

IMMIGRATION ACT 2014

SUMMARY PAPER

BACKGROUND



WHAT IS THE IMPACT OF THE IMMIGRATION ACT ON BUSINESSES

When considering the Modern Slavery Act it is worth incorporating the relevant aspects of the Immigration Act.

Immigration and visa requirements play an increasing part in the recruitment process. An employer's ability to recruit key personnel within the time frame demanded is crucial to its continued success. Those dealing with recruitment must have a good knowledge of immigration law so they can assess how realistic it is to employ migrants.

WHAT ARE THE KEY ELEMENTS A BUSINESS SHOULD CONSIDER

EMPLOYERS LICENCE TO SPONSOR

The current immigration system is based on a tiered points based system

An employer wishing to employ a foreign national under Tier 2 (skilled workers) and Tier 5 (temporary and youth scheme workers) must register and obtain a licence from UKVI (UK Visa & Immigration).

The UKVI uses a scoring system and employers should carry out an internal audit to ensure they are eligible to be an A rate sponsor. Company's whose scores are not satisfactory will only be granted a lower B-rating licence or not at all.

To obtain a license for an A-rated sponsor employers will need to

- Satisfy the UKVI they are genuine employers based in the UK and operating lawfully
- Comply with employment and immigration law and good practice
- Provide original or certified copies of documents required to support their application
- Demonstrate that it uses tight HR systems
- Does not have any civil penalties or criminal convictions against its organisation or key staff
- Is not found to be non-compliant

The sponsor license must be renewed every 4 years

SPONSORING MIGRANTS TO WORK IN THE UK

Employers cannot sponsor a migrant until they have obtained a sponsor licence. Employers must check in advance that migrants can meet their side of the obligations before starting the process of sponsoring them. Some basic stages involved in employing migrants include

- Carry out a resident labour market test for Tier 2
- Ensure migrant can meet their requirements for their specific category including English language and maintenance requirements and can provide all relevant documents
- Applying for a securing the migrants certificate of sponsorship (CoS), which is like a work permit but issued by the employer.
- Drafting and assigning the CoS and giving a copy to the migrant
- Assisting the migrant with their application for entry clearance
- Being aware when the migrant job change requires a new CoS

MERGERS TAKEOVERS AND TUPE

Sponsors licences are non transferable. The status of a sponsor licence can directly effect a merger or takeover. Migrants can transfer under TUPE, but the new employer may have to apply for a sponsor licence, which may have an impact on the TUPE process and the commercial negotiation.

OTHER EMPLOYMENT CONSIDERATIONS

Recruitment exercises that attract foreign nationals also attract an added risk of race discrimination. Employers must ensure policies or processes do not directly or indirectly discriminate.

Any offer of employment should be made conditional upon the migrant having and maintaining the legal right to work in the UK. The start date should be postponed if the legal right has not been obtained by that date, no employer should employ anyone prior to obtaining this right. If the start date is critical the offer must be made clear that without the right to work the offer will be withdrawn.

The following should be considered in Employment Contracts

- provisions that the employment remains conditional upon the migrant keeping its UK right to work status
- Obligations on the employee to update the employer on any information that would affect their immigration status.
- Immediate termination provisions if the employee's immigration status changes in a way that prevents them lawfully working in the UK.

Employers should consider the tax implications of employing foreign nationals. Employers should consider the migrants personal circumstances, some of their family may not be permitted to come to the UK, which may effect how long the migrant will stay. Will the role require a lot of travel and if so will the immigration status make this an ongoing issue for the employer and the migrant.

Employers need to put a system in place to ensure they are aware when their employees immigration status is due to expire, and deal with the renewal (if of course renewal is an option) in plenty of time to avoid penalties.

Employers should carry out annual document checks on all employees with time-limited visas. Failure by the Employer to report any matters which may effect the employees immigration status could lead to the employers licence being revoked or suspended, which could cause a major employment issue if the Employer has multiple foreign nationals working under the licence.

EMPLOYERS LIABILITY UNDER THE IMMIGRATION ACT

Employers have a duty to prevent illegal working and must be familiar with their obligations.

Failure to identify migrants who require UK immigration permission or failure to undertake the prescribed document checks can result in criminal and civil penalties of imprisonment and fines.

The maximum fine is £20,000 for each illegal worker (this increased from £10,000 in May 2014).