



Employment & immigration law update and looking ahead to 2022

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Agenda

Employment:

- Returning to the workplace - workplace health and safety obligations
- Employee vaccination status -
 - Reasonable management instructions
 - Automatically unfair dismissal and health and safety concerns

Immigration:

- Changes to the immigration categories for workers -
 - The Skilled Worker route
 - Other immigration routes
- Right to Work checks post-Brexit

- What's on the horizon?
- Q&A

Employment law update



Going forward - returning to the workplace

Can I make an employee come back to the office?

What is a COVID-19 safe office?



The future of working from home

- Hybrid model
- 8 flexible working refusal reasons
- Discrimination risk

Workplace health & safety

Do:

Employer's duties:

- ✓ The nature of the work
- ✓ Conducts its business
- ✓ Supervision, training, instruction
- ✓ Plant, equipment, materials and substances used
- ✓ Conditions
- ✓ Provision of welfare facilities



Practical health & safety steps

- Risk assessment
- Consulting with staff
- Eliminating all risk?

- Additional steps:
 - Hygiene
 - Ventilation
 - Communication -
 - Those working from home
 - Vulnerable workers

Current guidance on employee vaccination status

- PHE's Guide for Employers -
 - Departmental champions
 - Signposting
 - Facilitate
 - Amendments to policies?
- ACAS guidance
- EHRC guidance -
 - Blanket policies likely to be unlawful





Asking employees about vaccine status

- Employers must have a good reason
- ICO advice
- Employers may face difficulty if an employee refuses
- Certification

Recruitment and vaccine status

- Asking if candidates are fully vaccinated
- Section 60 Equality Act 2010

On the horizon





Sexual harassment in workplace

- Prescriptive duty on employers to prevent sexual harassment in the workplace
- Government consultation - July to October 2019
- Employer duty to prevent, with 'all reasonable steps' defence
- Lack of protection for volunteers

NI & tax increase

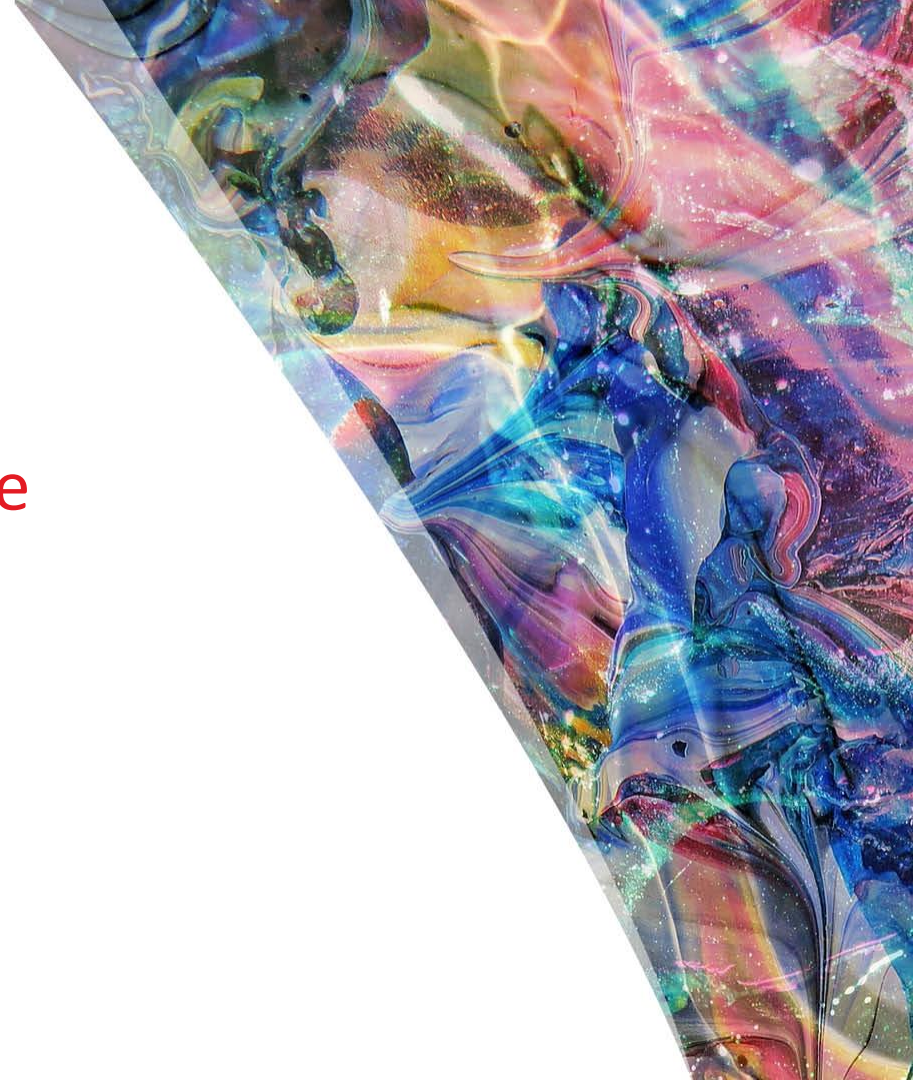
- April 2022 - National insurance contributions and tax on dividends to increase by 1.25%
- Class 1 (employee and employer) and class 4 (self-employed) increases
- Finance Bill 2022
- Adult social care - cap on personal care costs, provide financial assistance and improve the integration of health and social care systems



Flexible working 'day one' right

- Government consultation on flexible working
- Not a proposal to make flexible working an automatic right
- 'Day one' right removes the requirement for 26 weeks' qualifying service
 - Possible changes: to eight business decisions, requirement for alternatives, more than one application per year, temporary flexible working

Immigration law update

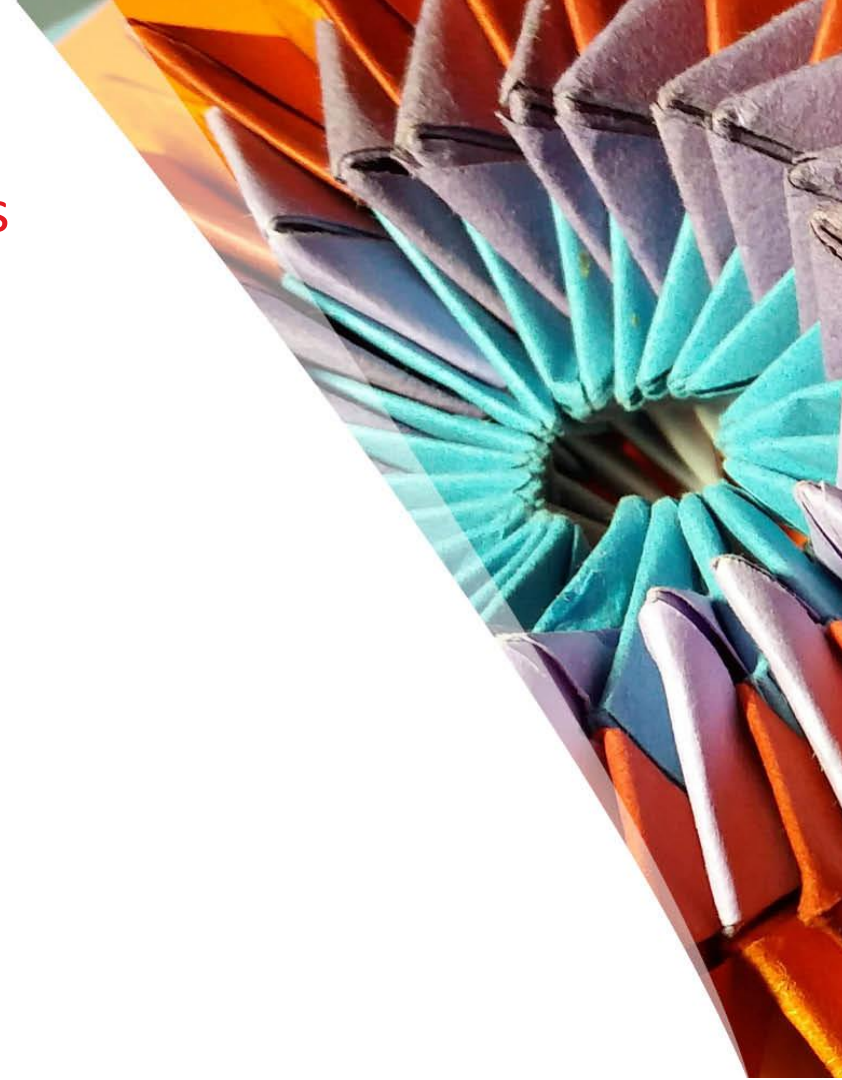


The 'new' points-based immigration system

- 20 Feb '20 - *Global Talent* replaced *Tier 1 (Exceptional Talent)*
- 05 Oct '20 - *Tier 4* replaced by *Student* and *Child Student*
- 01 Dec '20 - *Tier 2 (General)* replaced by *Skilled Worker*
 - Most other categories get a make-over
- 01 Jan '21 - EEA/Swiss nationals require immigration permission
- 31 Jan '21 - *Hong Kong BN(O) visa* introduced
- 01 Jul '21 - New right to work checks in force
 - *Graduate Route* introduced
- 26 Aug '21 - 'Delivery roadmap' for modernising the sponsorship system
- Autumn '21 - Short-term visas for HGV drivers, poultry workers and pork butchers

Poll - Has Brexit caused you any issues with recruitment (tick all that apply)?

- Yes, we're struggling to fill lower skilled vacancies
- Yes, we're struggling to fill vacancies for senior roles
- Yes, we've struggling to recruit at all levels
- No



Skilled worker – what's changed?

- Replaced Tier 2 (General) on 1 December 2020
- Minimum Skill level reduced to RQF 3
- Resident Labour Market Test removed
- Cap removed (but still need to request CoS for overseas applicants as and when required)
- Switching easier
- Tradeable points for salary requirement
- No cooling-off period

Skillz to pay the billz

Reduced from RQF level 6 to RQF level 3

RQF levels 3 & 4

Typically middle management and technician roles, eg:

- Planning, process and production technicians
- IT operations technicians
- Laboratory technicians
- Quality assurance technicians
- Business and related associate professionals NEC (eg Data analyst)
- Marketing associate professionals
- Health and safety officers

Lower skilled

- Office supervisors
- Medical secretaries
- Finance clerks
- HR administrators
- Receptionists
- Caretakers

Poll - Have you sponsored any skilled workers in roles at RQF 3 or 4?

- We don't have a Skilled Worker sponsor licence
- No, and we don't plan to
- No, but we have considered it
- Yes, just one
- Yes, more than one



Other changes

- **Graduate Route** introduced to allow pathway from Student visas to work (doesn't lead to indefinite leave)
- **Hong Kong BN(O) visa** for HK families wanting to relocate to the UK
- **Global Talent** route: fast-track for applicants holding a “prestigious prize”; fast-track endorsements for some academics; “full peer review” otherwise
- UK **Ancestry**, **Charity Worker**, **Minister of Religion**, **Religious** and **Creative Worker** routes broadly unchanged
- Reformed **International Sportsperson** category
- **Youth Mobility** to be extended to India and Iceland

Right to Work - summary of changes

Changed on 1 July – list of acceptable documents:

- **removal** of EEA passports, national identity cards and specified documents issued under EEA Regulations
- inclusion of -
 - Irish passports and passport cards
 - Documents issued by Jersey, Guernsey, or the Isle of Man, which have been verified as valid by the Employer Checking Service
 - Frontier Worker permits
 - EUSS Certificates of Application

COVID-19 adjusted right to work checking process to continue to 5 Apr 2022



Whose status can be checked online?

- EU, EEA and Swiss nationals:
 - Pre-Settled Status and Settled Status under EUSS
 - PBIS visas (eg Skilled Worker, Student)
 - Frontier Worker permit holders
- British National (Overseas) (BNO) visa holders
- Anyone who holds a BRP or BRC

View a job applicant's right to work details

Check details of a job applicant's right to work in the UK, including:

- the types of work they're allowed to do
- how long they can work in the UK for, if there's a time limit

You'll need the job applicant's:

- date of birth
- right to work share code

You can also [check someone's original documents](#) instead - for example if you do not have a share code.

[Start now >](#)
on the right to work service

Related content

- [Penalties for employing illegal workers](#)
- [Checking a job applicant's right to work](#)

Forthcoming changes

- 30 Nov '21 - Skilled Worker and Student extension applications can use ID app
- Q4 '21 - Fees review, Skilled Worker eligibility tool, HMRC salary check pilot
- Spring '22 - Launch of new 'Scale Up Visa'
- Mid-end '22 - Upgrades to Sponsor Management System and visa application forms
- ???? '22 - Reforms to Intra-Company and 'Global Mobility' routes
- ??? - Further sector-specific concessions for lower-skilled workers?





Get in touch



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