



# BUSINESS IMMIGRATION HUB

## An Overview: Right to work(RTW) Checks & Increased Home Office Enforcement

In December 2022, the UK government renewed its focus on tackling illegal working. Prime Minister Rishi Sunak confirmed a five-step plan for tackling illegal migration, including putting more resources in place to enable immigration officers to refocus on enforcement action and increase raids on illegal working by 50%.

The Prime Minister's announcement has been reflected in Home Office activity, with a significant increase in illegal working raids taking place since the start of 2023. In the face of increased scrutiny and enforcement action, it is therefore vital that organisations are doing all they can to ensure that all their staff have the appropriate RTW.

### Q What obligations do employers have in relation to RTW checks?

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- All employers in the UK have a responsibility to prevent illegal working. Employers can do this by carrying out prescribed RTW checks on all individuals before they commence work, to ensure they are not disqualified from carrying out the work in question by reason of their immigration status.

### Q Why is it important to carry out checks correctly?

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- If an employee does not have the RTE in their role they're in, their employer could be subject to enforcement action.
- In most routine cases, civil penalties will apply with a maximum fine of £20,000 per illegal worker. The employer will have a statutory defence to a civil penalty if it has carried out a compliant RTW check.
- Criminal penalties of up to 5 years' imprisonment and/or unlimited fines can apply where the employer knew or had reasonable cause to believe that an individual was employed without the legal RTW. These are reserved for the most serious of cases only.
- Penalties for illegal working also carry the risk of reputational damage; the government publishes quarterly reports naming employers who have been issued with a civil penalty, meaning this information is publically available.
- Receiving a civil penalty can also lead to any sponsor licence held by the company being downgraded or

revoked. This can have a serious impact on resourcing if the company is sponsoring workers, whose leave may be curtailed. If a company doesn't hold a sponsor licence, a civil penalty will render it ineligible to apply for one for a 12 month period, which can again adversely impact recruitment and resourcing.

### Q What should employers be doing?

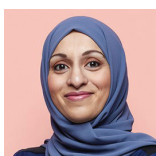
A

- A good strategy is to implement an up-to-date RTW policy and apply it to all new recruits.
- A compliant check will involve four key steps:
  - › Step 1: ensure that you obtain acceptable evidence (e.g. an original document or online check).
  - › Step 2: check that the document confirms the individual has the appropriate RTW, and that it belongs to the person presenting themselves.
  - › Step 3: retain a clear copy of the check, with a record of the date the check took place. Copies should be retained throughout the individual's employment and for two years afterwards.
  - › Step 4: If any individual has a time-limited RTW, carry out a further check, before the expiry of their current leave.

### Q What can employers do if they are concerned about historic checks?

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- Where robust practices have not been followed, conducting an audit of historic compliance is also vital so that any potential issues can be identified and appropriately dealt with.
- Carrying out a retrospective RTW checks will not afford the company a statutory defense excuse against civil penalties.
- If retrospective checks and identify an existing employee who is not able to provide evidence of their RTW, or an employee whose RTW is no longer valid, appropriate action should be taken following bespoke legal advice to mitigate the immigration law risks and the risks of employment law claims.
- Retrospective checks must be carried out in a non-discriminatory manner.
  - › Discriminate when conducting RTW checks;
  - › only check the status of those who appear to the employer likely to be migrants; or
  - › make assumptions about a person's RTW in the UK.
- Evidence of RTW for employees whose employment commenced pre-Feb 2008 is not required.



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