



Managing and retaining overseas staff

Edward O'Brien

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What will we talk about?

- Your responsibilities after recruitment
- Tips for retaining overseas staff
- What costs can be clawed back?
- What to do when visa is coming to an end
- Modern Slavery
- UKVI Compliance visits

Your Responsibilities

- Check that your foreign workers have the necessary skills, qualifications or professional accreditations to do their jobs, and keep copies of documents
- Tell UK Visas and Immigration (UKVI) if your sponsored workers are not complying with the conditions of their visa
- Monitoring employees: You must have HR systems in place that let you:
 - Monitor your employees' immigration status
 - What to do when keep copies of relevant documents for each employee, including passport and right to work information
 - Track and record employees' attendance and working time
 - Keep employee contact details up to date
 - Report to UKVI if there is a problem, for example if your employee stops coming to work

- You must report any significant changes in your own circumstances within 20 working days, e.g. you:
 - stop trading or become insolvent
 - substantially change the nature of your business
 - are involved in a merger or take-over
 - make changes that affect your relationship with any overseas businesses that have sent workers to you
 - make any changes to a contract covering secondment workers or service suppliers
- You must also tell UKVI if you're changing your details, like your address or allocated roles

Practical points to help overseas staff settle in

- Information pack about what to bring
- Virtual meeting between existing and new staff members to build connections
- WhatsApp group between new recruits and the local team
- Meet and greet at the airport
- Welcome pack
- A local guide/tour
- Help to apply for a national insurance number and open a bank account
- Help with short and/or long-term accommodation
- Buddy scheme
- Providing accommodation
 - Short term and long term
- Loans for visa/relocation costs

Clawing back costs

- What sponsorship costs can be recovered?
 - Cost of sponsorship licence? No – not attributed to individual
 - Immigration Skills Charge? No – but can be fully or partially recovered from the Home Office
 - Certificate of Sponsorship? Maybe – relatively low cost and so may not be worth the hassle
 - Visa fee and Immigration Health Surcharge? Yes
- Other costs
 - Loan agreement
 - Service occupancy/Tenancy
- Issues to consider
 - Authorising deductions from wages
 - Restraint of trade
 - Discrimination
 - Penalty clause

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Clawing back costs: Other costs

- Loan agreement:
 - Written agreement
 - Separate to employment contract
 - Satisfy employee loan exemption:
 - It is a borrower-lender agreement
 - It is an agreement of a kind offered to an employee
 - It provides that the only charge included in the total charge for credit is interest.
 - The interest rate under the agreement cannot exceed 1% over the highest of the base rate of permitted banks on the date 28 days before the date on which the interest is charged.
 - The total amount to be repaid by the borrower to discharge the borrower's indebtedness may not vary according to a formula that is specified in the agreement and that has effect by reference to movements in the level of any index or other factor.
 - It is offered by a lender to a borrower as an incident of the borrower's employment with the lender.
- Service occupancy/Tenancy
 - Note NMW/salary threshold for sponsorship
 - Who is the rent being paid to?



Clawing back costs: Issues to consider

- Authorising deductions from wages
 - In the contract/agreement in writing
- Restraint of trade/Modern Slavery
- Discrimination
- Penalty clause

Clawing back costs: Code of practice

- Any repayment clause included in an employment contract must abide by the 4 principles of transparency, proportionate costs, timing and flexibility (Code of practice for the international recruitment of health and social care personnel in England)
- Transparency:
 - the repayment clause must be set out in the contract or job offer letter and explained in full to the candidate before the job is accepted
 - an itemised list of costs to be reclaimed should be provided to show how the amount has been determined
 - only genuine evidenced, auditable expenses incurred can be reclaimed
 - it must be made clear how the costs will be recouped using an auditable method such as bank transfer or salary sacrifice
 - confirmation must be sought that health and social care personnel did not contribute towards the costs or expenses being reclaimed prior to their arrival in the UK

- Proportionate costs:
 - the cost must include only those expenses met by the employer on behalf of health and social care personnel. These include:
 - relocation expenses
 - visa fees
 - regulatory exam fees
 - costs that the employer is liable to pay as part of the recruitment process must not be reclaimed from health and social care personnel. These include the:
 - agency fee
 - immigration skills charge
 - sponsor licence fee
 - certificate of sponsorship
 - cost of the interview process
 - expense costs must not incur any interest on the amount reclaimed
 - employers should give health and social care personnel the option to repay the costs or expenses through a monthly repayment plan

- **Timing:**

- a repayment schedule must be provided and rechargeable costs must taper downwards with time. For example:
 - leaving within 0 to 12 months: can be charged 100% of total itemised expenses
 - leaving within 13 to 24 months: can be charged 50% of total itemised expenses
 - leaving within 25 to 36 months: can be charged 25% of total itemised expenses
 - leaving after 36 or more months: no repayable expenses after 36 months of service

- **Flexibility:**

- employers should be flexible about when they levy the repayment clause and consider individual circumstances. Each decision should be made on a case-by-case basis. Examples include:
 - where the health and wellbeing of a health and social care recruit is being adversely impacted
 - where the health or social care recruit leaves due to bullying, discrimination or poor working conditions
 - if a health or social care recruit's circumstances have changed beyond their control, either in the UK or in their home country
 - if the health and social care recruit wishes to move roles for career progression

What to do when visa is coming to an end

- Should have system in place to log and flag visa expiry dates
- Be proactive in liaising with an employee whose visa will be expiring:
 - What are their plans?
 - If they intend to renew, do they need any help (e.g. compiling required supporting documents)?
- If visa expires:
 - Need to terminate their employment – no longer a right to work in the UK; or
 - Need evidence that an application has been made to extend/for a new visa

Modern Slavery

- BBC report on 25 July 2023
- Modern Slavery Act 2015
 - Slavery or servitude
 - Forced or compulsory labour
 - Human trafficking and committing an offence with intent to commit human trafficking (including aiding, abetting, counselling or procuring a human trafficking offence).
- (Anecdotal) recent increase in Modern Slavery allegations against care providers

Compliance Visits

- Visit can be announced or unannounced
- Compliance Officers estimate it takes two to three hours to carry out an immigration audit
- Some of the things which may be checked include that:
 - Sponsored migrants are filling a job vacancy at graduate level unless there is a skill level exemption
 - You are keeping the required records to fulfil your sponsorship duties
 - You are paying the migrant at least the minimum appropriate salary rate
 - The right types of CoS has been issued and whether the original number of CoS you requested is still justified
 - The information you provided in your sponsor licence application is accurate
 - The migrant is complying with the conditions of their leave to remain in the UK
 - You are not a threat to immigration control



- Practical tips to prepare for an inspection:

- Floor plans available?
- Copies taken correctly? Dated and signed on each relevant page?
- Where is the Right to Work paperwork stored? Is it secure?
- Time limited stays rechecked at least every 12 months?
- Records held for two years after employment ended?
- Photographs and dates of birth are consistent across documents and with the person's appearance in order to detect impersonation?
- Expiry dates for permission to be in the UK have not passed?
- Can you contact overseas staff at short notice?

- What happens after the sponsor compliance visit?
 - A visit report will be completed to the case working team and a recommendation will be provided by the Officer. A decision will be made on your overall rating; you will be rated as either A or B.
 - Following a B rating you can take the following actions:
 - Pay the required fee and accept the action plan
 - Decline to pay the fee (this will lead to the sponsorship licence being revoked)
 - Do nothing (as will this)

Any Questions?



Employment law, Business Immigration and HR Legal Support:

- Sponsorship licences and business immigration support
- Day-to-day employment issues
- Dismissals
- Employment contracts and service agreements
- Restrictive covenants, confidentiality and intellectual property
- Employment status
- Restructuring, reorganisation and redundancy
- Mergers, acquisitions, insourcing and outsourcing (TUPE)
- Changing terms and conditions of employment
- Employment tribunal claims
- Discrimination and equal pay issues
- Whistleblowing
- Settlement agreements and pre-termination discussions
- Retainer service and 'TLC' insurance
- Data Protection (GDPR and subject access requests)
- Disciplinary and grievance investigations
- Policies and Procedures
- Employment law and HR training



KEVIN BARNETT
PARTNER
TEL: 01202 786332
Kevin.Barnett@LA-law.com



EDWARD O'BRIEN
SENIOR ASSOCIATE
TEL: 01202 786148
Edward.O'Brien@LA-law.com



EMMA STARMER
SENIOR EMPLOYMENT LAW
AND HR ADVISOR
TEL: 01202 786276
Emma.Starmer@LA-law.com

Care Legal Support:

- Advice on compliance with the regulations and registration
- Challenging inspection reports and ratings
- Defending regulatory enforcement action (CQC/Ofsted)
- Criminal investigations and prosecutions (e.g. by police, CQC, etc)
- Safeguarding investigations
- Coroner's inquests
- Funding disputes and unpaid care fees
- Court of Protection cases
- Regulatory due diligence
- Sales, acquisitions and refinancing
- Transactional and commercial services
- Employment issues
- Requirements for charities
- Property services, planning and development
- Restructuring

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LAURA GUNTRIP
PARTNER
TEL: 01202 786187
Laura.Guntrip@LA-law.com



NICOLE RIDGWELL
SENIOR ASSOCIATE
TEL: 020 7492 9834
Nicole.Ridgwell@LA-law.com



ALICE STRAIGHT
SOLICITOR
TEL: 01202 786353
Alice.Straight@LA-law.com

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Email info@LA-law.com or call +44(0)1202 786161