

Workplace Newsletter

Keeping you up to date with all things Employment Law, HR & Work-Based

December 2020



The UK's new immigration system is now live

Those employers who already hold a sponsor licence will have received notification that the online Sponsor Management System was updated with effect from 1 December 2020.

The old system for sponsoring individuals, for example as a Tier 2 (General) migrant, is no longer available and instead individuals requiring sponsorship will mostly fall under the new 'Skilled Worker' system.

The new system is more straight-forward and it should be easier to sponsor a worker under the 'Skilled Worker' system than it has been previously, for these key reasons:

- The resident labour market test has been abolished – so there is no requirement to advertise the role first for 28 days
- The skill level of the role the employer is looking to fill has been reduced from RQF level 6 to RQF level 3 (note that this is for Skilled Worker application, the skill level remains at 6 for ICT roles)
- The individual must score 70 points but there are only 3 mandatory requirements, the other requirements can be exchanged so points can be awarded by a 'mix n' match' approach. The mandatory requirements are:
 - Job offer from an approved sponsor
 - Speak English to the required minimum level
 - Job is at the appropriate skill level
- The minimum salary requirement has been reduced and different salary brackets attract different points so can be 'exchanged' for other attributes
- The cap has been removed so there is no longer a distinction between 'restricted' and 'unrestricted' certificates of sponsorship

Welcome

Merry Christmas and happy new year!

It's been a roller-coaster of a year - we've all faced some of our biggest challenges, both in personal and business life.

It's been a true pleasure to work alongside our clients, to help you face the adversity that 2020 has brought many of you, and to provide support during what has been, for lots of us, an extremely fraught time.

As we keep everything crossed for a much brighter, positive 2021, we'd like to wish you a safe, socially connected Christmas and a very happy New Year.

As always, please follow us on [LinkedIn](#) for our latest updates.

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outset.

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Did you know?

51 is the average age for a UK woman to go through menopause.

3.5 million women over 50 in the UK workplace.

3 out of 4 women going through the menopause experience symptoms

1 in 100 women experience menopause before 40.

1 in 4 could experience serious symptoms.

Why employers need to take menopause seriously

The menopause is a natural part of ageing for women that usually occurs between 45 and 55 years of age, as a woman's oestrogen levels decline. When you boil it down like this, it seems strange that it's a taboo subject that people often talk about in euphemism. There's nothing for women going through "the change" to feel embarrassed about and it's well overdue for employers to recognise this, tackle any stigma, support and inform their workforce.

Because menopause is not just an issue for women: it's an organisational issue. All managers need to know about it and understand how they can support their staff. Awareness on this topic is fundamental and reducing the stigma attached to it is vital so that more people will talk openly about it.

Studies have shown that menopause symptoms can have a significant impact on attendance and performance in the workplace.

With our population now living longer and working longer, it's vital that staff are supported to stay well and thrive in the workplace. Some women may cope well with the physical and emotional changes, but others may experience particular difficulties both in work and out of work. And we all know how problems outside of work can impact on performance at work.

Over the course of the last eight months, the world's attention has been focused on Covid-19. Its effects have been pervasive, touching on almost every aspect of our lives – whether the virus has directly affected us, or indirectly by the impact of lockdown.

For many of us, our workplace may have changed to our home during lockdown. However, menopause is not so happy to adapt, and while the world has been temporarily placed on pause, menopausal symptoms haven't just stopped.

Recently we've seen high-profile women talk openly about their menopause experience – Michelle Obama has gone on record to talk about her experience of going through hers in the White House. While most of us don't have such high-profile workplaces, the message is clear. Menopause is a great leveller, a common experience shared by women across the world.

What are other employers doing?

Many companies have been doing some great work when it comes to menopause in the workplace support. For example Santander have launched guidance for staff and managers, but have also sent out communications to ensure that all staff are engaged about the subject. Lockdown has not lessened their focus, but shifted it to where it's most needed. Their work and support includes:

- Recognising that working from home can be beneficial through:
 - The freedom for women to adjust their working conditions, such as temperature control
 - The ability to adjust start times for those suffering from poor sleeping patterns
- The move to video meetings to facilitate 'face to face' discussions
- Providing additional guidance and ideas for colleagues on how to manage their menopause journey during the pandemic
- Private online chat groups that staff can join as a safe space to engage remotely with others going through menopause
- Sharing colleagues' stories of their experience
- Holding webinars and online lunch & learn sessions
- Developing members of staff as champions to provide additional support

Where do we go from here?

2020 has been a hugely challenging year and we applaud businesses for stepping up to meet the new norms, especially those who have continued to support their colleagues suffering from menopausal symptoms, which may potentially have worsened over recent months.

Here are some small steps to get you started:

1. Refer to available guidance from a number of institutes and services such as Acas and The Chartered Institute of Personnel and Development (CIPD). Translating and applying it within your own workplace is the next step.
2. Consider how best you can recognise and support menopause at work
3. Keep the conversation going. What can you do within your organisation to get everyone talking about menopause?

Myth-busting

Does an individual currently sponsored under the old system need to switch to the new system?

No. Individuals currently sponsored don't need to take any action if their current permission remains valid. Only when their visa comes up for renewal will you need to apply for an extension under the new rules.

Do EU workers now need to be sponsored?

Not yet, but they will. EU nationals can continue to provide their EU passport as evidence of their right to work until 30 June 2021, and employers cannot insist on any additional evidence.

From 1 July 2021 EU nationals applying for jobs will need to provide their prospective employer with evidence of Settled Status. If they have not qualified for Settled or Pre-Settled Status then they will require sponsorship.

Can I ask EU national employees for evidence of Settled Status?

Employers can ask, but can't insist on evidence of Settled Status, whether for existing or prospective employees.

From 1 July, in respect of new employees, employers must ask for evidence of Settled Status.

Based on current Home Office guidance, employers won't be able to insist that existing employees (i.e. who joined prior to 1 July 2021 and provided their EU passport as right to work evidence) provide evidence of Settled Status.

What if I don't have a sponsor licence?

There are limited routes for foreign nationals to work without sponsorship. It might be that there is a suitable route for the candidate in mind, and you should take advice if you would like to explore those options.

However, if your business is going to be dependent long-term on attracting talent from outside the UK then it might be prudent to apply for a sponsor licence. It can be a time consuming process which will prove frustrating if you leave it until the moment you've found the ideal candidate, who needs sponsorship.



What next?

The Immigration Rules are spread over several online documents, frequently changed and are not always the most straight-forward to follow.

It isn't uncommon for employers to find their applications rejected when trying to navigate the system alone.

We can support employers with sponsor licence applications, sponsor duties, certificate of sponsorship and visa applications and queries, and right to work queries.

Please get in touch if you need support.

DECEMBER

Brexit and travel

The transition period ends on 31 December 2020 and any British citizen travelling abroad, including for business reasons, will need to be aware of the additional requirements.

Check whether your passport needs renewing: on the day you travel, you'll need your passport to both:

- have at least 6 months left
- be less than 10 years old (even if it has 6 months or more left)

If you do not renew your passport, you may not be able to travel to most EU countries and Iceland, Liechtenstein, Norway and Switzerland. If you need to travel for business (including for meetings) there are additional actions to take:

- [Check the entry requirements](#) of the country you're visiting
- [Check your professional qualifications will be recognised](#) if you're going to be providing services
- [Check whether you need indemnity insurance for employees](#)
- [Check whether you have permission to take goods out of the UK](#), even if only temporarily (e.g. taking samples to a trade show)

JANUARY

Furlough scheme changes

The government said it will review the Coronavirus Job Retention Scheme in January and could be asking employers to contribute more.

Employers should think about what it will mean for their business if its furloughed workforce becomes costlier.

Don't forget that, until further notice, the job retention bonus has been scrapped and won't be paid, as originally planned, in February.

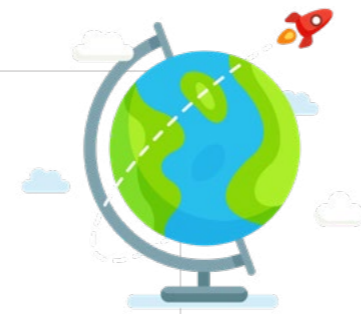
FEBRUARY

CJRS claims to be made public

HMRC will start publishing details of employers' CJRS claims on GOV.UK from February 2021.

The published information, relating to claim periods starting on or after 1 December 2020, will include the employer name, an indication of the value of the claim within a banded range and the company number (for companies and LLPs).

From February, furloughed employees will also be able to see details of claims made for them after 1 December 2020 in their personal tax account.



What to watch in

2021

APRIL

IR35 changes

The changes were delayed by a year, but with effect from 6 April 2021.

They apply to organisations which use contractors, engaged via personal service companies (e.g. an IT consultant who invoices the client via his own Limited company).

All medium or large-sized private sector (in addition to current public sector) organisations will be responsible for deciding the employment status of such workers.

If the IR35 rules apply, the worker's fees will be subject to tax and National Insurance contributions which the client must ensure are deducted.



APRIL

National Minimum and Living Wage changes

From April 2021 not only will increases to the rates be applied, but the National Living Wage age bracket will be lowered to start at 23, meaning the National Minimum Wage age category 23-24 will be removed.

The increases are:

- National Living Wage (23+) to increase 2.2%, from £8.72 to £8.91
- National Minimum Wage (21-22) to increase 2%, from £8.20 to £8.36
- National Minimum Wage (18-20) to increase 1.7% from £6.45 to £6.56
- National Minimum Wage (under 18) to increase 1.5% from £4.55 to £4.62
- Apprenticeship Wage to increase 3.6% from £4.15 to £4.30



JUNE

EU Settlement Scheme deadline

EU nationals must be resident in the UK by 31 December in order to qualify for Settled Status, but they have until 30 June 2021 to apply.

Being resident means more than just having a job offer, or even being put on payroll, but an EU national who is resident must apply by the June deadline, or lose their opportunity.



FUTURE?

The end of non-compete clauses?

The government is currently consulting on the use of post termination non-compete clauses.

This includes whether employers should have to pay for the period of non-compete, as is the case in many EU countries, or their use should be abolished altogether. The consultation closes on 26 February 2021.

To view the consultation and submit your response, [click here](#).

What do I do about...

Public holidays and annual leave?



As we approach the festive season the issue of public holiday and the interaction with annual leave rears its head. Couple that with the furlough scheme, and it can create a lot of confusion.

Are workers entitled to bank holidays off?

No. There is no statutory right to take a public/bank holiday as a day off – although there are trading restrictions in place for bank holidays so there are maximum hours some workers can be required to work.

Many businesses continue to operate up to 365 days a year, and will require its staff to work. The contract of employment will usually determine how bank holidays are treated and, if well drafted, will make it clear if a worker is not automatically entitled to take bank holidays off. Where a business does continue to operate on bank holidays, staff are usually required to request and book those days as holiday, as with any other day.

Christmas can be a tricky time to manage, as most people want to take time off to spend with their family. As long as your contracts and policies are clear though, you can plan this time off with your employees, and refuse holiday requests if necessary, as at any other time of year.

Can bank holidays be included in minimum holiday entitlement?

Yes. There are plenty of businesses which do shut down on bank holidays.

All workers are entitled to a minimum of 5.6 weeks holiday, which translates to 28 days for someone working 5 days per week. An employer can include the 8 public holidays we have in England and Wales in those 28 days (9 in Scotland, 10 in Northern Ireland).

Usually the contract of employment will say something like “You are entitled to 20 days holiday plus the usual 8 bank holidays in England and Wales”.

What about when there’s an extra bank holiday, like there will be in 2022?

In a press release on 12 November 2020, the government announced the creation of a Platinum Jubilee four-day weekend in June 2022.

As part of the celebration of the Queen’s 70th anniversary, the late May bank holiday will be moved to Thursday 2 June, while an additional bank holiday will take place on Friday 3 June.

That does not mean a business has to close, but if it does choose to, does this mean staff get an extra days’ holiday?

Not necessarily, but it can depend on the wording of the contract. In most cases, provided employers give their workers the correct notice, they can require workers to take the Platinum Jubilee bank holiday out of their existing holiday entitlement.

Many employers will take the opportunity to promote positive employee relations, and award the extra days’ holiday. Either way, think about it and don’t forget to plan ahead for what works best for your business.

Recent Case Decisions

The limits of employer’s health and safety duties

Andrew Chell v Tarmac Cement and Lime Limited

The Claimant was an agency worker who was contracted to the Respondent (Tarmac) who also employed its own in-house employees to carry out the same work. Tensions were rising between the Claimant and the in-house employees resulting in the Claimant being subjected to a practical joke involving “pellet targets” being struck causing an explosion near his right ear. The Claimant suffered a perforated eardrum, hearing loss and tinnitus.

The claimant sued Tarmac for negligence in failing to provide proper health & safety policies / risk assessments and for being vicariously liable for the Claimant’s suffering as a result of the practical joke.

Health and Safety Policies / Risk Assessments

In order to determine whether the employer had been negligent the judge considered whether the risk of injury was foreseeable.

The judge decided that the following factors evidenced the risk was not foreseeable:

- Although tensions had been rising there was no suggestion that violence was likely;
- The offending employee had been suspended before, but for a reason unrelated to violence;
- The offending employee was not described as volatile in the witness statements; and
- The availability of heavy and dangerous tools did not create a foreseeable risk of injury.

The judge also determined that even if the employer did have a duty of care they would not have breached it in this instance by having, as the Claimant suggested, inadequate health & safety procedures and lacking staff training because: “Horseplay, ill-discipline and malice are not matters I would expect to be included within a risk assessment”.

Vicarious Liability

The judge found that Tarmac was not vicariously liable for the actions of its employees in this case based on the following factors:

1. The “pellet targets” were not work equipment;
2. The use of “pellet targets” were not part of the employee’s job;
3. The explosion was unconnected to any instruction given by Tarmac;
4. The employee who caused the explosion had no instruction to be in that place at that time; and
5. The striking of the “pellet targets” did in no way advance the purposes of Tarmac.

This case provides a helpful reminder of the duty placed on employers to ensure the health and safety of its workers, but also the limits of that duty. Employers aren’t expected to predict every possible scenario, but should take into account risks which may arise from tasks relating to an employee’s job, the instructions the employer provides and the work equipment supplied.

Believe it or not?

Whilst most of us are trying to get creative with work Christmas party alternatives, in pre-Covid life, here’s what we might have been getting up to around the world...

Australia its summertime which means the air con is on full blast and workers decorate their desks with ‘Christmas Bush’ (a native Australian tree)

Poland in much of Europe Christmas Eve is a big day, and Poland is no different. Offices are filled with the smell of tangerines, trade is prohibited on public holidays, and Christmas is a time for celebrating with friends and family!

France unlike the UK, the French don’t tend to send each other Christmas cards and other than Christmas Day and New Years’ Day, it’s mostly business as usual

America the home of secret santa, which has become very popular in the UK too. Christmas is a big, flashy affair and usually the identity of each secret santa is revealed at the office party

Kenya travel is manic as many young professionals who work in large cities travel home for Christmas, via any available means, to honour the older generations and reflect on their origins

Philippines you may think the Christmas chocolates appear in our supermarkets too early each year, but in the Philippines Christmas celebrations start in September with plays, parties and decorations. Simbang Gabi (9 masses) lead up to Christmas Day and the belief is if you attend all 9, you will be granted a wish in the new year