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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 be facing a fine of up to £10,000 per offence. Further, if employers knowingly use illegal migrant labour it could carry a maximum 2 year prison sentence and/or unlimited fine.

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 now obtain and retain a certified copy of either one of the original documents included in List 1 or two original documents in List 2 using either 'Combination One' or 'Combination Two'.

- List 1
 - a UK passport
 - an EEA national passport or national identity card
 - UK residence permit
 - an application registration card issued by the Home Office to an asylum seeker stating that the holder is permitted to take employment.

- List 2

Combination One

- A document giving the person's permanent national insurance number and name, plus:
- Original birth certificate or
- A certificate of registration or naturalisation stating that the holder is a British citizen or
 - a letter issued by the Home Office which indicates that the person named in it can stay indefinitely in the UK or has no time limit on their stay or
 - an 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 letter issued by the Home Office which indicates that the person named in it can stay in the UK and this allows them to do the type of work you are offering or
 - an 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.

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Combination Two

- a work permit or other approval to take employment that has been issued by Work Permits UK plus:
- a passport or other travel document endorsed to show that the holder is able to stay in the UK and can take the work permit employment in question or
- a letter issued by the Home Office confirming that the person named in it is able to stay in the UK and can take the work permit employment in question.

The points-based system

The Government has introduced a merit-based points system for assessing non-European Economic Area (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 skilled workers, for whom no job offer or sponsoring employer is required, for example doctors, scientists and engineers;
- Tier 2: skilled individuals with 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 - 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 to 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 Border Agency if a foreign national fails to turn up for work.

There is a charge of £1,000 (£300 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 UK Border Agency through which it can issue its own certificates of sponsorship to potential migrant workers. The UK Border Agency 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 £170.

Employers that do not hold a licence cannot recruit non-EEA workers.

Identity cards

Identity cards for all foreign nationals from outside the European Economic Area (EEA) and Switzerland will be phased in over the next three years, these will replace the vignettes (or stickers) previously placed in passports.

Checking procedures

The following checks must also be taken 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
- 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 Border and Immigration Agency's Employers' Helpline – 0845 010 6677 or at www.employingmigrantworkers.org.uk.

How we can help

We will be more than happy to provide you with assistance or any additional information required.

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