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Employing illegal workers? You could lose your alcohol licence, even if you are not convicted

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The High Court decision in *East Lindsey District Council v Abu Hanif (t/a Zara's restaurant and takeaway)* is a stark reminder that there can be consequences for employers who employ illegal workers, even if they are not convicted of an offence.

Background

Employers may already be aware that, if they employ individuals who do not have the right to work in the UK or who are working in breach of their conditions of stay in the UK, they may be liable to a civil penalty or commit a criminal offence.

Employers may be liable to a civil penalty of up to £20,000 for each individual or, if convicted of the criminal offence of knowingly employing an individual without the appropriate permission, an unlimited fine and/or imprisonment of up to two years.

Facts

Following a raid of Mr Hanif's restaurant and takeaway business, Mr Hanif was found to be employing an illegal worker. He had employed a chef without appropriate paperwork evidencing a right to work in the UK and the chef had been paid cash in hand and below the national minimum wage. In addition, Mr Hanif had not kept or maintained PAYE records and had not accounted to HMRC for tax deducted from the chef's wages.

The licensing authority subsequently revoked Mr Hanif's premises licence. Mr Hanif appealed that decision and it was argued on his behalf that, as he had been given a civil penalty and had not been prosecuted for the criminal offence of employing an illegal worker, the licensing authority should not have revoked his licence because the crime prevention objective under the legislation had not been engaged.

District Judge's decision

The District Judge agreed that, as prosecution proceedings had not been brought, the crime prevention objective had not been engaged. Accordingly, the licence should not have been revoked. The Council appealed this decision by way of case stated.

High Court decision

The High Court Judge agreed with the Council's representations that the crime prevention objective did not require a crime to have been reported, prosecuted or established in court. The crime prevention objective is not retrospective; instead it is concerned with the avoidance of harm in the future.

The High Court Judge was satisfied that criminal offences had been committed – the non-payment of the minimum wage and failure to account to HMRC for tax deducted. He was also satisfied that Mr Hanif was aware that he was employing an illegal worker. Accordingly, in his view, the Council's decision to revoke Mr Hanif's licence was correct. He ordered Mr Hanif to pay costs and also approved the case for citation in future cases as a deterrent to other employers.

Comment

The implications of employing illegal workers can be severe for any employer.

Employers must carry out an initial right to work check on every prospective employee before the employment commences to ensure they are permitted to work in that particular role. The checks must be repeated where the employee's permission is time-limited.

However, as this case demonstrates, there are additional concerns for employers in the Hospitality and Leisure sector where holding an alcohol premises licence is an integral part of the business.

Although employing illegal workers was not the only offence here, and each case will be determined on its own facts and merits, hospitality and leisure employers should bear in mind that, even in the absence of a criminal conviction, employing illegal workers could potentially lead to the loss of their business.

Employers should also bear in mind that attempts to clamp down on illegal working are likely to increase. In particular, the government is proposing changes to the current immigration regime under the Immigration Bill 2015-2016. Key proposals include:

- An extension of the criminal offence of knowingly employing an illegal migrant to include circumstances where an employer has "reasonable cause to believe" that a person is an illegal worker;
- An increase in the conviction on indictment for that offence from two to five years; and
- Creation of a new offence of illegal working which would enable the earnings of illegal workers to be seized under the Proceeds of Crime Act 2002.

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