



## Illegal working fines triple in February 2024: how employers can avoid right to work penalties

Right to work mistakes are easy to make and the consequences have increased. The Immigration (Employment of Adults Subject to Immigration Control) (Maximum Penalty) (Amendment) Order 2023 has now been approved by the House of Commons and the House of Lords, which means employers found to have hired anyone without permission to work face the biggest hike in civil penalties since 2014.

The Home Office has updated its right to work code of practice to include how the new fines are calculated. From 13 February 2024, fines increased from up to £15,000 to up to £45,000 per worker for a first breach. Penalties for repeated breaches have tripled – up to £60,000, instead of £20,000 per employee. Landlords renting to migrants without the right to rent face similar penalty hikes.

### What’s the worst that can happen?

As well as tripling maximum civil penalties for employing people without permission to work, it is a criminal offence to employ someone if an employer is aware or has reasonable cause to believe the worker has no right to work in the UK, punishable with unlimited fines and/or imprisonment. Additionally, the UK Government has dedicated more immigration enforcement staff and is conducting more compliance visits on employers with sponsor licences to employ migrant workers.

Right to work breaches may impact a firm’s sponsor licence and its ability to retain or sponsor other migrant workers. Employees working in breach of immigration conditions may face a ban from returning to the UK of up to a year or, if UK Visas & Immigration (UKVI) believe deception was used, up to 10 years. If an employee knows or has reasonable cause to believe they are in breach, they may face criminal sanctions too – imprisonment and seizure of illegal earnings.

### How can employers protect themselves from illegal working penalties?

- Up to date right to work check practices are more crucial than ever. Carrying them out correctly affords employers a statutory excuse to prevent civil penalties. Regular compliance audits of right to work practice, record-keeping, sponsor licence and reporting duties are advisable. Staff visa expiry dates should be noted for follow-up checks. For those who employ students, close attention should be paid to

ensuring they are working in line with their conditions (such as part-time hours restrictions) and not filling a full-time permanent vacancy, unless an exception applies. Care should also be taken to retain evidence of term dates and course start and end dates.

- When undergoing a merger or acquisition, it is important to consider right to work checks as part of your due diligence. The acquiring company will inherit both the statutory excuse and any civil penalty liabilities of the acquired company, but there are ways to establish a new statutory excuse within a limited grace period where TUPE applies.
- If an employer discovers that they have been employing someone who did not have the right to carry out that work in the UK, it is possible to self-report this to UKVI. If the employer has carried out checks correctly, giving them a statutory excuse, they should not be liable a civil penalty. If a statutory excuse was not established, the employer may be liable for a penalty (which they may otherwise not have received if UKVI were not aware of the issue) but reporting this through official channels can result in a reduction in the amount of the penalty.

## How to carry out right to work checks in 2024

Checks must be carried out before employment starts to fully protect employers. When an employee is coming up to the expiry date of their visa, a follow-up check should be conducted.

If a new employee holds an eVisa, a Biometric Residence Card (BRC), a Biometric Residence Permit (BRP) or a Frontier Worker Permit (FWP) or has EU Settlement Scheme (EUSS) status, employers should conduct an online right to work check using the free Home Office online checking service. You can find further guidance on this process and the concession on what documentation Ukrainian nationals may use to prove their right to work here.

If a prospective employees' physical documents are valid British and Irish passports or Irish passport cards, employers should conduct in-person checks or use one of the certified Identity Service Providers (IDSPs) using Identification Document Validation Technology (IDVT) to check the valid documents.

We would always advise an employer that wants to ensure they have a statutory excuse and is using a government certified IDSP to ensure the IDSP is an approved one and take the following steps to protect themselves:

- obtain an output of the IDVT identity check from the IDSP containing a copy of the IDVT identity check and the document checked in a legible format that cannot be altered;
- carry out their own due diligence to reasonably satisfy themselves that their chosen IDSP has completed the check in the prescribed manner satisfy themselves that the photograph and biographic details (for example, date of birth) on the IDVT identity check are consistent with the individual presenting themselves for work;
- where names differ between documents, establish why and do not employ that individual unless they are satisfied documents relate to them. A statutory excuse will not be obtained where it is reasonably apparent that the prospective employee is not the individual linked to the identity verified by the IDSP; and
- retain this information securely for the duration of employment and a further two years after. The copy must then be securely destroyed.

Remote right to work checks brought in during the pandemic allowed employers to conduct checks on prospective staff without having to meet face-to-face, but these only provided employers with protection up to October 2022.

## Sponsor licence compliance

Employers are often put off sponsoring potential employees for work visas due to the perception that compliance responsibilities are complex, however, the requirements are relatively straightforward and easy to understand once you get to grips with them.

To become a sponsor, an organisation must be able to meet certain responsibilities for record keeping, monitoring and reporting. While these may require changes to HR systems and process management, these are generally common-sense procedures, and you are likely to be doing many of them anyway as a matter of good HR practice.

For example, most employers will have copies of contracts, job descriptions and references from previous employers on personnel files and most will have a means of tracking and monitoring absences from work.

In most cases, becoming a sponsor, sponsoring a visa and managing the sponsor licence simply involves understanding what UKVI expects of you, keeping good records and being organised.

You can find out more on how the new civil penalties are calculated and how to avoid them in the [Government's newly-published code of practice](#).

