

BREXIT: ensure your work force is legal

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With the end of the Brexit transition period in sight, the end of free movement of EEA and Swiss citizens in the UK is imminent. Companies which depend on an international workforce and global mobility should act now to safeguard their businesses in a post-Brexit UK.

If you are trading in the UK and employ EEA and/or Swiss citizens, you only have until 31 December 2020 when the Brexit transition period ends to take action to ensure that these employees can continue to work for you.

From 1 January 2021, EEA and Swiss citizens will be subject to immigration control. If they are unable to show that they have status under the EU Settlement Scheme ('EUSS') or under another category of the immigration rules, they could be refused entry, or limited to a maximum of six months in the UK with no right to work.

EUSS

Employers should ensure that their EEA and Swiss employees, or employees who are the family members of EEA and Swiss citizens, take advantage of the EUSS whilst it is still available. The EUSS is open to EEA and Swiss citizens and their family members who began their residence in the UK before 31 December 2020.

Under the EUSS, those who have been continuously resident for 5 years in the UK can apply for Settled Status (aka Indefinite Leave to Remain), allowing them to stay indefinitely. Those who have been resident for less than 5 years can apply for Pre-Settled Status (aka Limited Leave to Remain), allowing them to stay in the UK for up to 5 years, by which stage they could be eligible for Settled Status.

Providing support to employees in their applications under the EUSS will be much faster, significantly cheaper, and less onerous than sponsoring employees under a Tier 2 employment visa, a process which can cost around £10,000 in Home Office fees alone, and can often take 3-4 months. By comparison, the EUSS is free, and applications are often processed in just a few days.

The deadline for applications is 30 June 2021, but from 1 January 2021 EEA and Swiss citizens may be asked to prove their immigration status to banks, landlords, employers and the NHS, as well as to UK Border Force officers when they enter the UK.

Mock audit / compliance training

UK employers are legally obligated to ensure that all of their employees' nationality and immigration status records are up to date, in addition to ensuring that their on-boarding and recruitment processes are compliant with UK right to work regulations. Failing to do so regularly results in criminal and civil liability, up to five years in prison, and fines of up to £20,000 per person found to be working unlawfully.

We provide regular mock immigration audits to identify any compliance issues before the Home Office's immigration enforcement team decides to pay an unannounced visit.

What happens after the EU Settlement Scheme closes?

The impact of Brexit on employers will be a significant increase in the complexity and costs of recruitment and compliance. After 1 January 2021, employees face losing the right to live and work in the UK unless they have status under the EUSS, or status under another category of the Immigration Rules such as a Tier 2 or Tier 5 visa.

If employees do not have the necessary documents in place, it may also put you in a position where you cannot continue to employ them or offer

employment to certain new applicants, which can cost the business in terms of talent acquisition and retention.

This is a crucial moment to ensure that you are compliant with right to work obligations and to avoid disruption to your employees and to your business.

For further information as to how we can help please contact our Immigration team, or your usual Withers contact, who would be happy to advise, alternatively you can call +44 20 7597 6364 or email enquiries.uk@withersworldwide.com.

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