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VISA BYTES

Tier 4 Students: Working in the UK

There is some confusion about the rights of students to work. New rules came into existence on the 31st March 2010 which restrict work for categories of students who apply for permission after this date. This article is designed to answer queries raised by a number of employers.

The first rule is that students are prohibited from engaging in business, becoming self employed or filling permanent full time vacancies.

What can I check to see if student can work?

Students who are allowed to work have one of the following stamps:

“restricted work, part time term time, full-time vacations”

“work changes must be authorised”

“able to work as authorised by the Secretary of State”

“restricted work term time”

“no recourse to public funds. Work changes must be authorised”

What are the restrictions?

Students who were granted entry clearance or extensions before 31st March 2009 are subject to the old rules. They can work for up to 20 hours per week during term time and full time during holidays and work placements. They cannot work for an average of 20 hours a week whereby they work for over this amount some weeks and under this amount in other weeks.

On the 31st March 2010 further restrictions were introduced. Students can only work for 20 hours if:

- They have permission to be in the UK for 12 months or more

- The course is at degree level or is a “foundation degree” A foundation degree is a course which leads to a qualification at Level 5 or above of the National

Qualifications Framework is awarded by a UK institution which has degree awarding powers. Not all courses which are called degrees or foundation degrees meet these criteria. The institution will be able to confirm the level of their course. As an example HND’s do not meet this level.

All other students are restricted to 10 hours work.

Voluntary work counts towards the total hours permitted.

What about dependants?

Dependants of those who made their application before 31st March can work if the main applicant had permission to be here for 12 months or more.

Those who are dependants of students who qualified after 31st March can only work if the main applicant qualifies for 20 hours work..

What does term time mean?

These are usually determined by the timetable of the college. However those doing Masters or PHD’s are not on holiday merely because they are not required to attend classes. They cannot work until they have submitted their dissertation or final thesis. The only exception is where it is a work placement which is an assessed part of the course. Once the course is finished, if there is leave of up to 4 months left, work is permitted. Beyond this point a new application would need to be made to work.

Internships of up to 3 months are permitted for students who qualified before the introduction of Tier 4 (31st March 2009). There is no provision for this under the Tier 4 regulations.

What are the obligations of employers who have to employ students?

Tough measures are

being taken against employers who are found not only employing illegal workers but workers who are allowed to work but exceed their hours of work or do not observe the conditions of their leave. Penalties can range from £5000 to £10000 per person found working in this way. In order to protect the business it is therefore advisable to ensure that the student is allowed to work in accordance with their leave and that these checks are carried out at least once a year. It is worth asking students to produce a copy of their timetable and course so that you can check that they are working the correct number of hours. Those who have sponsor licences or plan to obtain one are particularly vulnerable. If found in breach of the regulations, apart from financial penalties employers could end up being refused or losing their licence.

Currently one of the areas of focus of the UK Border Agency is to prevent students from working over the period permitted. The changing regulations are a minefield for employers. Where in doubt contact the Home Office helpline where there is a pending application on 0845 010 6677.

Maria Fernandes is a solicitor based in Wembley who specialises in immigration law. She is an accredited member of the Immigration Law Panel of the Law Society and has several years experience.