

Welcome

Employment law and immigration law: How to remain compliant

Presented by Emma Morgan & Rachel Harvey

EMPLOYMENT LAW AND IMMIGRATION LAW: HOW TO REMAIN COMPLIANT

Your hosts

Connect with your hosts on LinkedIn by scanning the QR codes below.



Rachel Harvey, Legal Director

Rachel.Harvey@shoosmiths.co.uk



Emma Morgan, Partner

Emma.Morgan@shoosmiths.co.uk



What we will cover

- ✓ How to remain compliant with both Employment and Immigration requirements
- ✓ The cost and considerations of sponsorship
- ✓ Right to work: how to navigate
- ✓ Adverts, interviews and rejections
- ✓ Students & Graduates

A low-angle photograph of a modern glass skyscraper reflecting a traditional brick building. The text "How do we remain compliant?" is overlaid in white, bold, sans-serif font in the center of the image.

**How do we
remain
compliant?**

How do we remain compliant throughout?

Pre-Employment

- Right to work – confirm identity, immigration status, retain documents

During Employment

- Contractual provisions
 - *“warrant that you are entitled to work in the UK without any additional approvals...”*
 - *“warrant that you will notify us immediately if you cease to be entitled to work in the UK...”*
- Sponsorship duties – report promotions, salary reductions, changes of work locations within 10 days.
- Follow up checks – visa expired/extensions/switch (to be covered later).

Post-Employment

- Sponsorship duties – report a dismissal or resignation within 10 days
- Certificate of Sponsorship – be alert to end dates on certificates



The cost and considerations of sponsorship

What is the true cost of sponsorship?

- Visa application fee
- English language test
- ECCTIS statement of comparability
- Translation of supporting documents
- Immigration skills charge
- Immigration health surcharge (“IHS”)
- Visa centre processing fee
- Priority services
- Additional services
- Relocation costs
- School costs for dependants

Recruitment Considerations

- The Role
 - Length of time that the employee is needed for – permanent or temporary?
 - Level of “skill” that is required for the role
 - Shortage occupation and the relevant SOC code
- The Employee
 - Long term ambitions – do they want to settle in the UK?
 - Have they had entry clearance previously?
 - Are they switching visa category?
 - Do they have any dependants?
- The Cost
 - Immigration skills charge and immigration health surcharge
 - English language requirements or tuberculosis certificate cost

Immigration skills charge: a closer look

- Payable where the applicant is applying for a visa from (a) outside the UK to work in the UK for 6 months or more; or (b) inside the UK for any length of time.
- Exemptions apply including those sponsored on an ICT Graduate visa, those studying in the UK switching to a skilled worker or ICT visa and some employed under certain SOC codes (i.e. scientists, teachers, clergy, sports people).

Period	Small or charitable sponsors	Medium or large sponsors
First 12 months	£364	£1,000
Each additional 6 months	£182	£500

- Small sponsor = turnover is £10.2million or less, assets are worth £5.1million or less, 50 employees or fewer.

Clawback Agreements

- What can be “clawed” back?
 - Any cost paid by the business to the personal benefit of the employee (e.g. visa fee, IHS fee, visa centre fees, relocation costs, English language test fees etc)
 - Immigration skills charges cannot be claimed back
- Repayment terms
 - Sliding scale (i.e. 1 – 12 months = 100% payback, 13 – 18 months = 75% payback etc)
 - Deductions from monthly salary
- Considerations
 - What happens if the employment is terminated by the employer (e.g. gross misconduct, redundancy)?
 - What happens if the application is unsuccessful?
 - How are you going to deal with enforcement of the terms?



Right to Work: how to navigate?

An overview...

- Return of physical Right to Work checks postponed until 05 April 2022
- Continue to complete the checks via video conference
- UK government completing a review to move to digital solution
- An “App” or similar expected to be introduced to formalise right to work checks
- BRP phased out - 31/12/2024
- Employee “share code” best way to prove immigrations status

When to do the right to work check?

- As soon as reasonably practicable!
- Avoid waiting until day one of the employment / induction day
- Problems Shoosmiths have experienced:
 - Documents not being available to check
 - Documents having expired or being invalid to use for right to work purposes
 - People trying to use family member's / friend's documents
 - People not actually having the right to work or gaps in their RTW history
 - Share code not matching or being unrecognised
- Use HR systems to record end dates and the certificate of sponsorship end date (e.g. reminders 60 days and 30 days before expiry)

What should I do if an employee loses their right to work?

- INVESTIGATE

- Check Home Office's Employer Checking Service (application, review, appeal)
- Speak to the applicant and give them opportunity to obtain the proof
- Explain consequences if no right to work can be proven (i.e. dismissal)

- HEARING

- Discuss the matter with applicant in formal setting
- Set out the evidence and be transparent
- Termination by reason of some other substantial reason ("SOSR") rather than solely relying on illegality

- APPEAL

- Hear the appeal against dismissal in line with company policy
- Possible to reinstate if further evidence comes to light after the dismissal

What are the consequences for getting it wrong?

- Civil penalty - £20,000 per illegal worker
- Criminal penalty – 5-year prison sentence and unlimited fine
- Loss of sponsorship licence
- Closure of business and compliance order issued by the court
- Disqualification of Directors
- Disqualification as a sponsor
- Seizure of earnings made as a result of the illegal working





Adverts, Interviews and Rejections

Adverts

- What roles can we sponsor?
- Do we need to have a licence?
- Can we remain silent on whether we will offer sponsorship?
- Do we need a policy on sponsorship?
- How do we decide what roles or who to sponsor?
- Should we be doing impact assessments?

Rejections

- How do we deal with challenges?
- Risk of indirect discrimination?
- What should be our approach?
- What evidence do we have to deal with challenges?

A photograph of a modern building with a glass facade reflecting a traditional building. The text "Students & Graduates" is overlaid in white. The background shows a multi-story building with a grid of windows, some of which are arched at the bottom. The glass facade of the foreground building reflects the sky and the building behind it, creating a complex pattern of lines and colors. The overall tone is dark and moody, with a blue and grey color palette.

Students & Graduates

Considerations...

Students who are sponsored to study a full-time course by a sponsor are permitted to work for:

- Up to 20 hrs a week in term time if studying for qualification at degree level or above;
- Up to 10 hrs a week in term time if studying for a qualification below degree level;
- Outside of term time can work full-time but can't take a permanent role.

Letter must be obtained from the University confirming course dates

Consequences of Covid-19 – deferral to study, moved online, course shortened

Employers must check RTW carefully given limits - not all students can work (e.g. visiting students and short term students)



Graduate Visa route

- Implemented on 01 July 2021
- Valid Tier 4 (General) or Student Visa – must apply before expiry
- Completed course at a UK Higher Education provider
- No minimum salary requirements
- No minimum skill level requirements
- Valid for 2 years (3 years for those with a PhD)
- Not possible to extend and can only be used once
- Gives employers another option rather than “sponsorship”

**Watch this space for more routes
in Spring 2022...**