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3HR Legal Weekly

Immigration

Proposals for Tier 2 Minimisation

The Tier 2 category could be significantly restricted from as early as April 2016. The Migration Advisory Committee (MAC) has published a consultation document, commissioned by the Home Office, seeking advice on the impact of significantly reducing the number of migrant workers under the Tier 2 skilled worker category. Issues under review include:

- The impact of preventing Tier 2 dependant visa holders from working in the UK;
- Adoption of a skills tax for employers recruiting non-EU workers under the Tier 2 category;
- Whether to apply the immigration health surcharge to Tier 2 ICT migrants;
- Restricting Tier 2 (General) employment only to genuine skills shortages and highly specialised experts;
- Whether the above should restrict those switching from student visas to a Tier 2 visa.

The MAC's report to the Home Secretary is due to be published in December 2015 or early in 2016. Any newly introduced immigration rules are likely to take effect in April 2016. If you consider sponsoring any worker under the Tier 2 category, we recommend that you start looking into options now before further restrictions apply.

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Employment

CCTV Monitoring in the Workplace

Introducing CCTV in the workplace can be a somewhat complex and controversial procedure.

So why have CCTV monitoring in the workplace?

Employers can monitor their staff through a variety of methods, including CCTV and there a number of reasons why an employer may feel the need to monitor the working premises or indeed their employees. Such reasons may include but are not limited to the following:

- The need to safeguard their staff or members of the public for health and safety reasons;
- to safeguard their staff from abuse from the public;
- to protect their business from the prevention of crimes such as theft , deliberate damage or other forms of misconduct by staff or members of the public;
- compliance with legal or regulatory obligations;
- to manage quality and for the purposes of delivering training sessions; and
- to manage productivity and efficiency.

If the business decides to use CCTV, it must do so in a way that is consistent and compliant with legal requirements. There are a number of steps that must be taken in order to ensure this and to minimise any risks. Those involved in monitoring must be aware of privacy issues.

In the first instance, staff must be notified that they are being recorded and this is usually done by displaying signs which must be clearly visible and readable. It is also recommended that the business have a policy on CCTV and workplace monitoring and this should be made available to all staff so that they are aware that they are being monitored. Significantly, the business must ensure that the system is only used for the purpose it was intended to be used. Otherwise, they may be faced with multiple resignations by employees, claiming unfair constructive dismissal as a result of a breach of trust and confidence.

In addition, businesses must also notify the Information Commissioners Office (ICO) of what there are using CCTV for. The ICO recommend carrying out an impact assessment which can be very useful in justifying the use of CCTV. The assessment should identify the need for monitoring, the adverse impacts, and identify alternative means which can be used to achieve monitoring. The assessment should also be documented in case the business wishes to rely on it in the future. Employers should also be alert to the increased risks of receiving subject access requests (SARs) from employees where monitoring is used. Dealing with and responding to such requests and ICO's investigations can be a rather burdensome and time- consuming exercise.

Storage and processing of information as a result of the CCTV monitoring must be in accordance with the Data Protection Act 1998 (DPA) and its 8 key principles. The Human Rights Act 1998 also plays an important role in CCTV monitoring in the workplace, as it guarantees individuals a right to privacy. UK law recognises that employees may feel that monitoring by their employers at work may be invasive. In any event, it would be almost impossible to justify the use of CCTV in rest areas, changing rooms or toilets.

Finally, covert monitoring which is where individuals are not aware of being monitored, can only be justifiable in exceptional circumstances, for example where there are grounds to suspect criminal activity or where there is suspicion of very serious malpractice.

In conclusion, the employer should fully consider employees' rights and the risks involved when deciding whether to implement CCTV monitoring within the workplace.

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