

HR Essentials: Right to work checks

With Amanda Chadwick

Date:

Run Time: Approx 50 Mins

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across **Employment Law, HR and Health & Safety**



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Today We Will Cover

- Right to work in the news
- Code of practice on preventing illegal working
- Checking right to work for UK and Irish nationals, and foreign workers
- Tip and tricks for right to work checks
- Consequences of failing to check right to work

Right to work checks

- Process for checking if an individual has the legal right to work in the UK
- Essential check for all workers, regardless of nationality
- Conducting checks properly provides a statutory excuse
- Must be done before employment begins
- Fine of £45,000 for each illegal worker, rising to £60,000 for repeat offences, criminal offence if “reasonable cause to believe” individual doesn’t have right to work, risk of business being shut down

Why are Right To Work Checks important?

- Prevents exploitation of vulnerable individuals
- Illegal working can result in:
 - Tax evasion
 - Exploitative working conditions
 - Modern slavery
 - Breaches to National minimum Wage



Right to work checks in the news

- Government has “ramped up” illegal working enforcement under its Plan for Change
- HSBC, Deloitte and KPMG withdrew job offers to foreign nationals due to increase to visa salary threshold
- Deliveroo, Just Eat and Uber Eats to change their processes for checking right to work of substitute riders
- Government enforcement visits for right to work breaches rose by 68% last year
- Government Immigration White Paper outlines considerable reforms

The routes to working in the UK

- UK or Irish national
- Frontier Worker Permits
- Visas and pointsbased visas
- EU settlement scheme—settled and pre-settled status
- EEA citizens with Indefinite Leave to Enter/Remain



The law and the right to work

All UK employers have a responsibility to prevent illegal working, failure to do so can result in fines and criminal offences. They must:

- Carry out "right to work" checks on all prospective employees before employment starts
- Conduct follow-up checks where right to work is time-limited
- Keep records of all checks carried
- Not employ anyone it knows has reasonable cause to believe is working illegally



Code of practice – Avoiding Discrimination

To prevent unlawful discrimination when checking right to work, employers should:

- Be consistent in conducting checks
- Select based on suitability, not ethnicity
- Ensure no one is discouraged because of a characteristic (e.g. race)

Employers should not:

- Discriminate when conducting right to work checks
- Only check the status of those who appear likely to be migrants
- Make assumptions about a person's right to work



Checking right to work

- For UK and Irish nationals, there are digital or manual checks
- Checks for all other nationals are either manual or via the online Home Office checking service
- Follow up checks are only needed if the right to work is time limited



Checks for UK and Irish nationals only: Digital checks

- IDVT = Identity Document Verification Technology
- IDSP = Identity Service Provider
- For British and Irish citizens only
- Uses passports or passport cards (Ireland)
- External service, IDSP, makes the necessary checks
- IDSP's work to a range of standards / levels of confidence included on government list



Checks for UK and Irish nationals, and all other foreign workers: Manual checks

- Obtain an original document from List A or B
- Check
 - Is it genuine, has it been tampered with?
 - Is it the same person in the photo?
- Copy and keep for duration of employment + 2 years



List A - right to work documents that don't expire

List B - time limited right to work documents

Found in Government's Employers' right to work checklist

Checks for Non-UK or Irish foreign nationals: Online checks

- To access a Home Office right to work record (via gov.uk), need a share code and DOB
- Step 1: Use the Home Office online checking service
- Step 2: Check the photo matches the person, either in person or via video link
- Step 3: Retain evidence of the check



Scenario: Maintaining manual checks

- Organisation A offered employment to B, who is from the UK, and asked B to provide their passport so that A could use their IDSP to perform an IDVT check. But B's passport has expired. What can they do?
- Refuse employment as an IDVT cannot be carried out?
- Carry out a manual check?
- Insist B get a passport?



Tips and tricks for preventing illegal working

- Follow the Code of practice on preventing illegal working: Right to Work Scheme for employers
- Carry out checks promptly and thoroughly, and retain evidence of doing so
- Use digital services where possible to increase security
- Ensure records are up to date and rechecked where right to work is time limited
- Right to work checks transfer under TUPE but recommended to do them anyway



Scenario: What if an employee's right to work expires?

- Organisation C employees D. D's right to work in the UK is time limited and is due to expire soon. What does C need to do?
- Wait for D to let them know what's happening?
- Be proactive and talk to D about renewing the right to work so that they can apply in good time?



Scenario: Are checks needed following a TUPE transfer?

- Organisation E brings back in house a service provided by organisation F. Employees transfer as a result under TUPE. Does E need to do right to work checks on all those who transferred?
- No, they can trust F to have done them
- Yes, to gain the statutory excuse E has to do these checks
- It's recommended, in case F failed to perform the proper checks



Reform of right to work checks

- The Home Office plans to extend right to work checks to gig economy employers, including those using third party platforms and subcontractors
- Will apply regardless of type of contract or working pattern and to anyone working in the name of the business
- Formal consultation to take place
- No date yet for implementation

White Paper on immigration reform

- Changes from 22 July 2025
- Carer and Senior Care Worker Visa route closed
- Skilled Worker Visa now (largely) limited to roles requiring degree level skills
- Transition period for those already on these visas or who were in the process of applying
- Sectors recruiting foreign workers to have workforce strategies to improve domestic skills and talent

Legal consequences of failing to check right to work

- Immigration, Asylum and Nationality Act 2006 duty to prevent illegal working

Penalties for failing in this duty:

- Fines up to £45,000 per illegal worker, up to £60,000 for repeat offenders
- Criminal offence
- Disqualification as a company director
- Seizure of earnings
- Loss of the ability to sponsor migrants



Right to work check audits

- Can be conducted without warning by the Government
- Will be asked to produce right to work evidence at short / no notice
- If cannot be retrieved there could be consequences
- Must ensure relevant employees are training in performing right to work checks and maintaining the evidence, to carry out checks properly and should an audit be held



Summary

- Employers have a legal duty to carry out right to work checks for everyone that they employ
- Where checks are completed properly, the employer will have a statutory excuse should it be found that a worker without the right to work in the UK has been employed
- Failing to fulfil this legal duty can lead to criminal prosecution, reputation damage and expensive fines
- Where possible, the government recommends that employers use digital and online checks, however it's important to maintain the ability to conduct manual checks where digital or online checks are not an option
- Your organisation may be impacted by the changes in immigration law it's important to act if this is the case

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