Phipps Henson McAllister
CHARTERED ACCOUNTANTS

22-24 Harborough Road, Northampton NN2 7AZ **tel:** 01604 718866 **fax:** 01604 716880 **email:** info@phm-accountants.co.uk

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

Right to work checks have been temporarily adjusted due to coronavirus (COVID-19). This is to make it easier for employers to carry them out.

As of 30 March 2020 the following temporary changes have been made:

- checks can now be carried out over video calls
- job applicants and existing workers can send scanned documents or a photo of documents for checks using email or a mobile app, rather than sending originals
- employers should use the Employer Checking Service if a prospective or existing employee cannot provide any of the accepted documents

Checks continue to be necessary and you must continue to check the prescribed documents of any one or combination of the original documents included in List A or List B (Group 1 and 2). It remains an offence to knowingly employ anyone who does not have the right to work in the UK.

Because of COVID-19, some individuals may be unable to evidence their right to work. During this period, you must take extra care to ensure no-one is discriminated against as a job applicant or employee because they are unable to show you their documents.

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 six 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; from outside the EEA, who wish to study in the UK.
- **tier 5** - Contains six sub-tiers including: youth mobility and temporary workers (for example, musicians coming to play in a concert).

Sponsorship

You will usually need a sponsor licence to employ someone to work for you from outside the UK. This includes citizens of the EU, Iceland, Liechtenstein, Norway and Switzerland who arrived in the UK after 31 December 2020.

This includes unpaid work, like running a charity.

You will not need a licence to sponsor certain groups, for example:

- Irish citizens
- those with settled or pre-settled status under the EU Settlement Scheme
- those with indefinite leave to remain in the UK.

Types of licence

The licence you need depends on whether the workers you want to fill your jobs are:

- 'Workers' - for those with long-term job offers
- 'Temporary workers'

You can apply for a licence covering one or both types of worker.

Worker licence

A 'Worker' licence will let you employ people long-term or permanently. It is split into:

- Skilled Worker - the role must meet the job suitability requirements
- Intra-company visas - this includes Intra-company Transfer and Intra-company Graduate Trainee, for multinational companies which need to transfer established employees or graduate trainees to the UK
- Minister of Religion - for people coming to work for a religious organisation

- Sportsperson - for elite sportspeople and coaches who will be based in the UK.

Temporary Worker licence

A 'Temporary Worker' licence will let you employ people on a temporary basis. It's split into:

- Creative or Sporting Worker - to work as a high-level sportsperson (up to one year), entertainer or artist (up to two years)
- Charity Worker - for unpaid workers at a charity (up to one year)
- Religious Worker - for those working in a religious order or organisation (two years)
- Government Authorised Exchange Worker - work experience (one year), research projects or training, for example practical medical or scientific training (two years) to enable a short-term exchange of knowledge
- International Agreement Worker - where the worker is coming to do a job which is covered by international law, for example employees of overseas governments
- Seasonal Worker - for those coming to the UK for up to six months to do farm work.

Fees for sponsorship (licences and certificates) will continue to apply in the same way as they do now. Fees for a sponsor licence depends on the size of the company and the route they apply under. For example, under the Skilled Worker route, for small and charitable organisations the fee is £536; for medium or large business the fee is £1,476.

Employers who sponsor non-EU migrant workers under Tier 2 (General) and (IntraCompany Transfer) will be required, as now, to pay the Immigration Skills Charge (ISC), unless a specific exemption applies. Employers must pay £1,000 per skilled worker for the first 12 months, with an additional £500 charge for each subsequent six-month period. Under the Points-Based System the ISC is applied to sponsoring employers in respect of both EU and non-EU migrant workers. Discounted rates of £364 per sponsored worker per year will apply as they do now to charities and Small and Medium Enterprises.

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.

The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 ended free movement between the EU and the UK on 31 December 2020 (11pm). This means that EEA and Swiss nationals (and their families) arriving in the UK from 1 January 2021 onwards will do so under UK immigration laws and not under EU free movement. There is a grace period of six months which began immediately after the end of the transition on 31 December 2020 and will end with the EU Settlement Scheme (EUSS) application deadline of 30 June 2021. Right to work checks for EEA nationals will not change until after 30 June 2021. Until then, EEA nationals can use their passport or national identity card to evidence their right to work.

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.

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