

## Employee right to work checks – follow the steps or pay the price

All UK employers, no matter how large or small and no matter what sector they operate in, must check that their employees have permission to work in the UK before they start work. With immigration issues so high on the agenda following last year's referendum and looking ahead to Brexit, compliance in this area has never been so critical for charities and not-for-profit employers.

Employers that are unable to produce acceptable evidence of carrying out right to work checks may be fined up to £20,000 per illegal worker. In the 3 month period from July to September last year (2016), the Home Office issued fines of over £10 million, with over half served on employers in London and South East England. Unpaid fines will be referred to the Insolvency Service which may result in company directors being disqualified for failing to comply with their statutory obligations.

Since 12 July 2016, employers found guilty of employing someone who they knew or had reasonable cause to believe did not have the right to work in the UK can face an unlimited fine and a custodial sentence of up to 5 years.

Stories about illegal working may well be picked up by the media with potentially serious reputational consequences for organisations operating in the third sector. Charity trustees may also need to report actual or suspected serious incidents relating to illegal working to the Charity Commission.

### Who to check

Right to work checks must be carried out on all employees (including workers and apprentices), whether or not they have written contracts. Genuinely self-employed contractors do not need to provide evidence of their right to work in the UK and it is the employment agency that is responsible for carrying out checks on agency workers.

### When to check

Right to work documents must be checked before an employee starts work. In order to balance the requirement to check an individual's right to work against the duty not to discriminate in the recruitment process, employers should wait until offer stage to request information about a candidate's permission to work in the UK.

If a person's permission to work in the UK is time-limited, for example because they are the family member of an EEA national with a Residence Card, employers must do a follow-up check when the document evidencing their permission to work expires.

### How to check

- Step 1 - obtain original acceptable documents such as a passport, visa, biometric residence permit or other immigration status document.
- Step 2 - check the documents are genuine and not tampered with, any expiry dates have not lapsed, the photo and dates are consistent with the employee and whether there are any restrictions on the work they can do.

- Step 3 - take a clear copy of each document and record the date on which the check was conducted. Retain this evidence for the duration of the person's employment and for a further 2 years after they leave.

The [gov.uk website](https://www.gov.uk) has information about the types of documents that are acceptable for checking an employee's right to work and how long the check is valid.

### **Statutory excuse to illegal working**

Employers that follow these steps for every employee will have a statutory excuse to illegal working. This means that even if it transpires that an employee has been working illegally (for example, using a forged document) the employer will be held blameless and will escape a penalty.

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