

Employment & HR



Employment checks on new employees

Introduction

Employers have had responsibility for some years for checking the right of a person to work in the UK. With the recent expansion of the EU and other related issues of asylum seekers these rules have been tightened.

Your responsibilities

If you employ someone who does not have the right to do so you are liable to be convicted of a criminal offence and a fine of up to £5000. The onus is on you, as the employer, to show that you took all necessary steps to check eligibility and to produce evidence of having seen the necessary documents. You are not required by law to make any checks but if you don't you won't have any defence against a charge. Better to make the check at the time of appointment.

The check

You should ask all new employees to produce appropriate evidence of their right to work before they commence employment. Getting the evidence after they have started may not be sufficient.

You will cover yourself if you check and copy appropriate originating documents. Attached is a schedule that sets out the necessary documents to check. You have to have one document from List 1, or two documents in the right combination from List 2.

List 1 will normally cover people born in the UK and others from the EEC who have rights to work anywhere within the European community. A passport is the most obvious proof from this list, but there are others.

List 2 is more complex and requires two documents. There are two sub lists and you must have both documents from the same sub list; mixing and matching will not suffice. In each sub list you must have the first document, with any other document to validate it.

Discrimination

A further angle is that of discrimination. You should apply the checking process to all applicants even-handedly, asking for the same information from all applicants and employees irrespective of their apparent race or ethnic origin. Asking for proof, for example, only from people who look to be of middle eastern or Asian origin could lead to a valid claim of discrimination. If compensation is then awarded there is no upper limit.

List 1

Any one document from this list will provide the defence

- Passport of a British citizen or right of abode in the UK.
- National passport or identity card of a country in EEC or Switzerland
- Resident permit issued by the Home Office for person in EEC or Switzerland
- Passport or other document issued by the Home Office with endorsement as the family member of a national from EEC or Switzerland
- Passport or other travel document endorsed to show right of stay in the UK
- Passport or other travel document endorsed to show the holder is allowed to do the type of work you are offering if they do not have a work permit
- Application Registration Card issued by the Home Office to an asylum seeker confirming their right to take employment.

List 2

Documents which provide the defence if produced in combination You must secure both documents from the same combination. One document from each combination will not be accepted.

Combination 1

- A document giving the NI Number, and one of the following:
- Birth certificate issued in the UK including parent's name
- Birth certificate issued in Channel Islands, Isle of Man, or Ireland
- Certificate of registration of naturalisation stating that a British citizen
- Letter issued by Home Office stating person can stay in UK indefinitely
- Immigration Status Document issued by Home Office with an endorsement to indicate person can stay indefinitely in UK,
- Letter form Home Office indicating a right to stay in UK and allowing them to do type of job you are offering
- Immigration Status Document issued by Home Office with an endorsement to indicate person can stay in UK and allowed to do type of job offered.

Combination 2

- Work Permit or other approval for employment issued by Work Permits UK
- and**
- Passport or other document showing right to stay in UK and can take the work permit employment in question, or
 - Letter from Home Office confirming right to stay and can take the work permit employment in question.