



Understanding Supplementary Hours

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What will we talk about?

- Recent and upcoming changes
- Eligibility for supplementary employment
- What is working time?
- Common problematic areas
- Right to Work
- Common scenarios






Changes to sponsorship for care providers from 1 October

- Graduate visa reform: reduced from two years to 18 months for most, with PhD graduates retaining three years (applies to applications from 1 January 2027).
- English language requirements: Raised to level B2 for Skilled Worker visas (from 8 January 2026).
- Immigration Skills Charge increase: A separate process will increase the charge by 32% to reduce reliance on overseas recruitment.
 - Small employers: £364 to £480
 - Medium and Large employers: £1,000 to £1,320
 - From 16 December 2025



Changes to sponsorship for care providers from 1 July

- New entrants to Care Worker and Senior Carer Worker roles (under SOC codes 6135 and 6136) will no longer be eligible for sponsorship.
- Visa applications for those already working under those codes prior to 22 July 2025 will still be permitted during a transition period until 22 July 2028. This means that it will be still possible for those already working as Care Workers and Senior Care Workers to move to a new sponsor or to apply to renew their visa during that period.
- During the transition period, it will also be possible to sponsor workers as Care Workers and Senior Care Workers when they are switching from other visa routes, such as a student or graduate visa. However, there will be a requirement for the individual to must have been legally employed by a care provider for at least 3 months before a certificate of sponsorship can be assigned to them.

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- From 22 July 2028, the government intends to remove SOC Codes 6135 and 6136 from the Immigration Salary List or Temporary Shortage List, meaning the relaxed requirements for sponsorship under these routes (notably the significant reduction in the minimum salary threshold from £41,700 to £25,000 per year) will no longer apply.
 - Due to these changes, there will no longer be a requirement for care providers to engage with the pool of displaced workers, which was a requirement announced on 9 April 2025, before being able to assign a certificate of sponsorship for a Care Worker or Senior Care Worker.



Changes to sponsorship for care providers from 9 April

- Sponsorship threshold increase to £25,000 p/a or £12.82 p/h, whichever is higher




Other notable changes

- Proposals for ‘Earned Settlement’:
 - Increasing the default qualifying period for settlement from 5 years to 10 years, as set out in the Immigration White Paper Restoring Control over the Immigration System.
 - Increasing the qualifying period for settlement to 15 years for those in the Skilled Worker and Health and Care routes in a role below RQF level 6 (this includes care workers and senior care workers).
 - Introducing a “No Recourse to Public Funds” (NRPF) condition at settlement, aligning with existing visa conditions.
 - Earned settlement criteria, requiring migrants to demonstrate sustained good conduct, contribution, and integration rather than automatic entitlement after a fixed period.
 - Link to the consultation response form is here: <https://www.gov.uk/government/consultations/earned-settlement>. Open to 1 February.
 - Planned implementation is in Spring 2026.
- National minimum wage to be increased to £12.71 per hour from April 2026
 - Based on previous years, the sponsorship threshold hourly rate is expected to increase to approximately £13.50
- Post-licence priority service fee: Increased from £200 to £350




Eligibility for supplementary employment

- The worker must continue to work for their sponsor and in the employment specified in their Certificate of Sponsorship (CoS) while doing supplementary employment.
- The role must be either:
 - at an eligible occupation code that is a 'higher skilled' job (at RQF Level 6 or above);
 - one that appears in Appendix Immigration Salary List; or
 - in the same profession and at the same professional level as the job for which the CoS was assigned.
- Supplementary employment is only permitted in a job listed as 'medium skilled' (below RQF level 6) if both of the following apply:
 - The worker was issued their certificate of sponsorship for their first Tier 2 or Health and Care Worker visa before 22 July 2025; and
 - They have continually held one or more Health and Care Worker visas since then (which means they have had no period where their immigration permission has lapsed, or that they've moved on to another type of visa).

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- Supplementary hours are capped at 20 per week
 - This must be limited on a weekly basis
 - These hours cannot be averaged over several weeks
 - They include working time as defined under the Working Time Regulations 1998 (**WTR**) and National Minimum Wage Regulations 2015 (**NMW Regulations**)
 - Supplementary hours cannot be provided within the hours that the worker is contracted to work for their sponsor
 - Where supplementary employment is permitted, it does not have to be with a licensed sponsor. Sponsored workers do not need to advise us of any supplementary employment they undertake as long as it meets these criteria.

What is working time?

- WTR:
 - Any period during which the worker is doing all of the following:
 - working;
 - carrying out their duties; and
 - at the employer's disposal.
 - Any period during which the worker is receiving "relevant training".
 - Any additional period which is agreed to be working time.
- NMW Regulations:
 - Essentially, 'time spent working'
- They don't always agree!

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- Under the WTR, the following will normally be treated as working time:
 - Paid overtime and some unpaid overtime (unless it is purely voluntary in which case the worker is arguably not at the employer's disposal)
 - Time spent waiting or "on call" at the workplace (or at another place chosen by the employer), even if the worker is allowed to sleep
 - Responding to telephone calls while on call (at any location)
 - Travelling to incidents while on call
 - Travel time where travel is part of the job, such as travelling sales reps. This can include travelling to the first appointment of the day, and returning home from the last appointment of the day, for mobile workers (such as domiciliary carers)
 - Working lunches
 - Work taken home at the request of the employer
 - Attending work-related training
 - Other time that is treated as "working time" under a relevant agreement
 - Bear in mind however that there may be exceptions. The test is whether the worker is working, carrying out their duties, and at the employer's disposal (unless they are receiving relevant training or there is an agreement which defines the time as working time).



What is excluded?

- The following activities will not normally be considered working time under WTR:
 - Rest breaks including lunch breaks and coffee breaks
 - Daily and weekly rest periods
 - Annual leave
 - Time spent "on call" if the worker is not required to be at a particular place
 - Travelling to the workplace, unless the travel is undertaken following "booking on" or reporting to an assigned depot or booking-on point
 - Attending work-related social events
 - Unpaid overtime undertaken voluntarily
 - Attending evening classes or day-release classes that are not a requirement of the job
 - Working from home voluntarily
 - Responding to telephone calls voluntarily out of hours, including when travelling



Travelling time

- Unhelpfully, the WTR is silent on whether travel to and from a place of work or between places of work should be considered as working time. The three limb test must be used.
- Commuting
 - Time spent commuting would not usually be viewed as working time.
 - The employer has no control over how long the worker spends commuting as this will depend on where the employee lives.
 - Generally the worker is not at the employer's disposal until they reach the workplace.
- Other travel beginning or ending at home
 - NMW Regulations: Time spent travelling to the first appointment and from the last appointment is not working time
 - WTR: Time spent travelling to the first appointment and from the last appointment *is* working time
 - In practice, this means that pay is not due for this time, but it does need to be taken into account when calculating rest breaks etc.

Waiting time

- NMW Regulations

- In *Harris and others v Kaamil Education Ltd and others* ET/1302183/2016, an employment tribunal gave judgment by consent ordering three homecare service providers to pay ten care workers the NMW for travelling and waiting time between care appointments.
- To calculate the total value of their claims, the claimants added together travelling time between appointments during the day for gaps of 60 minutes or less, waiting time between appointments where travel was undertaken and there was an additional gap after travel and before the next appointment (but where the overall gap between appointments was less than 60 minutes), and the total duration of an appointment.
- HMRC takes the view that any time an employer requires a worker performing output work to be available at or near a place of work for the purposes of working is to be regarded as working time.

- WTR: Usually considered to be working time



Training

- NMW Regulations: Attending training which has been "approved by the employer" will generally count as working time
- This includes:
 - Attending during normal working hours at a place other than their normal place of work for the purpose of receiving training approved by the employer
 - Travelling during normal working hours between the workplace and place where the training is provided
 - Receiving such training at the workplace
- Where there is uncertainty over whether the training takes place in normal working hours, because the normal hours vary, this should be resolved in the worker's favour
- The WTR is silent on training time.



On-call working and sleep ins

NMW Regulations

- A worker who is not doing actual work is treated as working if they are available for work (and are required to be available) at or near the workplace.
- Two exceptions:
 - Time at home. Time when the worker is at home is excluded
 - Sleep-in time. Time when the worker is not "awake for the purposes of working" is excluded, even if the worker "by arrangement sleeps at or near a place of work and is provided with suitable facilities for sleeping"

WTR

- A requirement by the employer for time spent on-call or on standby at a place or narrowly defined places (for example, within a small geographical area) is likely to be working time in its entirety, even if the chance of being called upon to perform duties is slight
- Time spent on-call or on standby where the employer does not determine the place but in relation to which constraints imposed on the worker have very significant impact on pursuing personal and social interests is also likely to be working time in its entirety



WTR and NMW Regulations requirements

- Not just for calculating supplementary employment!
- Working time should be used to calculate:
 - Salary, if paid at an hourly rate
 - Sponsorship threshold (if working more than 37.5 hours per week)
 - Rest breaks
 - Weekly working time



Right to Work for supplementary employment

- In order to obtain a statutory excuse for Right to Work purposes, you are required to confirm that:
 - The worker has the right to work in the UK; and
 - Is allowed to carry out the work in question.
- You need to ensure that the supplementary employment meets the requirements. UKVI recommends asking the worker to provide a letter or other evidence from the sponsor confirming:
 - They're still working for their sponsor;
 - The job description and occupation code of their sponsored employment
 - Their contractual working hours
- If the worker undertakes additional employment that does not meet the supplementary employment criteria, and they have not been granted permission to allow them to take such employment, the worker will be in breach of their conditions of stay



In practice:

- Common for staff seeking supplementary employment to be receiving no/less than contracted work from their sponsor. In such cases, you should not provide supplementary employment;
- If the individual is no longer sponsored, they are not eligible for supplementary employment;
- If you become aware that the individual has lost their sponsorship whilst they're working for you, you lose the Right to Work statutory excuse at that point;
- Even if you do not have knowledge of, but only grounds to suspect, that the worker is no longer working for their sponsor, you should request further information from them and/or their sponsor; and
- If you identify that a worker is acting in breach of their sponsorship requirements, you should:
 - Take steps to terminate their employment; and
 - Consider whether it is appropriate to report to the Home Office.



Recommended clauses for contracts for supplementary hours

- To seek permission before working for another employer, aside from their sponsor
- To notify you immediately if there are any changes affecting their:
 - Working hours for their sponsor
 - Sponsor
 - Visa
 - Right to Work
- That their employment is contingent on them retaining the Right to Work in the UK and their ongoing employment with their sponsor
- (If driving is a requirement of the role) That their ongoing employment is contingent on them having a full driving licence that is valid in the UK



Some Common Scenarios

Scenario 1:

A provider is using staff from a recruitment agency to fill staffing gaps. The recruitment agency has a sponsorship licence but the provider does not. Some of the staff provided by the agency are sponsored and, although they are paid by the agency, they are working over 20 hours a week with the same provider.

Scenario 2:

Employer A doesn't have a sponsorship licence but is employing a staff member who has a certificate of sponsorship with Employer B. The staff member works 30 hours a week for their main employer, Employer B, and 15 hours a week for Employer A.

Scenario 3:

Employer C doesn't have a sponsorship licence but is employing a staff member who has a certificate of sponsorship with Employer D. Employer D later has their sponsorship licence revoked for an unrelated issue. Employer C doesn't find out about this immediately and continues employing the staff member for 15 hours a week.

Q&A: Any Questions?



Employment law, Business Immigration and HR Legal Support:

- Sponsorship licences and business immigration support
- Day-to-day employment issues
- Dismissals
- Employment contracts and service agreements
- Restrictive covenants, confidentiality and intellectual property
- Employment status
- Restructuring, reorganisation and redundancy
- Mergers, acquisitions, insourcing and outsourcing (TUPE)
- Changing terms and conditions of employment
- Employment tribunal claims
- Discrimination and equal pay issues
- Whistleblowing
- Settlement agreements and pre-termination discussions
- Retainer service and 'TLC' insurance
- Data Protection (GDPR and subject access requests)
- Disciplinary and grievance investigations
- Policies and Procedures
- Employment law and HR training



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Care Legal Support:

- Advice on compliance with the regulations and registration
- Challenging inspection reports and ratings
- Defending regulatory enforcement action (CQC/Ofsted)
- Criminal investigations and prosecutions (e.g. by police, CQC, etc)
- Safeguarding investigations
- Coroner's inquests
- Funding disputes and unpaid care fees
- Court of Protection cases
- Regulatory due diligence
- Sales, acquisitions and refinancing
- Transactional and commercial services
- Employment issues
- Requirements for charities
- Property services, planning and development
- Restructuring

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