

## Recruitment and Immigration

Under United Kingdom immigration rules, it is unlawful to employ a person who is not entitled to work in the UK. Any employer who employs a worker who cannot legally work in the UK may face a civil penalty of up to £10,000 for each illegal worker and if the employer knowingly employs an illegal worker they may face a criminal penalty of up to two years' imprisonment for employing them.

## Verification of the right to work

You can rely on the Statutory Excuse, under the Immigration (Restrictions on Employment) Order 2007, if you have checked, before the candidate starts work that the candidate has at least one of a range of documents verifying his or her right to work in the UK. This will enable you to avoid (or where necessary minimise) any liability for the above penalties. The following documents are acceptable on their own:

- A passport confirming that the candidate is a British citizen; or
- A passport or identity card of a European Economic Area (EEA) national (in addition further evidence of the person's right to work is required if he or she is a Romanian or Bulgarian citizen - see further details below).

Alternatively you can request that the candidate produces certain combinations of two documents, for example:

- A document giving the candidate's permanent National Insurance Number and a full UK birth certificate *or*
- A valid work permit and a passport confirming the candidate has the right to remain in the UK and to work in the UK.

You should ensure that the verifying documents are originals and you must satisfy yourself that the candidate is the rightful owner of any document he or she presents to you. You should also check that the documents allow the candidate to do the type of work you are offering. If you inadvertently accept a forgery you may be subject to legal action if the falsity of the document is reasonably apparent. This means that an untrained person could reasonably be expected to realise that the document is not genuine or the prospective employee is not the rightful owner.

You must make and retain the copies of any original documents you inspect. A list of all acceptable documents, and further detailed guidance, is available from the Home Office's UK Borders Agency (UKBA) website, <http://www.ukba.homeoffice.gov.uk/>.

Where an employee has only limited permission to remain or work in the UK, you are required to note the expiry date of the documentation and put a reminder system in place to check the documents. These checks must be carried out at least every 12 months of employment.

## **Employees from Europe**

All citizens of the European Economic Area (EEA) have the right to free movement in the European Union (EU) countries, and do not require a Work Permit to come to the UK. However, not all EEA citizens are eligible to work in the UK. There are three levels of entitlement:

1.) EEA nationals from some EU countries are free to work in the UK without any restrictions. Employers should still perform the usual pre-employment checks in the same way as they must for all new employees.

The EU countries this applies to are;

**Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the UK.**

2.) EEA nationals from the eight former Eastern Block countries are free to work in the UK without any restrictions. However, employers must take steps to ensure the employee is registered with the Home Office under the Worker Registration Scheme (see details below).

The eight countries are:

**Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia**

3.) People who cannot work as employees unless they are registered under the appropriate Authorisation to Work Scheme

Applies to people from: **Romania and Bulgaria**

Since Romania and Bulgaria joined the EU on 1<sup>st</sup> January 2007, EEA nationals from these countries are free to enter the UK without a visa, but they are not permitted to work in the UK as employees unless they have an Accession Worker Card.

The restrictions on employing people from Romania and Bulgaria are very similar to those on employing non-EU immigrants, and it may be difficult to get authority to employ them.

Romanians and Bulgarians are free to work as self-employed contractors in the UK, but if this is found to be a device to avoid the law, rather than the employer taking them on as employees, the employer will be committing an offence.

Employers need to take detailed advice from the UKBA before offering employment to Romanian and Bulgarian citizens, or taking them on as self employed contractors.

## Worker Registration Scheme

You are responsible for ensuring that nationals from the eight member states listed above, who started work for you after 1st January 2007, are registered with the Home Office under the Worker Registration Scheme.

Any exemption from the Scheme can be found on the Home Office website.

If a worker from one of these countries has been employed legally and without interruption, in the UK, for a period of 12 months, the worker may apply for a Residence Permit confirming his or her right to live and work in the UK. There is no requirement to continue checking if the employee produces the relevant documents indicating that they now have the right to remain and work permanently in the UK. **You must retain a copy of the relevant documentation for your records.**

## Procedure

When you employ a worker from one of the eight countries listed above, you must:

- Carry out an initial check

You must check that the worker is a national from one of these countries in order to confirm he or she has the right to work in the UK, for example, by checking his or her EEA passport or Identity Card.

- Advise the worker to register

As soon as the worker begins working, he or she must apply to register immediately with the Home Office. To do this, the worker needs to complete an application form and send this to the Home Office, along with an appropriate letter from you, on Company letterhead, confirming the date he or she starts working for you. Mentor recommends that you make a copy of the application form and retain this until you receive notification from the Home Office that the worker has been registered.

- Retain your copy of the Registration Certificate

Once the worker has registered successfully, the Home Office will send you a copy of the Registration Certificate confirming the registration. You must retain the copy sent to you.

## Authorisation to Work Scheme

Nationals from Bulgaria and Romania are free to come and reside in the UK. However they are required to obtain authorisation to work in certain categories by applying to the Home Office for an Accession Worker Card, before starting any employment, unless they are exempt from doing so.

The categories of work under the Scheme can be found on the Home Office website. If the employment does not fall into one of the specified categories detailed on the Home Office website a two step process will apply as follows:

- The employer must first apply for approval of the employment under the work permit arrangements.
- The Bulgarian or Romanian national must then apply for an Accession Worker card.

If the worker is from one of these countries and has been employed legally and without interruption, in the UK, for a period of 12 months, the worker may apply for a Registration Certificate (as detailed above). This will confirm that he or she has full rights of free movement and will no longer need permission to work in the UK. There is no requirement to continue checking if the employee produces the necessary documents indicating that they now have the right to remain and work permanently in the UK. You must retain a copy of the documentation for your records.

### **Points-Based System**

For all non-EU nationals, a “Points-Based” System came into force on 29<sup>th</sup> February 2008. Migrants seeking to enter the UK are awarded points that are scored for a variety of factors such as qualifications, aptitude, work experience and income.

There are five Tiers as follows:

#### **Tier 1**

Highly Skilled Migrants (i.e. doctors, engineers, finance experts and IT specialists, entrepreneurs and innovators). The Highly Skilled Migrant Programme (HSMP) allows migrants to come to the UK without a job offer. The HSMP is designed to allow highly skilled people to come to the UK to look for work or self-employment opportunities.

#### **Tier 2**

Skilled workers (e.g. nurses, teachers and administrators) with a job offer to fill shortages in the labour market.

#### **Tier 3**

Low skilled temporary or seasonal labour.

#### **Tier 4**

Students.

#### **Tier 5**

Youth mobility and temporary workers (e.g. volunteers).

Employers seeking to employ migrant workers under the Points-Based System must first apply for a Licence to be a Sponsor from the Home Office UK Borders Agency.

Further details of the above schemes can be found on the UKBA website.

## Penalty for employing unregistered workers

Under UK immigration rules, if you knowingly employ an unregistered national for more than one month without obtaining and retaining a valid copy of the worker's application form, Certificate of Registration, Accession Worker Card, or in breach of their conditions of stay, you may be committing a criminal offence as detailed above. This will not apply if the worker in question is exempt from the registration requirement. Similarly, if the Home Office notifies you that the worker's application has been refused and you continue to employ that person, you may also be committing an offence.

In addition to the civil penalty of up to £10,000 for each illegal worker and the criminal penalty of up to two years' imprisonment you may also be liable for additional costs (for example, unpaid taxes; social security payments; and/or the cost of repatriating the illegal worker). The UKBA also has the authority to serve 'on the spot' Penalty Notices if an employer is found to be less than diligent in their recruitment and employment practices.

## Avoiding Unlawful Race Discrimination

In carrying out the above checks and procedures, you should be careful that you do not discriminate unlawfully against any candidate on the grounds of his or her race, nationality or ethnic origin. To avoid a finding of race discrimination, you should ensure that you treat all candidates in the same way at each stage of the recruitment process. For example, you could ask all candidates to produce the documentary evidence at the outset of the recruitment process or request the information only from those candidates who have been selected for interview.

Further advice may be obtained by contacting the 24 hour Telephone Advice Service. Additional guidance is also available from the Home Office Sponsor and Employers' Helpline on **0845 010 6677**.

## Code of Practice

The Home Office has produced two Codes of Practice which apply from February 2008 which are both available to download on the UKBA website (<http://www.ukba.homeoffice.gov.uk/>). The Codes of Practice provide guidance to employers on how to avoid the civil and/or criminal penalties which can be imposed as well as guidance on how to avoid unlawful discrimination. The website also offers general advice, a detailed checklist of relevant documentation, as well as an interactive guide in relation to the checks required by employers.



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