

Right to Work Checks

Business Information Factsheet

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Introduction

Employers have a legal duty to carry out certain document checks, known as 'right to work checks', to ensure that they do not employ anyone who would be working in the UK illegally.

Employers who do not carry out these checks, and who employ someone who does not have a right to work in the UK, are guilty of a criminal offence.

This factsheet explains who has a right to work in the UK and what right to work checks employers must make. It outlines which documents are considered to be acceptable evidence of a person's right to work in the UK, how the checks should be carried out, and what records employers should keep. It also sets out the penalties that employers face if they do not make the correct checks.

Who has a right to work in the UK?

Citizens of the UK, Switzerland, and any country within the European Economic Area (EEA) all have a permanent right to work in the UK. EEA countries include all of the member states of the European Union (EU), plus Iceland, Liechtenstein and Norway.

Additionally, some people who are not citizens of any of these countries may have a right to work in the UK, for example because they are a relative of an EEA citizen living in the UK, or because they have successfully applied for a work visa or for an indefinite right to remain in the UK.

How to carry out a right to work check

Right to work checks must be carried out on all potential employees, including UK citizens, before offering them employment.

To carry out the check, employers must examine 'acceptable documents' that demonstrate a potential employee's right to work in the UK. They must make specified checks on the validity of these documents, retain a copy of them, and record the date that the check was made.

Acceptable documents

The full list of documents that can demonstrate a potential employee's right to work in the UK is published by the Home Office at www.gov.uk/government/publications/acceptable-right-to-work-documents-an-employers-guide.

To determine which documents are required for each potential employee, employers can use an online tool published at www.gov.uk/legal-right-work-uk.

Some acceptable documents (known as List A documents) show that the holder has a permanent right to work in the UK. Examples of List A documents include:

- A passport showing that the holder is a citizen of the UK or of an EEA country.
- A permanent residence card issued by the Home Office to a family member of a national of an EEA country or Switzerland.

Other documents (known as 'List B documents') indicate that the holder has permission to remain in the UK for a limited time and/or has a restricted right to work in the UK. If the potential employee provides a document from List B, the employer must make specified follow-up checks regularly throughout their period of employment.

Examples of List B documents include:

- A biometric immigration document issued by the Home Office indicating the person named on it can currently stay in the UK and is allowed to do the work.
- A passport endorsed to show that the holder has permission to stay in the UK and is currently allowed to carry out the specified type of employment.

Checking document validity

Employers must check (in the presence of the potential employee) that:

- All documents are originals and not copies, are valid and genuine, and have not been tampered with.
- Photographs are consistent with the potential employee's appearance.
- Dates of birth are consistent across documents, and match the age and appearance of the employee.
- Permission to remain in the UK is still valid.
- Home Office stamps, visas and other endorsements are appropriate for the type of work being offered.
- Any document showing a different name is validated, for example by a marriage or divorce certificate accounting for the name change.

Taking a copy of documents

Employers must make a clear copy, such as a photocopy, of each document and record the date on which the check was made. Most documents must be copied in full, but the front covers of passports do not have to be copied.

Copies must be kept for no less than two years after the employment has come to an end, either electronically or as hard copy. They must be stored securely, in accordance with data protection law. Guidance for employers about complying with data protection law is available at www.gov.uk/data-protection-your-business/recruitment-managing-staff-records.

Avoiding discrimination

When carrying out right to work checks, employers have a legal duty to ensure that they do not discriminate against anyone on the grounds of race. This means that they must not make any assumptions about a person's right to work in the UK based on considerations such as their colour, nationality, ethnicity or accent.

Guidance for employers on how to avoid discrimination while carrying out right to work checks is available at www.gov.uk/government/publications/right-to-work-checks-code-of-practice-on-avoiding-discrimination.

Offences and penalties

Under the Immigration, Asylum and Nationality Act 2006, as amended by the Immigration Act 2016, it is a criminal offence to employ someone who has no right to work in the UK, provided that the employer either knows or has 'reasonable cause to believe' that they are working in the UK illegally.

Employers who are found to have employed an illegal worker and cannot demonstrate that they carried out the correct right to work checks face sanctions including:

- A civil penalty of up to £20,000 per illegal worker.
- A prison sentence of up to 5 years.
- An unlimited fine.
- Seizure of earnings made as a result of illegal working.

Further information

BIF036 Checklist for Recruiting Staff

BIF336 Employer Sponsorship of Work Visa Applications

BIF473 A Guide to the Equality Act 2010

BIF535 A Guide to the Immigration Act 2016

'An Employer's Guide to Right to Work Checks'

Home Office

Website: www.gov.uk/government/publications/right-to-work-checks-employers-guide

'Frequently Asked Questions about the Illegal Working Civil Penalty Scheme'

Home Office

Website: www.gov.uk/government/publications/preventing-illegal-working-frequently-asked-questions

Useful contacts

UK Visas and Immigration (UKVI) is responsible for assessing applications to work in the UK. It provides information to employers about preventing illegal working.

Tel: 0300 123 5434 (Employer enquiry helpline)

Website: www.gov.uk/government/organisations/uk-visas-and-immigration

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