

## COVID-19 AND UK IMMIGRATION: THE IMPLICATIONS OF THE CORONAVIRUS PANDEMIC FOR EMPLOYERS AND EMPLOYEES

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The rapid spread of coronavirus across the globe has forced businesses to introduce initiatives to protect the wellbeing of their workers, including encouraging staff to work from home and furloughing employees at risk of redundancy. Beyond that, there are significant repercussions for foreign and domestic visa applicants and individuals with limited leave to remain, and employers are facing unprecedented challenges when managing the recruitment and retention of staff.

In light of this, the Home Office has introduced a series of temporary concessions to protect Tier 2, 4 and 5 sponsors and their affected employees during the pandemic, together with a number of wider concessions that benefit employers.

**"The Home Office has guaranteed that affected individuals will not be subject to enforcement action."**

### INSIDE THE UK

As of 3 April 2020, the following concessions are in place to protect visa holders who are unable to leave the UK due to coronavirus:

- where an individual's visa expires before the end of May 2020 and they cannot leave the UK on account of international travel restrictions or due to self-isolation, their visa can be extended to 31 May 2020;
- visa holders will be permitted to switch to a long-term visa category (with the exception of indefinite leave to remain) without having to leave the UK, even when the visa category would ordinarily require the individual to apply from overseas; and
- affected individuals must e-mail the Home Office's coronavirus immigration team with specific information, and the Home Office has guaranteed that such individuals will not be subject to enforcement action and that this extension will not prejudice their future UK immigration applications.

Given the rapidly developing global situation, it is entirely possible that these provisions may be extended beyond 31 May 2020.

### IMPACT ON UK IMMIGRATION SERVICES

There are currently significant restrictions and delays to UK immigration services:

- the £200 change of circumstances priority service for Sponsor Management System requests has been suspended;

- Sopra Steria, the Home Office's commercial partner, has closed all of its UK visa application centres for an initial period of six weeks, and visa applicants can expect lengthy delays before they can attend their biometric appointments. Those who have already scheduled an appointment can expect to have this rescheduled no earlier than six weeks ahead of their original appointment (subject to change if visa application centres are closed for a further period);
- indefinite leave to remain and British naturalisation applicants should note that Life in the UK test centres are closed until at least 13 April 2020 (though this may be extended); and
- the Overseas Visitors Records Office is currently closed. Visa nationals who are required to register with the police following the grant of their UK visa will be unable to do so. The Home Office will not take enforcement action against individuals who cannot register with the police during the coronavirus pandemic.

## VISA APPLICATIONS OVERSEAS

All of the visa application centres operated by the Home Office's commercial partners, VFS Global and TLScontact, are currently closed. The return of visa vignettes to successful visa applicants is also delayed owing to restrictions or closures in several jurisdictions.

Those whose visas have been granted may be unable to travel to the UK owing to the cessation of many international travel routes. Where travel is not possible during the 30-day validity of a visa vignette, the individual may need to apply for a replacement vignette. The Home Office has not yet confirmed whether there will be any discretion in this scenario.

Tier 2 visa applicants who need to take a Home Office-approved English language test may also run into difficulty owing to test centre closures, or international travel restrictions that preclude them from taking the test in another country. The British Council has suspended all tests in the UK and has temporarily closed many test centres overseas. Similarly, Trinity College London in the UK has suspended its English tests for the time being.

Employers should factor these potential delays into the timescales of any forthcoming visa applications.

**"Right to work checks for all employees must still be carried out by verifying the document holder's identity through a video call."**

## SPONSOR COMPLIANCE

The Home Office's coronavirus guidance states: "We will not take enforcement action against employers who continue to sponsor students or employees despite absences due to coronavirus" and confirms that:

- Tier 2 and 5 workers can take more than four weeks' unpaid leave during any single calendar year. Ordinarily, unpaid leave of more than four weeks would require the employer to withdraw their sponsorship;
- employers of Tier 2 and 5 workers whose absences for coronavirus-related reasons (e.g. self-isolation, sick leave or furlough) exceed four weeks will not need to report these absences to the Home Office; and

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- employers do not need to notify the Home Office of changes to Tier 2 or 5 workers' hours (e.g. a reduction of hours below the level indicated on the employee's certificate of sponsorship) or place of work (e.g. if the employee is working from home). Whilst sponsored workers can be furloughed, the Home Office's guidance does not currently clarify whether salary reductions for Tier 2 employees would need to be reported via a change of circumstances notification on the Sponsor Management System, and we advise employers to adopt a cautious approach.

Right to work checks for all employees must still be carried out by verifying the document holder's identity through a video call. A retrospective check of the original passport ID page (and visa, if applicable) must be carried out at the earliest opportunity. A certified and dated copy of each document must be retained on the holder's personnel file. If checks are not carried out in this way, the employer will not have a statutory excuse against a civil penalty if the employee is later found to be working in the UK illegally.

Employers can continue to conduct online right to work checks for EEA nationals (and their family members) registered under the EU Settlement Scheme.

Although these changes help employers, there are still several areas of difficulty which the Home Office has not yet resolved. Their guidance is being updated periodically therefore more changes are expected in the coming weeks.

Please do get in touch with a member of Watson Farley & Williams' immigration practice if you have any specific concerns or queries relating to these concessions.

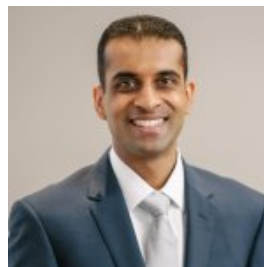
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