

Employers Guide to the Right to Work

From April 2022 the process that employers need to follow when conducting right to work checks changed.

We have produced this short guide to help employers understand their obligations and what checks they need to undertake to ensure that someone they recruit has a right to work.

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One of the basic requirements on all employers is to ensure that the people they employ have permission to work in the UK.

From April 2022 the process that employers need to follow when conducting right to work checks changed – you can no longer accept physical cards or permits, you must undertake digital checks.

Civil penalties are imposed on organisations that have employed an individual who does not have permission to work. If found to be employing workers who do not have the right to work, employers can face a penalty of up to £20,000 per worker.

The Home Office has produced guidance, but at 72 pages long, many employers may not be familiar with the specifics.

It's very important that employers understand how to conduct right to work checks. If a right to work check is undertaken correctly, employers are likely to have a statutory excuse against liability for a civil penalty. If not undertaken properly, a civil penalty may be imposed.

To help you, we have produced this helpful guide to help employers understand their obligations and what checks they need to undertake to ensure that someone they recruit has a right to work.

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How can I conduct a Right to Work Check?

Migrant workers can generate a share code which will give an employer online confirmation of their immigration status. Alternatively, specified documents can be checked.

The process changed on 6 April 2022, from this date, workers who hold a Biometric Residence Card (BRC), Biometric Residence Permit (BRP), or a Frontier Worker Permit (FWP) can only evidence their right to work by using the Home Office's online service.

To use this service, employers need the job applicant's date of birth and right to work share code.

Employers can no longer accept physical cards.

Retrospective checks are not required; if an employer undertook a manual check prior to 6 April 2022, as long as the check was undertaken correctly, they will in law have a statutory excuse against any future civil penalty for illegal working.

From 6 April 2022, employers can use certified Identity Service Providers (IDSPs) to undertake digital checks on British and Irish citizens who hold a valid passport. IDSPs will use Identification Document Validation Technology (IDVT) to confirm a prospective employee's identity, check their ID is valid, and will confirm that the document belongs to the employee. IDSPs will impose a small fee to assist with the checks. Using an IDSP is not mandatory; employers can instead continue to check a British or Irish national's physical documents and conduct the check themselves.

Usually, original documents should be reviewed in the presence of the worker, but due to Covid, the Home Office recognised that checks can be carried out via a video call and that job applicants / workers can electronically provide documents to their employer. This temporary adjustment ends on 30 September 2022. From this date, original documents will need to be checked in the presence of the applicant / worker.

Retrospective checks on those who relied on the Covid-19 adjustment will not be necessary.

What if an applicant / worker cannot provide acceptable documents?

You can use the Employer Checking Service to ask the Home Office to check an employee's/potential employee's immigration status.

Does an EEA Passport mean an individual can work?

No. EU free movement into the UK ended at 11pm on 31 December 2020.

Any EEA workers arriving after this date – and who hadn't lived here previously – was admitted under UK domestic law, meaning if no status was already held, they were likely admitted as visitors.

The Home Office imposed a grace period of 6 months (until 30 June 2021) which protected the rights of EEA nationals and their family members who were lawfully resident in the UK prior to 31 December 2020.

Due to this grace period, regardless of when the EEA national arrived in the UK, they could rely on their EEA passport to secure work until 30 June 2021.

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Are retrospective checks needed on EEA nationals post 30 June 2021?

No, employers are not required to undertake retrospective checks on EEA nationals who were employed on or before 30 June 2021.

If the initial right to work check was undertaken in accordance with relevant legislation and guidance, employers would maintain a statutory excuse (and avoid a civil penalty) if a worker was subsequently found to be unlawfully present in the UK.

What about EEA workers employed from 1 July 2021?

They can no longer solely rely on a passport or ID card. Just like other foreign nationals, they are now required to provide evidence of lawful immigration status by following the process as outlined earlier.

What if they don't have the right to work but I want to employ them?

You'd need to consider how to secure the worker permission to remain in the UK – you could sponsor the worker as a Skilled Worker, but you'd need to hold a sponsor licence.

The individual may also qualify for permission to remain on another basis. You should take advice if this is a route you wish to pursue.

What about Irish citizens?

Irish citizens have unrestricted access to work in the UK – Brexit did not change this. Irish citizens can continue to rely on their Irish passport (or other specified documents) to prove their right to work in the UK.

What if the worker has limited permission to remain in the UK?

You should ensure that you diarise this key date as you'll need to undertake a follow-up right to work check when the worker's documents expire.

What steps should employers make given the April 2022 change to Right to Work checks?

Employers are advised to:

- update internal policies and procedures relating to carrying out right to work checks; and
- provide relevant HR staff with training to ensure that anyone who is responsible for carrying out right to work checks is confident in using the online checking service.

For further information, or if you would like assistance, please contact us.

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