

Home Office to modernise right to work checks

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'The Immigration (Restrictions of Employment) (Code of Practice and Miscellaneous Amendments) Order 2018' and a revised Draft Code of Practice on Preventing Illegal Working were laid before Parliament at the end of last year and provide that, from 28 January 2019, employers will be able to solely rely on the online Right to Work Checking Service to demonstrate compliance with illegal working legislation, where a prospective employee has an immigration status that can be checked using the service. The service is voluntary for employers and they can therefore still ask employees to produce the necessary hard copy documents.

From 28 January 2019 employers will be able to use the online service to demonstrate they have conducted the necessary right to work checks and will be excused from a civil penalty providing:

- the online check confirms the employee has the right to work in the UK and perform the work in question
- the employer is satisfied that any photograph on the online checking service is of the employee concerned
- a copy of the check is retained for at least two years after the employment ends
- where the employee is a student, the employer obtains and retains details of the term and vacation dates of the employee.

Non-EEA nationals with a Biometric Residence Permit or Biometric Residence Card, and EEA nationals granted settlement under the EU Settlement Scheme will also be able to use the online checking service. However, EEA nationals who haven't obtained settled status/pre-settled status under the EU Settlement Scheme will still have to provide the necessary hard copy documents to demonstrate their right to work.

In order to make it easier for British citizens who do not hold a passport to demonstrate their right to work, the Order also provides that employers will be able to accept short-form birth and adoption certificates together with a National Insurance number when undertaking right to work checks.

This is good news for employers as it is likely to simplify right to work checks and reduce the risk of fraudulent documents and therefore civil/criminal penalties in the event of illegal working within the organisation.

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