

HEWITSONS

BUSINESS IMMIGRATION



Where an employer within the UK wishes to recruit an individual from outside the European Economic Area (EEA), it is important that it is alive to business immigration issues. For the unwary, business immigration is a potential minefield, given the repercussions of non-compliance.

Points-based system

Under the UK immigration system, nationals of countries outside the EEA are only entitled to enter or remain in the UK to live and work if they score the requisite number of points under the points-based system (“PBS”).

Points are awarded to the individual based on criteria which can include the migrant’s ability, experience and age.

Under the PBS, there are five routes of entry into the UK (known as “tiers”), namely:

- Tier 1 – highly-skilled individuals;
- Tier 2 – skilled workers with a job offer;
- Tier 3 – low-skilled workers (currently not operational);
- Tier 4 – students;
- Tier 5 – youth mobility and temporary workers.

Sponsorship

With the exception of Tier 1, migrants must be sponsored before they can apply to enter or remain in the UK. Employers who wish to employ migrant workers who fall within Tiers 2, 4 and 5 will therefore need to hold a “sponsorship licence”.

Once a business has obtained a sponsorship licence, it will be permitted to issue a “certificate of sponsorship” to the individual it wishes to employ. However, instead of being able to issue certificates of sponsorship to whoever it chooses, a number of different tests need to be passed before the

employer is legitimately able to issue a certificate of sponsorship to a migrant for a particular vacancy.

Penalties for non-compliance

Employers can be served with a penalty notice of up to £20,000 where they have illegally employed an adult who is subject to immigration control, known as the “civil penalty”.

An employer may establish a “statutory excuse” as a defence to being issued with a civil penalty where illegal workers are discovered, if they check original documents from prescribed lists before employing the individual. However, it is not enough simply for the employer to check the documents – the employer must also take reasonable steps to check the validity of the documents produced, take copies as evidence that the requisite documentary checks have been completed and retain such copies on file.

In addition to the civil penalty, there is also a criminal penalty where an employer either knowingly employs illegal workers, or has “reasonable cause to believe” that someone is working illegally. Sanctions can include prison sentences for individuals working for the employer who had knowledge, or reasonable belief, of the illegal working.



Further to potential financial and criminal repercussions, sanctions can be imposed on employers who are also PBS sponsors, from limiting their ability to issue certificates of sponsorship up to and including having their sponsor licence revoked altogether.

Specialist advice

Given the potentially serious repercussions for the business, it is vital for employers to be alert to business immigration requirements. The rules governing permission to work in the UK change frequently and therefore it is recommended that employers should take specialist advice if they are considering recruiting an individual from outside the EEA.

Lynne Adams



Associate
Milton Keynes
01908 247025
lynneadams@hewitsons.com

Gemma Hill



Solicitor
Northampton
01604 463309
gemmahill@hewitsons.com



We pride ourselves on delivering an outstanding service to a wide range of individuals, businesses and institutions including charities, educational and sports bodies. The firm's size and breadth of specialisms means each client receives the focus it requires. We operate UK wide and have worldwide reach via our network of independent law firms, LawExchange International.

This document is written as an outline guide only and any action should not be based solely on the information given here. Appropriate professional advice should always be taken in specific instances.

Hewitsons LLP is authorised and regulated by the Solicitors Regulation Authority.