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## New Laws on Illegal Workers



The Immigration Bill was passed recently, bringing in new laws on dealing with illegal workers in the UK under the Immigration Act 2016. Here, we take a look at what this means for employers.

### Illegal Working

There have been several pieces of legislation over the years which focus on preventing illegal working in the UK. Illegal workers are those who are subject to immigration control but do not have clearance to work in the UK.

The rules on clearance are dictated by the nationality of the worker in question and they are generally divided into 2 categories: those from a country in the European Economic Area (EEA) and those who are not from the EEA. Workers from the EEA e.g. Spain, France, Italy, Poland etc are free to work in the UK with no restrictions. Those from outside the EEA generally need to meet certain criteria and be sponsored by a licensed employer.

Employers must check the eligibility of ALL prospective employees, regardless of their national origin. There is a statutory list of documents which can be accepted as valid evidence of eligibility and employers must carry out checks on the documents provided to obtain the 'statutory excuse'. This excuse basically means that the employer will not be prosecuted for employing people who are turn out to be illegal, because they did everything that was expected of them to ascertain their eligibility.

### What Does The Immigration Act 2016 Do?

The Act will make it an offence for employers to employ someone whom they know, or have reasonable cause to believe, is an illegal worker. The maximum custodial sentence on indictment will increase from 2 to 5 years.

A new power will be introduced enabling enforcement officers to close down a workplace where the employer has employed illegal workers and continues to flout the law. The maximum closure

period will be 48 hours, however, an employer can be put under special compliance requirements which could include an extended period of closure and the requirement to conduct 'right to work' checks.

Whilst all employers are covered by the new law, there are some industry specific changes. Where employers are required to hold a licence to sell alcohol or late night refreshments, the continued validity of the licence may be subject to compliance with immigration laws, including employing illegal workers.

Additionally, some self-employed taxi and private hire drivers will be brought within the checking scheme for the first time; their self-employed status has previously meant that their 'employer' was not under the same obligation to check their immigration status as with their employees.

### What does this mean for me?

Employers should ensure that they continue to make 'right to work' checks on all prospective employees, making sure that the documents produced are included in the list of acceptable evidence. Whilst employers are not expected to be immigration experts, reasonable attempts at ascertaining the validity of the document is expected e.g. questioning any apparent misnomers such as obvious differences in appearance or age of the individual in question on their documents compared with their real life appearance.

*The content of this briefing is correct at the time of publishing.*

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