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Spring / Summer 2015

NHS Charges for Migrants

The NHS Immigration Health Surcharge for temporary migrants and students came into force on 6th April 2015. Nationals from outside the European Economic Area (EEA) coming to the UK for longer than 6 months will be required to pay a surcharge when they make their application. Temporary migrants will be required to pay £200 a year and overseas students will be required to pay £150 per year. Those nationals that are already in the UK who apply to extend their stay will also be required to pay the surcharge.

Health surcharge payers will be able to access the National Health Service in the same way as permanent residents. The surcharge is payable in full at the time of the immigration application and the amount of charge will be calculated based on the amount of time a migrant would be permitted to stay in the UK under the relevant category in the Immigration Rules.

The following categories will be exempt from paying the surcharge:

- Visitors and where the visa is for less than 6 months;
- Intra-company transfers (Tier 2 – Skilled Workers);
- Children under 18 years taken into care or in the care of a local authority;
- Migrants making an application for asylum, humanitarian protection or a claim that their removal from the United Kingdom would be contrary to Article 3 of the European Convention on Human Rights;
- Victims of human trafficking;
- Victims of domestic violence;
- Dependants of a member of Her Majesty's forces or a dependant of a member of another countries' forces who is exempt from immigration control;
- Applicants making an immigration application related to EU obligations;
- Nationals of Australia or New Zealand; and
- A British overseas territory citizen who is the resident of the Falkland islands

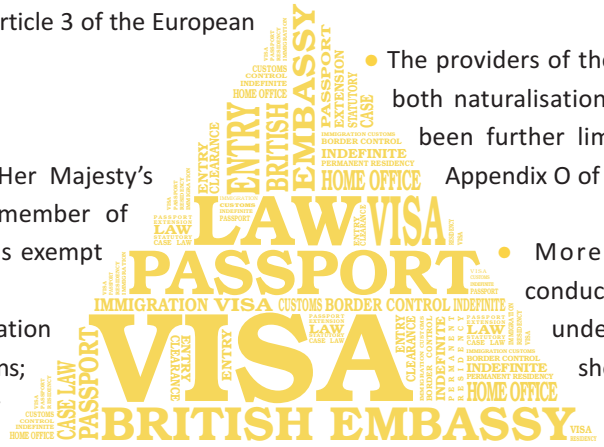
If an application is refused, the surcharge would be automatically refunded however if the visa is issued but the migrant decides not to travel to the UK, the surcharge would not be refunded. The surcharge would also not be partially refunded if the migrant departs the UK before the expiration of their permission to remain in the UK. Furthermore, if the migrant does not use the NHS.

The above change represents an increase in upfront costs payable by migrants, for example a migrant with 3 dependants applying for a Tier 2 (General) visa for a maximum period of 60 months will have to pay an additional £4,000 on top of the usual visa fees.

Immigration in Brief

- On the 6th of April the Home Office forms have changed. Usage of the old forms will result to a rejection of your application.

- The Home Office fees have increased. For example, an extension application fee is now £649, up from £601. A settlement application fee has also increased from £1,093 to £1,500.



- The providers of the English language requirement for both naturalisation and settlement applications have been further limited to specific Colleges listed in Appendix O of the Immigration Rules.

- More rigorous checks are being conducted by the UKBA against sponsors under the Tier 2 category. Employers should ensure that all records are up to date at all times as unscheduled visits are increasingly common.

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How to reduce payment of inheritance tax

Make a Will

An effective way of estate planning is to make a Will but unfortunately a large proportion of adults fail to do so.

Making a Will ensures your assets are distributed in accordance with your wishes. This is particularly important if you have a spouse or partner as there is no inheritance tax payable between the two of you but there could be tax payable if you die intestate (without a Will) and assets end up going to other relatives.

Make allowable gifts

You can give cash or gifts worth up to £3,000 in total each tax year and these will be exempt from inheritance tax when you die. You can carry forward any unused part of the £3,000 exemption to the following year but then you must use it or lose it. Parents can give cash or gifts worth up to £5,000 when a child gets married, grandparents up to £2,500 and anyone else up to £1,000. Small gifts of up to £250 a year can also be made to as many people as you like.

Give away assets

Parents are increasingly providing children with funds to help them buy their own home. This can be done through a gift and provided the parents survive for seven years after making it, the money automatically ends up outside their estate for inheritance tax calculations irrespective of size of the asset.

Make use of trusts

Assets can be put in trust, thereby no longer forming part of the estate. There are many types of trust available and can be set up simply at little or no charge. They usually involve parents (called settlors) investing a sum of money into a trust. The trust has to be set up with trustees (a suggested minimum of two) whose role is to ensure that on the death of the settlors the investment is paid out according to the settlors' wishes. In most cases this will be to children or grandchildren.

The most widely used trust is a 'discretionary' trust and can be set up in a way that the settlors (parents) still have access to income or parts of the capital. It can seem daunting to put money away in a trust but they can be unwound in the event of a family crisis and monies returned to the settlors via the beneficiaries.

The income over expenditure rule

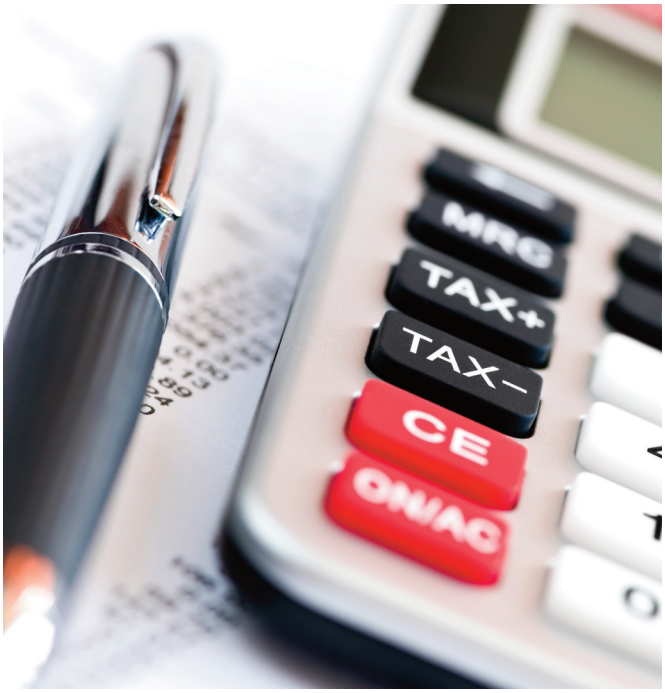
As well as putting lump sums into a trust you can also make monthly contributions into certain savings or insurance policies (not ISAs) and put them in trust. The monthly contributions are potentially subject to inheritance tax but if you can prove that these payments are not compromising your standard of living they are exempt.

Provide for the tax

An alternative approach is to make provision for paying inheritance tax when it is due.

The tax has to be paid within six months of death (interest is added after this time). Because probate must be granted before any money can be released from an estate the executor, usually a son or daughter, will often have to borrow money or use their own funds to pay the inheritance tax bill.

This is where life assurance policies written in trust come into their own. A life assurance policy is taken out on both a husband's and wife's life with the proceeds payable only on second death.



The amount of cover should be equal to the expected inheritance tax liability. By putting the policy in trust it means it does not form part of the estate. The proceeds can then be used to pay any inheritance tax bill straightaway without the need for the executors to borrow funds.

Sources – various websites

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Breaking News • New Douglass Simon Website • www.douglass-simon.com • Breaking News

A change to the law – presumption of parental involvement

Section 11 of the Children and Families Act 2014 came into force on 22 October 2014, and applies to cases started on or after that date. It enshrines into law a 'presumption of parental involvement', and has been drafted to encourage parents to be more focused on children's needs following separation and the role they each play in the child's life.

The new law will require family courts to presume that each parent's involvement in the child's life will further their welfare – where it is safe. However the needs of the child will always remain the paramount priority of the courts.

The Parental Involvement Provision is not about giving parents new 'rights' or the 50/50 division of children's time – it is about achieving a culture change by making clearer the court's approach to these issues.

When considering and consulting on the proposed legislative changes, the Government drew on lessons learned in Australia, where a provision for "meaningful relationship" was included in their 2006 Family Law reforms. Subsequent evidence showed increased litigation as a result and that their change contributed to damage to children because the term "meaningful" had come to be measured in terms of the quantity of time spent with each parent rather than the quality of the relationship for the child. Our Government said that it would consider very carefully how legislation could be framed to avoid the pitfalls of the Australian experience, *"in particular that a meaningful relationship is not about equal division of time but the quality of parenting received by the child".*[1]

The result was section 11 of the Children and Families Act 2014.

It is clear from the drafting of the new legislation that the presumption will apply unless there is evidence to suggest that a parent's involvement would put the child at risk of suffering harm. In practical terms this is likely to manifest in an identified risk being dealt with and overcome by a more limited form of involvement, such as supervised contact or indirect contact, and it should be noted that there are not many cases where the facts are so compelling as to suggest that any form of contact with a child will lead to a risk of harm. Most parents therefore will benefit from the presumption of involvement.

The new provisions apply when the court is deciding whether to make an order for parental responsibility in favour of a father or a second female parent (but not in favour of a step-parent) or when the court is deciding whether to make, vary or discharge a section 8 order.

The new provisions apply only to parents. This means that residence order holders, step-parents with and without parental responsibility and other individuals who may have played a full parental role in the child's life will be excluded from the presumption.

It is important to remember that the welfare of the child remains paramount and that this legislative change does not endow any parent with a right to either an equal division of a child's time or to any other fixed period or proportion of time.

The Family Team at Douglass Simon Solicitors are all members of Resolution, the independent body representing solicitors who specialise in family work. They recognise the importance to children of both parents remaining involved in their lives following separation and divorce and will work with you minimise or even avoid later disputes as to the arrangements for the children.

If you have any queries about this or any other family or children related matters please contact our family department at 0203 375 0555.

1 The Lord Chancellor and Secretary of State for Justice (Kenneth Clarke QC)

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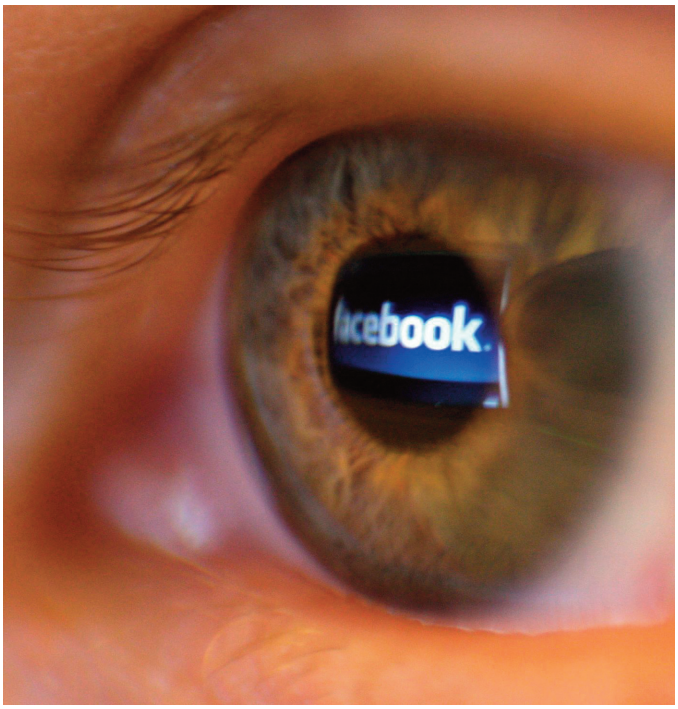
Social media and employment: the potential dangers of social media to employees



More and more people now use social media such as Twitter and Facebook. For many, social media is an invaluable tool to keep in touch with friends and family in a continuously hectic world. Social media also empowers people to express their views and opinions with friends, family and the wider public on a wide variety of matters from sport to politics.

There are, however, potential dangers to social media use by employees in an ever opinionated world where views and comments are aplenty. Whilst the use of social media (and the Internet in general) during working hours would usually be governed by one's contract of employment which would naturally restrict usage during working hours, what happens when an employee expresses an undesirable opinion, in the eyes of the employer, on social media outside of working hours and, for example, in a private capacity in the comfort of their own home at the weekend?

One would be forgiven to assume that such a situation has nothing to do with the employer in the same why as playing golf at the weekend or taking a weekend holiday has nothing to do with the employer. However, Employment Tribunals have had to deal with this specific question and a growing body of case-law is on the use of social media, even in a private capacity, is being developed by the Courts and the Tribunal.

In **Smith v Trafford Housing Trust [2012] EWHC 3221 (Ch)**, the claimant, a housing manager employed by the Trust, was demoted to a non-managerial position with a 40 per cent reduction in salary for posting comments on his personal Facebook page which were critical of the prospect that same-sex marriages might be conducted in church. The Trust argued, inter alia, that posting such comments on Facebook had the potential to prejudice the reputation of the Trust and breached the staff code of conduct (by promoting religious views to colleagues and customers); and that this amounted to gross misconduct.

Rejecting the Trust's arguments, Briggs J did not accept this line of reasoning. Significantly, Briggs J determined that, although on his Facebook page Mr Smith had listed his occupation as a manager at the Trafford Housing Trust, no reasonable reader would thereby conclude that his postings were made on the Trust's behalf.

He also considered that there was no realistic damage to the reputation of the Trust by association with the comments, given that they were made by an employee in a private capacity, outside of working hours and in a moderate way.

It was also concluded that the employee had a right to promote his religious views (or any view – for example, political) in his own time; this included his Facebook page because colleagues and customers had the option of whether or not to subscribe to it. To suggest that a code of conduct or clause in a Staff Handbook or Contract of Employment could be interpreted to extend so far into an employee's private life as to fetter his right of expression outside of work would amount to an infringement of rights of freedom of expression and belief and was unsustainable.

This case, despite the good news from the employee's perspective that the employer's decision was unfair, illustrates that any potential dismissal from an employer as a result of an employee expressing a personal opinion on social media which may, in the employer's view, harm the business could be fair and could fall within the reasonable band of responses (the 'reasonable band' test is the test used in Unfair Dismissal Law) available to an employer depending on the facts and particulars. This would depend on many factors such as the extent of the view expressed, how moderate the view was, whether the social media page was private or restricted to a

confined group of friends/acquaintances or open to the public, whether the view was frequently made as against the employer's sensitive line of business and the nature of the employer's clientele etc. Even in cases where the expressed view (or views) was only accessible by a confined group of persons, that confined group may include members of the employer's clientele which may associate the view of the individual employee with the employer and that could be pivotal to any decision.

The Employment Appeal Tribunal (EAT) in **Game Retail Ltd v Laws UKEAT/0188/14**, for example, saw the Tribunal reach the conclusion that a dismissal of an employee who posted tweets in a personal capacity (from a personal Twitter) which were seen as abusive in nature by the employer was fair. Distinguishing the case of **Smith**, the EAT pointed out that the Twitter account, whilst private, had not been set to a private setting and that it was accessible by all members of the public and that the abusive tweets ran the risk of affecting Game Retail Ltd's reputation as the employer.

This aspect of Unfair Dismissal Law is very fact-sensitive and demands a notable degree of judgment based on an understanding of the law and experiential insight into employment litigation.

We, at Douglass Simon Solicitors, have the requisite experience, client care, attention to detail and legal knowledge to assist you with such employment matters. Please do not hesitate to contact our offices should you have any such problems.

Our Languages

Our practitioners' legal skills are complimented by their commitment to strive for and achieve the highest possible standard. As part of our dedication to our multinational clients, we can assist in the following languages; Tagalog (Filipino), Hindi, Punjabi, Urdu, Arabic (all dialects), Spanish, French, German, Portuguese, Italian and Japanese (spoken only).

Free Legal Surgeries

For over a decade Douglass Simon Solicitors have been active in assisting those who are unable to afford legal advice. As our way of giving back to the community we provide initial advice absolutely free at our legal surgeries:

Richmond office:
Every Tuesday from 5pm to 7pm, these sessions are conducted by our senior family solicitors and are by appointment only. Please call our Richmond Office on 020 3375 0555 to book an appointment.

Earls Court Office:
Every Wednesday from 5pm to 7pm, conducted by Mr Haroon Khan. These sessions are by appointment only. Please call our Earls Court Office on 020 7373 4429 to book an appointment.

Earls Court Office:
Every *last Sunday* of the month from 1pm to 4pm, conducted by our Principal Ms Lira Simon Cabatbat. These sessions are on a first come, first served basis and no appointment is necessary. Depending on the demand on the day, we cannot guarantee that you will be seen.

Fixed fee initial consultation:
We also offer £60.00 fixed fee initial consultations at our Richmond and Earls Court offices during normal office hours (Monday to Fridays from 9am to 5:30pm). These consultations are by appointment only. Please call our Richmond Office on 020 3375 0555 or our Earls Court Office on 020 7373 4429
General Office Hours: Working Days 09:00 to 17:30

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What Judges say...

"The Appellant's case is fully particularised in the Grounds of Appeal submitted by the Appellant's current Solicitors, Douglass Simon."

and

"I note from the Appellant's solicitors covering letter dated January 2013 (pages 38 – 55 of the Appellant's bundle) was not only lengthy and detailed but also referred to (in general terms) all of the documentary evidence …"

First-tier Tribunal Judge A. Khawar granting an Appeal based on the income threshold and subsisting relation under Appendix FM of the Immigration Rules on 5th March 2015

★★★★★★★★★★★★

"As this arguable error of law has been identified [by the appellant's representative] all the issues raised in the grounds are arguable."

First-tier Tribunal Judge Osborne on 27th January 2015 in a decision granting permission to appeal to the Upper Tribunal as to whether 'time' can be a legitimate aim to a proportionality assessment under Article 8(2) of the ECHR – that is to say, whether an appellant ought to be allowed to remain outside the Rules whilst the appellant's employer applies for a Tier 2 Sponsor License application which is taking and has taken a long time to consider. It was argued that 'time' (or rather promptness) should not be a legitimate aim in itself under Article 8(2) unless the prolongation of time can be shown to have some detriment on the 'economic well-being' of the state - itself, a legitimate aim under Article 8(2)

"…it is arguable that the Judge's reasoning is flawed for the reasons set out in the grounds [prepared by Douglass Simon Solicitors]

Upper Tribunal Judge Allen granting permission to appeal on a complicated asylum matter from the First-tier Tribunal on 17th February 2015

★★★★★★★★★★★★

"…the decision is subjected to detailed analysis …"

Designated Judge of the First-tier Tribunal Digney on an application for permission to appeal to the Upper Tribunal on a complicated asylum matter
4th February 2015

★★★★★★★★★★★★

"As [the] grounds make clear …"

Upper Tribunal Judge Eshun in agreeing with our Grounds for Permission to Appeal and granting permission to appeal to the Upper Tribunal by finding that the First-tier Tribunal made an error in its approach and interpretation of the EEA (Immigration) Regulations 2006 (14th October 2014)

★★★★★★★★★★★★

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We can easily be reached by tube, train or bus. The nearest tube station is Richmond on the District Line, which also services National Rail. Take the Church Road Exit to reach our offices in Grand Prix House within minutes. Only yards away from our office are also the bus stops of the 337 and 419 bus routes serving Putney/ Wandsworth and Hammersmith respectively. Going from Richmond towards Sheen exit at the bus stop Church Road. Going towards Richmond from Sheen, exit at the bus stop Kings Road or Church Road.

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