Immigration: don’t fall foul of the law

The ever-changing nature of immigration law means that it is important to stay up to date.

1. Responsibilities as an organisation

Many charities and faith-based organisations take on more volunteers for fundraising, events, or charity work during certain periods, such as the festive season or emergency crises, to meet demand.

As an employer in the UK, it is your responsibility to ensure that every employee, worker, and volunteer is able to undertake the work for you. Organisations should ensure they are conducting right to work checks on all potential employees, including any unpaid workers who could be a 'voluntary worker'.

As a starting point, if an organisation fails to carry out right to work checks correctly, or at all, and is found to be employing someone illegally, then the organisation could face a civil penalty of £20,000 for each illegal worker. Knowingly employing an illegal worker carries a maximum penalty of two years' imprisonment and/or an unlimited fine. This can also severely affect a sponsor licence, if the organisation is a sponsor.

2. New visitor visa rules

From 24 April 2015, there are now only four categories available for a visitor visa, which allow visitors to engage in a wider variety of activities in each visit subcategory. The visitor (Standard) route allows the visitor to undertake incidental volunteering (not voluntary work), provided it is for a registered charity and will be no longer than 30 days in total.

3. Tier 2 (ministers of religion)

Compliance with immigration law, especially if you are a sponsor, is imperative. Recently we have encountered complications for sponsors as the job roles undertaken are not considered to be pastoral in nature.

The Tier 2 (Ministers of Religion) category is for those coming to fill vacancies as religious workers, including anyone doing preaching or pastoral work. Duties as a minister of religion include: leading worship, providing religious education, leading marriages, and counselling. However, the minister of religion may undertake a wider range of other duties in addition to the above. This category also applies to missionaries, for example a monastic community of monks or nuns. The work need not be restricted to preaching and teaching but may include some administrative activities as well. However, these activities should not be mainly administrative or clerical unless filling a senior post. A senior post may involve supervising staff and/or co-ordinating the organisation and being in charge of activities such as accounts, finance, personnel management, and IT. The work of the minister of religion must be within the order itself, or outside work directed by the order. Those studying for a qualification or on a formal full-time course, however, may need to be on a Tier 4 student visa. It is essential that the work undertaken by the minister of religion is pastoral in nature, otherwise their application may be refused.

4. Tier 5 (temporary workers)

The issue regarding work undertaken also affects those entering the UK under the Tier 5 (Temporary Workers) route for both religious workers and charity workers, where migrants come to work in the UK temporarily for up to 12 months. Duties for religious workers include teaching, pastoral, and some non-pastoral work. For charity workers, their voluntary activity must be directly related to the purpose of the charity. Any work straying from what is allowed under the rules may lead to the application being refused, or consequences if the Home Office attend for an audit.

Immigration law is complex and falling foul of the law can lead to severe consequences including fines and loss of sponsorship. It is therefore important to comply and, where necessary, seek advice.