

Employing EU Citizens Post-Brexit

Introduction

This guidance document has been produced to give managers guidance on the new rules relating to employing people from the EU when the UK leaves the EU on 1st January 2021. It is designed to give practical advice on how to continue employing EU nationals who already live and work in the UK, and the processes that will need to be followed to employ people who are not British citizens after 1st January 2021.

EU citizens currently working for you who were living in the UK on or before 31st December 2021

If you employ people who currently have the right to work in the UK under EU freedom of movement rules and do not have British citizenship, they can continue to work for you without additional checks providing they were already **living** in the UK by 31st December 2020.

If these employees wish to remain in the UK **after 30th June 2021** they will need to apply for “Settled Status”. If they have been living in the UK for five years this will normally be granted. If they have been living in the UK for less than five years they will normally be granted “Pre-Settled Status” for a period of up to five years, and once they have lived in the UK for five years they will then be able to apply for “Settled Status”.

You **must not** ask existing employees whether they have settled or pre-settled status, or whether they intend to apply for it. If the information is volunteered it can be recorded. There is no legal requirement to check employees have settled or pre-settled status if they commenced employment on or before 30th June 2021. You can rely on the existing right to work checks, which for EU citizens is normally an EU passport or national identity card. The Company can also remind existing employees of the need to apply for settled/pre-settled status and a copy of the “Employee Factsheet – Applying for Settled Status” can be provided to employees via our digital HR system.

New EU employee hires from 1st January 2021 to 30th June 2021

If you take on a new EU employee between 1st January 2021 and 30th June 2021, the right to work checks will remain the same as they are now and you **must not ask for proof of settled or pre-settled status either before, during or after interview**. Of course you would have no way of knowing whether or not they were resident in the UK prior to 1st January 2021 and therefore whether they have the right to apply for settled/pre-settled status or should have a work visa. However, providing the Company carry out the usual right to work checks you will not be held responsible if they are subsequently found to not have the right to live and work in the UK. This statutory excuse will not apply if it is found that you knew they should have had a visa but employed them anyway, only if you were unaware. If the candidate declares that they do not have settled/pre-settled status or a visa and need to be sponsored then you will need to follow the steps set out below.

New EU employee hires from 1st January 2021 who do not have settled/pre-settled status or a work visa

If an EU candidate who is due to commence employment on or after 1st January 2021 declares they do not have the right to work in the UK due to the fact that they were not resident in the UK prior to 1st January 2021, they will need to be sponsored by the employing Company unless they have some other form of right to work. To be able to sponsor employees you first need to have a sponsorship licence. This will be a strategic decision of the company whether it wishes to do so or not. If you think you are likely to need to take people on from **outside the UK** after 1st January 2021, it will be worth putting the wheels in motion to apply for the licence immediately as applications can take 4-6 weeks to process, and there is likely to be a surge in applications which may further delay processing.

Once you have a sponsorship licence, the costs to sponsor an employee for five years (based on current fees) are approximately £8,300.00. The visa application process can take time so this would need to be factored in to hiring plans.

The skills based visa application system is points-based, so you can't sponsor someone unless they meet certain criteria. These include:

- The salary must be a minimum of £25,600 per year, or £20,480 if the role is on the skills shortage list or the candidate has certain qualifications;
- The role must have a minimum skill level, which is equivalent to A-level qualification level; and
- The candidate must be able to demonstrate they can speak English at a required level.

Under the existing system employers have to advertise roles in the UK and demonstrate there are no suitable candidates who already have the right to work in the UK – this will no longer be in place from 1st January 2021.

Care should be taken in rejecting EU citizen applicants purely on the grounds associated with their nationality to avoid discrimination claims. Please speak to your HR contact for advice.