

QBE Europe

Secondments - are you managing the risks?

Secondments, where an employee is temporarily assigned to work for another organisation, can bring all kinds of benefits to your business, your staff and your clients. These can include broadening the skills and experience of your staff; gaining valuable insight into your client's business; and providing cover for short term projects or absence. But recent claims emerging in this area highlight the risks that can arise when entering into secondment agreements.

In one such case, a law firm seconded a partner to one of its clients, a national company, for one day a week to work with its in-house legal team. The client subsequently claimed that one piece of work undertaken by the secondee was negligent. The work that is criticised relates to the approval of a contract, which was then used in the client's dealings with a large number of its customers. However, the contract is unenforceable, and a claim is being pursued against the law firm to recover many millions of pounds of lost income.

Although this may be an extreme and, hopefully, rare example, the lessons to be learned are relevant to all secondment arrangements across all sectors.

Conduct a full risk assessment



With any business arrangement including secondments, it is crucial that you assess the risks involved and whether you have sufficient insurance in place to meet any potential claims. This is not only good business practice but, in the case of solicitors' practices, a professional obligation.

Among the areas to consider are:

- The type of work the host business conducts and precisely what work the secondee will be carrying out.
- Potential issues that could arise, the likelihood of these happening and how much it could cost your business. This should take into account the risk of potential claims but also how it could affect the ongoing relationship with your client.

REMEMBER

Contact your broker or insurer if the work is outside the scope of that your business normally carries out or it's particularly risky.



Questions to ask before a secondment

- Is the secondee the right person to meet the client's needs, rather than the person who is available at that time?
- What level of responsibility will the secondee have and how will their work be supervised?
- To what extent will the host firm be relying on the advice given by the secondee?
- What level of support will be given to the secondee, and by whom?

What is a secondment?

A secondment is any situation in which an employee is temporarily assigned to work for another organisation. This can be on a full-time basis or for just a day or two a week. It typically happens where the seconded individual is carrying out a significant amount of work, often on a regular basis, for one of their client organisations. It could also be a rolling programme where employees, often junior members of staff, work 'in house' with a client to supplement its team.

Secondment agreements



Having a formal secondment agreement in place is essential. Although many firms arrange secondments on an informal basis, relying upon goodwill and the relationship with the client, a properly agreed and documented secondment agreement will protect your interests if something does go wrong.

This should contain information including the duration of the secondment; the services to be provided; arrangements for payment; and how, and in what circumstances, the arrangement can be terminated.

Agreements also need to address who will be the secondee's employer during the secondment. This will almost always be the seconder but employment law issues can arise where this is not clear or where the host could be regarded as their employer.

It should also set out each party's expectations of the arrangement and its purpose. For example is it to provide the secondee with experience of the client's business or will they be making decisions and providing advice to the business?

Any agreement also needs to deal with liability for acts or omissions of the secondee, the level of insurance the firm has in place and any limitations the seconder wishes to place on their liability. This will primarily be a matter for negotiation between the parties.

Secondment terms checklist



- Purpose, scope and any targets
- Level and limits of authority
- Extent of reliance
- Technical supervision by the client / host firm
- Commercial monitoring by the employer / seconder
- Professional indemnity cover and limits of liability

Supervision



Careful consideration needs to be given to the level of supervision the secondee will require and how this will be given.

This will depend on the following:

- the purpose of the secondment,
- the seniority of the employee being seconded,
- their level of experience in the type of work being conducted,
- whether the secondment is full or part time.

It is important that there is some regular contact between the secondee and the seconder, especially where the secondee is simply providing services such as legal advice to the host in a way that could just as easily be provided through the normal solicitor-client relationship.

Ideally there should be a named contact at the seconder who can keep the arrangement under review and provide the necessary support to the secondee, ensure the host is adhering to the terms of the agreement and that the overall objectives are being achieved.

Whatever the arrangement, the balance between day-to-day technical supervision and monitoring of the agreement needs to be addressed and defined in writing to clarify how responsibilities will be shared.

It's also important to ensure that best practice protocols are extended to the arrangement, for example structured handover of matters being picked up at outset and handed back on completion of the secondment. This could be a risk factor in many secondments, especially where the secondee is helping to cover capacity shortfalls due to absence.

While there will always be a risk that a seconded employee makes a mistake or gives incorrect advice that leads to a claim against your business, ensuring the arrangement has been thoroughly risk assessed and the terms and supervision responsibilities agreed and documented, will help to reduce this risk.

Supervision check



Will the secondee be under the control of the client organisation, which might increase the risk of them being deemed to be an employee of the client, or will there be regular contact with the seconder?



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