

# It's beginning to sound a lot like Christmas

The arrival of the festive season is usually a time for merriment but for employers it brings with it the challenges involved with sourcing additional staff. It's important that you don't let practices slip, otherwise, you may find yourselves in tricky situations.

## The enforcement officer is coming to town

As an employer, you should ensure that your employees have the correct immigration permission to undertake the role in question.

Employing an illegal worker may lead to criminal and civil penalties on the employer, as well as other knock-on effects.

As the penalties can be substantial, it's important to understand your immigration duties and obligations.

## The checks before Christmas

In the rush to hire additional staff at short notice it's easy for crucial right to work checks on any prospective employee to be forgotten. Right to work checks on an individual's immigration status should be done before their employment commences.

## All I want for Christmas is you

At all times, all job applicants should be treated fairly and in the same way throughout your recruitment process. You should base selection purely on merit and only consider right to work issues during the latter part of the hiring process. You shouldn't make assumptions about a person's right to work in the UK on the basis of their colour, nationality, ethnic or national origins as this could result in race discrimination claims.



## Rockin' around employing students

If you employ international students, you should carefully check their visas for any restrictions on their right to work and consider the nature and duration of the role you are offering them.

You must retain additional evidence to confirm their academic term and vacation times for the duration of their studies in the UK.

It's advisable that you also check if the students are working for anyone else as this may impact their ability to work for you.

## O come all ye volunteers

If you consider recruiting volunteers to assist your business in the lead up to Christmas, you must ensure that they are subject to immigration control and are permitted to undertake 'voluntary work' in the UK.

As the 'workforce' of any organisation may include volunteers, you should ensure that you conduct right to work checks on all potential staff, including any un-paid workers who could be considered 'voluntary workers' under the immigration rules.

You should also ensure you understand the National Minimum Wage (NMW) provisions which provide an exemption to the requirement to pay the NMW for voluntary workers, providing they receive no payment other than reimbursement of expenses genuinely incurred in the performance of their duties.

Don't forget that volunteers shouldn't have a contract. If organisations accidentally create a contractual relationship with their volunteers, this could mean that their volunteers acquire certain employment rights. Organisations should therefore be mindful of this when asking volunteers to sign volunteer agreements, as it's all too easy for a volunteer agreement to tip into the language of contractual obligations.

Volunteer agreements shouldn't provide any benefits that could be classed as consideration and ideally benefits should hold no monetary value. Organisations should also remember that volunteers should not be subject to any unnecessary staff policies. For example, volunteers should never be subject to disciplinary sanctions as this could indicate employment or worker status.

## Closing down for Christmas

The Home Office has the power to shut down a business for up to 48 hours where that business has been employing illegal workers and has either (i) been convicted of an illegal working offence, or (ii) during the period of three years ending from the date on which an illegal working closure notice is issued, received a civil penalty, or (iii) has at any time been required to pay a civil penalty and failed to pay it. This could have severe implications on businesses during the Christmas rush.

### Get in touch



**Chetal Patel**

**Partner, Immigration**

T: +44 (0)20 7551 7741

E: c.patel@bateswell.co.uk



**Jasmine Sudworth**

**Senior Associate, Employment**

T: +44 (0)20 7551 7961

E: j.sudworth@bateswells.co.uk