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Legal Working in the UK

In line with the Immigration, Asylum and Nationality Act 2006, it is a criminal offence to employ anyone who does not have an entitlement to work in the UK, or undertake the type of work you are offering. Any employer who does not comply with the law may face a fine of up to £20,000 per offence. Further, if employers knowingly use illegal migrant labour it could carry a maximum five year prison sentence and/or an unlimited fine.

In addition, since December 2016, section 38 of the Immigration Act 2016 allows immigration officers to close a business for up to 48 hours if there is a reasonable suspicion that they employ foreign workers illegally and they have previously committed specific offences of illegal working. The closure notice might then be cancelled or an illegal working compliance order could be sought, one result of which could be closure of the premises for up to 12 months.

Here we provide an overview of the documentation required to ensure that your business does not fall foul of the law.

The rules

The increasing trend of illegal immigrants entering the UK has led to a rise in forged documentation, as well as grounds for certain employers to take advantage of cheap labour.

To combat this, the Home Office reviewed the law in this area and regulations were introduced on 1 May 2004.

Documentation requirements

An employer must obtain and retain a certified copy of any one or combination of the original documents included in List A or List B (Group 1 and 2). Those validated from List A will require no further checks, however, documents provided from List B must be followed up when the document or notice expires.

List A

- an ID Card or British passport identifying the holder is a British citizen; or
- an ID Card or European Economic Area (EEA) national passport or national identity card identifying the holder as a national of the EEA or Switzerland; or

- a registration certificate or document certifying permanent residence issued by the Home Office to a national of an EEA country or Switzerland; or
- a permanent residence card issued by the Home Office or Border and Immigration Agency to a family member of a national of a EEA country or Switzerland; or
- a current Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office indicating their right to stay indefinitely in the UK or has no time limit on their stay; or
- a current passport endorsed to show the holder is exempt from immigration control, is allowed to stay indefinitely in the UK or has no time limit on their stay.

Or a combination of the following:

An official document giving the person's permanent national insurance number and name, plus:

- a current immigration status document issued by the Home Office with an endorsement indicating that the person named in it can stay indefinitely in the UK, or has no time limit on their stay; or
- a full UK birth certificate or a birth certificate issued in the Channel Islands, the Isle of Man, or Ireland; or
- a full adoption certificate issued in the UK which includes the name(s) of at least one of the holder's adoptive parents; or
- an adoption certificate issued in the Channel Islands, the Isle of Man, or Ireland; or
- a certificate of registration or naturalisation stating that the holder is a British citizen.

List B Group 1

- a current passport endorsed to show that the holder is able to stay in the UK and is allowed to do the work in question provided it does not require the issue of a work permit; or
- a current Biometric Immigration Document issued by the Home Office which indicates that the holder is able to stay in the UK and is allowed to do the work in question; or
- a current residence card (including an Accession Residence Card or a Derivative Residence Card) issued by the Home Office to a family member of a national of a EEA country or Switzerland; or

- a current Immigration Status Document issued by the Home Office with an endorsement indicating that the person named in it can stay in the UK and this allows them to do the type of work you are offering when produced in combination with an official document, giving the person's permanent national insurance number and name issued by a Government agency or previous employer.

List B Group 2

- A Certificate of Application issued by the Home Office to a family member of a national of an EEA country or Switzerland stating that the holder is permitted to take employment which is less than 6 months old, when produced in combination with a Positive Verification Notice from the Home Office Employer Checking Service; or
- An Application Registration Card issued by the Home Office stating that the holder is permitted to take employment, when produced in combination with a Positive Verification Notice from the Home Office Employer Checking Service; or
- A Positive Verification Notice issued by the Home Office Employer Checking Service to the employer or prospective employer, which indicates that the named person may stay in the UK and is permitted to do the work in question.

The points-based system

The Government has introduced a merit-based points system for assessing non-EEA nationals wishing to work in the UK. The system consists of five tiers, each requiring different points. Points will be awarded to reflect the migrant's ability, experience, age and, when appropriate, the level of need within the sector the migrant will be working.

The five points-based system tiers consist of:

- **tier 1** - highly-valued skilled workers with exceptional talent, for whom no job offer or sponsoring employer is required (for example, doctors, scientists and engineers);
- **tier 2** - skilled individuals with a proven English language ability who have a job offer to fill gaps in the UK labour force (for example, nurses, teachers and engineers);
- **tier 3 (currently suspended)** - low skilled workers filling specific temporary labour shortages (for example, construction workers for a particular project);
- **tier 4** - students;
- **tier 5** - youth mobility and temporary workers (for example, musicians coming to play in a concert).

Sponsorship

Under tier 2, the employer sponsors the individual, who makes a single application at the British Embassy in his or her home country for permission to come to the UK and take up the particular post. The individual's passport will

be endorsed to show that the holder is allowed to stay in the UK (for a limited period) and is allowed to do the type of work in question.

UK based employers wishing to recruit a migrant under tiers 2 or 5: Temporary Workers will have to apply for a sponsor licence. To gain and retain licences, employers are required to comply with a number of duties, such as appointing individuals to certain defined positions of responsibility, having effective HR systems in place, keeping proper records and informing the UK Visas and Immigration (UKVI) if a foreign national fails to turn up for work.

There is a charge of £1,476 (£536 for charities and for employers with no more than 50 employees) for a licence to sponsor tier 2 migrants. This fee buys a four-year licence.

Once an employer has obtained its sponsorship licence, it can access an online system operated by the UKVI through which it can issue its own certificates of sponsorship to potential migrant workers. The UKVI determines the number of certificates to be allocated to a particular employer. Each certificate of sponsorship takes the form of a unique reference number to be provided by the employer to its potential recruit, who will then be able to apply for entry clearance into the UK at the British Embassy in his or her home country.

The fee for each application for a certificate of sponsorship for a tier 2 worker is £199. Certificates are free for citizens of Croatia, Macedonia and Turkey.

Skilled migrant workers who apply to settle in the UK from April 2016 under the tier 2 general and sportsperson categories of the points-based system are required to earn at least £35,000 (or the appropriate amount for their job, if higher). Employers that do not hold a licence cannot recruit non-EEA workers.

From April 2017 there is an additional immigration skills charge of £1,000 per tier 2 worker per year, or £364 for small businesses and charities.

Identity cards

Identity cards for foreign nationals are currently issued to some categories of foreign nationals from outside the EEA and Switzerland. Other immigration applicants continue to receive a sticker (vignette) in their passport.

With effect from 1st January 2014, EEA nationals from Bulgaria and Romania who wish to work in the UK no longer need an accession worker card or registration certificate.

Since July 2013, EEA nationals from Croatia were able to move and reside freely in any EU State. However, the UK is applying transitional restrictions and as such, Croatians wishing to work in the UK will need to obtain an accession worker authorisation document (permit to work). Before starting employment, employers will need to make document checks to confirm if the Croatian has unrestricted access to the UK labour market as they are exempt from work accession or they hold a valid work authorisation document allowing them to carry out the type of work in question.

If you are licensed to sponsor skilled workers or students from outside the EEA or Switzerland under the points-based system, you can use a migrant's identity card - which provides evidence of the holder's nationality, identity and status in the UK - to check their right to work or study here.

Checking procedures

The following checks must also be carried out to ensure that each document also relates to the prospective employee in question:

- ensure that any photograph and date of birth is consistent with the appearance of the individual
- if more than one document is produced, ensure that the names on each are identical. Otherwise further explanation and proof will be necessary (for example, a marriage certificate)
- check expiry dates. Follow-up checks must be conducted on the expiry date. When a Certificate of Application or an Application Registration Card is presented as evidence as right to work, or the employee has no acceptable documents because they have an outstanding application to the Home Office or appeal against an immigration decision, the follow-up verification check is required six months after the date of the initial check
- carry out ongoing checks on individuals who joined on or after 29 February 2008 and who have been granted only limited leave to remain and work in the UK

- take copies of original documents only - sign and date to certify
- before employing an individual who requires a tier 2 visa, be prepared to demonstrate that a recruitment search has been carried out according to the requirements under tier 2 of the points-based system
- where a recruitment agency is used to recruit an overseas national, ask the agency to prove that it has carried out all the necessary checks on the individual to ensure that he or she has the right to work in the UK.

To ensure that there is no discrimination, it is recommended that all potential employees are asked to produce original documents indicating they have the right to work in the UK.

If you have any doubts as to whether documents are genuine or sufficient to prove an employee's entitlement to work in the UK you are encouraged to access the Employer Checking Service, which is provided through the Home Office's Employers' Helpline: 0300 1234 699, or online service www.gov.uk/employee-immigration-employment-status.

How we can help

We will be more than happy to provide you with assistance or any additional information required. Please do not hesitate to contact us.