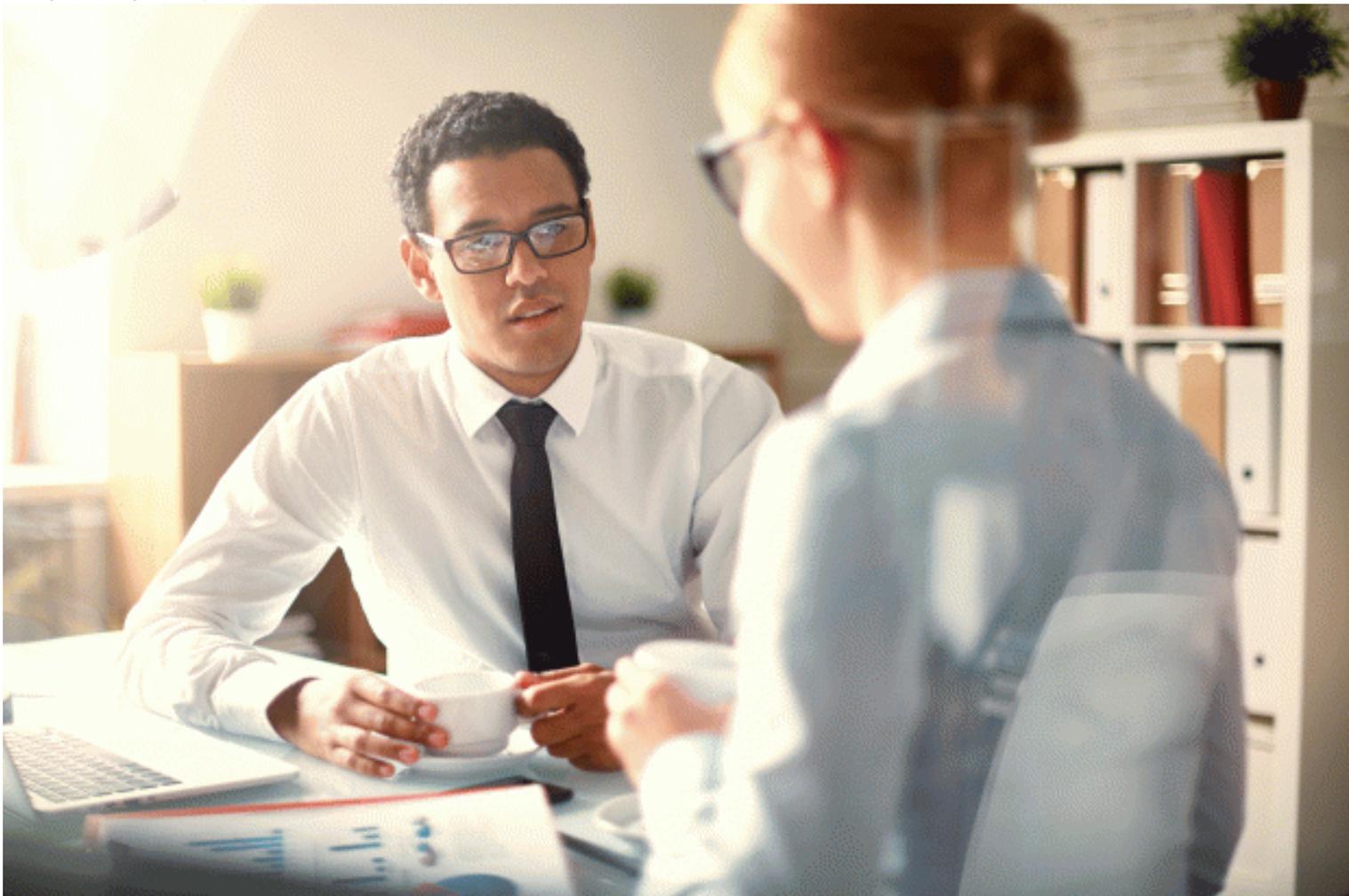


Brexit office relocations: What rights do you have if your employer wants to move?

Lawyer Matt Gingell explains what you can do if your employer decides to move jobs to a new location.

Matt Gingell | @MattGingell1 | Monday 26 September 2016 | 42 comments



Employers can only make you move within a 'reasonable' travelling distance. *office-relocations*

Office relocations could be all the talk. One Brexit result could be that UK firms holding “passporting” rights to operate throughout the European Economic Area may lose those rights. Currently, a considerable number of UK financial services firms rely on such rights.

If the rights disappeared, firms would then have no choice but to set up in an EU country to continue doing business across the European Economic Area. This means some business inevitably shifting out of the UK. It does though depend on the Brexit deal, and that's anyone's guess.

Of course relocations happen irrespective of the “unexpected” like Brexit. Offices may from time to time be relocated on expiry of a lease or because cheaper or more convenient premises are found elsewhere. Sometimes just sections of the business are moved, rather than the entire office.

“Mobility” clauses

If an office, or part of it, is relocating, it's first necessary to check whether there's 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.

Sometimes wording which is not written into contracts can be implied to give business meaning to the contract. This could be relevant when considering “mobility” clauses. Wording could be implied that the employee must reasonably be able to comply with the relocation request. There may also be an implied obligation that reasonable notice of the relocation should be given.

Redundancy

A redundancy occurs when an employee is dismissed due to: the actual or intended closure of the business; the actual or intended closure of the workplace where the employee was employed; or reduced requirements for an employee to do work of a particular kind where the employee was employed or within the business generally.

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

The employer could try and avoid the whole redundancy by simply asking the employee to relocate to the new premises in accordance with what’s 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.

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. Redundant employees, who have at least two years’ service, are otherwise usually entitled to the payment.

Claims

Employees who feel they’ve been dismissed unfairly may be able to claim unfair dismissal. Employees normally need to have at least two years’ service to bring an unfair dismissal claim, and the maximum compensation award is usually the lower of 52 weeks’ pay or £78,962.

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.

Employees could have other claims too. So if any of you employees out there are ever caught up in an office relocation and unsure of your rights, don’t forget to speak to your lawyer.

Matt Gingell is an employment lawyer at Gannons solicitors and specialises in employment law.