

Secondment – preparing contracts

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Introduction

In today's globally interconnected world of work, cross-border issues play an increasingly prominent role – particularly for corporates with a multi-jurisdictional presence in the European Union. However, in view of the United Kingdom's impending departure from the European Union, questions of structuring in this context have taken on new meaning across the board. **(1)**

Sending employees on secondments to company sites in other countries is a major issue in cross-border employment law. Secondment is often a popular way of deepening cross-border cooperation, particularly in terms of transferring know-how and securing closer contact with foreign branches.

Employers increasingly wish to fall back on instruments of this kind, especially those in preparation for Brexit. In legal terms, particular focus should be placed on drafting contracts.

Preparation

Employees being sent on secondment should be well prepare for their foreign assignment in terms of culture and language. Language courses are useful in this context, as is spending a few weeks in the planned destination prior to the actual secondment. Further, employers should, where possible, support their employees when looking for suitable accommodation, as well as schools for dependant children, if necessary.

In view of the relocation of parts of London's financial industry, regulatory authorities should exercise caution in respect of the employment law requirements. For example, banking regulatory law permits the use of employee secondment models in matrix organisations. Demanding authentic employment relations in the context of staffing new institutions cannot be justified on grounds of substance, since secondments can be structured in an equally stable manner. If only a short secondment is planned (ie, for a few weeks or months) and the secondee's scope of tasks remains largely unchanged, the employee may work abroad on the basis of their existing employment contract, together with a supplementary secondment agreement.

Legal framework

The following applies in respect of applicable law for secondments. If the employee temporarily works in another country, the laws of the country in which that employee habitually carries out their work remain applicable (Article 8(2) Sentence 2 of EU Regulation 593/2008 (Rome I). However, if no return date for the secondee has been agreed, the laws of the country in which the secondment takes place will apply because the secondee has a different habitual place of work.

Contracts

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For employees who are required to work abroad for a period of several years, thereby assuming significantly different tasks, the employment contract existing with the company initiating the secondment is, in practice, generally suspended for the period of the secondment and a new employment contract is arranged with a limited term, sometimes in the form of a secondment agreement, concluded either with the company initiating the secondment or the foreign branch.

The common use of the term 'secondment' does not necessarily correspond to the understanding of secondment in social security law. In this context, the contractual structure that is most suitable in view of all of the parties' interests must be identified in each individual case. It can also be helpful to contact the social security authorities in both the home and host countries and to clarify the contractual structures with them.

The 'local plus contract' is increasingly the solution of choice. This type of contract also allows the employee's costs incurred as a result of the secondment (eg, increased rent, relocation costs or school expenses for dependant children) to be represented on the basis of the local employment terms, including the local standard salary. If necessary, a third contract can also act as a binding element between the first two contracts and provide for any extraordinary benefits where no local plus contract is concluded.

Secondment policy

Even if a company sends only a few employees on secondment each year, it may be worth drafting a secondment policy. Secondment policies typically include guidelines regarding:

- relocation;
- travel costs;
- the assumption of accommodation costs abroad; and
- support payments for accompanying family members.

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Endnotes

(1) This article is part of a series that examines multi-jurisdictional employment law in the European Union. For the other articles in the series, please see:

- "[Cross-border employment law – place of work](#)"; and
- "[Cross-border employment law – freedom of choice principle under EU law](#)".

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