

Employment Law Fact Sheet No. 2

RIGHT TO WORK IN THE UK AND THE POINTS BASED SPONSORSHIP SYSTEM



Right to work in the UK

All employers are required to make documentary checks on every individual they intend to employ to ensure that they are entitled to work in the UK.

The employer must make and retain copies of original documents and store these for the duration of the employment and two years thereafter.

It is a criminal offence to knowingly employ someone who is not entitled to work in the UK. The maximum civil penalty is £20,000 (per illegal migrant worker) for negligent employment of such workers and an unlimited fine for knowingly doing so and /or imprisonment for up to two years. The fine was raised from £10,000 per illegal worker on 16 May 2014. Subsequent breaches within a three year period also carry a maximum fine of £20,000 per illegal worker.

Accordingly, document checks should be carried out for all new starters **before** they commence work followed by a further check **at the point of expiry** (it is advisable to undertake this check at least a month prior to expiration) for employees who have only limited leave to remain in the UK. In certain circumstances a follow up check must also be conducted within twelve months, and every twelve months thereafter if the employment commenced between 29 February 2008 and 15 May 2014, and within six months and every six months thereafter if the employment commenced on or after 16 May 2014, if the migrant presents one of a number of documents. For information regarding documentary checks you should visit the gov.uk website (link below).

Employers must also now record the date the right to work check is undertaken.

The grace period for employers to conduct right to work checks on employees acquired as a result of the Transfer of Undertakings (Protection of Employment)(TUPE) Regulations is 60 days.

The links below provides information regarding the checking process and a link to the the official guidance on preventing illegal working which sets out the documentation you should check:

<https://www.gov.uk/check-job-applicant-right-to-work>

<https://www.gov.uk/government/publications/acceptable-right-to-work-documents-an-employers-guide>

In order to avoid claims for discrimination employers should carry out these checks for all employees, and not only in relation to foreign nationals.

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