



# International HR Forum

## The End Game

Legal issues involved in finishing well

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# What is coming to an end?

The nature of the relationship should be established at the outset and kept under review throughout.

Is the mission partner:-

- Employed?
- Self-employed?
- Volunteer?

# Considerations

1. Control – to what extent does the mission agency control the mission partner's activities?
2. Mutuality of obligation – is there an ongoing obligation on both sides – for the mission agency to provide work and the mission partner to do it?
3. Personal service – must the mission partner do the work personally or may they send a substitute?

# Considerations

4. Equipment and insurance – does the mission partner pay for any materials / equipment or do they source their own insurance?
5. Is there an agreed “wage” or is the mission partner paid per project / completion of task?
6. Integration – to what extent is the mission partner integrated into the organisation – are they treated like other members of staff?

# Employed or not?





# Crucial question No.1

**Are we considering bringing an employment relationship to an end?**

If so, employment rights must be respected and proper procedures followed

If not, there is more flexibility (legally at least)



## Crucial question No.2

**Which country's employment law applies?**

UK?

Country where the mission partner is serving?



# Does UK law apply to workers overseas?

Case of *Lawson v Serco* identified 4 circumstances where employees would have the right to bring proceedings in the UK:-

1. Where the employee ordinarily works in the UK
2. Travelling employees whose base remains in the UK
3. Expatriates who can show they were posted by a British organisation for the purposes of business in Britain
4. “Equally strong connections with the UK”





# Does UK law apply to workers overseas?

## Considerations:-

1. Does the person's home remain in the UK?
2. Paid in sterling
3. Contract with UK employer
4. Pay tax and NI in UK
5. What does the contract say about which jurisdiction's law applies?



# Does UK law apply to workers overseas?

Whether or not UK law applies, it is important for the agency to familiarise itself with the employment laws in the country of service to ensure compliance with their laws.

E.g. A foreign worker based in the UK will have the right to bring unfair dismissal proceedings in the UK, irrespective of what his contract says about which law applies. Many countries will have similar rules so don't rely solely on complying with UK law in dealing with employees abroad?

# Ending well

Clarity is key from the outset:-

- Contract
- Policies
- Objectives
- Appraisals / reviews – succession planning, long term objectives and timescales
- Two way communication over hopes, encouragements, disappointments etc
- If there are performance / conduct concerns, address these early in the hope of a resolution

# Ending well

Fair reasons for employer to end:-

- Conduct
- Capability
- Performance
- Redundancy (personal support?)
- Retirement? (Employer Justified Retirement Age – check laws in country of service too)
- “Some other substantial reason”

# Ending well

The legal procedure (UK law)

1. Written notification of what is being contemplated and why
2. Meeting to discuss the matter (right of accompaniment) – practical difficulties can be overcome by Skype or other online media
3. Written outcome
4. Right of appeal

# If status is questionable?

The procedure for employees could easily be adopted for all mission partners, even if without legal obligation. It's about basic fairness as well as legal compliance.

Key points:-

- Early discussion regarding issues
- Written notice of formal issues
- Chance for mission partner to make representations



Any questions?

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