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Newsletter

June'16

## MEASURES IN THE IMMIGRATION BILL 2015/16 & RECRUITMENT CHECKS

The Immigration Bill 2015/16 covers a number of areas in connection with immigration. Particularly relevant to employment specialists are Part 1 which (together with Schedules 1 & 2) deals with the labour market and illegal working and Part 7 which covers language requirements for public sector workers.

We have summarised the key provision below and included a section on the checks you need to make when recruiting staff:-

### KEY PROVISIONS

The Bill aims to tackle exploitation in the labour market by:

- Establishing a new Director of Labour Market enforcement who will oversee agencies strategy to crack down on serious exploitation of workers
- Making it a criminal offence to work illegally, seizing illegal workers' earnings as the proceeds of crime (Proceeds of Crime Act 2002) with a maximum custodial sentence of six months and/or fine.
- Making prosecution of employers easier and sanctions tougher, reinforcing the current system of heavy financial penalties for employing illegal workers. The existing offence of knowingly employing an illegal migrant will be extended to apply to where an employer knows or has 'reasonable cause to believe' that a person is an illegal worker, with sentencing increasing from two to five years.
- Creating powers to close businesses for up to 48 hours until the employer demonstrates that they have conducted right to work checks where illegal workers have been identified. If they cannot, the business is placed under special compliance requirements, including continued closure followed by re-opening subject to right to work checks.
- Ensuring that licences for the sale of alcohol and late night refreshments are subject to compliance with immigration laws.

The Bill may limit the employment of overseas nationals.

It proposes to give the Secretary of State the power to introduce an 'immigration skills charge' on employers who sponsor skilled workers from outside the EEA.

It also requires public authorities to ensure that public sector workers in customer-facing roles speak fluent English. Codes of Practice will be issued with which public authorities will be required to comply.

## CHECKING DOCUMENTS WHEN RECRUITING

When recruiting staff you will need to check that:

- The documents are genuine, original and unchanged and belong to the person who has given them to you.
- The dates for the applicant's right to work in the UK haven't expired.
- Photos are the same across all documents and look like the applicant.
- Dates of birth are the same across all documents.
- The applicant has permission to do the type of work you're offering (including any limit on the number of hours they can work)
- For students you see evidence of their study and vacation times.
- If 2 documents give different names, the applicant has supporting documents showing why they're different, eg a marriage certificate or divorce decree.



## TAKING A COPY OF THE DOCUMENTS

When you copy the documents:

- Make a copy that can't be changed, eg a photocopy.
- For passports, copy any page with the expiry date and applicant's details (eg nationality, date of birth and photograph) including endorsements, eg a work visa.
- For biometric residence permits and residence cards (biometric format), copy both sides.
- For all other documents you must make a complete copy.
- Keep copies during the applicant's employment and for 2 years after they stop working for you.
- Record the date the check was made.
- Make sure you follow data protection law.

**IF THE JOB APPLICANT CAN'T SHOW THEIR DOCUMENTS:**  
You must ask the Home Office to check your employee or potential employee's immigration employment status if one of the following applies:

- You're reasonably satisfied that they can't show you their documents because of an outstanding appeal, administrative review or application with the Home Office.
- They have an Application Registration Card
- They have a Certificate of Application that is less than 6 months old
- Application registration cards and certificates of application must state that the work the employer is offering is permitted. Many of these documents don't allow the person to work.
- The Home Office will send you a 'Positive Verification Notice' to confirm that the applicant has the right to work. You must keep this document.

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