



Immigration: reform of employers' reporting duties and immigration skills charge exemptions

The Home Office has published [figures](#) showing a large increase in work visas in the past year: 248,919 in the year ending September 2022 (up 82% from the pre-pandemic year ending December 2019). Paradoxically, despite a record number of people given the right to work in the UK in the last year, the number of unfilled job vacancies has never been higher too. So despite various politicians' pronouncements of late, we expect that points-based sponsorship will continue to be crucial for employers hiring the talent they need.

The latest Home Office transparency data shows that Home Office actions against non-compliant sponsors have peaked after the pandemic slowed inspections down, and have gone back down to usual levels. The spike in sponsor licence suspensions and revocations after the pandemic shows the importance of employers keeping on top of compliance requirements.

In other news, the Home Office this month published some minor but important changes to the guidance for organisations with sponsor licenses that is worth keeping on top of.

Reporting of changes to sponsored staff start dates

Up to now if an employee's start date was delayed the sponsor needed to report this via their Sponsorship Management System within 10 working days. If it was delayed by more than 28 days then the organisation needed to stop sponsoring the migrant (meaning the sponsor needed to restart the process if it still wanted to the worker to join them).

Sponsors no longer need to report if the start date is delayed for a period under 28 days, which removes an administrative burden for sponsors.

Sponsors can also now keep a worker whose start date is delayed by more than 28 days if they report the change of start date and provide reasons.

However, the new Home Office guidance does warn that UKVI may still cancel the worker's visa if they are not satisfied by the reason given for the delay. The guidance suggests examples of suitable reasons, such as:



- Travel disruption due to natural disaster, military conflict or pandemic;
- Working out contractual notice periods;

- Requiring an exit visa for their home country but there are administrative delays getting this; or

- Illness, bereavement or other compelling circumstances.

Conducting correct checks of sponsored employees' right to work

Sponsors must carry out **right to work checks** for all workers before they commence employment, but it is especially important that they do so where the start date is delayed by over 28 days.

In such cases, as discussed above, there is a chance that UK Visas & Immigration (UKVI) will still cancel the visa – if they do so, the worker would no longer have the right to work so sponsors may be employing them illegally and may become liable for a civil penalty of up to £20,000. However, if the right to work checks are done in a fully compliant manner before the start of employment, the organisation will have a statutory excuse against the civil penalty and would not need to pay it.

Right to work checks after changes of employment roles

The new guidance contains a reminder that before a sponsored worker starts a new role – even if it is for the same employer, relevant right to work checks should be carried out once their new UKVI application has been approved.

The existing right to work check will provide a statutory excuse against civil penalties for the remainder of the original permission to stay in the UK, but with a change of job role, there is a change in status and employers can no longer rely on the previous right to work check.

Reporting of sponsored employees' unpaid leave

Previously, if a worker took four or more weeks unpaid leave in a calendar year, employers were required to withdraw sponsorship. Now, similar to the changes for delayed start dates, if sponsors want to keep employing the worker, they just need to report the reasons for the unpaid leave.

However, as with the delayed start date, UKVI may still cancel the worker's permission if they are not satisfied by the reasons.

New exemption from the Immigration Skills Charge

The new Home Office guidance also includes details of an exemption from the Immigration Skills Charge for sponsors with licences in the Global Business Mobility – Senior or Specialist Worker category (previously known as Intra-Company Transfer). This is still subject to new regulations being approved by Parliament, but the plan is that Senior or Specialist Workers sponsored from the beginning of 2023 who are EU nationals (or Latvian non-citizens) and are assigned to the UK from an EU business for under three years will be exempt from the Immigration Skills Charge – potentially saving sponsors up to £3,000. Do please note that this does not apply to EEA or Swiss nationals – this is a rare instance where rules for EU nationals do not apply also to Iceland, Norway, Liechtenstein and Switzerland.

To discuss sponsor compliance, right to work checks and employer liability further, or for any related advice or help formulating company policies please contact [\[email protected\]](#).