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Visabytes

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- Sponsor Licencing: the main issues
- Illegal work and the consequences

Your immigration newsletter by Fernandes Vaz

Sponsor Licencing: the main issues

Now that the new year is upon us, a new year resolution must be to put your affairs in order. A business which is unfocused, sloppy in the collection and maintenance of a good human resources system is likely to come unstuck in the area of sponsor licences. Employers believe that as long as they are not employing anyone whose status is legal, they are shielded from the rigours of the licencing system. This is not the case. The licencing system is there to identify a threat to immigration control from the processes adopted and once you remember this your task will be much easier.

The system you maintain can either be manual or electronic or both. It is entirely up to you to dictate how this should be done. If asked you must be prepared to demonstrate the system adopted.

Visits can be announced or unannounced. Unannounced visits take place in sectors that are deemed to be high risk. Restaurants and care homes appear to fit this bill.

The person who should be interviewed should be the person who maintains the system and although the UKVI may insist on carrying out the interview without this person, they can only interview the owner or Manager. If there is no senior person on the premises they should be asked to return. Otherwise there is a real risk that inaccuracies will be recorded and treated as fact.



Maria Fernandes

At the end of an interview the UKVI asks the employer to sign the record. This must be checked carefully despite the fact that it may have been a tiring and stressful event. You are entitled to refuse to sign it if you do not agree with the record. You could offer to check it and return it by post. Otherwise check it thoroughly, correct in writing any inaccuracies or additional comments that you wish to make and state your objections if you went through the interview reluctantly. This should ideally be on the record itself. In the section that states "are you well and fit to be interviewed" you should record your objection. If the officer refuses to allow you to put your comments on the document, this is not lawful and you should follow up the matter in writing immediately. Do not assume that you will have an easier time if you do not object. And finally time and time again it is necessary to remind employers to keep a copy of the interview for their record.

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So what is the minimum you need to do?

Preparation and maintenance of a staff list by name, date of birth, nationality and immigration status/ expiry date is an essential starting point. This document should be reviewed on a regular basis.

Any dates of expiry of a visa should be recorded in a manual or electronic diary and acted upon by that date. In the past it was expected that employers were required to record these dates of expiry 3 months beforehand. However it is no longer required. However by the date of the expiry of the visa, you should have a record of an application for an extension and this should take the form of a top copy of the form and evidence of a delivery receipt. Beware an applicant who states that he/she used ordinary post. After 28 days have passed from the date of the expiry you are expected to contact the Home Office Checking service to confirm that the application is pending. If they do confirm that it is pending and that the applicant is allowed to work this protects you for a period of 6 months. By then you should either have obtained a copy of the new visa or repeat the checks.

Where migrant staff are hired and they are not exempt from the resident labour market test you will need to keep the evidence of advertising efforts, any applicants shortlisted and any notes of an interview with the candidate to satisfy the authorities that the test has been properly conducted. Advertising itself can only be conducted in a particular manner and using particular mediums. Local advertising and word of mouth is not acceptable.

There is a requirement to keep copies of certain documents. This includes passport copies, biometric cards, payroll summaries which can include P35, P46, payslips, P60, P11, P14, employment contracts. They need not be available immediately and can be sent within a reasonable period agreed with the officer. There should be a system to record absences, for holiday or sickness and each record of an employee should record their absence. The information provided must tally with the Certificate of Sponsorship.

Finally, the person appointed on the system, the Authorising Officer, the key contact and Level 1 user must never share their password as this is a breach of security that can merit a revocation. This includes the password of the Sponsorship

Management System (which underpins the licensing system) or the email address they gave for contact.

Once you receive a decision, positive or negative it is good practice to request a copy of the visit report for your records.

Illegal work and the consequences

Many to the people who do not have sponsor licences assume that they are protected from being fined if they do not knowingly employ those who do not have permission to work. The fact is that new regulations which came into force in May 2014 (and apply to those employed on or after this date) have strengthened the hand of the UK VI and it is possible to incur a fine in circumstances in which information was withheld from you by the employee.

There have been some minimal changes made to the regulations to ease the burden of employers. One of the measures introduced is the removal of the automatic requirement to conduct checks every 12 months. Instead, once the initial documents are checked, there is no longer a requirement to re-check these documents again during the currency of the visa.

Where students are employed it is now necessary to take further steps to obtain, check and copy evidence of the students education sponsor which must contain the term and vacation dates and must show the duration of the period of study.

If challenged or visited, you must be able to demonstrate that you carried out the appropriate checks and as a result have a 'statutory excuse' If you know that that a person is illegal this will not provide a statutory excuse.

For a continuous statutory excuse for British Citizens or those settled here you will need to check original documents from a specific list of documents. The best form of evidence is a passport showing that the person is a British Citizen or settled or at least 2 documents such as a birth certificate plus a National insurance number.

For a limited statutory excuse (for non British/Settled persons) you need to check a current passport and biometric card or obtain a Positive Verification from the UKVI. For EU nationals, a Certification of Application is acceptable. For asylum seekers an Application Registration Card plus a Positive Verification from the Home Office Checking service is necessary.

In the first scenario you will not need to re-check the documents again. In the second case, it covers the period of the visa and for 28 days afterwards by which time you are required to carry out checks with the Home Office Checking Service or have seen a valid visa on a biometric card. A Positive Verification protects you for up to 6 months by which time you should have obtained copies of the person's passport. If not the check has to be repeated. You should satisfy yourself that any application for an extension was made before the expiry of leave.

In terms of determining the level of the fine where the starting point is £20000 there are 2 processes:

1. Have you been found employing illegal workers in the 3 years before this? If you have more than one site and recruitment takes place on each site, it will be treated as a separate site.
2. Are there any mitigating factors which should reduce your fine for example active co-operation with the authorities or good recruitment practices generally. This has a whole host of scenarios as to what is active co-operation justifying a reduction by £5000.

The first stage is a form of potential liability where further information is sought and the second stage is the liability notice. It is possible to object to the penalty within 28 days and if the decision is maintained appeal to the county court again within a further 28 days. There is a reduction in the fine if it is paid within a particular period.

We offer assistance with the following:

- Sponsorship Licences
- Certificate of Sponsorship (Formerly Work Permit)
- Pre Licencing audits and advice
- Management of your Sponsorship Management System
- Assistance with Licence Downgrading, Suspension and Revocation
- Judicial Review applications
- Civil Penalties (Objections and Appeals)
- Tier 1 Visas (including Investors and Entrepreneurs)
- Extensions for all categories
- Tier 4 Students

- Human Rights applications
- UK or Entry Clearance applications for all categories
- Rights of Residence under EU Law
- Transfer of Conditions
- 10 years Long Residence / 20 years Long Residence
- Domestic Worker applications
- Immigration Appeals
- Indefinite Leave to Remain
- Naturalisation and Registration as a British Citizen
- British Passport Applications

We also submit fast track applications by post or in person at the Home Office for some of the above categories in which a decision is made on the same day.