

MIKE PITT, employment, company and commercial law specialist, of Oldham's Pearson Hinchliffe, examines the rights of Britons who work abroad.

A FRIEND on a recent short business trip to Berne met a personnel officer from Chadderton, an operations manager from Shaw and an English teacher from Springhead. Two of them had been posted to the Swiss capital and the third spent a lot of time travelling to and working from the country.

“How,” the friend asked me, “are their UK employment rights affected by periods of overseas working?”

The employer must have a contractual right to post the employee to work outside Britain. The employment contract may contain an express mobility clause allowing this. Alternatively, such a term might be implied if, for example, the firm carries out a lot of business abroad and the employee knew this when he or she started to work for the company. If there is no express or implied contractual term relating to overseas work, the employer should try to agree a variation of contract with the employee as and when the need for an overseas posting arises.

Employers must provide all their employees with written statements of their terms and conditions of employment. Where the employee is required to work outside Britain for more than a month, the written statement must state how long he or she will be working abroad and any terms and conditions that relate to his or her return to the UK. The written statement must detail any extra money or benefits the employee will receive because of working abroad, and the currency in which he or she will be paid.

When an employee is posted abroad, it might be necessary to decide which country's law applies to the contract. However, the employee will not be deprived of certain UK employment rights simply because the parties decide that UK law will not apply to the employment contract.

Under European Union legislation, various aspects of the labour law of the country in which they work protect UK workers posted to another EU country. Once again, however, this does not automatically mean that they can no longer rely on UK employment law. They may have a choice.

UK law on unfair dismissal covers employees if they are “employed in Great Britain”. An employee who works overseas temporarily will not necessarily lose the right to claim unfair dismissal in the UK.

Employees may bring claims under UK discrimination law unless they work “wholly outside” Britain. Even employees who work wholly overseas, but fulfil specific criteria, may bring race, religion, sexual-orientation and disability discrimination claims in the UK.

A period of employment spent wholly or mainly outside Britain counts towards an employee's continuous employment for all purposes other than redundancy.

Workers who, under their contracts, “ordinarily work” in Britain are covered by the UK national minimum wage.

Special provisions relate to seafarers, airline employees and offshore workers.