

ELIGIBILITY CHECKS - RIGHT TO WORK IN THE UK

It is a legal obligation to obtain evidence of a worker's right to work in the UK prior to a worker being placed on an assignment. We could face a civil penalty if we engage an illegal worker and haven't carried out a correct right to work check.

'An Employers Guide to Right to Work Checks', issued by the Home Office dated January 2019 states that an employer (and agencies) must:

- 1. Obtain** original versions of one or more acceptable documents
- 2. Check** the documents validity in the presence of the holder, this means you need to check that:
 - The documents are genuine, original and unchanged and belong to the person who has given them to you
 - The dates for the worker's right to work in the UK haven't expired (UK/EU expired passports are acceptable)
 - Photos are the same across all documents and look like the applicant
 - Dates of birth are the same across all documents
 - The person has permission to do the type of work you're offering (including any limit on the number of hours they can work)
 - For students, evidence of their study and vacation times is required
 - If two documents give different names, the person has supporting documents showing why they're different, e.g. marriage certificate or divorce decree
- 3. Retain a clear copy** (which cannot manually be altered). Please note there is no longer a requirement to obtain a copy of a passport's front cover, and
- 4. Record the date** (on the copy) the check was made. Simply writing a date on the copy document does not, in itself, confirm that this is the actual date when the check was undertaken. If you write a date on the copy document, you must also record that this is the date on which you conducted the check. E.g. **'the date on which this right to work check was made: (Insert date)'**.

If a UK candidate is unable to provide a valid Passport, a combination of the following will be required;

- HMRC tax document showing their National Insurance number

AND one of the following

- UK birth certificate (Short or long) or UK Adoption certificate

If an EU candidate (not UK) is unable to provide a valid passport, a current National Identity card is acceptable. A clear copy of both sides of the ID card must be taken with the copy being dated.

If a non-EU candidate is providing Right to Work, acceptable documents include a combination of their passport and a current residence permit. A clear copy of the right to work must be taken.

N.B - When taking a copy of a passport you need to copy all four corners. All four corners include the opposite side of the photograph page too. It is important to note that in British passports and in some other passports, security features are present on both pages, not just the photo page.

Statutory excuse

If you conduct the checks as set out in this document and the Code of Practice, you will have a statutory excuse. This means that if the Home Office find that we have employed someone who does not have the right to work in question, but you have correctly conducted right to work checks as required, you will not receive a civil penalty for that illegal worker.

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Conducting a right to work check

Manual right to work check

The Home Office recommend using the Employers 'Right to Work Checklist' to ensure you have correctly carried out all the steps you need to; or

By following 'Check if someone can work in the UK' which will take you through the process by asking you a series of questions.

Online right to work check

From 28 January 2019, an online right to work check will provide you with a statutory excuse against a civil penalty in the event of illegal working involving the subject of the check. You can do an online check by using the online service, entitled 'View a job applicant's right to work details' on gov.uk. It will not be possible to conduct an online right to work check in all circumstances, as not all individuals will have an immigration status that can be checked online.

The online right to work checking service sets out what information you will need. In circumstances in which an online check is not possible, you should conduct the manual check (as above).

Currently, the online checking service supports checks in respect of those who hold:

- A biometric residence permit;
- A biometric residence card; or
- Status issued under the EU Settlement Scheme (alternatively, these individuals continue to be able to demonstrate their right to work by presenting their EU passport or ID card until the end of the planned implementation period).

How does the service work?

The service works on the basis of the individual first viewing their own Home Office right to work record. They may then share this information with you if they wish, by providing you with a 'share code', which, when entered along with the individual's date of birth, enables you to access the information. The share code will be valid for 30 days, after which a new code will be required in order to conduct an online check.

You must access the service using the employer part of the service ('View a job applicant's right to work details') in order to obtain a statutory excuse. It is not sufficient to view the information provided to the employee, or prospective employee, when they view their profile using the migrant part of the Home Office online right to work checking service. The Home Office has an audit record of online checks conducted by employers using the service. You will not establish a statutory excuse by viewing the migrant part of the service.

There are 3 basic steps to conducting an online right to work check;

- Use the Home Office online right to work checking service on Gov.uk.
- Check that any photograph on the online right to work check is of the individual presenting themselves for work.
- Retain a clear copy of the response provided by the online right to work check.

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What are the sanctions against illegal working?

If you are found to be employing someone illegally and you have not carried out the prescribed checks, you may face sanctions including;

- A civil penalty of up to £20,000 per illegal worker;
- In serious cases, a criminal conviction carrying a prison sentence of up to 5 years and an unlimited fine;
- Closure of the business and a compliance order issued by the court;
- Disqualification as a director;
- Not being able to sponsor migrants;
- Seizure of earnings made as a result of illegal working;

Helpful number

If you are still unsure, you can call the number below at the home office, all you need to say is that you are thinking about employing someone and would like to clarification. You don't need to provide your name or the Company name.

Employer Enquiry Helpline
Telephone: 0300 123 5434
Monday to Thursday, 9am to 4:45pm
Friday, 9am to 4:30pm