

BMA Guidance to practices on how to employ shared staff

BMA Regional services and BMA General practitioners committee

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This guidance has been jointly produced by BMA Regional services and the General practitioners committee as a general guide for GP practices on how to employ shared staff.

For more specific employment advice members are advised to contact the BMA Employer Advisory Service on 0300 123 123 3 or by emailing support@bma.org.uk. It is not within the BMA's core remit to provide financial or VAT advice, and practices should contact a financial adviser on any such related issues.

A GP employer, practice manager or other employee may have identified work time that is not currently being fully utilised, and which may be provided to another practice on a fee-charging basis. It may also be the case that a vacancy has been identified that requires filling by a practice, but the practice may wish to utilise the services of a skilled individual without having to employ one directly, or that neighbouring practices would like to jointly deliver a service provided by a shared staff member.

By sharing staff between neighbouring practices (i.e. those operating from the same or nearby premises/building), the practices may be able to make savings by utilising an arrangement such as a secondment or joint employment arrangement. The appropriateness of whether to utilise a secondment or joint employment arrangement will depend on the practice's business needs and the type of work that needs to be carried out.

Secondments

Under a secondment agreement, an employee is provided on a "loan" basis by their employer to another part of the same business (for example, to a branch surgery) or to a different business (for example, a neighbouring practice). This guidance focuses on staff sharing arrangements between two separate businesses.

The intention is that the secondment entails no change in the employer, for example Practice A is the employer, and continues to be the employer during the period of the employee's secondment to the host employer, Practice B. The employee continues to be paid by Practice A, and the employee does not transfer employment to Practice B. The employee will return to Practice A at the end of the period of secondment. Essentially, a secondment will mean that Practice A will remain the employer of the seconded employee, as the seconded employee's contract of employment continues with them. The employee's continuity of employment with Practice A remains unaltered.

Although the secondment entails no change in the employer, it is important that a written agreement is drawn up between Practice A and Practice B to enable Practice A to obtain payment from Practice B for the services of the seconded employee.

Practice A will 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, other extended leave periods, disciplinary and grievance procedures (although information from Practice B may be required), appraisals (although information from Practice B may be required, i.e. on target setting and performance assessment) and any expenses as per the terms of the contract of employment.

Upon the completion of the secondment the seconded employee will return to being directly managed by Practice A.

A genuine secondment will depend on the contractual terms between Practice A and Practice B; as well as the contractual terms between Practice A and the seconded employee; and the way the employee is treated by Practice A and by Practice B. An examination of the relationship between the parties will be required.

If there is no contractual provision within an employee's contract of employment stating that the employee is required to undertake temporary secondments at the request of the practice, then it is advisable that the employee is made aware that the secondment is offered on a voluntary basis (as opposed to being imposed).

Potential benefits of secondments:

- cost savings
- allowing for a broadened skills base within an organisation, and identifying and sharing best practice
- building/enhancing relations and links with other practices
- addressing staff shortages and staff excesses
- offering employees with personal and career development opportunities
- time-limited, enabling both practices to review their business needs on a periodic basis

Potential pitfalls of secondments:

- overcoming practical problems - could there be uncertainty and confusion as to the arrangement?
- the employee being ill-suited for the secondment as he/she does not hold the necessary skills, or conversely, the employee preferring to work at the host practice, so may wish to leave Practice A to become an employee of Practice B
- evaluating the success of the secondment

Secondment agreement

It is essential to draw up an agreement between the parties to a secondment arrangement to avoid future acrimony or dispute. This arrangement could be formalised by a letter from the employer (Practice A) to the seconded employee (and copied to the host practice (Practice B)) confirming that it is a secondment.

The BMA also recommends that a service level agreement should be in place between Practice A and Practice B to assist the governance of arrangements and to ensure a payment to Practice A is forthcoming. The service level agreement would cover terms relating to the payment and other costs as well as terms on insurance and indemnity. It is also important to note that both Practice A and Practice B could be liable for any negligence by the seconded employee.

Points for consideration to be covered in the secondment agreement:

- Does the agreement confirm that the seconded employee has a contract of employment with the employer practice?
- Are the parties clear about the objectives of the arrangement?

Termination of the secondment

Each of the three parties to the arrangement (the employer practice (Practice A), the host practice (Practice B), and the seconded employee) have the right to terminate the secondment. The statutory minimum notice periods do not apply because only the secondment (not the employment) is ending. However, the parties to a secondment agreement need to ensure that when terminating the arrangement that they do not breach the agreement, or breach the implied term of mutual trust and confidence (an employee has to show that the employer is guilty of fundamental breach of conduct so as to seriously harm or destroy the employment relationship, when claiming constructive unfair dismissal subject to having the requisite continuous service).

Subject to the usual employment protection rights, Practice A and the seconded employee will also have the right to terminate the employment. Where an employee resigns from Practice A, the employee will also resign from the secondment arrangement. Practice A will be responsible for final entitlements, such as any pay for accrued but untaken annual leave.

In a termination of employment situation, the statutory minimum notice period / contractual notice will apply (the contractual notice provision cannot be less than the statutory entitlement to minimum notice under s.86 of the Employment Rights Act 1996).

Joint employment

In a joint employment situation, an employee is appointed by more than one employer, and a joint contract of employment is held between the employee and the relevant employers.

An employee is jointly employed if their offer letter of appointment and contract of employment clearly states that they have more than one employer. The offer letter and contract would state who the employers are, e.g. 'Practice A and Practice B'. An employee is not jointly employed if their contract of employment is with a single practice, even if the practice states that the employee is required to work for another practice. The joint employers should ideally set out their obligations/requirements in a service level agreement between them to avoid uncertainty and misunderstanding.

Potential benefits of joint employment:

- it may be easier to attract an employee with specialist skills / specialising in a niche area
- an employee may prefer to work full-time under a joint contract, rather than part-time for one practice and part-time for another
- joint employment may allow for flexibility so that some weeks the employee dedicates more time at one practice, and at other periods, does more work at the other. For example:
 - o different practices may have different deadlines for projects, so the employee could schedule work time as needed; at the end of the agreed period, work time split will have balanced out
 - o it may be possible that in the course of a working day, the employee could travel to and from the two practices if operating from the same building as and when the need arises.
- cost savings
- shared control by the joint employers, e.g. taking of annual leave, the work schedule.

Potential pitfalls of joint employment:

- Overcoming practical problems - could there be confusion as to the arrangement?
- If the two practices have completely different employment/contractual arrangements, how will they agree on the applicable terms and conditions, such as sick pay and annual leave?
- Which collective agreements will apply?
- Who would the employee complain to about a grievance in connection with one practice?
- In a disciplinary situation who would manage the process and make the decisions? What if one practice wanted to issue a sanction or dismiss and the other did not?
- Employment tribunal claims against both practices although the dispute was with one
- How will the practices determine their responsibilities/liabilities in the event of a dispute?
- What happens if one of the joint employers wishes to end the arrangement, perhaps because they are no longer providing a particular service, but the other practice is? Will the latter take on full responsibility for the employee, so there is no shortfall in working hours and pay?
- What if one employer wants to outsource the work or sell its business? (TUPE Regs 2006)

For further advice on joint employment contracts, please contact the BMA.

VAT considerations

Outlined below is the differing VAT treatment between the secondment of staff members from one GP practice to another and the option of staff being employed jointly by two different GP practices.

Secondment of staff

When determining whether or not a supply of staff has taken place for VAT purposes, a distinction has to be made between a supply of staff and a supply of the services that the staff are providing.

Supply of staff

A supply of staff would be made between two GP practices if the use of an individual who is employed by Practice A is provided to Practice B for a consideration [an agreement to provide a service in exchange for payment]. This applies whether the terms of the individual's employment are set out in a formal contract or letter of appointment or are on a less formal basis. The determining factor is that the staff are not contractually employed by Practice B but come under its direction. Where staff are supplied to Practice B but continue to operate under the direction Practice A, this is not a supply of staff, but is a supply of those services. If the supply is deemed not to be a supply of staff, then the supply is subject to the VAT liability applied to the type of services being provided. The supply of staff is subject to VAT at the standard rate when made between two UK entities.

Therefore, the charge from Practice A to Practice B for a supply of an employee on secondment would be subject to UK VAT at the standard rate (currently 20%).

Value of supply

If practice A is VAT registered, VAT would have to be charged on the full amount of the payment for services provided for the supply of staff (whether full-time or part-time). As well as any fee, this would include recovery of staff costs from Practice B (e.g. salary, NICs and pension contributions). VAT is due on the full consideration, including payments by Practice B direct to the staff member (e.g. NICs, PAYE and similar items). If practice A is not VAT registered, then it must do so when the value of its taxable supplies exceeds the VAT registration threshold (currently £79,000 in any 12 month period).

Therefore, Practice A must charge VAT on the whole amount being paid by Practice B for the supply of the employee.

Joint employment of staff

In case of Practice A and Practice B entering into a joint employment contract with an employee there is no supply of staff for VAT purposes between the Practices.

In order for staff members to be considered to be jointly employed their contracts of employment or letters of appointment must make it clear that they have more than one employer. The contract must specify who the employers are (e.g. 'Practice A and Practice B must both be named as joint employers).

When one practice acts as paymaster and pays the staff members salary, NIC and pension contributions etc, the reimbursement of its share of those costs by the other practice is treated as a disbursement for VAT purposes and is not subject to VAT.

Employees would not be considered to be jointly employed if their contract was with either Practice A or Practice B, even if their contract specifies that they will be required to carry out duties for the other practice. In that case there would be a supply of staff between one practice and the other and the treatment mentioned above would apply.

Where a joint contract of employment is entered into with Practice A and Practice B jointly employing the staff member there is no supply for VAT purposes. Reimbursement of costs between Practice A and Practice B is not subject to VAT.

Alternative Arrangements

Apart from secondment and joint employment contracts, there is an alternative arrangement where **employee can be on 'loan' from Practice A to Practice B for part of the working week (i.e. on a sessional/hourly basis).**

In a situation where there is not sufficient work at the original practice, it might be that a proposal for an employee to work part of the week at another practice is suggested as an alternative proposal to that of a variation to working hours.

Other alternative arrangements include CCG employed staff who do small amounts of audit work in a practice e.g. a prescribing advisor, shared provider companies that work on behalf of a number of practices, the use of joint call centre for managing appointments/telephone triage or an in-hours visiting service for a number of local practices.

See the section below for further information and contact the BMA for further advice.

Managing change

Change within an organisation is inevitable. It is important that any change is managed well through appropriate discussions and consultations with all those involved with a view to reaching agreement on the change. Training, development and regular communication are central to the management of change.

Before embarking on any change, you need to be clear of the following:

- why are you doing it?
- what are the intended outcomes?
- the impact of the change on your business
- the potential impact on your employees
- the potential cost of the change
- the anticipated timescales
- how you will measure the success of the change.
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Once you have identified the proposed change you need to begin appropriate consultations with your staff. Changes to a contract should normally only be made if both the employer and the employee agree. Please contact the BMA for advice if no agreement can be reached.

Please seek advice from the BMA at the earliest opportunity.

The BMA is there to help you with:

- your responsibilities as an employer
- providing initial guidance on the appropriate steps to follow
- explaining the legal framework that you are required to work within as an employer
- example policies, contracts etc. that can be adapted to your individual requirements
- giving you best practice advice.
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This document cannot replace the expert and specific advice on employment issues that you should and can obtain. This is available as part of your membership through the **BMA Employer Advisory Service** who can be contacted on **0300 123 123 3** or by email at support@bma.org.uk where more detailed individual advice and assistance can be provided.

It is not within the BMA's core remit to provide financial or VAT advice, and practices should contact a financial adviser on any such related issues.