



Armed and Dangerous - the BIA fights back

July 2008

Major changes to the law now mean that the UK Border & Immigration Agency ("BIA") are clamping down hard on employers who employ illegal workers.

Armed with new powers to issue swingeing fines to those employing illegal workers, the BIA has already shown that it is not afraid to get tough with employers breaking the law. Fines totalling more than £250,000 were issued against employers in May 2008 alone.

What do you need to know to keep out of the BIA's clutches?

The BIA's new powers allow it to fine employers for illegal employees who were **employed on or after 29 February 2008** and two new offences under the Immigration, Asylum and Nationality Act 2006 have been created:

The New Civil Offence

An employer who, *unknowingly*, employs an adult, who has no permission to work in the UK or who is working in breach of his conditions of stay in the UK, is committing a civil offence and can be fined up to £10,000 per illegal employee.

The New Criminal Offence

An employer who, *knowingly*, employs an adult who has no permission to work in the UK or who is working in breach of his conditions of stay in the UK is committing a criminal offence. This carries an unlimited fine and/or a maximum two year prison sentence.

What happens if the BIA imposes a fine on you for committing the civil offence?

Where the BIA finds that a civil offence has been committed, it will issue a Notification of Liability for a Civil Penalty stating the offence that has been committed and the amount of the fine. You will have 28 days from the date of the notice to pay the fine, object to the BIA or appeal to the County Court.

The defence available

You can defend the civil (but not the criminal) offence if you have:

- obtained specific original documents (as detailed in BIA guidance) at the date of recruitment;
- checked those documents to ensure that they appear genuine, valid and match the job applicant; and
- retained copies in a form that cannot easily be amended (e.g. photocopies).

What about employees who started work before 29 February 2008?

For illegal workers employed prior to 29 February 2008, the previous regime applies. This means an employer can be guilty of a criminal (but not a civil) offence carrying a fine of up to £5,000 per employee. There is a statutory defence (similar to the defence outlined above) if the employer can demonstrate that it carried out appropriate document checks at the time of recruitment.

What should you do now?

- Review your recruitment procedures to ensure that the correct documentation is being obtained, checked and retained for all new recruits.
- Review the immigration status of all existing employees to ensure that no illegal workers are employed.
- Follow all appropriate procedures (including the statutory dismissal procedure) when dismissing anyone employed illegally.
- Treat all employees equally to avoid claims for race discrimination.

How can Burges Salmon help you?

We can:

- carry out an audit to establish the immigration status of existing employees, review the audit results and advise you accordingly;
- review your recruitment procedures to help minimise the risk of offences being committed; and
- advise in relation to the objection and/or appeal of any civil fines that are imposed.

For further information on immigration or employment law issues, please contact Roger Bull on 0117 902 2701 or roger.bull@burges-salmon.com or Huw Cooke on 0117 902 7719 or huw.cooke@burges-salmon.com.

Burges Salmon LLP, Narrow Quay House, Narrow Quay, Bristol BS1 4AH
Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400

Chancery Exchange, 10 Furnival Street, London EC4A 1AB
Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7685 1266

www.burges-salmon.com

Burges Salmon LLP is a Limited Liability Partnership registered in England and Wales (LLP number OC307212) and is regulated by the Solicitors Regulation Authority. A list of members, all of whom are solicitors, may be inspected at our registered office: Narrow Quay House, Narrow Quay, Bristol BS1 4AH.

Business Immigration Services

In today's global economy, businesses are increasingly needing to recruit from a worldwide market place to meet their operational needs.

This, combined with an increasing number of international companies that need to move employees around their organisations and the increasing mobility of employees means that immigration issues are a key concern.

In February 2008, the Government announced a new points-based immigration system (PBS) that will replace the 80 current routes in which non-EEA nationals can work, train and study in the UK. Split into 5 tiers, the PBS has already started to come into force and it is expected to be in full effect by early 2009.

Burges Salmon has a wide range of expertise and experience and the Business Immigration team is able to advise on immigration matters for businesses including the following:

- Tier 1 applications under the PBS for highly skilled individuals, investors, entrepreneurs and certain graduates.
- All work permit applications, changes and extensions – NB the work permit scheme will be replaced by Tier 2 of the PBS in Autumn 2008.
- Tier 2 applications under the PBS for skilled workers who are offered a job by a UK-based sponsor registered with the UK Border & Immigration Agency (BIA).
- Sponsor's licence applications and sponsor's compliance issues.
- Illegal working audits.
- Criminal and civil offences (including fines imposed in relation to illegal workers by the BIA).
- Applications for leave to enter and/or remain in the UK as a fiancé(e), spouse, dependant or student.
- Applications for indefinite leave to remain.
- Applications for British nationality.

For further information please contact:

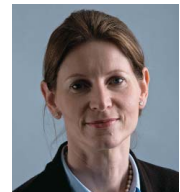
Roger Bull
Partner

+44 (0) 117 902 2701
roger.bull
@burges-salmon.com



Alyson Curtis
Associate

+44 (0) 117 902 6699
alyson.curtis
@burges-salmon.com



Huw Cooke
Associate

+44 (0) 117 902 7719
huw.cooke
@burges-salmon.com



Jamie Cameron
Solicitor

+44 (0) 117 902 7712
jamie.cameron
@burges-salmon.com



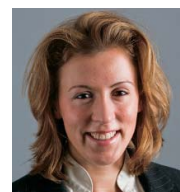
Catharine Vinson
Solicitor

+44 (0) 117 902 7727
catharine.vinson
@burges-salmon.com



Rebecca Brocklebank
Solicitor

+44 (0) 117 902 7281
rebecca.brocklebank
@burges-salmon.com



Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

© Burges Salmon LLP 2008. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged.

Data Protection: Your details are processed and kept securely in accordance with the Data Protection Act 1998. We may use your personal information to send information to you about our products and services, newsletters and legal updates; to invite you to our training seminars and other events; and for analysis including generation of marketing reports. To help us keep our database up to date, please let us know if your contact details change or if you do not want to receive any further marketing material by contacting marketing@burges-salmon.com.