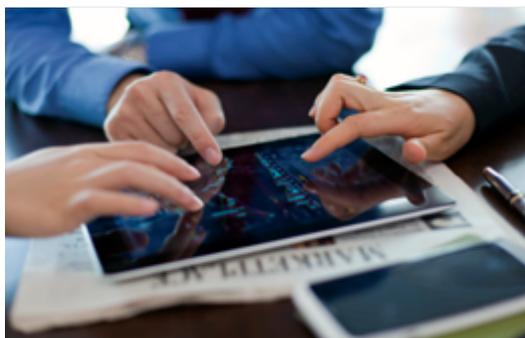
There are a number of practical issues that the employer will need to consider and encapsulate in any agreement or letter to the employee. This would include lines of management during the period of secondment, what would happen in the event a disciplinary or a grievance process became necessary, what effect the end of the secondment will have on the employment and, finally, consent from the employee to the arrangement. The employer should ensure the employee signs to confirm their agreement to the terms.

What will happen if the seconded becomes unavailable through sickness or otherwise during the secondment period?

This is a matter for negotiation and agreement between the parties. The host organisation may think it appropriate for the employer to provide a substitute if the original seconded is unavailable. However, this would depend upon whether or not the specific skills of the seconded are the reason for the secondment.

What if the host organisation terminates the agreement mid-term?

If the host organisation terminates the agreement, the seconded should, if there is an agreement that they will do so, return to their former role. If their former role is no longer available, and the employer has not made a contractual commitment to ensure it is available, then the employer will need to consider redeployment within its organisation. The employer should not simply terminate the contract of employment and must consider why the secondment has been terminated and discuss any issues with the host organisation with a view to seeking the reinstatement of the seconded. If reinstatement is not possible, the employer must look at redeployment. Only if all avenues fail should a termination of employment be considered.



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What about insurance?

You should seek advice from your insurance broker: public liability and/or professional liability insurance cover may be required.

What about health and safety?

The employer should require the host organisation to give an undertaking that it will treat the secondee – for health and safety purposes only – as one of its own employees.

What about tax issues?

VAT is charged on the supply of goods and services. If an employee of an organisation is seconded to another organisation at no cost then there is no supply, because no payment has been made in return for the services. However, it is usual when an employee is seconded to an organisation that a payment is received in return and then there is a supply for VAT purposes.

VAT is not chargeable in the following circumstances:

- (1) the secondment is between members of the same VAT group. So, for example, where an employee of company (A) is seconded to work for company (B) and they are members of the same VAT group. Any recharge made between (A) and (B) for the

cost of the employee’s services is an internal recharge for VAT purposes, so it is outside the scope of VAT;

- (2) the employee is jointly employed by the employer (Seconded) and the host organisation;
- (3) the secondment is between charity (C) and charity (D), and the employee has been engaged only in the non-business activities of the lending organisation, has been seconded to assist in such activities at the host organisation, and the host pays no more than the normal reimbursement cost of the employee to the lending charity. This is an HMRC concession that applies not just to charities but also to secondments of employees to/from non-profit making voluntary organisations.

In some circumstances, there may also be a VAT exempt service.

What happens in circumstances where the secondee commits a serious breach of their employment contract and/or the secondment agreement?

There should be an entitlement on the part of the host organisation to suspend the agreement. This would mean that the employee immediately reverts to the care of the employer, who must then make its own decision about whether or not to suspend the employee from their employment.

Find out more

If you are considering a secondment arrangement, we will be happy to advise on any secondment agreement that is required.

Please contact Sarah Bull on 020 7551 7739 for more information.