

Legal update: Our latest compliance tips for sponsors.

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We constantly monitor UKVI's approach to enforcement action against sponsors to help our clients stay ahead, remain compliant and keep their licences.

In relation to sponsors of migrants under Tier 2, UKVI's officers are increasingly likely to request evidence as to the role performed by a sponsored migrant during a visit to the sponsor. We therefore recommend that if your organisation sponsors migrants under Tier 2, you give some thought as to the type of evidence you would produce to demonstrate that a sponsored migrant is performing the role stated on the COS assigned to them. You must ensure that any evidence you provide supports the information provided when you assigned the COS. If UKVI's officers conclude that the migrant is not performing the same role or that their actual duties are at a lower skill level, there is a risk that they will recommend that enforcement action is initiated. Ensuring that you are able to provide clear evidence of the work the sponsored migrant is performing could be the key to a successful compliance visit.

We recommend that sponsors under all tiers ensure that they have an action plan in place to deal with visits by UKVI's officers which can be announced or unannounced. This plan should include information as to the personnel who will be on hand to liaise with UKVI's officers during the visit and these individuals should be trained in how to respond to any questions asked in a manner that will protect the sponsor's licence and demonstrate that the sponsor is complying with the sponsor duties.

Personnel who are interviewed during a compliance visit are likely to be asked to sign a declaration confirming that:

- they have fully understood the questions put to them by the compliance officer and have been given the opportunity to provide additional information; and
- the information recorded by the compliance officer is a true and accurate description of the comments and responses they have given.

This makes it extremely difficult for a sponsor against whom enforcement action has been taken to subsequently argue that the compliance officer's records were not accurate or complete.

UKVI also appears to be expecting sponsors under Tiers 2 & 5 to report via the Sponsor Management System if a sponsored migrant's application for leave has been refused. Tier 4 sponsors have of course been required to file such reports for a number of years and the requirement is expressly set out in paragraph 6.24(c) of document 2 of the Tier 4 Sponsor Guidance. However, the Sponsor Guidance for Tiers 2 and 5 does not refer specifically to a requirement to report refusals of leave. It could no doubt be argued that penalising sponsors for failing to take such action may be unlawful. Few sponsors however wish to incur the disruption and expense of mounting a legal challenge and we therefore recommend that sponsors under Tiers 2 and 5, like their Tier 4 counterparts, make a report via the Sponsor Management System in cases where the migrant's application for leave has been refused.

Finally, if your organisation holds a Tier 4 sponsor licence and a civil penalty is issued under Section 15 of the Immigration, Asylum and Nationality Act 2006, there is an express obligation as set out in paragraph 8.4(k) of document 2 of the Tier 4 Sponsor Guidance to report this to UKVI. The Sponsor Guidance for Tiers 2 and 5, somewhat surprisingly, contains no such reporting requirement. We recommend that the sponsor's Human Resources department liaises with the sponsor's Tier 4 compliance team in the event of a civil penalty so that a report can be made pursuant to the specific duty under the Tier 4 licence.

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If you require advice on preparing an action plan for a UKVI compliance visit, have questions about any other areas of sponsor compliance or would like to kick-start 2017 with one of our bespoke immigration compliance reviews, please contact us.

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