

Employing Staff From Overseas

Over the last 12 months there has been a notable increase in the number of visits being made by the UK Border Agency (“UKBA”) to health and social care services around the country.

A number of recent news reports suggest that this increased scrutiny could be attributed to improved intelligence obtained by the UKBA indicating that people living in the UK illegally are being employed in particular kinds of establishments, including in care homes.

Whilst it is a limited number of providers who break the law by employing an illegal immigrant knowingly, there are a number of businesses who employ staff with visas which allow them to work in the UK. However, these visas have specified conditions attached to them. Failure to comply with the requirements of a visa can have serious repercussions for an employer.

A number of overseas workers are employed in the United Kingdom and their skills and dedication can add real value to a business, however, there are serious penalties in place for both the employer and the individuals they employ who breach the conditions of their working visa.

In recent months we at Ridouts have seen clients faced with the threat of action by the UKBA where they have failed to conduct adequate pre-employment checks for employees or have not adhered to the conditions of staff member’s visa where that person is employed as a working overseas student.

For example, the conditions of a Tier 4 student visa mean that an employee must not work for more than 20 hours a week during term time. This means that a provider would have to make the necessary changes to staffing arrangements to ensure that these workers do not exceed the threshold. It may be tempting for a provider to “turn a blind eye” to such a requirement but the penalties for failing to comply are harsh.

Employers of overseas workers must be able to confirm that they have seen certain documents which show that the person in question can work at the establishment lawfully and know what restrictions are placed on that person. Performing such checks will allow an employer to establish what is known as a statutory excuse against the payment of a civil penalty if the employee is found to be undertaking work which they are not permitted to do without the knowledge of the employer.

If an employer has knowledge that they are employing a person who is not permitted to work, then they will not be entitled to the statutory excuse. The employer could be prosecuted under section 21 of the Immigration, Asylum and Nationality Act 2006. In this situation, an employer may face a fine and could also be subject to imprisonment of up to two years.

The UKBA have the power to impose a fine of up to £10,000 per illegal worker on an employer who employs someone subject to immigration control who is not entitled to undertake the work in question.

The UKBA have in place a matrix that determines the penalties to impose in cases of a breach. This system will take into consideration the quality of the paperwork relating to the staff concerned, as well as how many times the employer has been warned on the issue.

The member of staff involved may also face deportation.

Providers must pay close attention to the process and administration of employing an overseas worker. If the associated paperwork is in place, the employer can show that all relevant checks have been made and the employment does not go beyond what is allowed by the visa, then an employer can enjoy the benefits of adding the member of staff to their team.

Contact Us

Paul Ridout, Partner

paul@ridout-law.com

0207 317 0341

Author

Jenny Wilde, Solicitor

jenny@ridout-law.com

0207 317 0343