

Immigration Law and Petrol Stations

Introduction

The Immigration Act 2016 (“the 2016 Act”) is now law and I wish to remind readers of the serious implications for petrol station owners (“Owners”).

The 2016 Act builds on the measures set out in the Immigration Act 2014 (“the 2014 Act”) and introduces a number of changes, particularly with respect to illegal working on licensed premises

The general purpose of the 2016 Act is to make it more difficult to live and work illegally in the United Kingdom.

Right of Entry to Licensed Premises

Where a police constable or authorised person has reason to believe that offences under the 2014 Act are being committed, they have a right to enter licensed premises to investigate. Now, under the 2016 Act, an immigration officer is given the same power of entry.

Illegal Working Closure Notices and Compliance Orders

An immigration officer will be able to issue an “illegal working closure notice” for up to 48 hours if he or she is satisfied, on reasonable grounds that an employer operating at the premises has:

- Been convicted of an immigration offence
- During the period of three years ending with the date on which the illegal working closure notice is issued, been required to pay an immigration penalty

- At any time been required to pay an immigration penalty and failed to pay it and is employing a person who does not have the correct work status.

A closure notice may only be issued if reasonable efforts have been made to inform any person who has an interest in the premises that the notice is to be issued. Additionally, the immigration officer is required to consult any person he believes is appropriate.

The effect of a closure notice is to prohibit access to the premises unless authorised in writing by the immigration officer. No paid or voluntary work may be performed at the premises unless authorised in writing by the immigration officer.

The closure notice may apply to any outbuildings if they are used as part of the premises. So where the premises are made up of separate areas, such as in a petrol station, the notice may concern one area, for example, a car wash, but impact on the rest of the premises.

If the employer or a connected person in relation to the employer, can show that they have complied with the employment requirements in relation to the employment, the immigration officer may cancel the notice. If the employer is unable to demonstrate their compliance with these requirements, an application for a compliance order must be made by the immigration officer and heard by the Court within 48 hours after service of the closure notice.

The Court may issue the compliance order if satisfied, on the balance of probabilities, that an illegal worker was working on the premises and

that it is necessary to make the order to prevent the employer at the premises from employing illegal workers.

The Court can make any such order that it deems appropriate. This can include prohibiting access to the premises; requiring right to work checks to be carried out; requiring right to work documents to be produced and specifying times for an immigration officer to enter the premises. A compliance order can have effect for a maximum of 12 months, but the immigration officer may apply for this to be extended.

The Court will notify the Licensing Authority of the order and a licence review must then take place. An immigration offence is likely to be seen as a very serious matter by the Licensing Authority and the outcome may be the suspension or revocation of the licence.

If an offence is committed in relation to the compliance order, the Court can impose a prison sentence for up to 51 weeks or a fine.

Steps to take upon receipt of knowledge of a notice or order

If you become aware of a closure notice or compliance order affecting your premises, you may apply to the Court to adjourn proceedings for up to 14 days.

If the order has already been granted, you may apply for the order to be varied or discharged.

The Court will discharge the order if it is satisfied, on the balance of probabilities, that it is no longer necessary to prevent an employer operating at the premises from employing an illegal worker.

Commission operators

Many owners have arrangements whereby the business at the petrol station is run by a commission operator ("Operator"). It is the Operator who generally employs the staff.

It is critical that Owners ensure that their Operators have up to date work status records for ALL staff at ALL times. Owners should audit such information periodically. Operator agreements should include very clear obligations on Operators so they know exactly what is required in respect of

work status documents and the consequences should they fail to maintain such records.

A failure by an Operator at a petrol station or just an ancillary car wash could lead to the closure of the petrol station. The fact that the Owner is not the direct employer of an illegal worker will not be a defence.

Conclusion

The passing of the 2016 Act should be of immediate concern to all Petrol Station Owners. It will be vitally important for all Owners to have a robust checking process regardless of whether they are the direct employer.

Owners should be reviewing their commission operator agreements to ensure that the requirements of the Operator are clear and that robust remedies are included to protect the Owner.

It is also important that the Owner displays clear signage notifying operators of the actual owners of the petrol station. This reduces the risk of a closure notice being issued without the Owner's knowledge.

Please contact us if you would like further information on how the changes may affect your business or if you wish to know more about the 2016 Act.

For further information, please contact:



Robert Botkai | Partner

T: 020 7593 5004

E: rbotkai@wslaw.co.uk