Ruth Seddon HR

Employment Law Update

2nd July 2021

Right To Work in the UK from 1st July 2021

CHANGES FOR EU WORKERS

EEA and Swiss Nationals who entered the country before 31st December 2020 had until 30th June 2021 to register under the EU settlement scheme. Any EU or Swiss nationals who entered the country between 1st January and 30th June 2021 may not be entitled to work but as long as they started work before 30th June the employer is not obliged to ask for proof other than apply the rules in place at that time, which for most workers will be an EU passport.

There is no obligation to carry out retrospective checks on EEA and Swiss nationals employed on or before 30th June 2021, as long as the initial check was done in line with the legislation in place at the time.

From 1st July 2021 the rules have changed for any new employees; EU workers will no longer be able to rely on their passport but will have to prove their status as settled or pre-settled, or alternatively work under a sponsor licence (see below). Irish workers are exempt from the new rules and simply have to show a passport.

SPONSOR LICENCE FOR NON-UK WORKERS

If you want to employ a non-UK national after 1st July 2021, you will need a sponsor licence. This does not apply to Irish citizens, anyone with settled (5 years' continuous residence in the UK) or pre-settled status (less then 5 years' continuous residence in the UK) or those with indefinite leave to remain.

This is a points-based immigration system and employees must have a minimum of 70 points to qualify for a right to work.

You should check the government website:
www.gov.uk/uk-visa-sponsorship-employers

You will need to ensure you have some basic HR systems in place to:
· monitor your employees' immigration status
· keep copies of relevant documents for each employee, including passport and right to work information
· track and record employees' attendance
· keep employee contact details up to date
· report if there is a problem, for example if your employee stops coming to work

REMINDER OF RULES ON PROOF OF RIGHT TO WORK

All employers have an obligation to prevent illegal working and you should carry out a right to work check on all employees before they do any work for you. If they have a temporary right to work you must check them again before their right to work is due to expire.

Getting it wrong can result in a criminal conviction with an unlimited fine and prison sentence of up to 5 years if you knowingly employ an illegal worker or had reason to believe they were not entitled to work. If you unknowingly employ someone not entitled to work, it is a civil offence and can result in a fine (up to £20,000 per worker), but if you have checked the employee's status before they start work, it is a valid defence in court.

In checking documents you should:
1. Ensure the employee gives you original documents (this rule is currently relaxed due to Covid to end August but I still recommend you check it in person if you can)
2. Check them in their presence
3. Take a copy/scan and record the date of the check

Many foreign workers will now give you a check code; you will need this and the employee's date of birth and you can check their status online at the following address:
https://www.gov.uk/view-right-to-work

If you use the online checking service, you should check the photo on the website is the person in front of you and download a copy of the check, following the instructions (their permit may have an expiry date so you need to recheck later or they may have permanent right to work for example).

VALID DOCUMENTS

Any one of the documents listed below will provide the necessary evidence of the right to work in the UK. The document provided must be the original.

- A passport showing that the holder is a British or Irish citizen or has the right of abode in the United Kingdom.
- A passport or other document endorsed to show that the holder can stay indefinitely in the United Kingdom or has no time limit on their stay.
- A passport or other travel document endorsed to show that the holder can stay in the United Kingdom; and that this endorsement allows the holder to do the type of work the employer is offering if they do not have a work permit.
- An Application Registration Card issued by the Home Office to an asylum seeker stating that the holder is permitted to take employment.

If the employee does not have a passport, the most common proof of right to work is a full (not short) birth certificate plus a document giving their National Insurance number and name. This could be a: P45, P60, National Insurance card, or a letter from a Government agency

A Reminder

This is general guidance only; if there is any doubt about a person's status, query it with UKVI (UK Visas and Immigration and do not let them start work.

Any questions, do get in touch!



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