

Is Your Business One Of The UK's 29,000 Sponsor Licence Holders?

If so, are you aware of your sponsor duties and how your organisation is complying with them?

In a world where the rules and regulations surrounding the hiring of employees from outside the EEA is growing ever more complex and fierce, there is no room for non-compliance.

A sponsor licence is required by any UK organisation seeking to employ (sponsor) a migrant worker. It is valid for four years and plays two main roles in a migrant's application for permission to work in the UK:

- It provides evidence that the migrant will fill a genuine vacancy that can't be filled with a suitably qualified settled worker
- It involves a pledge from the sponsor that it accepts all of the duties expected when sponsoring a migrant.

The most recent changes to the compliance regime for sponsor licence holders are no exception to the rule and include a number of new requirements which both employers and their sponsored migrants are especially advised to take note of.

So What Are My General Duties As A Licensed Sponsor?

As a licensed sponsor you are expected to play your part in ensuring that the system is not abused. This means that you must fulfil certain duties. The objectives of these duties are to:

- Prevent abuse of assessment procedures
- Capture any concerning patterns of migrant behaviour
- Address weaknesses in process; and to
- Monitor compliance with the Immigration Rules.

How Will The Home Office Check That I Am Complying With My Sponsor Duties?

In this game, you need to be prepared. It is quite possible that you will be subject to an unannounced visit from Immigration Compliance Officers who will wish to confirm that you are continuing to comply with the duties and responsibilities of a licensed sponsor.

"...you will be subject to an unannounced visit from Immigration Compliance Officers"

These checks can be undertaken at random and visits may be unannounced. Licensed sponsors therefore need to ensure that they are committed to maintaining compliance with their sponsor duties at all times.

What Happens If I Do Not Comply With My Sponsor Duties?

Since 2008, there have been measures in place to ensure the enforcement of sponsors' duties along with the identification of dishonest or incompetent sponsors. Non-compliance can result in your licence being downgraded, suspended or even revoked.

It is easy to overlook the role which sponsorship duties should play within your organisation. For example, in order to be compliant you must have at least one level 1 user in employment throughout the life of your licence. If you do not have a level 1 user in place this means that you cannot fulfil your sponsor duties and the Home Office will take action against you.

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What Are The Key Compliance Changes Raised By The Home Office In The New Tier 2 & Tier 5 Guidance?

Many of the recent changes provide the Home Office with greater powers to revoke rather than just downgrade or suspend a licence. Here are just some examples of where non-compliance can now lead to the loss of a sponsor licence:

- Your company is found to be unable or unwilling to continue to meet its sponsor duties
- You assign an unrestricted Certificate of Sponsorship (CoS) to a migrant who requires a restricted CoS
- You do not have in place the processes necessary to comply with your duties as a sponsor. For example, an employer's internal communications may not be good enough for it to know if a sponsored migrant has not reported for work

- The Home Office is not satisfied that you can offer genuine employment that cannot be filled by a resident worker
- You fail to assign a new Certificate of Sponsorship (CoS) (and where appropriate fail to properly conduct a resident labour market test) to a migrant who needs to make a change of employment application
- You fail to employ a resident worker who was found to meet the job requirements in a role which you subsequently sponsored a migrant worker to undertake
- You supply false information on a Certificate of Sponsorship. For example: The salary on that CoS is different to the amount paid to that migrant.

"If the contract of employment for one of your sponsored migrants is terminated earlier than shown on their Certificate of Sponsorship (CoS), do you have the systems in place to ensure you report this change to the Home Office with 10 working days?"

Our Advice To Employers

There are currently over 29,000 organisations licensed to sponsor migrants under Tiers 2 and 5 of the Points-Based System. It is apparent that the Home Office considers this number to be excessive and that its aim is to considerably reduce this total by conducting a greater number of unannounced visits to those UK employers who currently hold a sponsor licence.

If a Home Office compliance visit is made to your organisation, compliance officers will not only want to verify your current sponsor licence information, check you are complying with your sponsor duties, and to speak to any migrant workers and any employees or colleagues involved in the recruitment of migrant workers, but will also wish to inspect records and/or systems to ensure that you are following your sponsor obligations and adherence to rules, along with conducting checks on other workers to ensure you are complying with your obligation to prevent illegal working.

'Since these compliance visits are now being regularly conducted on an

unannounced basis, it is essential that you maintain and regularly audit your records and processes to ensure you are able to fulfil your sponsor duties.’ – David Hugkulstone, Director at Smith Stone Walters.

As these latest changes prove, the rules surrounding sponsor compliance continue to be modified with an increasing level of enforcement. Smith Stone Walters can assist you by conducting an audit of your internal systems and identifying any weaknesses in your processes that could result in you failing to meet your obligations as a sponsor.

Contact Smith Stone Walters today to discuss how our sponsor compliance services can help you manage your migrant population in accordance with UK immigration law.

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