

Changes to Foreign Worker Rules

In the know

The government has recently changed the rules on employing workers from outside of the European Economic Area in a bid to encourage employers to recruit from within the UK. Employers who undertake overseas recruitment must be aware of the rules in order to avoid hefty fines.

European Economic Area

- The rules an employer should follow in order to prevent illegal working depend on where an individual is from;
- The distinction is usually drawn between individuals from the European Economic Area (EEA) and non-EEA individuals;
- Generally, individuals from within the EEA e.g. France, Spain, Germany, Italy etc enjoy freedom of movement and require no clearance to work in the UK. Clearly, Brexit may affect this but no details are currently confirmed in this regard;
- Individuals from outside the EEA e.g. USA, Australia, Africa, India etc must meet certain tests before they may legally work here;
- Different 'tiers' exist which dictate entry requirements dependent on type of job etc, and employers must 'sponsor' the individuals by obtaining a sponsorship licence;
- The recent changes to immigration affect employers who wish to recruit from outside of the EEA.

2017 Changes

- Most overseas workers will enter the UK using the Tier 2 visa;
- Tier 2 (General) visa individuals will need to earn at least £30,000 per year to qualify (an increase from £25,000) though there are some exemptions;
- A new Immigration Skills Charge now applies to each certificate of sponsorship. This costs £1000 for larger firms and £364 for smaller firms or charitable organisations;

- This charge will not apply to graduate trainees, students switching to Tier 2 visas, anyone sponsored before 6th April 2017 or those applying to extend leave to remain, or to exempted roles;
- Employers must already advertise a role in the UK for at least 28 days (Labour Market Test) unless the role attracted a salary of £155,300 per year. The salary threshold has now increased to £159,600;
- Employees who transfer within a multi-national business to the UK will have to pay an immigration surcharge of £200 but the Immigration Skills Charge will not apply.

2016 Changes

- The Immigration Act 2016 reduced the threshold for prosecution: it must now be shown that an employer had reasonable cause to believe an individual is illegal, rather than showing the employer actually knew;
- Employers face an increased maximum prison sentence of 5 years, up from 2 years;
- Businesses can be shut down for up to 2 days for repeated offences.

Croner Tips

It is imperative that employers check appropriate documentation from all individuals before employment starts to ascertain their right to work in the UK.

These checks should be carried out on all prospective employees, not just those who do not appear to be from the UK.

Please contact the Business Support Helpline for advice on your specific situation before acting on the information in this article.