



Employment Law Newsletter - February 2020

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Proposed immigration system

[Here](#) are the government's plans for a new UK points-based immigration system from 1st January 2021, once free movement with the EU ends

What do you need to know?

- EU and non-EU citizens will be treated equally, save for EU citizens benefitting from a more streamlined application process.
- The government will not introduce a general low-skilled or temporary work route.
- Migrants to the UK will have to score 70 points under the new system to qualify for a visa.
- The skills threshold for roles that can be filled by migrant workers will be reduced to include "medium skilled occupations".
- The cap on the number of people able to enter the UK under the skilled worker route will be suspended.

The proposed system includes:

Characteristics	Mandatory	Points
Offer of job by approved sponsor	Yes	20
Job at appropriate skill level	Yes	20
Speaks English at required level	Yes	10
Salary of £20,480 (minimum) – £23,039	No	0
Salary of £23,040 – £25,599	No	10
Salary of £25,600 or above	No	20
Job in a shortage occupation	No	20
Education qualification: PhD in subject relevant to the job	No	10
Education qualification: PhD in a STEM subject relevant to the job	No	20

A total of 70 points is required; some characteristics are tradeable, others are mandatory.

Somewhat insultingly, the government claims that it will encourage you to move away from using the UK immigration system to recruit 'cheap labour from Europe' as an alternative to wider investment in staff retention, technology and automation.

What should you do?

Obtain a sponsor licence

You will need to sponsor EU citizens who enter the UK after 31 December 2020 to be able to employ them in the UK. The number of applications for a licence will grow as we reach the end of the year which will delay their processing, so apply now.

Budget

Your costs of recruitment may increase significantly from 1 January 2021 as the Immigration Skills Charge (up to £1,000 per year of the visa) and Immigration Health Surcharge (£400 per year for each applicant and their dependants) will apply to EU citizens as well as non-EU citizens entering the UK to take sponsored employment.

Plan

Recruitment will be more difficult next year, particularly if you rely on lower-skilled workers from the EU, so plan how you will mitigate the risks posed by those difficulties.

Guidance on veganism

In [Casamitjana v The League Against Cruel Sports](#) an employment tribunal held that ethical veganism is capable of being a philosophical belief under the Equality Act 2010.

The Vegan Society's booklet, [Supporting veganism in the workplace: A guide for employers](#), suggests that you consider:

- sending out a 'dietary requirements' sheet for catered events, ensuring vegans can request appropriate food
- designating food storage areas for vegans, for example a shelf in the fridge above non-vegan foods
- providing milk alternatives for tea and coffee making
- ensuring vegans have access to vegan-friendly clothing, such as synthetic safety boots
- exempting vegans from attending corporate events such as horse racing or barbecues
- exempting vegans from participating in approving purchases of non-vegan products
- supporting vegan employees to discuss their pension investment.

The guidance, which also suggests that you train your staff to improve their understanding of ethical veganism and update your equality policies to include provisions for ethical veganism should help you avoid direct and indirect discrimination against vegans.

Coronavirus

You have common law and statutory duties to protect the health and safety of your employees. If, after assessing the risk, you identify that one of your people may have been exposed to coronavirus then it would be appropriate to suspend them from attending work until the risk has passed, albeit although they may be able to continue working remotely.

You may not have an express right to suspend in these circumstances as your contracts may not have envisaged this scenario. With employee relations, it's sometimes not what you do but how you do it that's crucial. People should understand if you have legitimate grounds for concern, even if they hold a different view. Consult on such matters proportionately and sensitively to avoid conflict.

Should you pay them?

This is likely to be the most significant factor in dictating how your employee reacts to your decision to suspend them. Your employee is ostensibly, ready, willing and able to work. You have chosen to suspend them. In those circumstances, it would be appropriate to pay in full, particularly given that the period is unlikely to last beyond two weeks. This will reduce the risk of a worker feeling compelled to come into work, potentially spreading the coronavirus.

If they have been diagnosed with coronavirus, or otherwise became too unwell to work, then your normal sick pay rules apply

What about a healthy employee who is too scared to come to work

An employee may fear attending work because they are concerned about the risk of contracting the coronavirus. Although you can require them to attend work and discipline them for unauthorised absence if they refuse, that should be the last resort. Speak to them about the source of their fear and seek to allay those fears by explaining the steps that the business is taking to keep people safe.

A flexible approach to annual or unpaid leave, or working from home would be appropriate, particularly for those at high risk of developing more severe symptoms from the coronavirus, because they have a poor immune systems or are pregnant.

We will send a more detailed note about managing the business problems associated with coronavirus in the next few days.

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On 7th February 2020, HMRC and HM Treasury announced a change to how the extension of the off-payroll working rules to the private sector will apply when they take effect on 6 April 2020. The extension will only apply to services provided on or after that date.

Previously the extended rules would have applied to services provided before 6 April 2020 if payment for those services were made on or after that date.

It has also said that penalties will not be payable for errors relating to off-payroll in the first year, except in cases of deliberate non-compliance

Did you plan this pregnancy?

In [Camara v East London NHS Foundation Trust](#) a manager was asked to manage a poorly performing team and identified that Mrs Camara was part of the problem. When told of her pregnancy, the manager asked whether Mrs Camara had planned her pregnancy and commented that her maternity pay would come out of her (the manager's) budget. The decision to dismiss Mrs Camara was found not to be discriminatory because the Trust already had concerns about her work, and it was likely that she would have been dismissed in any event.

However, the complaint on the grounds of discrimination on the grounds of pregnancy succeeded because, in the circumstances of that case, the question was objectively inappropriate and upsetting to the claimant. It was manifestly made because of her pregnancy and was objectively unfavourable to her.

So, what can we learn from this case?

You should never quiz a worker about the circumstances of her pregnancy, because, apart from it being none of your business, it's likely to amount to discrimination on the grounds of pregnancy.

However, you can ask practical questions about the consequences of the pregnancy, such as those about the timing of maternity leave and keeping in touch days.

Ensure that you record evidence of poor performance. That practice allowed the employer in this case to successfully defend the automatically unfair dismissal claim.

If you would like to discuss these or any other issues facing your organisation please speak to your usual contact at Watershed or Keith Morgan on +44 161 703 5611

watershedhr.com

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