CHALLENGES FOR EMPLOYERS IN THE LEAD UP TO BREXIT

With so much yet to be resolved in the UK's exit from the EU, we are dealing with more enquiries from our clients on both the employment and immigration implications of Brexit.

WHERE IS MY WORKFORCE?

Many employers, particularly in this area with its vast agricultural and rural sector, are already seeing the consequences of Brexit uncertainty. Their EU workers, on whom they heavily rely, are deciding to leave the UK, or having left after last year's harvest, have decided not to return. This is causing a labour shortfall which is a real challenge, needing an early solution.

Manufacturing, construction, healthcare and tech businesses are also affected and are finding it tougher to recruit into key skilled roles as job-seekers look elsewhere to avoid Brexit effects. Firms are now having to look beyond the EU and consider sponsoring workers to come to the UK. Sponsorship is not only expensive but also brings with it onerous obligations towards the Home Office in terms of oversight and reporting obligations.

WHY ARE WORKERS STAYING AWAY?

One factor is the value of sterling – after the referendum, its value fell initially, denting the economic benefit for migrants working in the UK. As many EU migrants come to the UK to work so that they can send money home to their families, it is easy to see why a weaker pound makes working in the UK less appealing than working in Germany, for example.

Numbers of EU workers coming in were also affected by the initial backlash against migrants before the referendum. Net migration fell by 106,000 in the first full year following the referendum – 75% of those people were EU citizens. The statistics also show that the number of migrants coming to the UK to look for work (rather than to take up a definite job offer) has decreased by 43%.

WHAT ARE THE RULES ON WORKERS' RIGHTS?

The Government's announcement in December that an agreement with the EU on citizens' rights has been reached is a step in the right direction. It confirmed that EU citizens already in the UK before our final exit will be able to apply for settled status after living in the UK continuously for five years - if they have been in the UK for less than five years when Brexit happens, they will have to apply for a temporary residence permit which can be replaced by settled status when the five-year point is reached.

There will be a grace period of around two years after we exit the EU, during which EU citizens who arrive in the UK can stay, but their ongoing status after that point will be subject to whatever new regime is adopted for EU citizens. So for the next three years or so, other than some changes in the procedures for applying for temporary or settled status (apparently to be simplified), EU citizens will continue to be able to work in the UK freely.

WHAT CAN I DO AS AN EMPLOYER?

Employers have a big part to play in allaying the concerns of their existing EU workers and encouraging new entrants into the UK. This might be achieved by offering assistance in formalising their status and advising on future requirements.

Otherwise, employers will need to think of ways to encourage local people to take up roles which often involve manual labour outside in all weathers.

In the agricultural and horticultural sectors this is a particular challenge, as the pool of potential employees is limited and potential workers are unlikely to travel far for such work. These employers cannot afford to pay over the odds for an unskilled job, but making these roles attractive, either from a pay or career progression point of view, is tough.

Certainly key staff, particularly those in managerial roles, will need to be reassured of their status and worth to the business if they are to stay. But the answer lies in using creative recruitment processes to find stable, local labour whose working rights are not affected by Brexit.

In the future, employers will need to be extremely cautious when undertaking the mandatory right to work checks for any staff whose permission to work in the UK is subject to the new requirements. As the penalties for getting it wrong are high - up to £20,000 per illegal worker - it is crucial that robust processes are in place to ensure compliance.

For advice on employment and immigration issues pre- and post-Brexit, contact Claire Thompson on **01905 746462** or at **cthompson@hcrlaw.com.**

CASE STUDY

A client was recently faced with an unannounced visit from Immigration Enforcement following a tip off that they may be employing illegal migrants. They contacted us after receiving an Information Request detailing four workers who were suspected of working illegally. Two of those named were employed by our client – the other two were visiting our client's premises at the time of the Immigration Enforcement visit and were not employed.

We provided comprehensive information to Immigration Enforcement with regard to the named individuals, including details of the right to work checks carried out by our client when they employed the two employees. For the visiting migrants, we explained the circumstances of their presence on the premises. It later transpired that one of the employed workers had provided false documentation of sufficiently good quality that our client would not have been able to easily identify them as false.

Relax and look for the positives!

We were able to satisfy Immigration Enforcement that the visiting migrants were not working and no fine was received by our client in respect of them or the employee who had provided false documents. However, they were fined £10,000 (the maximum fine being £20,000 per illegal migrant) in respect of the other employee.

An Objection Notice was filed on behalf of our client regarding the £10,000 fine but Immigration Enforcement maintained the penalty at £10,000. Our client's next option was to appeal the penalty but from a tactical perspective they opted to pay the fine early to take advantage of the 30% discount (reducing the fine to £7,000) for payment within 21 days. Our client also dismissed the two illegal workers. Taking this approach enabled our client to avoid adverse publicity through being 'named and shamed' on the Home Office quarterly report which names those employers who have received a penalty but not paid the penalty or begun to make regular payments to meet the full penalty.

Early advice is essential to ensure that employers have the best chance of avoiding a fine completely or minimising the fine and damage to their reputation.