



Sponsor sanctions

The latest Home Office figures reveal yet another increase in employer sponsor licences for hiring non UK or Irish citizens. Since Brexit stopped UK employers being able to use European freedom of movement for new hires, numbers of licences and sponsorship applicants have continued to grow.

Worryingly the last two quarters' Home Office statistics also reveal that Home Office actions against non-compliant employers have shot back up since checks ground to a halt during the pandemic.

The increases in sponsor licence suspensions and revocations, especially for the majority of sponsor licences which are for Skilled Workers, show the importance of keeping on top of compliance requirements. Failure to ensure this can result in license suspensions, revocations, costly illegal working sanctions, civil and criminal penalties, not to mention serious reputational damage. It can leave employers open to employment law issues too. If work contracts are terminated due to sponsor non-compliance, there may also be a potential risk of employers facing unfair dismissal claims.

Keeping on top of Sponsor Management Systems and documentary record keeping

The UK Visas and Immigration (UKVI) division has been increasingly contacting sponsoring employers since pandemic measures were lifted if they suspect that the Sponsor Management System (SMS) has not been accessed for 12 months or that Key Personnel data registered on the SMS are not up to date.

The UKVI can downgrade, suspend or revoke a sponsor licence if the authorising officer left the company without being replaced on the SMS or you have no Level 1 users in place.

Not keeping the SMS up to date is a potential breach of a sponsor's duties, so we always urge employers to regularly check and update their SMS.

Correct record-keeping is also essential not to fall foul of UKVI. Documents must be kept in the correct format for the correct period and be made available for the UKVI if requested.

A regular sponsor licence audit is useful and recommended for avoiding onerous sanctions.

Company mergers, acquisitions and other such changes

Organisational and ownership changes may result in sponsor licence compliance issues. Certain changes need to be reported within prescribed time limits and may require an organisation to re-apply for its sponsor licence. We regularly advise employers around the sponsoring and reporting implications of changes of company ownership, mergers, TUPE transfers or new branches.

Right to work checks and monitoring sponsored staff

The rules on right to work checks have been updated to reflect a new post-pandemic move to digital, as well as evidential issues for refugees from Ukraine.

The legislation and guidance around illegal working can be complex. Employers may face a range of tough sanctions, both civil and criminal, if they are found to be employing people who have no right to work in the UK.

Human Resources staff can avoid this by ensuring full right to work checks are conducted in keeping with the latest Home Office guidance.

We provide specialist advice on the range of illegal working offences, best practices to avoid them, how to mitigate and report lapses and also how to respond if you fall short.

Following a hiatus during the pandemic, the Home Office has resumed compliance visits and official figures show a large rise in penalties, amounting to up to £20,000 for each member of staff illegally employed.

Employers with sponsor licences must also keep on top of compliant systems to monitor sponsored staff and check they comply with the requirements of their visa. Changes of circumstances must be reported within prescribed time limits.

A visit from UKVI inspectors

Along with Home Office sanctions, inspections are again a growing reality for employers post-pandemic.

In all likelihood firms may never face a visit from inspectors, but if one is requested, they must comply - as must third-parties, such as clients at whose sites sponsored workers are based.

Failure to comply can result in penalties such as the downgrading of a sponsor licence, suspension or revocation - with all the havoc that can cause.

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If an employer is threatened with suspension or revocation of their sponsor licence, there will be implications for sponsored staff too. Staff in the UK may have difficulty renewing their sponsorship or have their visa cancelled and may consider switching to a different type of visa or sponsor; prospective staff set to travel to the UK may not be able to.

Employers may be subject to action plans which must be complied with fully before any more staff are sponsored.

None of these are ideal situations to be in, but we can help employers negotiate all the above sanctions with the least disruption to business and employees.

To discuss sponsor compliance, right to work checks and employer liability further, or for any related advice or help formulating company policies please contact .