



# CORONAVIRUS (COVID-19) BRIEFING: ADVICE FOR TIER 2 AND 5 SPONSORS

The Home Office has updated its [guidance](#) for people in the UK whose immigration status is affected by the coronavirus outbreak.

As of 1 June 2020, UK Visa and Citizenship Application Centres (UKVCAS) and Service and Support Centres (SSCs) as well as Visa Application Centres (VACs) worldwide have begun a phased reopening with limited services.

A list of the UKVCAS centres which have begun offering limited services is available [here](#).

To check for updates on which VACs worldwide have begun a phased reopening applicants will need to review the updates from either [TLS](#) or [VFS](#) depending on country of application.

The foreseen scenarios addressed by the Home Office are as follows:

## EMPLOYEE ABSENCE

The published guidance confirms that enforcement action will not be taken against sponsors who continue to sponsor employees despite absences due to coronavirus (which can include illness, their need to isolate or an inability to travel due to travel restrictions).

Sponsors will not be required to report these absences but should keep their own record as to the circumstances that resulted in the absence.

The general rules have been suspended in these circumstances and sponsors will not be required to report or withdraw sponsorship if (due to the pandemic) an employee is absent from work without pay for more than four weeks.

## SPONSORING EMPLOYEES WORKING FROM HOME

Sponsors do not need to report changes to work location if they are sponsoring employees who are working from home due to the coronavirus pandemic.

Other changes (eg early termination of employment, salary changes (but see below) and changes to title, duties and/or responsibilities) must continue to be reported in the usual way.

## REDUCING SALARY

The Home Office has published concessions to allow sponsors to temporarily reduce the pay of sponsored employees to 80% of their salary or £2,500 per month, whichever is the lower. This concession does not overwrite the general policy regarding salary reductions outlined in the [Tier 2 & 5 sponsor guidance](#) and the circumstances in which salary can be reduced to below 80%. This applies even in cases where such reductions would cause the salary to drop below the minimum thresholds for sponsorship.



Such reductions must be part of a company-wide policy to avoid redundancies and in which all workers are treated the same. After the temporary arrangements have ended, the employee's pay must return to at least previous levels.

These reductions must also be reported on the sponsorship management system and we advise the report should confirm:

- amount salary is reduced to
- period of reduction (e.g. temporary reduction for X months)
- that the reduction is part of a company-wide policy to avoid redundancies as a result of the COVID-19 pandemic.

We also advise that a report be made to confirm when the salary is re-instated to at least the pre-reduction level.

### **WHERE A CERTIFICATE OF SPONSORSHIP (COS) HAS BEEN ISSUED BUT THE EMPLOYEE HAS NOT BEEN ABLE TO APPLY FOR A VISA**

There will be cases where a CoS has been assigned but the prospective worker has been unable to apply for a visa to come to the UK because of the COVID19 pandemic.

In these instances, the guidance confirms that UKVI may still accept a CoS that has become invalid (eg has expired) because an employee was unable to travel due to the COVID-19 pandemic. It is also now possible to delay a start date by more than 28 days from the date initially stated on the CoS. Decision to accept an invalid CoS will be discretionary and will be considered on a case-by-case basis.

### **STARTING NEW WORK WHEN A VISA APPLICATION IS PENDING**

For those [workers already in the UK](#), and who are making applications here for further leave to remain including those who are exceptionally able to switch status from within the UK, the Home Office has confirmed that they may start working before their application has been decided if:

- they have been assigned a CoS
- they submitted their application before their current visa expired
- the role they are employed (during the period their application is pending) in is the same as the one on their CoS

In these cases, the sponsor's reporting responsibilities for the employee start from the date the CoS was assigned, rather than from the date that their application is granted. Reports cannot however be made using the sponsorship management system and sponsors will instead need to ensure that they record and maintain all the relevant information set out in the sponsor guidance on their own systems. Any changes that will impact the eventual consideration of the migrant's visa application should be updated on the CoS, as normal (by way of sponsor note). If the employee's application is eventually rejected as invalid or refused, employment must immediately be terminated.

### **SUSPENSION OF THE TIER 2 & 5 PRIORITY SERVICE LINE**

Due to the ongoing Covid-19 pandemic, the Tier 2 & 5 Priority Service line remains closed. This service allows Tier 2 & 5 sponsors to apply for faster consideration of 5 types of change of circumstances requests:

- in-year certificate of sponsorship (CoS) allocations
- annual CoS allocation renewals



- adding a new level 1 user
- replacing an authorising officer (AO)
- adding a representative

The Home Office states, particularly in relation to processing of annual CoS allocation renewals that it is dealing with applications in a chronological, date received order and only prioritises requests where there is a genuine urgency (eg a worker's visa is due to imminently expire).

The UKVI has stated that it is taking a pragmatic approach to dealing with immigration issues arising out of the coronavirus pandemic. Whilst attempting to be proactive, the published guidance addressed anticipated issues arising out of live examples that have been brought to the attention of policy makers by immigration practitioners and through the government's COVID19 helpline.

Whilst the above provisions are welcome, still many questions and issues remain, including the basis for the right to work when a change of employer visa application is pending and the documentation the sponsor must retain in such circumstances.

This policy, as with all Coronavirus (COVID-19) immigration policies and guidance, is evolving and is frequently updated. This document is current as at 15 June 2020. For specific advice and up to date information, please contact a member of the Penningtons Manches Cooper LLP immigration team: [immigration.enquiries@penningtonslaw.com](mailto:immigration.enquiries@penningtonslaw.com)