

EMPLOYMENT SCENARIOS

This document provides some general guidance on main themes which emerged from my session at the Study Day for Retainer and Sessional GPs in Oxford on Tuesday 29 September 2009.

Contract of Employment

It was stressed that it is essential to ensure that you are satisfied as to the wording of your contract of employment **before** you agree any contract and that the wording of the contract is agreed and signed before you start employment. You should also agree the job plan as part of the contract before you start.

The BMA provide a contract checking service and further guidance is also available on any particular queries or issues that may arise through askBMA and the Regional Advisers. Tel 0300 123 1233.

Application of National Model Terms

The national model salaried GP contract applies directly to GPs employed by GMS practices and PCOs on or after 1 April 2004. Although it is not obligatory for PMS or APMS employers, GPC would, expect all salaried GPs to receive at least the model terms. Remember, however, that:-

- The model terms may not be offered to you even where they should be and if you agree to different terms then that is still contractually binding.
- When model terms are offered there may, nevertheless, be amendments/modifications which you would wish to agree with the employer.
- The model terms do not cover every aspect of the employment relationship, so you should ensure that you are satisfied that there are no additional terms which it would be advisable to agree in writing.
- The salary level and any scale are for individual negotiation although at least the DDRB minimum recommended salary for salaried GPs should be offered.
- The job plan will have to be individually agreed.

Statutory Rights and Timescales

In addition to contractual rights, employees will also have statutory rights. Some of these are dependent on length of service and will invariably be subject to timescales if it is decided to proceed with a legal remedy (e.g., to an Employment Tribunal). Usually, but not always, the limit is **3 months** from the relevant act. However, assessing the timing of the relevant act may not be straightforward and time will usually be required to gather information and assess the merits of any case. Therefore, if an issue occurs, it is important that the BMA is contacted as soon as possible.

Ending Fixed Term Contracts

If an employer is considering the ending of a fixed term contract then effectively this is a dismissal in law and the normal employment rights apply. The employer should follow the statutory and contractual procedures to end employment. As a minimum, this should involve advising you of what is anticipated and inviting you to a meeting to discuss the proposed end of the employment. You are also entitled to have a representative and to appeal.

Whilst the primary responsibility for operating these processes lies with the employer, any salaried GP can and should consider raising the issue of future employment sufficiently in advance of the expiry of the fixed term to allow proper consideration and discussion to take place.

The discussion between the practice and the salaried GP should consider the scope for the salaried GP to continue working with the practice even though this would be beyond the date of the fixed term contract. Whether any such employment would be forthcoming would be dependent on the needs of the practice and wishes of the salaried GP. If further employment is agreed then the contractual documentation would have to be amended appropriately including whether or not it is now substantive, i.e. continues indefinitely. Under the Fixed Term Employees Regulations 2002, a fixed term contract is deemed to be substantive after 4 years in any case unless the employer can objectively justify the fixed term nature of the contract at the date of the last renewal. Any such amendments need to be agreed and documented.

If the practice is unable to offer further employment then there may be a need to consider the fairness of any subsequent dismissal and entitlement to a redundancy payment.

Changing Terms and Conditions

There are essentially five ways in which terms and conditions can be changed.

1. Explicit agreement to change.
2. Contractual right to vary the contract; for example an employer could reserve the right to change the timings of hours of work subject to consultation. If the contract contains such provision, the employer would not need subsequently to agree any change to hours. It might however be possible to object to the change if it was excessive or unreasonable.
3. Collective agreement; Where the contract specifies that such changes will be incorporated it may be possible to change the contract.
4. Accepting a change by performance; the employee could be deemed to have accepted a change by their performance if they raise no objection to, for example, a change in hours. If a change occurs which a salaried GP is concerned about then they need to clarify whether or not they are agreeing to the change.

5. Introduce change by dismissing someone; in law subject to notice an employer can introduce change by offering an employee a new contract on different terms following the dismissal. This would only be expected to occur in extreme circumstances.

Increases in Hours/Workload

The provisions in the national model contract states

“A practice may agree with a practitioner that he/she should undertake work which is not specified in his/her job plan by way of additional nominal sessions or fractions thereof. The extra session(s) shall be remunerated on a pro rata basis to a full time practitioner’s salary. Any such agreement shall be reviewed when required but at least annually and will be terminable at 3 months notice on either side”.

If problems with increasing workload are experienced then the salaried GP should:-

- Check what the contract says.
- If any aspect is unclear then ask for further clarification.
- Clarify and record what the additional work was, who authorised it, when it took place and how much time was involved.
- Raise your concerns with the employer, in the first instance informally and then if not successful as a formal grievance with your concerns recorded in writing.

Locums -v- Salaried GPs

The main consideration is whether the locum position is under a contract of employment or a contract for services. This has implications for a range of matters including application of national terms, statutory employment rights and income tax. It is very important to clarify and agree the nature of the contract at the outset. It should be recognised, however, that the agreement that applies is not necessarily determinative of the actual status of the contract. In the case of a subsequent dispute it may be that the status will have to be determined by an Employment Tribunal in considering whether any employment rights apply. In doing so, the Tribunal will have regard to a number of “tests” established by case law. Similarly the tax position is not necessarily determinative of the nature of the contract; it is possible for the Inland Revenue to take a different view of the status of the contract from that of an Employment Tribunal. If you have concerns about the possible status for your contract you should contact the BMA for further advice.

Sick Leave

The national model provides for entitlement to occupational sick pay depending on length of service. If an employee is off work for a protracted period, it is possible that an employer may consider whether employment should continue or not. Long term absence can be a fair reason for

dismissal. However, much depends on the circumstances and the employer should not only have a fair reason but also act reasonably. It would be expected, for instance, that a prognosis would be obtained regarding the length of the expected absence; that an analysis would be undertaken of the impact of the absence and the practice and that you would be consulted about the findings before any dismissal was implemented. It is also possible that issues relating to disability discrimination may apply. It is not a straight forward area of the law and you seek advice from the BMA as soon as possible.

Parental Leave

Parental leave offers qualifying parents the right to take unpaid time off work to look after your child or make arrangements for their welfare. It can help you to spend more time with your child and strike a better balance between your work and family commitments.

You have the right to parental leave if you:

- have been employed by the same company for a year or more
- are an 'employee', with a contract of employment (most agency and casual staff don't have the right to parental leave)

and you:

- are a parent named on the child's birth certificate or
- are named on the child's adoption certificate or
- have legal parental responsibility for a child under five (18 if disabled)

Both parents have the right to parental leave. If you are separated and you don't live with the children, you have the right to parental leave if you keep formal parental responsibility for the children.

Foster parents do not have rights to parental leave.

Wherever possible, employers and employees should make their own agreements about how parental leave will work in a workplace, but if this is not possible the following 'fallback scheme' applies automatically. The terms of your workplace agreement cannot be less favourable than the fallback scheme.

Always check your contract of employment or staff handbook for your employers own parental leave scheme. This could offer you special arrangements that are better than the fallback scheme, for example, you might be able to take parental leave even if:

- you have worked there for less than a year
- you are the grandparents or step-parents of the child
- you are the long term foster parent of the child

The fallback scheme

You must take your leave in blocks of full weeks, so if you want time off in odd days, for example to take your child to the dentist, you should ask your employer if you can work flexibly or use your holiday allowance.

A week is based on your usual working pattern. So if you work Mondays and Tuesdays only, a week would be two days or if you work Monday to Friday, a week would be five days.

You can't take more than four weeks' leave for any one child in a year. For these purposes, a year starts when you become eligible for parental leave. This is either when the child is born, or when you have worked for your employer continuously for one year, whichever comes later.

You can take a total of up to 13 weeks' parental leave for each of your children up until their fifth birthday.

If your child is adopted, you can take a total of up to 13 weeks' parental leave until the fifth anniversary of their placement with you or until their 18th birthday, whichever comes first.

Time off for dependants

If you are an 'employee', you have the right to unpaid time off work to deal with emergencies involving a 'dependant' – this could be your husband, wife, partner, child, parent, or anyone living in your household as a member of the family. A dependant may also be anyone who reasonably relies on you for help in an emergency, for example an elderly neighbour living alone who falls and breaks a leg and you are the closest on hand.

You should check your contract, written statement of employment or practice handbook for details of the policy on time off for dependants and compassionate leave.

BMA ISSUES

Sessional GPs Conference

The BMA is holding an educational conference for Sessional GPs on 13th November, entitled "Recognise Your Talents, Realise Opportunities: Key Steps For Salaried and Locum GPs.

Details can be found via the attached link

http://www.bma.org.uk/whats_on/SESSGP09.jsp

Model Contracts

The model salaried GP contract for a GP employed by a GMS practice can be found in the BMA Salaried GPs Handbook.

The model GP retainer contract is also set out in the Salaried GP Handbook.

The handbook may be accessed via the link below.

http://www.bma.org.uk/employmentandcontracts/employmentcontracts/salaried_gps/salariedgpbook.jsp

**FOR INFORMATION, ADVICE OR REPRESENTATION CONTACT
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