

Changes to the law for UK employers on preventing illegal working

CODE OF PRACTICE

What is the code of practice about?

In 1999 the Government published a code of practice for employers on how to comply with section 8 without discriminating unlawfully. To bring the code into line with changes to section 8 which took effect from 1 May 2004, the published version will be revised later this year, but you can obtain a copy of the current version by calling the Employers' Helpline on 0845 010 6677 or by visiting www.ind.homeoffice.gov.uk). The leaflet describes the code of practice for employers and it shows how you can avoid race discrimination in recruitment, while making sure that the staff you take on have a right to work in the UK.

Why does the new code matter?

If you are prosecuted for employing someone who has no right to work here, you can be fined up to £5,000 for each employee. In addition to this, if you ever have to defend yourself at an Employment Tribunal against a complaint of race discrimination, your failure to follow the code can count against you. If a complaint is upheld, the tribunal will normally order you to pay compensation, for which there is no upper limit.

Race discrimination - what does the law say?

- It is against the law to discriminate against people because of their colour, race, nationality or ethnic or national origins when you are recruiting.
- It is against the law to discriminate in a job advertisement or to ask an employment agency to discriminate (and for an agency to do so).
- It is against the law for your employees to discriminate; you will be held responsible too unless you took steps to stop it happening.

Illegal working - what does the law say?

- It is against the law to employ a person aged 16 or over who does not have permission to live and work in the UK.
- You will be able to establish a statutory defence under section 8 of the Asylum and Immigration Act 1996 by checking and copying one of the original documents included in List 1, or by copying a combination of two original documents specified in List 2 below. You should do this before the person starts working for you, and you should keep a record of it.

This check is not compulsory but it is advisable, otherwise you may be convicted of a criminal offence under section 8 of the Asylum and Immigration Act if it turns out that any of your employees are not legally entitled to work here. You must be careful, however, that checking does not lead you to break the law on discrimination.

How can I prevent illegal working without discriminating?

- The best way to make sure that you do not discriminate is to treat all job applicants in the same way at each stage of your recruitment process.
- Don't assume that a foreign national or someone from an ethnic minority has no right to work in the UK.

Treat all people who apply in the same way. Ask all applicants for a document, or combination of documents from the lists below, and ask everybody if they need permission to work. A specified combination of documents from List two is just as valid as evidence of right to work as one document from List 1.

- Don't assume a person is an illegal worker if they can't produce a document. Suggest they go to a Citizens Advice Bureau for further advice on what to do.
- Monitor your recruitment practices taking account of equality issues.

The types of documents that are enough to secure a defence against prosecution for employing illegal workers are shown below. Remember - you only need to see one document from List 1, or a specified combination of two documents from List 2.

List 1

- A passport showing that the holder is a British citizen, or has a right of abode in the United Kingdom.
- A document showing that the holder is a national of a European Economic Area country or Switzerland. This must be a national passport or identity card.
- A resident permit issued by the Home Office to a national from a European Economic Area country or Switzerland.
- A passport or other travel document endorsed to show that the holder can stay indefinitely in the United Kingdom, or has no time limit on their stay.
- A passport or other travel document endorsed to show that the holder can stay in the United Kingdom; and that this endorsement allows the holder to do the type of work you are offering if they do not have a work permit.
- An Application Registration Card issued by the Home Office to an asylum seeker stating that the holder is permitted to take employment.

List 2

You will not have the defence if you see one document from the first combination and one from the second combination.

First combination

A - A document giving the person's permanent National Insurance Number and name. This could be a: P45, P60, National Insurance card, or a letter from a Government agency.

Along with checking and copying a document giving the person's National Insurance number, you must also check and copy only one of the following documents listed in sections B - H:

B - a full birth certificate issued in the United Kingdom, which includes the names of the holder's parents; OR

C - a birth certificate issued in the Channel Islands, the Isle of Man or Ireland; OR

D - a certificate of registration or naturalisation stating that the holder is a British citizen; OR

E - a letter issued by the Home Office to the holder which indicates that the person named in it can stay indefinitely in the United Kingdom, or has no time limit on their stay; OR

F - an Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the person named in it can stay indefinitely in the United Kingdom, or has no time limit on their stay; OR

G - a letter issued by the Home Office to the holder which indicates that the person named in it can stay in the United Kingdom, and this allows them to do the type of work that you are offering; OR

H - an Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the person named in it can stay in the United Kingdom, and this allows them to do the type of work that you are offering.

Second combination

A - A work permit or other approval to take employment that has been issued by Work Permits UK.

Along with a document issued by Work Permits UK, you should also check and copy one of the following documents listed at B - C:

B - a passport or other travel document endorsed to show that the holder is able to stay in the United Kingdom and can take the work permit employment in question; OR

C - a letter issued by the Home Office confirming that the person named in it is able to stay in the United Kingdom and can take the work permit employment in question.

August 2004

None of the document descriptions contained in List 1 and List 2 reflect the precise wording contained in the law.

You must carry out the following **reasonable** steps when checking all of the documents presented to you by your potential employee:-

- Check any photographs, where available, to ensure that you are satisfied they are consistent with the appearance of your potential employee;
- Check the dates of birth listed so that you are satisfied these are consistent with the appearance of your potential employee;
- Check that expiry dates have not been passed
- Check any United Kingdom Government stamps or endorsements to see if your potential employee is able to do the type of work you are offering;
- If your potential employee gives you two documents from List 2 which have different names, you should ask them for a further document to explain the reason for this. The further document could be a marriage certificate, divorce document, deed poll, adoption certificate or statutory declaration.

Documents that are NOT acceptable:

- A Home Office Standard Acknowledgement Letter or Immigration Service Letter (IS96W) which states that an asylum seeker can work in the United Kingdom
- A letter issued by the Home Office stating the holder is a British Citizen
- A passport describing the holder as a British Dependent Territories Citizen which states that the holder has a connection with Gibraltar
- A short birth certificate issued in the United Kingdom which does not have details of one of the holders parents
- A card or certificate issued by the Inland Revenue under the Construction Industry Scheme
- A temporary National Insurance number beginning with TN, or any number which ends with the letters from E to Z inclusive
- A driving license issued by the Driver and Vehicle Licensing Agency
- A bill issued by a financial institution or a utility company

Finally, you should take a photocopy of the following parts of all documents shown to you:-

- The front cover and all of the pages which give your potential employee's personal details. In particular, you should copy the page with the photograph and the page which shows his or her signature; and
- Any page containing a UK Government stamp or endorsement which allows your potential employee to do the type of work you are offering.

You should then keep a record of every document you have copied. By doing this, the immigration Service will be able to examine your right to the defence if they detect anyone illegally working for you.

It is recommended that no offer of employment is made until relevant original documentation has been checked and copied and that the employer is satisfied that the potential employee is the rightful holder of the documents that he or she has presented.

On 1st May 2004 ten countries joined the EU under the Accession Treaty. Nationals of these countries will be able to move freely around the EU without immigration restrictions and work legally in the UK. However, workers from 8 of these countries (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia) will be required to register under the new scheme.

The Workers Registration Scheme will enable the government to monitor the numbers coming into the UK from accession states and impose restrictions to protect the labour market if necessary.

When dealing with an applicant from one of the 8 listed countries, employers should provide the individual with evidence of their employment (either a contract or a letter). The employee must then make an application to register with the scheme and the employer should take a copy of the completed application for before it is sent. This should be kept until the employer receives notification from the Home Office of

August 2004

the successful application and the registration certificate retained. If the Home Office refuses registration, the employee cannot be retained as a worker.

Additional information on the Workers Registration Scheme can be found on: www.workingintheuk.gov.uk

Further info available on website: www.ind.homeoffice.gov.uk or in the home office booklet – “Changes to the law on preventing illegal working”

August 2004