MATT GINGELL
020 3797 1264 | mattgingell@mattgingell.com

Office relocations: HR guide

Description

Introduction

Office relocations need to be handled carefully.

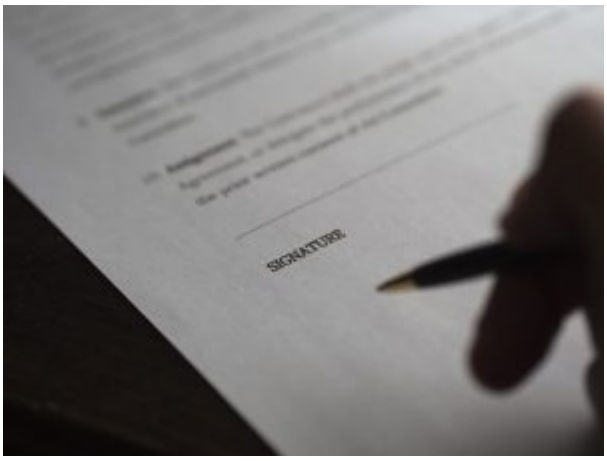
Office relocations happen for various reasons. Businesses may be relocated because a lease is coming to an end or it's more economically viable to operate in a different location. On some occasions just part of the office could be moving such as when a particular function is being done at another branch.

Whatever the type of relocation there are a number of employment law issues to consider.

"Mobility" clauses

If an office, or part of it, is relocating, it's first necessary to check whether there is a clause in the employee's employment contract which could allow the employer to change the employee's place of work. These clauses are known as "mobility" clauses. A very wide "mobility" clause purporting to allow the employer to change the workplace to any location is likely to be unenforceable. But a commonly used "mobility" clause permitting the employer to relocate within reasonable travelling distance would probably be acceptable.

It will often come down to what the intentions of the parties were at the point of contract. It would be reasonable to assume that the employee accepted that they may have to work temporarily in another office not far from their home.



Redundancy

In a redundancy situation an employer could try and rely on a “mobility” clause in one of two ways.

The employer could avoid the whole redundancy by simply asking the employee to relocate to the new premises in accordance with what is stated in the contract. If the employee refuses the employer could, arguably, dismiss for misconduct on the basis that the employee failed to follow lawful and reasonable instructions. Remember though – the “mobility” clause has to be enforceable for the employer to be able to exercise it.

Alternatively, the employer could go down the redundancy route and offer the employee suitable alternative employment at the new location. If the employee refuses, the employer could argue that the refusal was unreasonable and that the employee therefore lost the right to a statutory redundancy payment.

In some cases it may be reasonable for the employee to refuse an alternative job and the employee (subject to length of service) would then be entitled to a statutory redundancy payment.

Unfair dismissal

Employees normally need to have at least two years' service to bring an unfair dismissal claim. In order to defend the claim, the employer would need to show a fair reason for the dismissal (such as redundancy or misconduct), and a fair process must have been followed.

In a redundancy case the employer must consult with the employees prior to making any decision to dismiss. Depending on the number of employees affected the employer could have a separate obligation to consult the workforce collectively.

The employer would also have a duty to consider suitable alternative roles for the employees. Depending on the circumstances, the duty could extend to searching for appropriate jobs at companies within the same group of the employer. If, for example, a London office was relocating to New York it might be reasonable to expect the employer to consider suitable roles in the New York office (as well as at other company offices).

On some occasions the employer may be required to carry out a fair selection process. This is more relevant though when businesses are reducing headcount rather than relocating.

This guide is intended for guidance only and should not be relied upon for specific advice.

If you need any advice on **office relocations** or have queries relating to other employment law issues please do not hesitate to contact me on 020 3797 1264.

Do check mattgingell.com regularly for updated information.