



Do you employ staff?

Employment Law Update - December 2020

End of Freedom of Movement from 31 December 2020

The 'transition period' for the UK to leave the EU (and freedom of movement) will soon come to an end on 31 December 2020, after which if you continue to employ anyone from the EU, the EEA or Switzerland, then your employee must apply to the 'EU Settlement Scheme' to enable them to live, work and study (if applicable) in the UK beyond 30 June 2021. To apply to the scheme, your employee must already be living in the UK prior to 31 December 2020. Please refer to our February 2020 Employment Law Update for further information: <http://hasslefreehr.co.uk/wp-content/uploads/2020/03/ELUfebruary2020.pdf>

In summary, employees who have lived or worked in the UK for five years or more by 31 December 2020 will be able to apply for "Settled Status". Once approved, this gives them the right to continue living and working within the UK indefinitely. Employees who have lived or worked in the UK for less than five years by 31 December 2020 will be able to apply for "Pre-Settled Status". Once approved, this gives the employee the right to continue living and working within the UK long enough for them to reach the five-year requirement that will then allow them to apply for "Settled Status."

The Home Office have created a useful toolkit for employers to share with their employees:

www.gov.uk/government/publications/eu-settlement-scheme-employer-toolkit

As an employer you must ensure that you do not inadvertently discriminate against EU citizens in light of the UK's decision to leave the EU as both a prospective and current employer. Also, you should refrain from 'interpreting' information on the EU Settlement Scheme provided by the government and you must be careful not to provide immigration advice for your employees, unless you are qualified to do so.

Checking 'Right to Work' Status

As a transition measure, employers can continue to accept the passports and national identity cards of EU citizens as evidence of their 'right to work' up until 30 June 2021. The process thereafter will be based upon the UK Point Based Immigration System.

UK Point Based Immigration System – effective 1 January 2021

From 1 January 2021, the UK will introduce a points-based immigration system which will apply equally to EU (and EEA and Swiss) and non-EU citizens. From this date anyone you want to hire from outside the UK, excluding Irish citizens, will need to apply for permission in advance. Under a points-based immigration system, anyone coming to the UK for work must meet a specific set of requirements for which they will score points. Visas are then awarded to those who gain enough points. The points-based system will enable UK employers to recruit skilled workers from outside of the UK, via a number of different 'immigration routes'. The Home Office have created a useful guide for employers:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/935768/6.6991_HO_I

Sponsor Licence

From 1 January 2021 employers will need to have a 'sponsor licence' to recruit from outside the UK (excluding Ireland). This will only apply where someone is being recruited after 31 December 2020. Employers will not need a sponsor licence if they are recruiting from Ireland or recruiting anyone from the resident labour market with an existing right to work in the UK. This includes EU citizens with settled or pre-settled status, and non-EU citizens with indefinite leave to remain in the UK. To obtain a licence employers will need to check they are eligible, confirm the type of skilled worker licence they wish to apply for and identify an internal person within their organisation, who will manage the sponsorship process. There is a fee charged for application, however this varies depending upon whether the employer is a small business (annual turnover of 10.2 million or less and with 50 or fewer employees) or whether they are medium or larger. In addition, there is an Immigration Skills Charge (ISC) which is a fee paid by the employer for each skilled migrant worker they employ through the Skilled Worker and Intra-Company Transfer routes. From 1 January 2021, employers will need to pay the ISC when sponsoring both EU and non-EU migrant workers. Employers must pay £1,000 per skilled worker for the first 12 months, with an additional £500 charge for each subsequent six-month period. Discounted rates will apply as they do now to charities and small businesses. Further information can be found here:

<https://www.gov.uk/uk-visa-sponsorship-employers>

Immigration Routes

Skilled Worker Route

Under the 'skilled worker' route, anyone coming to the UK to work after 1 January 2021, will need to demonstrate that:

- they have a job offer from a Home Office licensed sponsor

- the job offer is at the required skill level – RQF 3 or above (A Level and equivalent)
- they speak English to the required standard

In addition to this, the job offer must meet the applicable minimum salary threshold. This is the higher of either:

- the general salary threshold set by Her Majesty's Government on advice of the independent Migration Advisory Committee at £25,600, or
- the specific salary requirement for their occupation, known as the “going rate”.

All applicants will be able to trade characteristics, such as their qualifications, against a lower salary to get the required number of points. If the job offer is less than the minimum salary requirement, but no less than £20,480, an applicant may still be eligible if they have:

- a job offer in a specific shortage occupation
- a PhD relevant to the job
- a PhD in a STEM subject relevant to the job

There are different salary rules for workers in certain health or education jobs, and for ‘new entrants’ at the start of their careers. A total of 70 points is required to work in the UK.

Global Talent Route

From 1 January 2021, the current ‘Global Talent’ route which currently operates for non-EU citizens, will open to anyone from the EU (EEA and Switzerland). Under this route, the most highly skilled, who can achieve the required level of points, will be able to enter the UK without a job offer if they are endorsed by a recognised UK body, as approved by the Home Office. Under this route (which is designed to attract recognised global leaders and promising individuals in science, humanities, engineering, the arts and digital technology) employers will not need to have a sponsor.

Graduate Route

The Graduate Visa will be available to international students who have completed a degree in the UK from summer 2021. This will enable international students to remain in the UK and work at any skill level for two years after they have completed their studies. It will be an unsponsored route. International students who complete a PhD from Summer 2021 can stay in the UK for three years after study, to live and work. This will make it easier for some of the best international graduates to secure skilled jobs in the UK and contribute to economic growth.

Intra-company Transfer Route

The Intra-company Transfer (ICT) route allows multinational organisations to facilitate temporary moves into the UK for key business personnel through their subsidiary branches, subject to ICT sponsorship requirements being met. The route will require applicants to be in roles skilled to RQF 6 (graduate level equivalent), and subject to a different

minimum salary threshold from the main skilled worker route. Further information about recruiting from the EU from 1 January 2021 can be found here: <https://pbisemployers.campaign.gov.uk>

How Can We Help

If you have any queries relating to the content of this newsletter, or any other HR related topic, please don't hesitate to contact us via hradvice@hasslefreehr.co.uk

This year has been such a strange year and we have assisted many of you with coronavirus related queries. We expect this will continue during the earlier part of 2021 so please don't hesitate to contact us if you have any coronavirus related queries.

We will also be issuing a newsletter in January to inform you of the anticipated employment law changes for the year ahead.

In the meantime, we wish you a very healthy, happy and peaceful Christmas and New Year.

Elaine & Kirsty