

Global Hospitality & Leisure Update

UK Immigration Update

A major overhaul of the UK employment law relating to the use of immigrant labour is having a significant impact on Britain's hospitality and leisure industry. The new system makes it easier to hire foreign nationals in the UK but puts a far greater responsibility on employers to conduct relevant checks and maintain up-to-date records.

According to the British Hospitality Association, there are 1.5 million people employed in the hospitality industry in the UK. It is estimated 23% of those working in this sector were born abroad. Accordingly, there will be very few employers in this sector who remain unaffected.

The Government is pursuing a three pronged strategy:

- increased penalties for offenders;
- more vigorous enforcement of the laws relating to the employment of migrant labour; and
- the introduction of a new points-based system for skilled workers.

Increased penalties for offenders

Employers convicted of negligently hiring illegal workers will now be faced with a fine of up to £10,000 per illegal worker. If they hire an illegal immigrant knowingly, they could face an unlimited fine and up to two years' imprisonment.

Since the new law came into effect last year the largest fine has been £30,000. It was imposed on an Indian takeaway employing several illegal workers.

More vigorous enforcement of the law

In 2007 only 15 businesses were caught hiring illegal immigrants. By the end of November 2008 there had been well over 500 prosecutions.

It is particularly important to note that employers who outsource their checking process to a third party may not escape liability if they are found to be employing illegal workers despite doing so unknowingly.

New points based system

The most significant change being introduced is a new points-based system for skilled workers. This is based on an Australian model and replaces the work permit scheme previously in force.

The new system requires employers to obtain a licence issued by the UK Border Agency to offer jobs to skilled workers. Licensed employers will be able to issue a foreign worker with a certificate of sponsorship if it can be shown that the skilled role could not be filled from the resident workforce. Employers will need to have advertised the position for a minimum of two weeks before being able to issue the certificate. Employees will also need to have attained a certain number of points for qualifications, earnings and English skills.

Exemptions to certain of these requirements are available for intra-company transfers and shortage occupations. Despite the recognised shortage of skilled workers in the industry, in particular chefs, currently no hospitality and leisure related jobs are listed as shortage occupations.

Summary

The new law has been designed to make it easier for employers to hire foreign nationals as it removes the lengthy work permit application process. However, it also puts a far greater responsibility on employers to conduct relevant checks, keep accurate and up-to-date records and report any changes in migrant workers' circumstances. Employers who fail to do so risk having their licence downgraded or even revoked.

As a result of the increased responsibility on employers, coupled with the new criminal and civil penalties which apply, employers are advised to have a dedicated and trained member of their HR team to deal with all their immigration needs and duties.

More information on the new points based system and employment issues generally is available from our Employment Group's website:
<http://www.mayerbrown.com/employment>

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