

# Management Alert



## U.K. Immigration: Changes to the “Right to Work” Procedures and Penalties

By Deirdre M. Murphy

*The following alert is directed to organizations with a presence in the UK or who anticipate the need to place talent at a UK work site.*

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The Home Office has introduced changes to the rules regarding the prevention of unauthorized employment to which all employers in the U.K. are subject. These procedures are commonly referred to as the “Right to Work” checks. The new regime clarifies the documents which employers must check and simplifies the verification process, which is welcome news for employers. However, the level of fines for employing an illegal worker has increased, reinforcing the fact that employers must act in accordance with the new requirements to establish a defense and avoid sanctions.

### Overview of the Changes

Under Section 15 of the Immigration, Asylum and Nationality Act of 2006, an employer may be liable for a civil penalty if found to be employing a person who does not have the right to work in the U.K. To establish a defense against a fine, employers must check and retain specified documents for all employees before she or he begins working in the U.K.

As of May 16, 2014, the main changes are:

- The list of documents which an employer may check has been reduced. The Home Office has issued a revised “List A and B” and “Right to Work” checklist available here: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/311657/Employer\\_s\\_Right\\_to\\_Work\\_Checklist\\_final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311657/Employer_s_Right_to_Work_Checklist_final.pdf).
- If employing students, employers must now also obtain evidence from the academic institution confirming the student’s term dates and vacation times for the period he or she will be employed.
- Employers are no longer required to undertake an annual check on employees who have a status document with an expiration date. Rather, employers are now required to carry out a follow-up check before the expiration date of the status document, following the same steps as the initial check.

- Employers now have a grace period of 60 days after a transfer to undertake document checks for employees who have been acquired under the Transfer of Undertakings (Protection of Employment) regulations (at present the period is 28 days).
- The Government has increased the maximum civil penalty which may be imposed on an employer from £10,000 to £20,000 per illegal worker. The powers to enforce the payment of civil penalties have also been enhanced and the option to pay a reduced fine for early payment has been introduced.

The Home Office has published new, simplified guidance detailing the steps which employers should follow to ensure full compliance with the right to work check procedures, as well as detailed guidance on the civil penalty scheme. These documents are available here: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/311553/3\\_step\\_check\\_v5.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311553/3_step_check_v5.pdf) and <https://www.gov.uk/government/publications/illegal-working-fines-employers-guide>.

## What Does This Mean For You?

Employers should review current onboarding procedures to ensure that they are following the “Right to Work” checks in accordance with the new requirements. In particular, employers must check the documentation of new employees in accordance with the revised “List A & B.” Employers may also wish to utilize the revised “Right to Work” checklist as part of the onboarding process, to establish a statutory defense against a civil penalty, and reduce the potential financial risk and the reputational harm resulting from a breach of the regulations.

If you would like further information, please contact your Seyfarth attorney or Deirdre M. Murphy at [dmmurphy@seyfarth.com](mailto:dmmurphy@seyfarth.com).

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