

Employing shared staff – secondments and joint contracts

Employment update

Secondments and joint employment arrangements allow employers to share members of staff but there are costs and potential pitfalls to consider when deciding which route to take. Paul Seath examines the pros and cons of secondments versus joint employment.

There are occasions when two employers wish to share a member of staff or when one employer has a member of staff who could be utilised by another employer. When this happens, secondment or joint employment can be used. The appropriateness of one or the other will depend on the relevant business needs and the practical realities of the arrangements.

Secondments

Secondments involve an employee being ‘loaned’ by an employer to another and different organisation (the ‘host’).

Secondments entail no change in the employer. The employee continues to be paid by their employer and the employee’s employment does not transfer to the host. The employee will usually return to the employer at the end of the secondment, although this is not always the case.

Although the secondment entails no change in employer, it is important that a written agreement is concluded between the employer and the host to enable the employer to obtain payment for the seconded employee. Any such agreement will also set out how the arrangement will work in practice, and the obligations of each party.

A genuine secondment will depend on the contractual terms between the employer and the host, as well as the contractual terms between the employer and the seconded employee. The way the employee is treated

by the employer and the host will also be relevant. In this regard, the employer will usually retain control and continue to be responsible for the seconded employee’s pay and benefits, management of holidays, sickness absence, maternity or adoption or paternity leave, disciplinary and grievance procedures and appraisals.

In such situations the monies paid by the host to the employer will be subject to VAT and HMRC will consider there to be a supply of services, so the employer must charge VAT on the whole amount being paid by the host for the supply of the employee.

This obviously has significant cost implications and, provided the arrangement is genuine, a way to avoid the VAT is to enter a joint employment arrangement rather than a secondment.

In some circumstances the income from the hire or loan of staff from one charity or voluntary organisation to another can be treated as non-business and outside the scope of VAT. This is subject to the following conditions:

- The employee has been engaged only in the non-business activities of the lending charity or organisation and is being seconded to assist in the non-business activities of the borrowing charity or organisation; and
- The payment for the supply of the employee’s services does not exceed the employee’s normal remuneration.
- A ‘voluntary organisation’ is a body who operates other than for profit, but does not include any public or local authority. ‘Normal remuneration’ means the total costs incurred by the lending charity or organisation in employing the member of staff including National Insurance and pension scheme contributions.

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Joint employment

In order for staff to be considered to be jointly employed, their contracts of employment must make it clear that they have more than one employer. The contract must also specify who the employers are and those employers must be named as joint employers.

An employee will not be jointly employed if their contract of employment is with a single employer, even if that employer states that the employee is required to work for another organisation.

Joint employers should set out their obligations/requirements in a Service Level Agreement between them to avoid uncertainty and misunderstanding.

It is also essential that the management of the employee reflects the joint nature of the arrangement and the work they do, meaning that each employer must manage the employee in respect of the work that the employee does for that employer. This division of management should extend to all of the management scenarios set out above – namely management of holidays, sickness absence, maternity or adoption or paternity leave, and other extended leave periods, disciplinary and grievance procedures and appraisals.

That said, where one employer acts as the paymaster and pays the staff member's salary, NICs and pension contributions etc., the reimbursement of the share of those costs by the other employer is treated as a disbursement for VAT purposes and is not subject to VAT.

The potential benefits of joint employment are:

- a) an employee may prefer to work full-time under a joint contract rather than part-time for one employer and part-time for another;
- b) it gives flexibility, so that in some weeks the employee dedicates more time to one employer than the other;
- c) costs savings;
- d) shared control by the joint employer. The potential problems of joint employment are: a) persuading the employee to accept joint employment rather than secondment;

- b) overcoming practical and everyday management problems;
- c) agreeing on the applicable terms and conditions, such as sick pay and annual leave, where the two differ between each employer;
- d) deciding which collective agreements apply;
- e) deciding who the employee would raise any grievances with;
- f) management of disciplinary processes and making decisions on the same. There would need to be clarity about who is the ultimate decision-maker (for example, what would happen if one employer wanted to issue a sanction or to dismiss but the other did not?);
- g) the potential of employment tribunal claims being brought against both employers, although the dispute is only with one, consideration should be given as to whether an indemnity should be included where wrongdoing is only by one employer;
- h) what if one employer wants to end the agreement (i.e. by reason of dismissal or outsourcing) and the other doesn't? Again, this needs to be catered for.

Conclusion

As will be seen from the above, secondment arrangements offer the employing entity certainty and control, but VAT costs will then be incurred. In order to avoid those VAT costs, joint contracts can be utilised but only where the arrangement is one of genuine joint employment and where the employers can work through the above pitfalls.

If you would like to find out more, get in touch:



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