

# RIGHT TO WORK CHECKS

## A GUIDE FOR TRADE UNION REPS



Changing the world  
of work for good

April 2022

**Migrants'  
Rights  
Network**

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## AUTHOR

**Migrants' Rights Network is a charity that works alongside migrants in their fight for rights and justice.**

We build relationships with grassroots, migrant-led organisations to understand the issues that are important to them and how we might be able to help. This can take many forms, but has included:



- Using our platform to raise awareness of the issue amongst politicians and policy makers, and in the media.
- Linking up individuals or organisations with legal experts in order to pursue strategic litigation.
- Conducting research to better understand an issue and build an evidence-base for change.
- Making links between different causes and campaigns, to enable information and resource sharing.
- Providing advice, training or mentoring.

We believe that human rights are universal, and that the law should apply equally to everyone. That is why we are particularly keen to work with seldom heard groups, and on the less popular and less publicly palatable issues that are not being addressed by others.

We are not a formal network. Rather, we seek to bring people together in order to share our collective resources and expertise and to build solidarity between movements, campaigns and communities. Whether that is making links between the race equality sector and the migrants' rights sector, or between an individual and a legal expert who may be able to take on their case, we believe it is through building these bonds between people that we have the greatest opportunity to achieve change.

**Website:** [www.migrantsrights.org.uk](http://www.migrantsrights.org.uk)      **Email:** [info@migrantsrights.org.uk](mailto:info@migrantsrights.org.uk)

## WHY HAVE WE CREATED THIS GUIDE?

On 6 April 2022 the Home Office introduced changes to the right to work checks. The Home Office imposed a rule that employers must carry out right to work checks online if the employee is a holder of a Biometric Residence Permit or Biometric Residence Card, a Frontier Worker Permit, or holds pre-settled or settled status under the EU Settlement Scheme.

We know from anecdotal evidence that a digital only system creates real risks of harm - discrimination, security and further risks for those who are digitally excluded. So, we want to ensure that migrant workers and their representatives are fully aware of the rules, and their rights when these checks are undertaken.

## WHO IS THIS GUIDE FOR?

This guide has been produced to help trade union reps better understand the new right to work checks process to inform and support their migrant members and colleagues when they need it, and also aims to set a standard for representation.

## KEY PROVISIONS

Employers will draw upon the law on preventing 'illegal working' which is set out in sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006 ('the 2006 Act'), section 24B of the Immigration Act 1971, and Schedule 6 of the Immigration Act 2016.

They will also consider the Immigration (Restriction on Employment) Order 2007 ('the Order') which sets out the right to work check procedure, record-keeping requirements and the effect of a successful check.

Note that this guide sets out the procedure which came into effect on 1 July 2021. To review whether a historical check was conducted correctly, it is necessary to refer to archived guidance for the indicated periods. There is further information on the right to work check procedures and processes and historical policies under **Appendix A**.

## WHY DO EMPLOYERS CONDUCT A RIGHT TO WORK CHECK?

### STATUTORY EXCUSE AGAINST CIVIL PENALTY

There is **NO** legal obligation for an employer to carry out right to work checks. However, it is illegal for an employer to employ someone who does not have the right to work in the UK. Therefore, if an employer conducts a right to work check on an individual, it will have a statutory excuse against a civil penalty for employing a person illegally unless the employer knew 'at any time during the period of employment' that the individual was working 'illegally'.

An employer can use an Identification Document Validation Technology (IDVT) service provider to carry out digital checks on British and Irish citizens with valid passports. However, the employer is still liable for the civil penalty if the employee is later found not to have the right to work and the check has not been done correctly. A statutory excuse cannot be established if any other third party other than an Identity Service Provider conducts the check.

### FAILURE TO CARRY OUT A RIGHT TO WORK CHECK

Where employers fail to perform right to work checks correctly, it can result in unwanted Home Office scrutiny and serious ramifications, including:

- ❑ Civil penalty for illegal working – fine for up to £20,000 per breach
- ❑ Criminal prosecution
- ❑ Enforced debt action
- ❑ County Court judgment
- ❑ Sponsor Licence suspension or revocation
- ❑ Adverse impact on the ability to obtain future credit
- ❑ Disqualification of company directors
- ❑ Inclusion on the Home Office's civil penalty offender list
- ❑ Bad press, reputational harm, and a resulting hit on profits
- ❑ Business forced to cease trading

What is most important is where an employer only performs right to work checks on individuals it believes does not have the right to work in the UK, it risks being subject to a discrimination claim. Therefore, employers should conduct right to work checks on **ALL** workers.

## **WHO WILL CONDUCT THE RIGHT TO WORK CHECK?**

The check must be carried out by the employer (or a member of its staff) and cannot be delegated to a third party. Except from 6 April 2022, employers will be permitted to use certified providers to undertake digital identity **checks** on new employees. This will include candidates previously outside the scope of the Home Office's current online services, and it appears that this will initially be available in relation only to British and Irish citizens who hold valid passports (or Irish passport cards). The provider will carry out the check on behalf of the employer using Identification Document Validation Technology (IDVT).

## **WHICH WORKERS CAN BE CHECKED?**

An employer will only be liable for a civil penalty or criminal offence in relation to their 'employees', defined as those employed under a contract of employment (a contract of service or apprenticeship whether expressed or implied and whether oral or in writing), continuously employed since 29 February 2008.

This is a broad definition which includes individuals classed as 'workers' under employment law. An employer will not be in breach of the right to work checks if it does not perform checks on other categories of workers (e.g. self-employed and contractors), even if the individual may be committing an offence by working.

## WHAT TO EXPECT WITH A RIGHT TO WORK CHECK?

The employer can conduct the right to work check in one of two ways:

1. A manual right to work check
2. An online right to work check

## MANUAL RIGHT TO WORK CHECK

The manual right to work check can be summarised in three stages, and will likely consist of the following:

### STAGE 1 – OBTAIN:

**OBTAIN A SINGLE DOCUMENT OR A COMBINATION OF DOCUMENTS SPECIFIED IN THE ORDER (SEE APPENDIX B) FROM THE EMPLOYEE OR JOB APPLICANT**

**IF THE INDIVIDUAL IS UNABLE TO PROVIDE THE DOCUMENTS, OBTAIN A POSITIVE VERIFICATION NOTICE USING THE EMPLOYER CHECKING SERVICE (SEE BELOW)**

### STAGE 2 – CHECK:

**CHECK THAT THE DOCUMENT MEETS THE REQUIREMENTS IN THE ORDER**

**CHECK THE DOCUMENT BELONGS TO THE INDIVIDUAL**

**CHECK THAT THE DOCUMENT IS NOT A FORGERY**

### STAGE 3 – COPY:

**TAKE A COPY OF THE ORIGINAL DOCUMENT**

**RECORD THE DATE OF THE CHECK**

**DIARISE THE DATE THAT A REPEAT CHECK IS DUE (IF APPLICABLE)**

## OBTAIN

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### OBTAIN DOCUMENTS SPECIFIED IN THE ORDER

The employer should ask the individual to produce any documents from Lists A and B under the Order (see Appendix B). The original document(s) must be returned to the employee once the check has been carried out unless an exception applies.

Individuals will be expected to provide documents based on their residency or immigration status. For example, the following groups will need to provide a document from List A of the Order (see Appendix A) showing a right to work in the UK:

- British citizens
- Individuals who hold a right of abode in the UK
- Individuals who have been granted indefinite leave to enter or remain in the UK (including settled status under the EU Settlement Scheme)
- Individuals who do not have a time limit on their stay in the UK

and, the following groups will need to provide a document from List B – Part 1 of the Order showing a time-limited right to work in the UK:

- Work, study and investment migrants and their family members
- Individuals with pre-settled status under the EU Settlement Scheme
- Anyone else with a time-limited right to work in the UK

Previously it was expected for employees to show the original document, to the employer, and for them to make a copy. However, since 30 May 2020, a temporary concession was introduced due to the COVID-19 pandemic allowing employers to carry out manual right to work checks using video conferencing and copies of documents rather than originals until 30 September 2022.

The temporary concession procedure is as follows:

- The employee sends a scanned copy of the document to the employer by email or a mobile app
- The employer must check the scanned copy against the original produced by the employee during a video conference call
- The employer must record the date using the following wording 'adjusted check undertaken on [insert date] due to COVID-19'

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## **EMPLOYER CHECKING SERVICE**

If an employee is unable to provide the documents specified in the Order, the employer can use the Employer Checking Service in the following circumstances:

- The employer is seeking to rely on a Positive Verification Notice specified in List B – Part 2 under the Order
- An individual is unable to produce the specified right to work documents and the employer is reasonably satisfied that this is because of an outstanding Home Office application made prior to:
  - the expiry of their permission (where applicable), administrative review or appeal; or
  - 1 July 2021 for applications to the EU Settlement Scheme
- The employer chooses to accept alternative evidence that the employee was exercising their rights as a frontier worker on or before 31 December 2020
- The employee presents a Certificate of Application, or evidence of a late application to the EU Settlement Scheme made on or after 1 July 2021
- An individual is unable to produce the specified right to work documents but can demonstrate that they are a long resident who arrived in the UK before 1988
- Where an individual presents a grant of permission confirming that the holder is allowed to stay in the UK for a time-limited period but in an expired passport
- An individual presents with a valid EU Settlement Scheme family permit, in a passport or on a separate card/paper, and the passport has expired

The employer should receive a response within five working days. The response will either be a:

- Positive Verification Notice, confirming that the individual is eligible to work in the UK
- Negative Verification Notice, confirming that the individual is not eligible to work in the UK

A Positive Verification Notice will give the employer a statutory excuse from civil penalty for six months from the date of the notice.

While a Negative Verification Notice is an indication that the worker does not have a right to work in the UK, the employer cannot rely on this alone. Concerns about the accuracy of the Employer Checking Service have been raised by both employers and advisers, and civil society groups. We would encourage further investigations, and for the employee to be offered support to confirm their right to work in the UK (see section unfair dismissal)

Furthermore, there may be circumstances where the individual may have a right to work, but it is not clear from their documents such as:

- Individuals with claims to British citizenship
- Long resident non-EEA nationals who entered the UK before 31 December 1988

- the 'Windrush' generation who arrived in the UK before 1 January 1973

## CHECK

### DOES THE DOCUMENT MEET THE REQUIREMENTS IN THE ORDER?

The employer should 'take all reasonable steps to check the validity of the document'. List A and List B under the Order detail the features of the documents to determine their validity. The document will not be valid unless all the elements specified are present.

### CHECK THE DOCUMENT BELONGS TO THE INDIVIDUAL?

Article 6 of the Order sets out the required steps to check the individual's identity, such as:

PHOTOGRAPH	All checks must be conducted either in the presence of the holder or over video link. The employer will need to be in possession of the original document when conducting the identity check. This means that the individual may have to send the original document to the employer prior to the check via video link.
DATE OF BIRTH	The employer will have to satisfy themselves that the date of birth is consistent with the appearance of the individual. Furthermore, because the employer is required to take 'all other reasonable steps to check that the employee is the rightful owner of the document', they may check the date of birth on the document against the date of birth on the employment application or other available documents.
NAME	The employer may ask for an explanation and documentary evidence if there has been a change of name.
SIGNATURE	The employer may check the signature on the document against the individual's signature if available.

The employer will not have a statutory excuse against civil penalty if it is 'reasonably apparent' that the document was false.

## **COPY**

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### **TAKE A COPY**

The employer will take clear copies in a format that cannot be altered of the documents from List A and List B under the Order, the validity checks, and any other additional evidence that has been examined.

Unless the document is a passport, all pages and both sides of cards must be copied.

Only the following pages of passports need to be copied:

- Any page containing the holder's personal details
- Any page containing the holder's signature
- Any page containing the expiry date
- Any page containing information indicating the holder has an entitlement to enter or stay in the UK and undertake the work in question

The copies **MUST** be kept securely by the employer for the duration of the employment. You can ask where the documents will be stored, and who has access to them. The documents must be securely destroyed two years after the employment has ended.

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### **RECORD DATE CHECKED**

The employer will keep a record of when the check was made by writing the following on the copy and signing it:

***'Original document examined by me [PRINT NAME] on [DATE]'***

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## DIARISE A REPEAT CHECK

The employer may diarise as a minimum the following dates:

DOCUMENT	DEADLINE	REMINDERS
LIST B - PART 1	THE EXPIRY DATE OF THE DOCUMENT IN QUESTION	REMINDERS TO CONTACT THE EMPLOYEE ONE MONTH AND TWO WEEKS BEFORE THE DEADLINE
LIST B - PART 2	SIX MONTHS FROM THE DATE OF THE POSITIVE VERIFICATION NOTICE	REMINDERS TO CONTACT THE EMPLOYEE ONE MONTH AND TWO WEEKS BEFORE THE DEADLINE
POSITIVE VERIFICATION NOTICE BY THE HOME OFFICE EMPLOYER CHECKING SERVICE	SIX MONTHS FROM THE DATE OF THE POSITIVE VERIFICATION NOTICE	REMINDERS TO CONTACT THE EMPLOYEE ONE MONTH AND TWO WEEKS BEFORE THE DEADLINE
ONLINE RIGHT TO WORK CHECK	THE EXPIRY DATE ON THE RESPONSE PROVIDED BY THE ONLINE RIGHT TO WORK CHECK	REMINDERS TO CONTACT THE EMPLOYEE ONE MONTH AND TWO WEEKS BEFORE THE DEADLINE
STUDENT TERM DATE INFORMATION (SEE BELOW)	THE START OF THE NEW ACADEMIC TERM (PRECISE DATE UNKNOWN)	REMINDER TO CONTACT THE EMPLOYEE IN THE SECOND WEEK OF AUGUST TO OBTAIN NEW TERM DATES

## ONLINE RIGHT TO WORK CHECK

An online right to work check involves an employer viewing an individual's right to work electronically on a dedicated portal on the GOV.UK website.

The online right to work check service supports individuals with:

- A biometric residence permit
- A biometric residence card
- A digital status issued under the EU Settlement Scheme or certain categories under the post-Brexit points-based immigration system
- A frontier worker permit

Employers can encourage individuals to use the online service, but they CANNOT insist on it unless a manual right to work check is not an option e.g. a digital status. Employers should provide all options and not discriminate against individuals who are not able or willing to use the online service.

From 6 April 2022, it will only be possible to conduct a right to work check on an individual with a biometric residence card, biometric residence permit or frontier worker permit online. The manual right to work check will no longer be an option for these individuals.

## LOG INTO THE ONLINE PORTAL

There are two relevant portals when carrying out an online right to work check:

- [Prove your right to work to an employer](#), which enables an individual to input their details and request a share code (a unique nine-character code) which is valid for 30 days (this may be subject to change soon and extended to 90 days) and can be shared with the employer.
- [View a job applicant's right to work details](#), which enables an employer to view an individual's right to work if provided with a share code and the individual's date of birth within 30 days of the share code being generated (this may be subject to change soon and extended to 90 days)

## CHECK

The employer will check that:

- The individual has the right to work in the UK and is not prohibited from undertaking the work
- The photograph is a true likeness of the individual by meeting with the employee in person or by video link

## RETAIN

The employer should print and keep a copy of the online right to work check for the duration of the employment. You can ask how and where the documents are stored, and who has access to them. The document must be securely destroyed two years after the employment has ended.

## DATA PROTECTION

When conducting the checks, the employer will be processing personal data about the individual's racial or ethnic origin. This means the employer will be processing special categories of personal data under the UK General Data Protection Regulations ('GDPR') and the Data Protection Act 2018 ('DPA 2018').

To process special categories of personal data lawfully, the employer will have to rely on:

- A lawful condition for processing personal data under Article 6 of the GDPR; and
- A specific condition for processing special categories of personal data under Article 9 of the GDPR.

Both Article 6(1)(a) and 9(2)(a) of the GDPR require 'consent' and 'explicit consent' respectively. However, consent cannot be freely given where there is an imbalance of power between the data subject and controller such as the employer-employee relationship. The employer may use an alternative lawful basis such as 'legitimate interests' under Article 6(1)(c) of the GDPR and 'defence of legal claims' under Article 9(2)(f) of the GDPR, which is advised by the Information Commissioner's Office ('ICO')

If the employer decides to rely on the individual's consent as the lawful basis, it should follow the ICO's [consent guidance](#) and [consent checklist](#) when obtaining consent by ensuring it:

- Includes a positive opt-in
- Includes a clear, specific, and concise statement of consent
- Is a stand-alone document
- Names any third-party data controllers who will rely on the consent
- Makes it easy for an individual to withdraw the consent and provides them with information on how to do so
- Is reviewed and refreshed where there are changes
- Is not required as a precondition for receiving any service

Where the employer has the option to carry out an online or a manual right to work check, it should:

- Make it clear in correspondence using plain and easy to understand language that an online right to work check is optional and that the individual is under no obligation to provide the employer with their share code

- Give the individual an option of a manual right to work check

The employer may use Pt 2 Sch 1 of the DPA 2018, the 'substantial public interest' condition, which sets out the condition for 'preventing or detecting unlawful acts' condition.

The employer is not required to have an 'appropriate policy document' in place as the processing consists of the disclosure of personal data to a competent authority or is carried out in preparation for such disclosure.

The employer must determine and document the lawful basis for processing the data before it begins the process. It should not change it to a different lawful basis later without good reason.



## WHEN WILL RIGHT TO WORK CHECKS BE CONDUCTED?

A right to work check will be carried out in three situations:

- An initial check
- Repeat checks
- Checks after workers have joined the employer following a TUPE transfer

### INITIAL CHECKS

The initial check will be conducted on an individual who has accepted an offer of employment before their period of employment begins. If they do not perform the check, it will not provide a statutory excuse against civil penalty. The Discrimination Code of Practice recommends that employers make checks on all candidates at the interview stage.

### REPEAT CHECKS

A repeat check will be required if:

- An employee previously relied on a document from List B under the Order when undergoing an initial or earlier repeat check
- An employer is relying on a Positive Verification Notice by the Home Office Employer Checking Service
- An online right to work check confirms that the employee has a time-limited right to work

A repeat check is **NOT** required if:

- An employee produced a document from List A under the Order confirming that their right to work is not time limited
- An online right to work check confirms that the employee has no time limit on their right to work

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## **LIST B – PART 1**

A document listed in List B – Part 1 will indicate that the individual has an express time limit on their stay in the UK. A repeat check should be done on or before the expiry date on the document in question, unless the employer has reasonable grounds to believe that the employee has applied to extend their leave and the application has not yet been decided. If so, the employer will have a further 28 days from the expiry date to make the check using the Employer Checking Service.

Examples of reasonable grounds include:

- A Home Office acknowledgement letter confirming receipt of the application
- An appeal tribunal reference number with proof of postage date
- A copy of the Home Office payment confirmation
- A copy of relevant pages from the application, administrative review or appeal supported by a letter from the employee's solicitor

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## **LIST B – PART 2**

The documents in List B – Part 2 relate to outstanding EU Settlement Scheme and asylum applications.

The employer is required, in all List B – Part 2 cases, to seek confirmation from the Home Office via the Employer Checking Service and obtain a Positive Verification Notice which confirms an individual's right to work.

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## **POSITIVE VERIFICATION NOTICE - EMPLOYER CHECKING SERVICE**

The Positive Verification Notice will give an employer a statutory excuse against a civil penalty for a six-month period commencing on the date of the Positive Verification Notice. A repeat check will be required before the expiry of that six-month period.

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## **ONLINE RIGHT TO WORK CHECK**

A repeat check will need to be carried out prior to the expiry date on the response received by the online right to check service, unless the employer has reasonable grounds to believe that the employee has applied to extend their leave and the application has not yet been decided. If so, the employer will have a further 28 days from the expiry date to make the check using the Employer Checking Service.

Examples of reasonable grounds include:

- A Home Office acknowledgement letter confirming receipt of the application
- An appeal tribunal reference number with proof of postage date
- A copy of the Home Office payment confirmation
- A copy of relevant pages from the application, administrative review or appeal supported by a letter from the employee's solicitor

## **CHECKS FOLLOWING TUPE TRANSFER**

The Transfer of Undertakings (Protection of Employment) Regulations 2006 provides for employment contracts to automatically transfer between employers in several circumstances. An employer who receives employees under a TUPE transfer is granted a grace period of 60 days to conduct a new right to work check on the transferred employees. It must check all employees transferred and not discriminate.

## **STUDENTS**

Students who are permitted to work have a limit on the hours they can work during term time (10 or 20 hours a week depending on the level of study) but can work full time outside of term time. The student's employer will obtain and retain the course term and vacation dates. Students can provide a printout of the institution's website or an email or letter that they have received. If the course is longer than one year, the employer will repeat the check yearly, unless the institution has made available dates for future years.

## UKRAINIAN NATIONALS

There are three ways employers can carry out [right to work checks](#) on job applicants:

- A Home Office online right to work check
- A manual right to work check
- A right to work digital identity check using (IDVT) via the services of third-party identity service providers (IDSP)

The [Employers Guide to Right to Work Checks](#) has also been updated with an annex on Ukraine to support employers seeking guidance on what documentation Ukrainian nationals will need to prove their right to work.

## POTENTIAL EMPLOYMENT LAW ISSUES

### UNFAIR DISMISSAL

Under the Employment Rights Act 1996, employees have a right not to be unfairly dismissed if:

- They have one-year continuous employment, and their employment began before 6 April 2012
- They have two-years continuous employment, and their employment began on or after 6 April 2012
- They have been employed for any period and they were dismissed for a specified automatically unfair reason

Although an employee with a time-limited right to work in the UK may have an insufficient period of service to be eligible for the right not to be unfairly dismissed, they may be able to make a claim of discrimination if the employer dismissed them unfairly.

A dismissal is unfair unless it is for one of five potentially fair reasons. The following reasons are the most relevant to a failed right to work check:

- The dismissal relates to the conduct of the employee

- The dismissal is because the employee could not continue to work without contravention of a duty or restriction (illegality)
- The dismissal is for 'some other substantial reason'

Illegality will only constitute a fair reason for dismissal ( if the employer can establish as a fact that the employee does not have a right to work in the UK.

Alternatively, an employer can give 'some other substantial reason' as the reason for dismissal if they have a genuine belief that the employee does not have the right to work in the UK. Furthermore, the employer may be able to rely on this reason for dismissal if it had a genuine, but mistaken, belief that the individual was working illegally because it was misadvised by the Home Office or other government department that the employee had no right to work.

The employer will not have dismissed the individual unfairly if it acted reasonably in treating the reason for dismissal (i.e. illegality or some other substantial reason) as a fair reason. This means that the employer must conduct a fair, consistent, and transparent investigation in line with comprehensive HR policies and offer a right of appeal against any decision to dismiss.

Where the individual does not have the right to work in the UK, it is unlikely to be possible to continue to employ them in another role, but there may be limited scenarios. For example, limiting the number of hours that an individual working on a student visa works.

If the illegal working was caused by the employer, it should assist the employee by helping the individual with a fresh application or to accessing an immigration adviser. If the employer fails to offer this assistance, please contact the immigration service provider of your union - most of them have one - or the local immigration advice service or provider (details can be found via [OISC](#) or [SRA](#) registered immigration adviser).

## **DISCRIMINATION**

Under the Equality Act 2010, an employee has the right not to be discriminated against based on their race and nationality during recruitment or employment. Employers must treat all employees and job applicants in the same way and avoid making assumptions about an individual's right to work in the UK if they are to avoid discriminating against people.

Employers must not treat job applicants with time-limited leave to remain or permission to work any less favourably than others when it comes to the terms and conditions of employment and any other opportunities.

If the employer assists an individual to obtain the right to work, it should be offered in all cases and not based on the individual's seniority, role or personal characteristics or circumstances as the employer may become liable for a discrimination claim under the Equality Act 2010.

If an employment contract is deemed to be illegal (i.e the contract will be void and treated as if it was never entered into) due to an individual not having the right to work in the UK, this will not necessarily prevent them from bringing a claim for discrimination. For example, an employee who did not knowingly participate in the illegality or any misrepresentation in obtaining their right to work documentation may be able to bring a successful claim. It may also be possible to sever the illegal part of a contract (i.e., the part in relation to which immigration conditions were breached) from the remainder of the contract.

## THINGS TO DO

- ❑ **READ THE EMPLOYER'S WRITTEN PROCEDURES FOR THE RECRUITMENT AND SELECTION OF WORKERS AND ENSURE IT IS BASED ON EQUAL AND FAIR TREATMENT FOR ALL APPLICANTS**
- ❑ **CONDUCT A SURVEY OF ALL WORKERS IN THE WORKPLACE TO DETERMINE WHO THE EMPLOYER HAS CONDUCTED RIGHT TO WORK CHECKS. THIS SHOULD BE ON ALL WORKERS AND NOT ONLY ON INDIVIDUALS IT BELIEVES DO NOT HAVE THE RIGHT TO WORK IN THE UK**
- ❑ **HELP MEMBERS TO COMPILE RELEVANT DOCUMENTS TO EVIDENCE THEIR RIGHT TO WORK IN THE UK**
- ❑ **FOLLOWING A TUPE TRANSFER, CONFIRM IF THE EMPLOYER HAS CONDUCTED A NEW RIGHT TO WORK CHECK ON THE TRANSFERRED EMPLOYEES WITHIN THE 60-DAY GRACE PERIOD**
- ❑ **ENSURE THAT THE EMPLOYER IS COMPLYING WITH ITS OBLIGATIONS UNDER THE DATA PROTECTION LEGISLATION BY DETERMINING AND DOCUMENTING THE LAWFUL BASIS FOR PROCESSING THE WORKERS' PERSONAL DATA BEFORE IT BEGINS THE RIGHT TO WORK PROCESS**
- ❑ **CONFIRM WHERE THE EMPLOYER SECURELY STORES COPIES OF THE RIGHT TO WORK DOCUMENTS FOR THE DURATION OF THE EMPLOYMENT AND CONFIRM THEY ARE DESTROYED TWO YEARS AFTER THE EMPLOYMENT HAS ENDED**
- ❑ **CHECK IF YOUR UNION PROVIDE IMMIGRATION ADVICE OTHERWISE REFER MEMBERS TO AN OISC OR SRA REGISTERED IMMIGRATION ADVISER IF THEY NEED ASSISTANCE RENEWING THEIR LIMITED LEAVE TO REMAIN OR APPLYING FOR INDEFINITE LEAVE TO REMAIN PRIOR TO THEIR REPEAT CHECK**
- ❑ **TALK TO STUDENT MEMBERS AND ASK THEM WHETHER THEY ARE BEING FORCED TO WORK LONGER THAN THEIR PERMITTED WORKING HOURS DURING TERM TIME**
- ❑ **ADVISE AND REPRESENT MEMBERS IN GRIEVANCE PROCEEDINGS IF THEY HAVE BEEN DISCRIMINATED AGAINST**
- ❑ **ADVISE AND REPRESENT MEMBERS IN DISCIPLINARY PROCEEDINGS IF THEY ARE UNABLE TO PROVE THEIR RIGHT TO WORK IN THE UK**
- ❑ **CONTACT YOUR UNION IF A MEMBER HAS BEEN UNFAIRLY DISMISSED OR DISCRIMINATED AGAINST AND YOU WANT TO BRING AN EMPLOYMENT TRIBUNAL CLAIM AGAINST THE EMPLOYER**
- **CONTACT YOUR UNION IF YOU NEED FURTHER ADVICE AND SUPPORT REGARDING RIGHT TO WORK CHECKS**

## APPENDIX A: PUBLICATIONS AND HISTORICAL RIGHT TO WORK CHECKS

### PUBLICATIONS

The following publications provide more information about the right to work check procedures and processes:

- [An employer's guide to right to work checks](#)
- [Right to work checklist](#)
- [Codes of practice for employers](#)
- [Online tool providing information on types of documents that evidence a right to work](#)

### HISTORICAL RIGHT TO WORK CHECKS

Note that this guide sets out the procedure which came into effect on 1 July 2021. To review whether a historical check was conducted correctly, it is necessary to refer to archived guidance for the indicated periods:

- [Illegal working penalties: codes of practice for employers, January 2019](#) (28 January 2019 to 30 June 2021)
- [Code of practice on preventing illegal working: Civil penalty scheme for employers, May 2014](#) (16 May 2014–27 January 2019)
- [Full guide for employers on preventing illegal working in the UK \(for employment from 29 February 2008 to 15 May 2014\)](#) (24 November 2009 to 15 May 2014)
- [Preventing illegal working: code of practice, 2008](#) (29 February 2008 to 23 November 2009)
- *27 January 1997–28 February 2008* scheme under the Asylum and Immigration Act (as originally enacted) 1996

## APPENDIX B: LIST A AND B DOCUMENTS

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### LIST A

- A passport showing that the holder is a British citizen or a citizen of the United Kingdom and Colonies with the right of abode in the UK
- A valid document issued by the Home Office to the family member of an EEA or Swiss national which indicates that the holder is permitted to stay in the UK indefinitely
- A passport or passport card showing that the holder is a national of the Republic of Ireland
- A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted unlimited leave to enter or remain
- A current biometric immigration document indicating that the holder is permitted to stay indefinitely, or has no time limit on their stay
- A current passport endorsed to show the holder is exempt from immigration control, is permitted to stay indefinitely, has the right of abode, or has no time limit on their stay
- A current immigration status document issued by the Home Office with an endorsement indicating that the holder is permitted to stay indefinitely or has no time limit on their stay in combination with an official document issued by a government agency or previous employer giving the individual's national insurance number
- A birth or adoption certificate issued in the UK, the Channel Islands, The Isle of Man or Ireland in combination with an official document issued by a government agency or previous employer giving the individual's national insurance number
- A certificate of registration or naturalisation as a British citizen in combination with an official document issued by a government agency or previous employer giving the individual's national insurance number

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## LIST B – PART 1

- A current passport endorsed to show that the holder is permitted to stay in the UK and is allowed to do the type of work in question
- A current biometric immigration document issued by the Home Office indicating that the holder is permitted to stay in the UK and is allowed to do the work in question
- A valid document issued by the Home Office to a family member of an EEA or Swiss national indicating that the holder is permitted to stay in the UK for a time limited period and do the work in question
- A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted limited leave to enter or remain
- A frontier worker permit issued under regulation 8 of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020
- A current immigration status document containing a photograph issued by the Home Office with an endorsement indicating that the holder is permitted to stay in the UK and is allowed to do the work in question in combination with an official document issued by a government agency or previous employer giving the individual's national insurance number

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## LIST B – PART 2

- A document issued by the Home Office showing that the holder has made an application for leave to enter or remain under Appendix EU to the immigration rules on or before 30th June 2021
- A document issued by the Bailiwick of Jersey or the Bailiwick of Guernsey showing that the holder has made an application for leave to enter or remain under Appendix EU(J) to the Jersey Immigration Rules or Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008, on or before 30th June 2021
- An application registration card issued by the Home Office stating that the holder is permitted to take the employment in question



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