

IMMIGRATION AND ELIGIBILITY ISSUES

Entitlement to Work

An employer has a legal responsibility to prevent illegal working. He must ensure that the employee is entitled to work in the United Kingdom.

It is essential to undertake document checks on potential recruits. The UK contains a range of racial and ethnic backgrounds. An individual's race or ethnicity origin is no indication of entitlement to work or not. Any discrimination on racial grounds could lead to liability under discrimination legislation.

An employer is entitled to verify entitlement to work. A prospective employee must provide an employer with an original version of documents from one of two lists. The documents should not only be produced but must be checked to ensure that they are genuine and that the person named is the person in the documents and is the prospective employee. If the document indicates the employee only has limited leave to work in the UK, the check must be re-undertaken every twelve months.

There is an on spot notice of up to £10,000.00 per illegal migrant worker if an employer cannot establish that it has undertaken the relevant checks. In addition there is the risk of prosecution and an unlimited fine or prison for up to three years.

The employee should be asked before commencing employment to bring the appropriate documentation. Alternatively, the offer could be made conditional upon production of the documents. The relevant documents must be kept either by way of photocopy or digital image. A record of every document must be kept. It is only permitted to keep original documents for the purpose of copying. Original documents must not be kept for more than a day. It is an offence for an employer to retain any such documents.

Automatic Entitlement

The following groups are not subject to immigration control and are employable without any restrictions.

- British citizens;
- Members of the common travel area which is the UK and Republic of Ireland;
- Certain Commonwealth citizens;
- EU and EEA Nationals.

Some employees may need to register or get authorised from the UK Border Agency to work in the UK legally.

Certain Special Categories

Overseas nationals who do not fall within the above categories are subject to immigration control. Some overseas nationals may be granted permission to work without a work permit. A points system is being phased in gradually, to replace existing work permit rules in the UK. Under the system there are a number of tiers. Only tier one is now in operation. This covers highly skilled migrants, entrepreneurs and investors.

A highly skilled migrant can apply to come to the UK without having a job offer. If the application is successful, the applicant can take any job he chooses. For an applicant to be successful, he must have a specified number of points. This will depend on a combination of skills and attributes such as age, qualifications, knowledge of the English language and savings.

Other tiers will be introduced later and this will allow for other categories of individuals to apply for clearance to enter the UK.

Students from outside the EU and EEA over sixteen can undertake certain periods of work in the UK, as long as they meet the conditions of entry and are given leave as a student to undertake work. It is possible to employ a student up to twenty hours a week only, during term time, except when the placement is in accordance with the requirements of their assigned course or internship. They may work full time outside the term time, but they must have had leave to enter the UK.

An asylum seeker may be able to apply to work. They should demonstrate entitlement through their registration cards, which should state the permitted employment applicable.

Permits

In order to apply for a work permit, it is generally necessary to satisfy the UK Border Agency that it is essential to recruit somebody outside the UK or the EU/EEA.

The application will be assessed with reference to the circumstances. The vacancy must be real. The pay and conditions must be equal to those of resident workers. This job must comply with UK law and licensing where applicable. If there is a qualified or experienced resident worker whether a EEA or UK national, a work permit may be refused.

The main kind of work permits issued are:

- business and commercial work permits;
- training and work experience scheme permit;
- sports and entertainment scheme permit;
- sector based schemes permit.

The work permit must be for a named person and a specific job. It is not transferrable nor may it be used for a different job.

The work permit has to be issued before the potential overseas employee can enter the UK as a work permit holder. Nationals of some countries may need to get an exit visa from their own country and/or an entry visa to the UK from their own government.

An individual who qualifies for a work permit will not necessarily be permitted a visa or permission to enter the UK.

There is a flat fee charge of £190.00 per application for work visas. It also applies to extensions and change of employment. It is necessary to notify certain changes of employment particulars such as changes of address.

All employees of UK based businesses must be paid the national minimum wage. This is the case whether they are paid overseas or in the UK.

European Union Citizens

Employees from the European Economic Area which includes the European Union and five other European states are entitled under European law to work in the UK. However some will need authorisation from the UK Border Agency to work in the UK legally. Even if an individual is from an EEA country, they must still be asked for an original version of the relevant documents in order to prove their entitlement.

Nationals of Latvia, Slovakia, Czech Republic, Lithuania, Slovenia, Estonia, Hungary and Poland can live and work in the UK. However a Workers Registration Scheme (WRS) has been set up to monitor the participation of nationals from these countries in the UK labour market.

Unless exempt, all workers must apply to register under the WRS with the UK Border Agency within one month of starting work. They will need to provide evidence of their employment as part of the application and a £90.00 fee unless they already have a certificate of registration. The scheme does not apply to Bulgaria and Romanian nationals who joined the EU on 1st January 2007.

An employer should take a copy of the worker's completed registration application form and keep this until official notice is received confirming the worker has been registered. It is an offence to employ a non-exempt unregistered national from one of the above countries for more than thirty days without obtaining a copy of their application form or their certificate of registration.

Once registered, the UK Border Agency provides the employer with a registration certificate. Although it is the employee's obligation to register, it is the employers responsibility to verify that they have done so by copying their application and keeping their copy of the certificate. There is a penalty of £5,000.00 for failing to do so.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.

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