

Employing Foreign Workers

Hardly a day goes by without there being some mention of illegal immigration in the news. As a result, hardly a day goes by without the Government proposing, revising or introducing new legislation to help combat the perceived problem.

Recent proposals to increase penalties for those who employ workers illegally, and requiring employers to carry out more frequent checks, have met with a mixed response. Many employers would argue that they are not, after all, immigration officers. The Home Office itself has estimated that it will cost in excess of £27m for businesses to acquaint themselves with the new law, both financially and in terms of management time.

At the moment the main problem employers face is how to avoid committing a criminal offence under the Asylum and Immigration Act by taking on someone not legally entitled to work in the UK, without falling foul of the Race Relations Act, under which it is unlawful for an employer to discriminate on the grounds of race, colour, ethnic or national origin or nationality.

In order to establish a defence against conviction for employing an illegal worker, employers must be able to demonstrate that they checked and copied certain original documents belonging to that employee when their employment began.

The legislation sets out a list of the documents that form acceptable evidence of a person's legal right to work in the UK. In fact there are two lists – List A and List B. These are basically either secure documents, such as a UK or EEA passport, or the originals of certain other documents confirming the holder is entitled to take up the employment in question. Before an individual starts work an employer must see either one document from List A or two documents from List B.

The employer must also be satisfied that the individual is the rightful holder of the documents they present, and that they allow them to do the type of work the employer is offering. This will involve

checking photographs, dates of birth, expiry dates, and the bewildering array of stamps and endorsements appearing in official documents of this nature. Finally, the employer must make and retain a copy of these documents. Providing that they have done so, they should then have a defence against any criminal proceedings brought against them.

The requirement to ask certain questions and seek confirmation of nationality or immigration status before permitting an individual to commence employment does of course raise issues of race discrimination. Anyone who believes that they have been discriminated against on racial grounds by an employer or prospective employer can bring a complaint before a Tribunal. If their complaint is upheld, there is no upper limit to the amount of compensation the employer could be ordered to pay.

Obviously the best way for employers to ensure that they do not discriminate is to treat all job applicants in exactly the same way at each stage of the recruitment process. If you are an employer you should:

- Ask **all** applicants for one of the necessary documents before they start work
- Don't insist on seeing a particular document – all documents are of equal value
- Don't assume that a foreign national or an applicant from an ethnic minority has no right to work in the UK
- Don't assume that a person is an illegal worker if they can't produce one of the relevant documents. You could suggest they go to a Citizens Advice Bureau for advice on what to do.

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This briefing is for general guidance only. It represents our understanding of English law and practice as at December 2007, but is not intended to be a comprehensive statement of the law. Readers are advised to seek specific guidance from Ward Hadaway.