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Changes to UK immigration rules for sponsored non-EEA workers

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Payne Hicks Beach partner Kathryn Bradbury unpacks recent changes to the United Kingdom's immigration policies and how they are likely to affect businesses sponsoring workers from outside the European Economic Area.

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On 16th March 2017, the Home Office published its bi-annual statement of changes to the immigration rules. Many of these changes are particularly relevant to non-EEA workers sponsored by an employer in the UK.

Immigration Skills Charge - what is it?

The Home Office's much publicised Immigration Skills Charge was brought into effect yesterday on 6th April 2017. Under this provision, any company which sponsors an overseas worker under Tier 2 of the Points Based System (the UK's immigration framework) will be obliged to pay a fee of either £1,000 (for large or medium sized businesses) or £364 (for small companies) per year per sponsored employee. This is a significant additional financial burden for companies to meet, which could amount to £5,000 per sponsored employee and has to be paid when issuing the Certificate of Sponsorship at the commencement of Tier 2 sponsored employment.

There will be an exemption to the Skills Charge for those employees who are already sponsored under Tier 2 prior to 6th April 2017 and are extending their stay with the same or a different employer.

Will the Immigration Skills Charge work?

David Cameron, then Prime Minister in his speech on immigration on 21 May 2015 stated:

For too long we've had a shortage of workers in certain roles. Engineers, nurses, teachers, chefs – we haven't had enough Brits trained in these areas and companies have had to fill the gaps *with people from overseas. With Sajid Javid as the new business secretary we're going to get far better at training our own people.*

This involves creating 3 million more apprenticeships – and we will consult on getting the businesses that use foreign labour to help fund them through a new visa levy.

The question remains over whether the skills levy will help to train British workers in the areas in short supply. The shortage occupation list contains professions from engineers, to digital IT specialists and nurses. All of these professions undergo several years of training to qualify in their particular industry. Therefore the upskilling will take several years and if any visa restrictions to Tier 2 are put in place too soon, employers will be unable to recruit the employees they require.

It was reported in a Daily Telegraph article on 12 July 2015 that the CBI was concerned that only 2% of apprenticeships in 2013-14 were at an advanced level. The apprenticeships suggested in the budget will not fill this skills gap.

One solution offered was to encourage universities to offer industry schemes such as offering more degrees with work placements. At present only 30% of courses on offer in the UK contain a work placement compared to 84% in France, as reported in the Telegraph article referred to above.

History shows that skills levys are not always effective. In 1964 the UK introduced a levy grant scheme however due to diminishing effectiveness and objections from employers, it was disbanded in the 1980s. Extensive consultation with employers across the broad range of industries will be essential to the success of any such scheme.

Employers are likely to face difficulties where an employee leaves employment early, it may have been more effective for this to be factored into the annual payments rather than then having to claim a refund that can take some time to be administered.

Tier 2 salary increases

The 16th March changes will also bring in an increase in the minimum salary that must be paid to sponsored workers. The threshold is currently £25,000 and will rise on 6th April to £30,000 for experienced workers. A lower threshold applied to 'new entrants' (recent graduates for example) will remain at £20,800. However it is important to note than the actual salary that needs to be paid may be higher, dependant on the salary bracket stated in the Codes of Practice for Skilled Workers, which sets minimum salary requirements for each particular role.

Also the minimum salary requirement for high earners (which allows an exemption from the advertising requirement- the Resident Labour Market Test) has been raised from £155,300 to £159,600.

To qualify for Indefinite Leave to Remain on or after 6 April 2022 a Tier 2 migrant must be earning at least £37,900.

Other changes

Various other changes to the Tier 2 Intra-Company Transfer route, and advertising under Tier 2 General have also been made.

The period of overstaying which is permitted before a re-entry ban is imposed on individuals who have remained in the UK after their leave to enter or remain has expired will be reduced from 90 days to 30 days. Unless specific exceptions apply, anyone who overstays for more than 30 days will be subject to a 12 month re-entry ban.

Reducing reliance on overseas employees

The government's aim of these changes is to 'influence employer behaviour by incentivising businesses to reduce their reliance on migrant workers'. The problem here is that until such time as there are sufficient resources within the UKs own labour market, employers will continue to need to hire skilled workers from abroad. This is only going to be exacerbated by Brexit, and the government has already identified that restrictions on EU migrant workers may not be introduced for some time.

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