

IMMIGRATION.

A guide to business immigration to give your organisation the skills it needs.

businessbirmingham.com



GUIDE TO IMMIGRATION.

Birmingham is unparalleled in the UK in terms of its diversity of people and talent with access to a working population of 4.3 million people in the region, businesses have a wealth of knowledge and skills to draw upon. Air, road and rail connections provide further access to 400 million people across Europe. Still, there might be a requirement to relocate employees from different countries.

Laws relating to business immigration are relevant to all employers, even those who are not actively seeking to employ migrant workers.

Eligibility of workers

Some people are automatically entitled to work in the UK. Others may have restrictions on how long they can stay, whether they can work or the type of work they can do.

All employers in the UK have a responsibility to prevent illegal migrant working and it is the responsibility of the employer to check the entitlement of everyone they plan to employ in the UK.

Checking entitlement

Checks for eligibility to work in the UK must be carried out on each prospective worker prior to employment commencing.

Checking the right to work in the UK

The UK Border Agency publishes two lists of documents – List A and List B – and it is only where the employer has sight of these original documents and retains copies that it can establish an individual's entitlement to work in the UK. For an employer to have a statutory excuse against liability for a civil penalty, the prospective worker must provide the employer with an original version of one of the specified documents from List A (for example, a valid passport, national identity card or residence permit for a European Economic Area country or Switzerland), or a specified combination of two documents from List B (for example, a Biometric Residence Permit issued by the UK Border Agency to a non-EEA national which indicates that the holder can stay in the UK and is allowed to do the work in question). In the case of workers who provide a document or documents from List B (and whose employment began on or after 29 February 2008), the employer must repeat the checks at least once every 12 months to retain the excuse until they provide a specified document or documents from List A, or they leave employment.

In order to avoid racial discrimination, employers should check all prospective workers' eligibility to work in the UK – regardless of their race, ethnic or national origin, colour or (apparent) nationality.

Copying and retaining workers' records

In the process of carrying out 'right to work' document checks, the employer should follow the UK Border Agency's three-step check as specified in its 'Guidance for Employers on Preventing Illegal Working' which includes taking reasonable steps to check that the documents presented are genuine and relate to the worker in question. The employer must also keep a record of these documents. This should be done by either photocopying them or scanning and saving them electronically on a nonrewritable disk. Retaining copies of original documentation is essential to enable an employer to establish a statutory excuse against a civil penalty if the UK Border Agency detects anyone working for it illegally.

Copies of the documents should be kept for two years after the worker's employment ends.

An employer should not retain a person's original documents, except for the purpose of copying them. The only exceptions are:

- When an individual gives a P45 as part of a combination of documents, the employer should retain part two of the document for three years to comply with HM Revenue & Customs rules; and
- When someone is employed for 24 hours or less and it is not practicable to obtain a copy of the documents, the employer can retain the document(s) while they work for them but they must have facilities for keeping them safe.

Compliance checks

Police and immigration officers have certain powers to enter business premises where they believe an immigration offence is being committed.

Employers found to be employing illegal workers whose employment began on or after 29 February 2008 and cannot demonstrate a statutory excuse could be served with a notice requiring payment of up to a maximum penalty of £10,000.00 per illegal worker. Regardless of employment start date and any document checks carried out, where an employer has knowingly employed an illegal migrant worker, it will be at risk of criminal prosecution including an unlimited fine as well as custodial sentences of up to two years for corporate officers or managers if the criminal offence was committed with their consent or connivance or as a result of their negligence.



Sponsor businesses

All employers seeking to sponsor migrant workers must first apply to obtain a sponsor licence under the UK Border Agency's points-based system. As part of this process, the prospective sponsor will be subject to a compliance audit by the UK Border Agency visiting officers either before or after the sponsor licence is granted.

Licensed sponsors are required to comply with a number of obligations to retain their licence including the prevention of illegal working and observing detailed and specific record-keeping and reporting duties. Sponsors who are found to be in breach of these obligations may face the following sanctions:

- A written warning, civil penalty or criminal prosecution for employing an illegal worker
- Withdrawal of the sponsor licence and removal from the sponsor register (requiring the termination of employment of all sponsored migrants who cannot obtain permission to work by some other means)
- Suspension of the sponsor licence or downgrading on the sponsorship register from an 'A' to a 'B' rating and receiving a detailed action plan of measures to comply with and a charge of £600 payable within 14 days
- Prosecution for facilitation/trafficking of illegal migrants or the procuring/use of fraudulent identity documents
- Disbarring as a company director/officer as a result of prosecution points-based system sponsorship register

Useful links

www.ukba.homeoffice.gov.uk



These brief articles and summaries should not be applied to any particular set of facts without seeking legal advice. © Squire Sanders Hammonds 2011.

Squire Sanders Hammonds is the trade name of Squire, Sanders & Dempsey (UK) LLP, a Limited Liability Partnership registered in England and Wales with number OC 335584 and regulated by the Solicitors Regulation Authority. Squire, Sanders & Dempsey (UK) LLP, is part of the international legal practice Squire, Sanders & Dempsey which operates worldwide through a number of separate legal entities. Please visit www.ssd.com for more information. This factsheet has been prepared in conjunction with leading worldwide legal counsel, Squire Sanders Hammonds, to provide a short guide highlighting the importance of business immigration compliance.

Birmingham Unlimited

Business Birmingham is your access point to Birmingham's business networks and here to help you benefit from the city's strong enterprise culture. By working as a strategic partner and consultant with your internal project team, we can provide relevant information for your organisation and a comprehensive package of support.

T: +44 (0) 121 202 5022

E: invest@marketingbirmingham.com

W: businessbirmingham.com



Business_bham



BusinessBirmingham



Delivering the Working
Neighbourhoods Fund

