



EMPLOYMENT
LAWYERS
ASSOCIATION

P.O. BOX 353
UXBRIDGE UB10 0UN
TELEPHONE/FAX 01895 256972
E-MAIL ela@elaweb.org.uk
WEBSITE www.elaweb.org.uk

MIGRATION ADVISORY COMMITTEE

CALL FOR EVIDENCE: REVIEW OF MIGRANT EMPLOYMENT IN LOW-SKILLED-WORK

RESPONSE BY THE EMPLOYMENT LAWYERS ASSOCIATION

13 December 2013

INTRODUCTION

- i. The Employment Lawyers Association (“ELA”) is an unaffiliated group of specialists in employment law, including those who represent both employers and employees. It is not our role to comment on the political merits or otherwise of proposed legislation; rather we make observations from a legal standpoint.
- ii. ELA’s Legislative and Policy Committee consists of barristers and solicitors (both in private practice and in-house) who meet regularly for a number of purposes, including considering and responding to proposed new laws.
- iii. Various of our members engage in advising clients on both employment and immigration matters with a day-to-day dual employment and immigration practice.
- iv. Consequently a working group was set up under the Chairmanship of Robert Davies of Dundas & Wilson LLP (“the Working Group”) to consider and comment on the questions contained in the Migration Advisory Committee’s Call for Evidence: Review of Migrant Employment in Low-Skilled Work – September 2013 (“the Call for Evidence”). A full list of the members of the Working Group is attached.
- v. The Working Group has sought to address as many of the specific points highlighted in the questions at Table 1 (page 3 of the Call for Evidence) based upon the practical experience of advising employers which utilise workers in roles of the nature which are sought to be captured by the Call for Evidence (noting the inevitable challenges in respect of defining such term, as reflected in Section 4 of the Call for Evidence). In doing so, we must stress that there has been no systematic survey of ELA members requesting input from clients because time and resource does not permit such a response. We have also taken particular account of the four over-arching general themes of enquiry summarised at Section 1.1 of the Call for Evidence.

Specific Questions

1. Have migrants (EEA and non-EEA) doing low-skilled jobs had an impact on the economy, specifically the following (please given examples):
 - local employers and businesses;
 - national economy?

Members of the Working Group have experience of advising employers in a variety of sectors which commonly rely upon migrants for roles which fall within the categorisation of low-skill jobs utilised in the Call for Evidence. These sectors include construction, agriculture, catering, hospitality, restaurants and hotels. We are not in a position to provide comments regarding specific localities – many of the clients referred to above have multiple locations of operation throughout Great Britain – with the exception of certain observations with regard to London.

Clients operating restaurants have observed that it would be highly impractical and in many instances impossible to run their businesses in London without the use of migrant workers. Of these workers, a very high proportion come from the A8 countries.

The Working Group is aware that there is also significant reliance upon migrant workers in agricultural roles. In the experience of certain of the members there is a high proportion of Eastern European EEA migrants in the agriculture and construction sectors.

The impact that we are able to discern through qualitative (albeit essentially anecdotal) client observations is that in order both to fill roles and to manage cost (given that the pay for such roles is commonly set at the National Minimum Wage level) in agricultural, hotel and restaurant sectors in particular it is **essential** to make use of EEA migrant workers.

2. Have migrants (EEA and non-EEA) doing low-skilled jobs had a social impact, specifically the following (please give examples):

- **the demand on health services, education, housing, social care and policing;**
- **the delivery of health services, education, housing, social care and policing?**

We are not able to respond to this question.

3. Are there factors that impact on someone's likelihood to take up low-skilled work which affect UK-born and migrant workers differently?

The factors that are considered to be relevant based on the recruitment experiences of various employers that indicate why migrant workers may be more prepared to undertake such roles include:

- 3.1 the preparedness of certain migrant workers to accept what might be viewed as roles with anti-social working hours and challenging working conditions because they work intensively for say 8-10 month periods, seeking to minimise their living costs whilst in Great Britain, before returning to their country of origin where their families are commonly based.
- 3.2 many migrants work in Great Britain with their families continuing to be based in their country of origin; therefore, although the wages for such roles may be comparatively very low within Great Britain, the additional purchasing power that it provides in the country of origin makes a significant difference to the relative attractiveness of the role.
- 3.3 overseas students (from EEA and non-EEA countries) in particular are prepared to carry out part-time work which can be fitted around their study commitments which can help fill particular gaps for employers.

4. Where and how do you recruit workers for low-skilled jobs? Is there any difference to how you recruit migrants (EEA and non-EEA) compared to UK workers?

Members of the Working Group are aware of a variety of recruitment techniques used by employers to recruit for low-skilled/low pay roles. The principal routes are:

- 4.1 usual advertising in trade and other publications including local press in particular – with the expectation that the vast majority of applicants will be migrant workers from within the EEA, but without any particular targeting of such workers – along with regular use of internet/web-based sites such as Gumtree.
- 4.2 an increasing use of specialist agencies. This is partly explained by levels of registration with such agencies being driven by "word of mouth" amongst migrant workers.

Neither route is materially different from the recruitment process used for UK workers, per se. It is more a case of being aware that in order to fill certain vacancies it is necessary to anticipate a materially higher rate of response, if not an exclusive level of response, to such advertisements from migrant workers.

- 5. Does your organisation experience problems recruiting people for low-skilled jobs? Why?**

Please refer to the response to Questions 1 and 3.

6. What skills do you require of low-skilled workers? How are these best acquired?

We are not in a position to respond to this question.

7. What would you do if you were not able to recruit migrants (EEA and non-EEA) for low-skilled jobs?

Please refer to the response to Question 1 with regard to the experience of certain employers particularly within the restaurant, hospitality and hotel sectors.

8. What are the advantages and disadvantages of:

- **employing migrants (EEA and non-EEA) in low-skilled jobs?**
- **employing UK-born workers in low-skilled jobs?**

8.1 Reported advantage of the use of EEA migrants:

8.1.1 preparedness to accept such roles

8.1.2 better retention rate following commencement of roles

8.1.3 work ethic

8.2 Reported disadvantages of the use of EEA migrants:

8.2.1 increased training costs to address poor English language skills

8.2.2 increased health and safety costs in ensuring translation of safety considerations and instructions.

8.3 Reported advantages of the use of UK-born workers:

8.3.1 reduced instances of poor English language skills

8.4 Reported disadvantages

8.4.1 fundamentally, a lack of availability of candidates

- 9. Please tell us about your experience of looking for work and working in low-skilled jobs, especially in relation to competition for jobs, working conditions and factors affecting your decision to take up or reject offers of low-skilled work.**

We are not in a position to respond to this question.

10. Has the increase in low skilled migrants had an impact on your pay, hours or working conditions?

We are not in a position to respond to this question.

11. Migrant Workers:

- **Why did you choose to work abroad?**
- **Why did you choose to come to the UK in particular?**
- **Do you plan to stay in the UK? Do you plan to return to your home country? Why?**

We are not in a position to respond to this question.

Appendix

Contributors to Working Group

Working Group:

Robert Davies, Solicitor, Dundas & Wilson LLP, Chair

Georgina Porter, Solicitor, Weightmans LLP

John-Paul Waite, Barrister, 5 Essex Court

Lorraine Mensah, Barrister, St John's Building

Sarah Stanzel, Barrister, Tanfield Chambers