



Think global for future employment

Huw Cooke, senior associate at leading law firm Burges Salmon, advises on the implications of employing overseas students

Universities understandably focus on obtaining immigration permission when employing overseas nationals in the UK – getting it wrong can lead to the loss of the sponsor's licence and civil penalties of £20,000 per illegal employee.

However, there are wider implications of employing overseas nationals and Huw Cooke, a senior associate in leading law firm Burges Salmon's employment and business immigration team, advises a holistic approach to the management of such staff.

At the start of employment, standard recruitment principles should apply and establishing eligibility to work in the UK should be left as late as possible in the recruitment process. If individuals are removed at the sift stage or not shortlisted because of assumptions about their ability to work in the UK, this may give rise to claims of race discrimination.

Once a successful candidate has been identified, their offer needs to be clearly conditional on the individual receiving necessary permission to the work in the UK and their employment contract must require the individual to keep the university informed of any changes to their immigration status or personal details.

An employee obtains permission to work in the UK on the basis that a university will be acting as their sponsor, HR teams will need to ensure that the university complies with

its sponsor duties. This includes reporting key events, such as changes in the individual's circumstances, job description, salary or location, to the Home Office.

HR systems should identify the expiry date of an individual's immigration permission with sufficient time to consider visa extensions. While the dismissal of overseas nationals for misconduct, capability or redundancy should be handled in the normal way, greater care needs to be taken where the employment is ending because the individual's immigration permission has expired.

Employers should not simply rely on illegality as the reason for any dismissal. Instead, employers should carry out all appropriate investigations, discuss the matter with the Home Office and the individual and avoid hasty decisions. Dismissals should then be justified if an employer can show that they have a genuine belief that the employee does not have immigration permission to enable them to work in the UK.

Three key tips:

- Ensure that your HR processes are robust enough to withstand a Home Office inspection
- Implement an immigration policy and train your managers on it
- Retain clear and comprehensive records.

Advice courtesy of www.burges-salmon.com