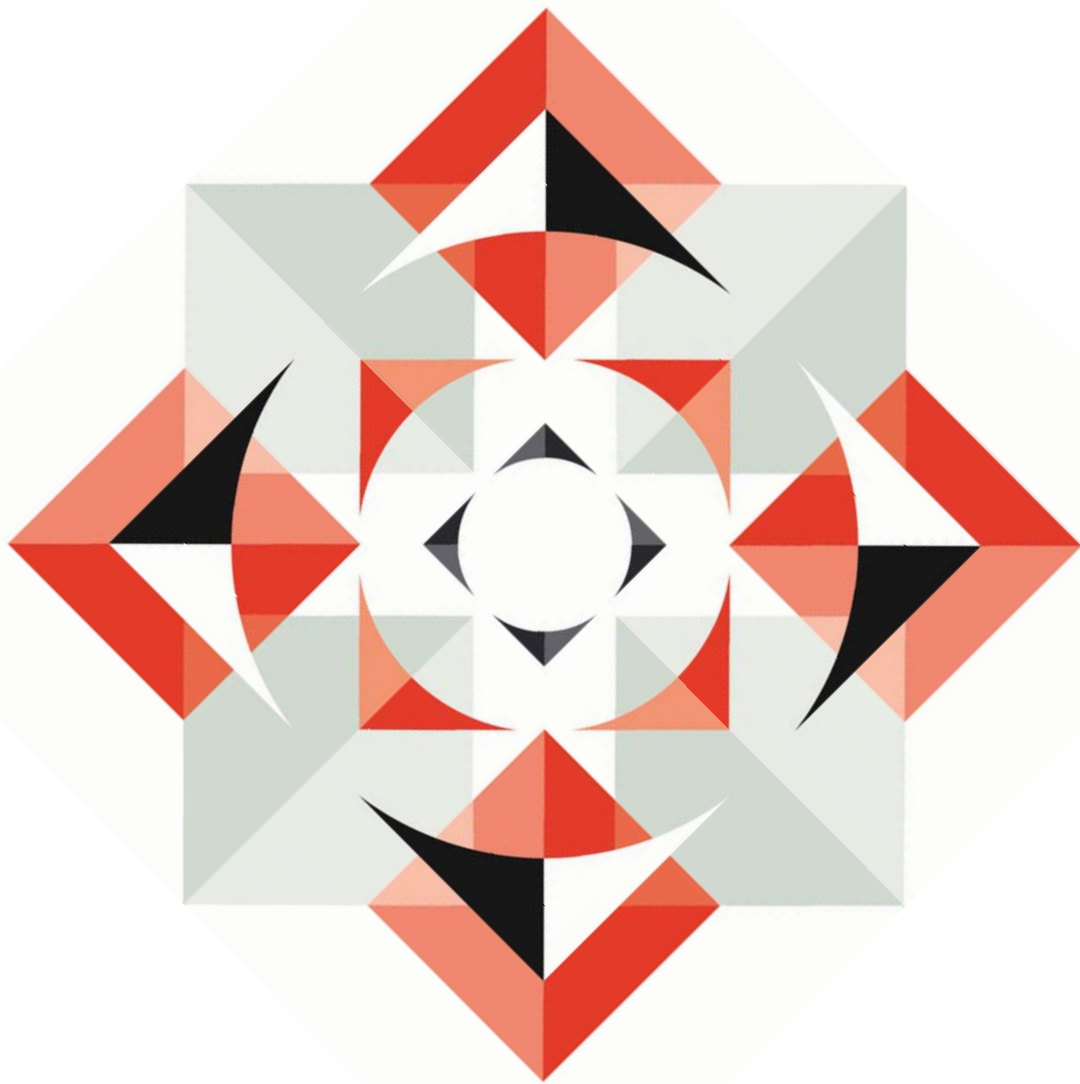


Immigration basics

For retail, hospitality and leisure



► Inside

- Prevention of illegal working
- Students
- Interns
- Sponsoring overseas workers
- Supplementary employment



Introduction

Employers in the retail, hospitality and leisure industries are under particular scrutiny from the Home Office. It is therefore essential for them to have at least a basic understanding of immigration requirements.

This Inbrief explains the Home Office's Prevention of Illegal Working regime and highlights the immigration routes most useful to an employer in a retail, hospitality or leisure environment.

Prevention of illegal working

It is a criminal offence to employ someone if it is known or there is reasonable cause to believe that the person is an illegal worker. A conviction could trigger penalties of up to 5 years in jail and/or an unlimited fine.

Under the civil penalty scheme, any employer found inadvertently employing an illegal worker could face an on-the-spot fine of up to £20,000 per illegal worker.

There is no requirement for an immigration officer to check the documentation obtained from the illegal worker. The immigration officer can simply issue the fine if he believes that an employee is working illegally. Employers are afforded 28 days to object to penalties.

If the Home Office discovers an illegal worker, it will also impact upon the employer's ability to obtain a sponsor licence, which is required to sponsor foreign workers. An employer who already has a sponsor licence and is discovered to be employing an illegal worker could lose its sponsor licence.

An employer can substantially reduce its chances of being fined, or substantially reduce the amount of the fine, by checking and copying documentation of all new employees before they begin employment. This must be documented as stipulated in the Home Office's Prevention of Illegal Working guidance.

Retail, hospitality and leisure businesses often overlook document checks because they assume that a prospective employee has the right to work, for example because he or she was referred to the business by an established employee. A business can avoid this pitfall by institutionalising a document checking policy. For example, an employer could list document checking as an item on a new hires checklist.

A robust document checking policy includes rechecking the permission to stay of every employee who provides documentation showing that they have temporary leave to remain in the UK.

Some documents showing temporary leave must be rechecked before the date of expiry. Others involve obtaining confirmation from the Home Office Employer Checking Service of the employee's right to work, and these must be

rechecked within 6 months.

An employer will have to do this for every employee who is on a temporary visa, until they produce documentation showing that they have permission to stay in the UK indefinitely or permanently.

The Prevention of Illegal Working requirements may pose practical difficulties for employers in the retail, hospitality and leisure industries. For example, it can be challenging to devise a method for storing migrant employee documentation and information so that it is readily accessible to the Home Office during a visit to a store or restaurant, whilst ensuring centralised control and uniform procedures.

Students

Retailers often rely heavily on student workers. It is fine to include migrant students in the workforce, as long as the conditions of their particular visas are respected. The limits on a student's ability to work depend on the date on which he applied for permission to come to, or stay in, the UK as a student, the type of course he is undertaking and the type of institution where he is studying.

Some students can work for up to 20 hours a week during term time and full-time during vacations. It is worth noting that vacations include the time between a student's course finishing and their leave expiring, which can be as long as 4 months as students are often permitted to remain in the UK up to their graduation day.

Factors affecting a student migrant's authorisation to work include the date of their initial student visa application, the level at which they are studying and who the education provider is.

Employers can hire students on work placements provided the placement is an assessed part of the course and the assessment is more than half or a third of the course, depending on the level of the course.

A student migrant cannot fill a full-time permanent vacancy. For example, a retailer cannot employ a student migrant as a full-time store manager.

As with all prospective employees, employers



must request original evidence of students' right to work in the UK. Students should be able to produce a Biometric Residence Permit (BRP), passport stamp or passport endorsement that has not expired. BRPs issued to students before 30 March 2010 will not show how many hours per week they can work. BRPs after this date should show how many hours they can work.

In either case, an employer should also obtain evidence of their academic term and vacation dates. This could be a printout from the student's educational institution's website setting out its timetable for the student's course of study or a letter from the student's educational institution, detailing the level and duration of their course, and confirming term time and holiday dates.

Employers should view the evidence of their right to work before they start working, copy the documents, write on each copy "I confirm that this is a copy of an original, which I have seen", and sign and date each copy. This evidence should be kept on file. Employers should also diarise to recheck the documents at least every 12 months. This documentation will minimise the risk of being penalised under the Home Office's Prevention of Illegal Working regime.

Interns

The Home Office's Tier 5 category for temporary workers includes two immigration routes useful for bringing non-EEA nationals to the UK to work as interns: The Government Authorised Exchange route (particularly the GTI scheme under this route) and the Youth Mobility Scheme.

Government Authorised Exchange

The Home Office has approved a number of schemes under the Government Authorised Exchange category. Each scheme is managed by an overarching body, supported by a UK Government department. The schemes aim to share knowledge, experience and best practice, and to experience the social and cultural life of the UK.

A job must be at National Vocational Qualification level 3 or above to be eligible. The proposed internship role must be additional to normal staffing needs. Interns are granted leave

for up to 12 or 24 months, depending on which scheme they use to enter the UK.

Interns can apply from overseas. Migrants who are already in the UK as students or in a few other categories can apply from within the UK.

Most schemes are industry-specific, for example the Food Standards Australia and New Zealand Scheme. However, a general scheme called the Tier 5 Interns scheme is also available.

The Tier 5 Interns scheme allows graduates to work in the UK for up to 12 months. The scheme is administered by a private company, GTI Recruitment.

Employers register under the GTI Recruitment Tier 5 Interns scheme online. An employer does not have to hold a sponsor licence under the points system to use the Tier 5 Interns scheme. Once the company is registered and confirms the individual's personal details and the proposed role, GTI Recruitment assigns a Certificate of Sponsorship. The individual uses this Certificate of Sponsorship to apply for a UK visa from overseas, or for further leave to remain in the UK.

Youth Mobility Scheme

The Youth Mobility Scheme allows non-EEA nationals, who are from participating countries and aged 18-31 years, to UK to experience life in the UK for 2 years. Participating countries are Australia, Canada, Japan, New Zealand, Taiwan, Hong Kong, South Korea and Monaco.

Youth Mobility Scheme participants can work full-time in the UK. There are very few restrictions on the work they can undertake.

Many retail, hospitality and leisure businesses obtain youth mobility scheme visas for recruits to their graduate training programmes.

Sponsoring overseas workers

To sponsor overseas workers under Tier 2 of the Points-Based System, an employer must obtain a sponsor licence from the Home Office. With a licence, an organisation can issue certificates of sponsorship to support the visa applications of the overseas workers.

A sponsor licence entails recordkeeping, reporting and compliance duties to the Home Office. An employer must have certain HR

systems in place to ensure that it will fulfil its duties, before applying for a sponsor licence. For example, it is essential to a retailer or restaurant business's successful sponsor licence application to establish protocols so that line managers will report events such as migrant absences to HR.

To fulfil the duty of compliance, sponsors must only allocate certificates of sponsorship in the correct circumstances. Sponsors must ensure that the job is at or above National Qualifications Framework level 6.

The Home Office has raised the required skill level several times over the past few years. The rising skill levels are particularly hard on retail, hospitality and leisure businesses, as the majority of roles in these industries are not highly skilled.

Sponsors must ensure that the salary meets the Home Office's salary requirements. Sponsors also usually must undertake a resident labour market test, unless the role is on the Home Office's list of occupations for which there are shortages of EEA workers. Sponsorship is therefore not appropriate for floor staff or similar roles.

Sponsors fulfil the resident labour market test by advertising the role as dictated by the Home Office and showing that no EEA nationals apply for the job.

The shortage occupation list route is easily overlooked, but can be useful if the sponsor or their representative has experience in meeting the list's requirements. Jobs on the shortage occupation list are exempt from the resident labour market test. Certain chef roles are included on the shortage occupation list.

The qualification, experience and earnings criteria relevant to the catering industry change frequently. A high level of expertise is required to navigate the criteria successfully. Experience in assessing the elements of catering roles at various levels including Sous, Specialty, Executive and Head Chefs is essential to meeting the Home Office requirements.

Supplementary employment

If a non-EEA national is already sponsored by an employer, they may be able to work for a second employer as well. A Tier 2 migrant can work for a second employer, without the second employer having to sponsor them, subject to the following restrictions:

- > They must either work in the same profession and at the same professional level as that for which they are sponsored, or work in a shortage occupation role
- > They must not work for the second employer more than 20 hours a week
- > They must only work for the second employer outside the normal working hours of their sponsored employment
- > They must continue to work for the employer sponsoring them

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