

In the Know....

Tougher rules on illegal workers come into effect



Parts of the Immigration Act 2016 will come into force shortly, strengthening the Government's ability to punish employers who break the law on the prevention of illegal working. Here, we take a look at what they are.

Various pieces of legislation have shaped and re-shaped the area of preventing illegal working in the UK. Employees must be able to evidence their eligibility to work in the UK by presenting to their prospective employer one or more documents from a prescribed list; in some cases one check is enough, in other cases employers may have to carry out further checks during the lifetime of employment. Long standing legislation provides that employers can be fined up to £20,000 per illegal worker they are found to be employing.

The Immigration Act 2016

The most recent development in the area of preventing illegal working came in the Immigration Act 2016, the provisions of which are to be brought into effect at different stages. It deals predominantly with the enforcement of current rules i.e. how the Government penalises employers for failing to follow the rules, rather than amending the checking systems that employers should carry out on all prospective employees.

Important 2016 Act provisions already in effect

The Act changed the test that a Court has to apply to an employer's knowledge of a worker's ineligibility to work in the UK. Previously, an employer was liable to proceedings if he knowingly employed an illegal worker, however, proving that the employer "knew" was difficult. Now, the test is whether the employer "had reasonable cause to know" that someone was not eligible.

More new laws

On 21st November 2016, the public sector language requirement will be brought into effect. This requires all customer facing public sector staff to speak fluent English or Welsh to an appropriate standard for that role. It applies to new and existing members of staff, agency workers, apprentices, fixed term employees where the role is customer facing.

On 1st December 2016, several parts of the Act are brought into force which cover various different areas of law, including residential tenancies etc. Those with an impact on employment are:

Illegal Working Closure Notices

A Chief Immigration Officer will have the power to issue an employer with a closure notice that will prevent access to its premises for the purpose of paid or voluntary work if the Officer reasonably suspects that the employer is illegally employing foreign workers and has been convicted of an offence under the law on illegal working. The maximum close down period will be 48 hours;

Illegal Working Compliance Orders

When an illegal working closure notice is issued, the officer must make an application to the Court for an Illegal Working Compliance Order. The Order can:

- Prohibit or restrict access to the premises (as above); or
- Require right to work checks to be carried out; or
- Require the employer to produce documents relating to right to work checks; or
- Set times for an immigration officer to enter the premises to carry out inspections

The maximum time a Compliance Order can have effect is 12 months.

Self-Employed Taxi Drivers

There is currently no requirement for licensing authorities to make right to work checks on self-employed taxi drivers. This will become mandatory from 1st December 2016. This provision does not place an onus on any taxi firm who contracts with a self-employed taxi driver to provide them with work to conduct right to work checks.

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

Please contact the 24 Hour Advice Service for advice on your specific situation before acting on the information in this publication.