

COURIER ARTICLE

RIGHT TO WORK CHECKS



Following the controversial comments regarding employing foreign workers by the Home Secretary, Amber Rudd, earlier this month, it is useful to recap on what current obligations employers have in relation to checking foreign workers since penalties for getting it wrong have recently increased.

Those employers using payroll software may have noticed a recent change when adding new employees. In the Sage payroll system, for instance, employers are asked 'Have you conducted a right to work check?' with three options available from a dropdown list; 'no', 'yes' or 'I'm recording this elsewhere'. These details are included in a full payment submission (FPS) and reported to the Home Office, so it is important to complete this field correctly. Whether employers use Sage payroll or not, employers have a duty to carry out right to work checks on any new employee, rather than assume they are entitled to work in the UK. Guidance on how to carry out a check, which documents are acceptable and how to record evidence can be found at : www.gov.uk/government/publications/right-to-work-checks-employers-guide.

If employers fail to comply with the Home Office requirements and are found to be employing workers illegally, the fines can be as much as £20,000 per illegal worker.

Employers have a duty to prevent illegal working in the UK by carrying out prescribed document checks on people before employing them to ensure they are lawfully allowed to work. These checks should be repeated in respect of those who have time limited permission to work in the UK. During 2014 and 2015 changes came into force to strengthen and simplify the civil penalty scheme for employers. The new rules were updated on 12 July 2016 and those set out the criminal offence of employing an illegal worker.

In respect of the individual, a person is committing the offence of working illegally with effect from 12 July 2016 if he is (a) subject to immigration control and works when disqualified from doing so by reason of his immigration status, and (b) at the time, he knows or has reasonable cause to believe that he is disqualified from working by reason of his immigration status. In Scotland, the offence carries a maximum penalty of six months' imprisonment and a fine.

With regard to the employer position with effect from 12 July 2016, an employer commits an offence if he employs an illegal worker and knows or has reasonable cause to believe that the person has no right to do the work in question. This subtle change means that an employer can no longer evade prosecution where the Government Agency cannot prove that the employer knew that the employee had no permission to work. The amended offence enables employers to be prosecuted where they have reasonable cause to believe that the employee could not undertake the employment. The maximum sentence for this offence has been increased from two years to five years.

Employers must therefore check documents before employing the person to ensure that they are legally allowed to do the work in question. This comprises three key steps:

- (a) Obtain the person's original documents;
- (b) Check them in the presence of the employee; and
- (c) Make and retain a clear copy and make a record of the date of the check.

This procedure is very similar to the anti-money laundering procedures most people are now familiar with when dealing with banks and solicitors, etc.

The Home Office recommend that employers should conduct right to work checks on all potential employees to ensure that job applicants are treated fairly and to prevent discrimination claims as they point out in their guidance that employers should not make assumptions about a person's right to work in the UK or their immigration status on the basis of their colour, nationality, ethnic or national origins, accent or length of time they have been resident in the UK.