

## **THROGMORTON HR QUARTERLY UPDATE - Q2 2021**

With so much happening at the moment, we wanted to share a number of key updates that we think you should know about. Immigration and COVID-19 mean this is a longer update than usual. We do hope you find it interesting.

### **REVIEW OF UK IMMIGRATION CHANGES**

The new rules are now in effect. Overall, the new points-based system for **Tier 2 Work Permits** is significantly easier to understand. As usual, however, the online processes are significantly more complex and repetitive than they ought to be. A case in point is the process to get one's certificates of sponsorship assigned. This is proving to be a quick turnaround, but firms do need to be prepared with all of the data already included in the sponsorship application to hand, as this has to be submitted again. We're on hand to talk you through it, if you need us.

The new requirement to prove English language proficiency is working well. We have experience of candidates going through the new English language test in a number of locations in Europe. These candidates have found this part of the process straightforward and speedy. All of the candidates we have seen have been able to pass the test.

Those applicants eligible under the **Tier 5 Youth Mobility Scheme** have found that their applications have been processed quickly. Because of the lockdown(s) and travel restrictions, the annual quotas have not been met and so this remains a great option for younger candidates.

However, there are a couple of areas where things aren't as good as we'd hoped.

Firstly, be prepared for it to take the full eight weeks that the website is quoting for the initial sponsorship process. Secondly, we are finding that only around one in three of our clients are able to opt for the priority four-week option. We have some hints and tips to help you increase that chance, but it does still feel a little like a lottery.

The new **Graduate Visa** will be launched in Summer 2021 and will allow those who have completed their degree in the UK to remain for two years. If individuals have completed a PhD in the UK then they are permitted to remain for up to three years after completing their course.

### **EU SETTLED STATUS**

If your EU employee(s) haven't already applied, the clock is ticking (loudly). The deadline is end of June 2021, for employees who entered the UK before 31st December 2020 to get their status confirmed. Your due diligence requires you to check the sharing code that your employee provides,

on the UK.Gov webpages and print off the confirmation of status and retain it on file. Like UK and Irish passport holder checks, the employer need only do this once during employment (unless immigration rules change).

Please do contact us if you need assistance in getting your due diligence done, or your employees need assistance with the process.

## **VISITOR VISAS:**

Nationals from EU Member States will be classified as 'Non-Visa-Nationals', joining countries such as the USA, Canada, and Australia, and will be able to apply for their visitor visa upon arrival.

### **Such Nationals:**

- may undertake courses of study for up to 6 months in duration on this type of visa. As is the case today, visitors may attend conferences, meetings, interviews, give and receive training and gather information to aid their work overseas. They may not undertake any work or long-term study in the UK and any time spent here on this category of permission will not count towards residency; should not be paid via a UK payroll during their stay, as this would be indicative of them performing meaningful work, in breach of the visa type.

## **EU WORKERS ON UK PAYROLL:**

We have had a lot of calls about employees currently residing overseas, many unable to return or unwilling to due to COVID-19 travel restrictions.

A reminder that if such employees are on UK payroll, even if they are not physically in the UK at present, their immigration permission still needs to be in place. With the removal of freedom of movement, with the exception of the Republic of Ireland, they cannot simply choose to be a UK employee residing in an EU Member State indefinitely, without triggering additional tax and social charge liabilities.

Similarly, employers may wish to consider whether they are happy to pay a 'London salary' if the employee is no longer fulfilling their London-based role. This brings us neatly onto returning to work after UK lockdown restrictions are over.

## **RETURNING TO WORK**

We have been working with a number of clients regarding return-to-work planning. While the return-to-work risk assessment that we supplied last year will stand you in good stead in checking and preparing the workplace, there are now more factors to consider, and we have to ponder what the new workplace norms will be.

Most clients are telling us that the return-to-work plan will be voluntary and limited at first, e.g., to the maximum occupancy advised by the landlord of the office building. Who employers invite to return and how much of the working week they do that for should be based upon need, for example receptionist and office managers who have a need to be physically present to deliver their entire role may return to work sooner and for a much higher proportion of the working week than other employees whose work can still be delivered effectively from home.

Employers will need to think about the approach that they take and have contingencies for different requests from employees, ranging from those who are very keen to return, on a full-time basis, to those who are adamant that they are unwilling or unable to return to the office. We have seen employee responses indicating that they are unwilling to consider any physical return to the office in 2021. You will have to think carefully about why they need to be in the office and what part of their role they might be unable to perform remotely, before tackling this one.

While the majority of people believe that vaccination is good news, it is not a cure for COVID-19. One may still be a virus carrier after vaccination and so any return to work should take into account all reasonable precautions in place today, e.g., handwashing, social distancing and wearing a face covering. While many individuals are positive about returning, for example to share their physical, working environment with companions other than the cat, the same individuals may be less enthusiastic about sharing a busy train or tube.

## THE GLOBAL VIEW

**In the USA** the latest Edelman Trust Barometer shows that 60% of the 2500 Americans surveyed believe that their employer should not try to force them back into the workplace. Align this to politics and this number increases to 68%, for Biden voters. While the CDC and FDA have advised the US populace that employers may make full vaccination a condition of return<sup>1</sup>, 69% of Americans surveyed believe that this should be a personal choice. Given the disparity in vaccination take-up rates, we suggest that you recommend, but do not insist upon, vaccination.

Similarly, we advise that employers look at the rationale for office-based working and review remote/agile working policies before requesting employees return. The same survey (cited above) stated that 81% of respondents want weekly updates on COVID-19 and return to work plans that their employers are contemplating. A significant majority of respondents also stated that they trust their employers more to respond effectively and responsibly than national health authorities or government.

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<sup>1</sup> Whilst the CDC statements make it clear that employers of at-will employees can require vaccination, there should always be a carve out for those who cannot be vaccinated for medical or religious reasons.

The **Australian** Government has announced that COVID-19 vaccination will not be mandatory. However, the Government is currently debating introducing proof of vaccination as a Border entry/re-entry condition; entry to Government Buildings and even permitting the leisure sector to enforce an exclusion policy for those who cannot prove their vaccination.

However, **Australia** has reliable, and recent, case law in Ms Maria Corazan Glover v Ozcare [2021] FWC 231, where the Influenza vaccine was a mandatory requirement for anyone entering an elderly care facility. The claimant was a care worker who had a proven medical history of severe reaction to the Influenza vaccine. She was put on paid suspension pending vaccination despite sharing the medical reason for her refusal. She successfully claimed that she had been dismissed by her employers for refusing to have the vaccination. This case may be pivotal in Australia, and may prove influential in other countries such as the UK. Where employees seek a medical exemption, employers are advised to make reasonable accommodations in such circumstances.

In the **UK**, there is currently no mandatory vaccination approach in place but how does this sit with the employer's obligation to provide a safe working environment for their employees, and the enhanced rights workers here hold? As with most things' employment law related, the answer is complex. If employees are working in an office, rather than a higher risk location such as a school or hospital, it would be significantly more difficult to justify a mandatory approach to vaccination as the response of a reasonable employer.

As with all other locations, employers will be expected to have an opt out for those who cannot be vaccinated for medical reasons or where there is a genuinely held religious objection to vaccination.

In the **UK**, while there is as yet no relevant case law, those who have a strongly held philosophical belief such as Veganism (vaccines often have small amounts of egg or animal by products in them or will have been tested on animals prior to approval) or even committed opposition to vaccination of any type this may be sufficient to provide protection from Discrimination under the Equality Act 2010.

We encourage employers to engage and encourage your employees to be vaccinated. We are happy to help you to draft communications and policies for your workforce. We have pulled together a table of locations and responses, and we are happy to send that to existing HR clients without charge. Please simply email [HR@throgmorton.co.uk](mailto:HR@throgmorton.co.uk) with **COVID - Global** in the subject line and we'll send you a copy by return. We will be regularly updating the table as Governments publish their policies.

To aid clients we have set up some employee surveys that we can administer for you, to help you to understand how your own workforce feels about the planned return to work. We can tailor a survey for your business and provide you with greater insight into employee mood, engagement and willingness to return.