

Brexit: Impact on overseas recruitment

29th October 2020

On 13th July 2020, the Home Office published a statement setting out further detail on how the UK's immigration system will operate after freedom of movement ends on 31st December 2020. The latest statement builds on the detail set out in the Policy Statement issued on 19th February 2020 and is broadly divided into those 'coming to work', 'coming to study', 'coming to visit' and 'other immigration routes'.

How does the current system operate?

Currently, EU nationals (and certain other categories of individuals, such as relevant family members) have the freedom to live and work in the UK without a visa and, whilst as an employer you need to check their right to work in the UK, this is straightforward and is typically done by checking the migrant's passport or national identity card. EU citizens already living in the UK prior to 31st December 2020 can continue to rely on these documents as evidence of their right to work in the UK until 30th June 2021. However, EU citizens and their family members who want to stay in the UK beyond June must make an application under the EU Settlement Scheme ('EUSS') before 30th June 2021 and be awarded either 'pre-settled' or 'settled status' in order to retain the right to live and work in the UK.

What does the new statement say?

In broad terms, anyone from outside the UK and Ireland coming to the UK after 1st January 2021 will need a visa if they want to work in the UK.

Non-EU nationals cannot work in the UK unless they have a visa and are 'sponsored' by their employer. Therefore, if you are wishing to recruit non-EU nationals, you must hold a sponsor licence in order to employ them. If you do not currently have a sponsor licence but will want to recruit from outside the UK from 1st January 2021, you will need to apply for a sponsor licence. Applications must be made online:

<https://www.points.homeoffice.gov.uk/gui-sponsor-jsf/SponsorHome.faces>

What are the new immigration routes from 1st January 2021?

EU nationals arriving in the UK after 1st January 2021, or who have not applied under the EUSS by 30th June 2021, will need a visa in order to work in the UK. The two main work visa options for overseas migrants (including EU nationals) will be a 'Skilled Worker' visa (which will replace the current Tier 2 (General) visa) or a Tier 2 (ICT) visa. If you are found to employ a worker who does not have the immigration permissions necessary to work in the UK, you may be subject to significant civil and criminal penalties, including fines and/or a period of imprisonment of up to five years.

What does this mean if you want to recruit overseas nationals on and after 1st January 2021?

Unless the migrant has an alternative route of entry, you will need to sponsor the migrant through either the Skilled Worker or Tier 2 (ICT) visa routes. This will significantly increase the time it takes to recruit (arranging sponsorship through these routes can take several months) and it can be expensive; you will need to pay a fee to assign a Certificate of Sponsorship to the migrant (£199) and the Immigration Skills Charge (£1,000 per migrant per year of sponsorship). The migrant will also need to pay for the visa itself (costing between £409 and £1,480) and the Immigration Health Surcharge, currently £624 per year.



What should you be doing?

You should:

1. **Review your existing workforce.** You should identify the number of EU nationals (and those who have the right to work in the UK by virtue of their relationship with an EU national) in your workforce. You should encourage those who have yet to do so to make their EUSS application. The application is free and can be completed online.
2. **Review your recruitment and global mobility strategy.** You should examine how heavily your business relies on EU nationals and consider whether this approach remains viable, given the additional costs, time and resource involved in sponsoring a migrant under the Skilled Worker or Tier 2 (ICT) routes and maintaining a sponsor licence. Your recruitment processes should be updated depending on the outcome of this review, although you should take care that your recruitment processes are not discriminatory.
3. **Apply for a sponsor licence (if you don't already have one).** If EU or other migrants will continue to make up part of your workforce, you will need to apply for a sponsor licence as soon as possible. This will allow you to sponsor incoming migrants so that they can apply for a visa. It can take several months to apply for and obtain a sponsor licence. You should act now in order to safeguard against any potential business interruption, in the event you do not have a sponsor licence set up in time.
4. **Train staff and allocate internal resources.** You should ensure that your employees who are responsible for recruitment are trained on the UK's new immigration system, so that they are prepared for when the changes come into effect on 1st January 2021. This training will be particularly relevant for those involved in recruiting employees to your business. It will also be important for those who will have overall responsibility for ensuring that your organisation complies with its sponsor duties, to be familiar with the Tier 2 and 5 Guidance and Immigration Rules.

It may be tempting, with Coronavirus continuing to take centre stage, to put off the thinking on this for the moment. However, if your business relies on EU workers as a mainstay of your workforce, you would be well-advised to invest time now to appreciate the implications of the changes and take action sooner rather than later to make sure you and your workforce are well-prepared.

How Hallidays HR can help

If you would like to discuss any of the above in more detail, then please do not hesitate to contact us on 0161 476 8276 or email hr@hallidays.co.uk.

