**EMPLOYERS GUIDE – RIGHT TO WORK CHECKS**

**What is a right-to-work check?**

A right-to-work check consists of checking that employees have acceptable documents to prove they have a right to work in the UK.

**Who is responsible for carrying out right-to-work checks?**

* employers

**Who should you carry out right-to-work checks for?**

* all potential employees

**When should you carry out right-to-work checks?**

* before their first day of work.
* if employers follow the correct right-to-work checks procedure, they will have a **STATUTORY EXCUSE** against liability for a civil penalty if they are found to have employed someone who is prevented from carrying out the work in question because of their immigration status.

**Importance of right-to-work checks**

* all employers in the UK have a duty to prevent illegal working. Therefore, if right-to-work checks are not carried out, employers can find themselves liable for a Civil Penalty of up to £60,000 per illegal worker.
* a statutory excuse will **not** be established if the check is performed by a third party, e.g., a recruitment agency or professional advisor.

Even if you are not the direct employer of the workers involved in your business, there are compelling reasons why you should seek to know that your workers have a right to work.

**How to carry out a right to work**

* obtain original versions of one or more acceptable documents.
* See the link for suitable documents. [**https://www.gov.uk/government/publications/right-to-work-checks-employers-guide**](https://www.gov.uk/government/publications/right-to-work-checks-employers-guide)
* check the validity of the document in the presence of the holder
* make and retain a clear copy and record the date the check was made.

For a passport - Write the following: “I certify this is a true likeness” Date and signed by the employer.

Birth certificate and national insurance evidence (Card,p45) "I certify this is a copy of an original" Date and signed by the employer.

**Online Right-to-Work Checks**

**Who the online right-to-work checking system can be used by:**

* non-EEA nationals who hold a biometric residence permit
* EEA nationals who have been granted settled status under the EU Settlement Scheme.

EEA nationals without settled status will still need to provide the appropriate documents to prove their right to work.

**How do you carry out an online check?**

This can be done using an online service on the gov. UK website.

* view a job applicant’s right to work details - [**https://www.gov.uk/view-right-to-work**](https://www.gov.uk/view-right-to-work)

It will not be possible to conduct an online right-to-work check in **ALL** circumstances, and not all individuals will have an immigration status that can be checked online.

Online right-to-work checking services currently supports checks for those who hold:

* a Biometric Residence Permit
* status issued under the EU Settlement Scheme (alternatively, these individuals continue to be able to demonstrate their right to work by presenting their EU passport or ID card until the end of the planned implementation period)

All employees should be allowed to demonstrate their right to work. It would be best if you did not discriminate based on whether an individual is able and willing to prove their right to work using the online checking services. This may result in you breaching the law.

While you may choose to encourage the use of the online check and may support individuals in doing so, you are not permitted to **mandate online checks.**

If individuals do not wish to demonstrate their right to work using the online service, even if their immigration status and documentation are compatible with the service, you should conduct a manual check.

**How does the online right-to-work checking system work?**

**Employees**

* the online right-to-work procedure involves individuals viewing their own Home Office right-to-work record.
* they can then share this information with employers by providing a **SHARE CODE.** This is valid for **30 DAYS,** after which a new code is required.

**Employers**

* employers should use a service called **‘view a job applicant right to work details’** on the **gov—UK** website.
* the service must be accessed using the employer part of the service to obtain a statutory excuse.
* it is unacceptable for employers **only** to view the information provided to the migrant/employee when they view their right-to-work information.
* employers must ensure that they use the share code provided by the employee and the employee's date of birth to **use** the service 'to view a job applicant's right-to-work details.

The Home office has an audit record of all the online checks that employers have carried out. Therefore, if an employer does not actively go online and do the right-to-work check, then a statutory excuse cannot be established.

Even if the employer is physically present with the employee when they are doing their part of the online right-to-work check, a statutory excuse cannot be established.

All employers are required to use the employee's share code and date of birth to generate a profile page using the employer’s section of the service.

**Conducting online right-to-work checks**

* Use the Home Office online right-to-work checking service on Gov. uk
* Check that the photograph on the online right-to-work check is of the individual presenting themselves for work)
* Retain a clear copy of the response provided by the online right-to-work check
* if an individual wishes to share their right to work with you, they should provide you with a share code generated by the online checking system. This can be done by providing you with the share code directly.
* you will receive an email from **right.to.work.service@notifications.service.gov.uk**

**What do you need as an employer to view the right-to-work details?**

* share code
* date of birth of the individual
* the photograph on the online right-to-work check shows the individual presenting themselves for work.
* employ the person, or continue to employ an existing employee, if you are conducting a follow-up check, if the online check confirms they have the right to work and are not subject to a condition preventing them from doing the work in question.

If the online check does not confirm the right to work in the UK and do the work in question, you will not have established a statutory excuse from this check. If you carry on and employ the person, you risk being found guilty of a criminal offence.

If you employ someone based on the online check but it is reasonably apparent from the photograph that the individual working is not the individual to whom the information provided in the check relates, you may face a civil penalty in the event of illegal working.

**What should you retain?**

* profile page which confirms the individual’s right to work; this should include:
* the individual’s photo.
* date the check was performed.

You will have the option to print the profile page or save it as a pdf or HTML. The profile page should be securely stored electronically or as a hard copy for the duration of employment and two years after. Please note that if they have a fixed residency time within the UK, they will need a fixed-term contract to ensure they have provided an updated length of stay.

**For information on right-to-work checks, visit https://www.gov.uk/check-job-applicant-right-to-work**