Immigration

Tier 2 (General) Certificates of Sponsorship Reduction

There is always talk in the media of the government's intention to reduce migration into the UK and therefore any changes to the Immigration Rules are always carefully watched by the immigration solicitors at 3HR. The most recent changes announced came into effect on 6 April this year, but fortunately it appears they will not significantly adversely affect the majority of our clients.

One point to notice is the reduction in the number of Restricted Certificates of Sponsorship available for Tier 2 (General) migrants. These are the Certificates that must be specifically requested from the Home Office before they can be assigned to an individual, and therefore before the individual can make their application (whether for entry clearance or leave to remain). These Certificates tend to be used for those migrants who are not from an overseas group company, and normally they will have had to also go through the Resident Labour Market Test before they can be requested.

At this stage, the Home Office has announced a relatively slight reduction in the number of Restricted CoS available. In the 2015/2016 year there was a total of 20,700 available and this will reduce in the 2016/2017 year to 18,500. However, what is noticeable is the tapering of this number throughout the year – starting at 2,000 being available in the April/May period and then reducing to 1,500 in the September/October period and finally ending at 1,000 in the February/March period. That final figure of 1,000 is a much lower figure than Sponsors of migrant workers will be used to, and it will be concerning if it in fact then sets the tone for the number to be available in the 2017/2018 year.

The reductions are likely to make it harder to obtain the necessary Restricted CoS, effectively meaning that only those jobs at higher salaries will be successful in obtaining them. We suggest companies consider bringing forward their anticipated future Tier 2 (General) recruitment processes in order to avoid the expected increased difficulties with this particular tier.

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Employment

Staff Handbooks

Q. Can provisions in staff handbooks be changed without employee agreement?

A. The common law position is that a contract, including contracts of employment, may only be varied in accordance with its own terms or as agreed by the parties. However, it is not always easy to identify the terms that form part of an employee's contract of employment. It is clear that the terms set out in a written contract of employment will form part of the employee's agreed terms. However terms may also be incorporated from other sources, such as a staff handbook.
The case of Department for Transport v Sparks and others [2016] EWCA Civ 360 addressed whether a provision in a staff handbook concerning absence management had been incorporated into employees' contracts of employment and therefore could not be changed without employees' agreement. That provision included a 'trigger point' at which the Department for Transport (the DfT) could take action in connection with an employee's persistent short-term absence (which ranged from 8 to 21 days, depending on the department). The DfT wished to reduce the trigger point to 5 days.

The handbook stated that its terms were to be incorporated into the employment contracts and that the DfT had to consult with staff before making changes to employee' 'contractual terms. If that process failed the changes could only be made if they were not detrimental to staff. The DfT had consulted with staff about the proposed changes but when the consultation process failed, they proceeded to unilaterally change the trigger point to five days.

The High Court held that the DfT was not entitled to unilaterally change the terms of the handbook as the current absence management procedure was incorporated into the employees' contracts of employment. Therefore, the DfT could only make changes to it if, in accordance with the handbook's variation provisions, the changes were not detrimental. The Court held that the change was detrimental as employees could now take fewer absences before the formal absence management process was triggered and there was the possibility of sanctions. In addition, employees would likely not take absences that they were entitled to, in order to avoid triggering the absence management procedures. The Court made a declaration reinstating the employees' original contractual terms.

These types of cases are very fact-specific, however this case does provide a useful reminder of the general principles when considering whether a particular provision forms part of an employee's contract of employment.

Employers who do not wish to risk a similar issue should seek legal advice about reviewing policies and procedures and ensuring that their contractual (or non-contractual) status is clearly expressed. Alternatively, employers are advised to introduce a fully non-contractual handbook with all contractual terms dealt with in the written contract of employment. If you would like advice or assistance in relation to your staff handbooks and contracts of employment, please contact the Employment Team.

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