



## International Recruitment update and Right to Work

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# What will we talk about?

- eVisas
- Fee increases
- Other key changes
- Conducting Right to Work checks
- Problematic areas with Right to Work



# eVisas

- What is an eVisa?
  - An online record of an individual's immigration status and the conditions of their permission to enter or stay in the UK
- Replaces:
  - Biometric Residence Permits
  - Biometric Residence Cards
  - Visa stickers and ink stamps in passports
- In place from Autumn 2024
- Benefits:
  - Secure from tampering (meaning they're more reliable as proof of Right to Work)
  - Cannot be lost or stolen
  - No need to wait for physical documents to be processed
  - Individuals can update personal information (such as change of address) in their UKVI account

- How will it affect Right to Work checks?
  - Individuals with eVisas will generate their share code from their UKVI account
  - You can then use this to verify their right to work using UKVI's online checking service
  - Alternatively, you can request a check using the employers checking service
- What sponsored employees need to do:
  - BRPs expire on 31 December 2024. Those with BRPs should create their UKVI account before that date
  - Retain their expired BRP card in case it is needed for future applications to extend their right to stay in the UK
  - If they have lost their BRP card, they can use their passport and visa application number to create their UKVI account
  - Those with BRCs will already have had an eVisa granted to them

# Fee increases

## UK Work Visa Fees:

- Health & Care Worker Visas:
  - For up to three years, fees increased by 7% from £284 to £304.
  - For over three years, fees increased by 7% from £551 to £590.
- Certificate of Sponsorship allocation fee increase
  - From £239 to £525
- Sponsor Licence Fees increase:
  - Large sponsors: an increase of 7% from £1,476 to £1,579
  - Small sponsors and charities: an increase of 7% from £536 to £574

# Changes to sponsorship for care providers from 9 April

- Sponsorship threshold increase to £25,000 p/a or £12.82 p/h, whichever is higher
- Requirement to attempt to recruit from within the UK before recruiting from overseas:
  - Providers are required to show that they have tried to recruit from the pool of displaced workers already within the country before sponsoring.
  - There are two exceptions to this:
    - the worker was last granted permission as a Skilled Worker and sponsored under the 6135 or 6136 SOC codes – this applies whether the worker is changing sponsor or continuing with the same sponsor; or
    - the worker is already legally working for you as a care worker or senior care worker, and has been working for you in that role, with permission on another immigration route, for at least the 3-month period before the date of their application.

(Paragraph SK4.29 of the Workers and Temporary Workers guidance)

  - To recruit directly from overseas, providers will confirmation from the relevant regional or sub-regional partnership that they have made genuine efforts to recruit from the existing pool of workers in the UK.
- White Paper announced last week
  - Medium term aim is to prevent providers from recruiting from overseas.
  - Immigration salary list will be replaced by a short-term list, which care workers will be excluded from.
  - As it stands, the long-term vision of the government is that care providers should only recruit from the domestic market.

# Right to Work checks

- Right to work checks are used to ascertain whether someone is an illegal worker. An illegal worker includes someone who does not have permission to be in the UK, including overstayers, as well as those who do have permission to be in the UK but their permission does not allow them to work in the UK.
- Right to Work checks should be carried out before the employee has commenced work for you. If you delay in carrying out Right to Work checks, there is a risk that you could be illegally employing a worker and, even if you are not, UKVI could deem that your taking a risk in delaying your Right to Work checks could pose a risk to sponsorship compliance.
- Right to Work checks must be carried out for all staff, and not just those requiring permission to work within the UK.



# Right to Work: What must be done?

- All employers must:
  - Carry out "right to work" checks on all prospective employees before the employment starts
  - Conduct follow-up checks on employees who have a time-limited permission to live and work in the UK
  - Keep records of all the checks carried out
  - Not employ anyone it knows or has reasonable cause to believe is an illegal worker
- Penalties
  - A civil penalty may be imposed if an employer employs someone without the right to undertake the work for which they are employed (section 15, IANA 2006): £45k per worker for first offence, £60k per worker for subsequent offences.
  - Other sanctions may include:
    - closure of the business and a compliance order issued by the court
    - disqualification as a director
    - not being able to sponsor migrants
    - seizure of earnings made as a result of illegal working
  - A criminal offence will be committed if an employer knew or had "reasonable cause to believe" that the employee did not have the appropriate immigration status (section 21, IANA 2006)
    - Sanction can be a prison sentence of up to five years and an unlimited fine



# How to carry out Right to Work checks

- To comply with your Right to Work obligations, you should carry out one of the following checks for each employee before they start work for you:
  - a manual right to work check (this can be carried out for all employees)
  - an electronic right to work check via the services of a Digital identity document validation technology (IDVT) provider (for British and Irish citizens only)
  - a Home Office online right to work check (for non-British and non-Irish citizens)



# These are as follows:

- Step 1: Obtain
  - You can check the employee's right to work online using the share code provided by them
  - Alternatively, you should obtain the employee's original Right to Work documents as prescribed in the Home Office's guidance. These fall into one of three categories, depending on the nature of the employee's Right to Work:
    - List A (continuous Right to Work). You won't need to recheck their Right to Work after the initial check.
    - List B Group 1 (time limited Right to Work): You'll need to conduct a further Right to Work check before their current permission expires.
    - List B Group 2 (time limited Right to Work for 6 months): You'll need to conduct a further Right to Work check before the expiry of the Employment Checking Service positive verification notice.
- Step 2: Check
  - This step needs to be carried out in the presence of the employee, either in person or via live video link. You should check that the employee has the right to work by performing a manual document check or an online right to work check.
- Step 3: Copy
  - You will need to take copies of the documents that have been manually checked, record the date of the check and date for follow-up checks, and retain copies of those documents. For online checks, the "profile" page, which includes the individual's photograph and date on which the check was conducted, must be retained.

# Right to Work: Supplemental Employment

- Workers can undertake supplementary employment:
  - that appears in Appendix Immigration Salary List; or
  - is in the same profession and at the same professional level as the job for which the CoS was assigned.
- Supplementary employment must not:
  - exceed 20 hours per week (which includes travelling and waiting time)
  - take place during the contracted hours for their sponsored employment
- In order to obtain a statutory excuse for Right to Work purposes, you are required to confirm that:
  - The worker has the right to work in the UK; and
  - Is allowed to carry out the work in question.
- You need to ensure that the supplementary employment meets the requirements. UKVI recommends asking the worker to provide a letter or other evidence from the sponsor confirming:
  - They're still working for their sponsor;
  - The job description and occupation code of their sponsored employment
  - Their contractual working hours.

# Right to Work: Supplemental Employment

In practice:

- Common for staff seeking supplemental employment to be receiving no/less than contracted work from their sponsor. In such cases, you cannot provide supplemental employment;
- If you become aware that the individual is not working their contracted hours for their sponsor whilst they're working for you, you lose the Right to Work statutory excuse at that point;
- Even if you do not have knowledge of, but only grounds to suspect, that the worker is no longer working for their sponsor or has fallen below the salary threshold, you should request further information from them and/or their sponsor; and
- If you identify that a worker is acting in breach of their sponsorship requirements, you should:
  - Take steps to terminate their employment; and
  - Consider whether it is appropriate to report to the Home Office.

# Right to Work: Students

- International students are permitted to work in the UK:
  - For limited hours during term time (usually 20 hours)
  - full-time before their course starts, during vacations or whilst they retain permission after they have completed their course
- Permission to work must be set out in the individual's passport or eVisa
- As part of your Right to Work checks, you should keep copies of their academic term and vacation times
- Students are not permitted to fill a permanent full-time vacancy unless they are applying to switch into the Skilled Worker or Graduate routes during their study.
- If so, they can fill a full-time role:
  - up to three months prior to the course completion date for the Skilled Worker route, or
  - once they have successfully completed their course of study for the Graduate route

Any Questions?



# Employment law, Business Immigration and HR Legal Support:

- Sponsorship licences and business immigration support
- Day-to-day employment issues
- Dismissals
- Employment contracts and service agreements
- Restrictive covenants, confidentiality and intellectual property
- Employment status
- Restructuring, reorganisation and redundancy
- Mergers, acquisitions, insourcing and outsourcing (TUPE)
- Changing terms and conditions of employment
- Employment tribunal claims
- Discrimination and equal pay issues
- Whistleblowing
- Settlement agreements and pre-termination discussions
- Retainer service and 'TLC' insurance
- Data Protection (GDPR and subject access requests)
- Disciplinary and grievance investigations
- Policies and Procedures
- Employment law and HR training



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# Care Legal Support:

- Advice on compliance with the regulations and registration
- Challenging inspection reports and ratings
- Defending regulatory enforcement action (CQC/Ofsted)
- Criminal investigations and prosecutions (e.g. by police, CQC, etc)
- Safeguarding investigations
- Coroner's inquests
- Funding disputes and unpaid care fees
- Court of Protection cases
- Regulatory due diligence
- Sales, acquisitions and refinancing
- Transactional and commercial services
- Employment issues
- Requirements for charities
- Property services, planning and development
- Restructuring

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