



The HR professional's best friend

Weekly article

## Illegal workers are double trouble!

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The Government has released details on the tougher measures it is proposing to prevent illegal working in the UK, including doubling the current maximum fine. Non-compliance with the laws on recruitment is always a costly mistake, but ignore these rules and you could also face imprisonment! If you want your organisation to be excused from paying a penalty you will need to make pre-employment checks mandatory.

The Border and Immigration Agency (BIA) has recently published the draft statutory Code of Practice setting out the proposed penalties for offences under the Immigration, Asylum and Nationality Act 2006 and specifying what employers should do to avoid liability. Corresponding pieces of legislation, namely the Immigration (Employment of Adults Subject to Immigration Control) (Maximum Penalty) Order 2007 and the Immigration (Restrictions on Employment) Order 2007, have also been laid before Parliament and are expected to come into force on 29 February 2008 to replace the current offences and defences under the Asylum and Immigration Act 1996.

Under these new measures employers who are found to be employing one or more illegal migrant workers face a fine of up to £10,000 per worker. The actual amount of the fine levied will be determined on a case by case basis and the Code sets out a sliding scale of minimum and maximum amounts taking into account:

- any previous offences committed in the last 3 years;
- whether or not the employer has reported any suspected illegal workers; and
- the extent to which the employer has cooperated with the detection and detention of the illegal worker(s)

No penalty will be imposed where the employer can demonstrate that before taking up employment, the employee provided them with certain documents confirming their eligibility to work in the UK and that it had taken reasonable steps to check the validity of the documents provided. To escape liability employers must comply with the requirements in full but consideration will be given to reducing any fine where the employer has only partially satisfied the requirements.

To comply, the employee must produce a single document, or a combination of documents which confirm their eligibility. For example, this can be a passport showing that the employee is a British citizen or a national of the European Economic Area or a letter issued by the BIA indicating that the person is allowed to take up the employment together with an official document confirming their name and National Insurance Number. The documents which are acceptable are described in List A and List B and are set out in the Code's appendix. You can view a copy [by clicking here](#).

In addition the employer must:

- take reasonable steps to check the validity of the documents;
- keep copies of the documents for at least two years after the employment terminates;
- satisfy itself that any photographs in the documents are of the employee;
- satisfy itself that the employee's appearance is consistent with any date of birth in the documents;
- take all reasonable steps to check that the employee is the rightful owner of the documents;
- copy the following specified pages of any passport or other travel document in a format that cannot be subsequently altered:
  - the document's front cover;
  - any page which contains the holder's personal details, photograph, date of birth and/or signature;
  - any biometric details;
  - the date of expiry;
  - any relevant UK immigration endorsements.
- For all other documents, a copy of the whole document must be taken in a format which cannot be subsequently altered.

If the employee produces documents showing a different name, the employer is expected to verify the change in the name and should ask them to produce an additional document to confirm the genuine validity of the documents, such as a marriage certificate, a divorce decree or a deed poll document. A copy of which should also be retained.

The checks must be carried out **before** the worker takes up employment and on the employees first day at the very latest. The only exception is where employees have been transferred under TUPE. A new employer has a period of 28 days from the date of transfer in which to confirm the eligibility of the transferred employees and copy any necessary documents in order to rely on the defence.

Employers will therefore need to keep accurate records of the dates these checks were made. In many cases, it will only be necessary to do complete the check once for this to remain valid for the duration of the employment. However, if the employee has produced documents from List B, the employer will only be excused from paying a penalty for a year after the check was made and must carry out follow up checks at least once every 12 months to be able to continue to rely on the statutory defence.

Employers will not be able to seek reliance on the statutory defence by copying documents which they know to be false and may even face a penalty if any documents thought to be genuine subsequently turn out to be false, where the falsity is reasonably apparent and should have been noticed by the employer.

Employers, who knowingly employ an illegal worker, will be committing a criminal offence and will be liable for an unlimited fine and/or a prison sentence of up to two years.

It may seem like a lot of trouble for nothing when all your prospective employees turn out to be legitimate. However, last year the BIA carried out over 5,200 illegal working operations and removed more than 22,000 people from the UK. So in this case, taking the precautions is better than risking a conviction!

