



Right to work check news - what to watch out for as social distancing ends

Very last-minute, but good news for employers, is that the Home Office caved into calls to extend the concession permitting employers to carry out a manual right to work check remotely using video conferencing and scanned copies of supporting documents during the pandemic. The coronavirus concession was due to end abruptly this month but that has now been aligned with the proposed relaxation of lockdown restrictions and social distancing measures on 21 June 2021.

The guidance states that from 21 June 2021 'employers will revert to face to face and physical document checks as set out in legislation and guidance'. The Home Office has also confirmed to firms who provided feedback on the initial date that it is undertaking a review of the value of technology including identification verification technology as a means of playing a role in right to work checks going forward.

Compliance visits and penalties are back

Employers must not get caught by the change on 21 June, as the Home Office has resumed compliance visits as well as issuing fines for right to work check breaches.

During the pandemic, the remote right to work checks meant employers did not need to lose out on statutory protection against illegal working penalties if new joiners sent scanned copies of their evidence, then held the originals up to camera on a video call, with dated records kept of these checks.

One positive however is that the Home Office's updated advice confirms employers will not have to carry out a retrospective or follow-up check if they carried out the checks as required by the Coronavirus concession between 30 March 2020 and 21 June, 2021. The original plan was for firms to have to do the checks again after the disruption of the pandemic ended – which would have been a nightmare for companies with high turnovers of staff.

From 21 June, new employees will still be able to send their original documents by post or courier and employers check their likeness

over a videocall, potentially convenient for those who may want to still work from home perhaps, though not everyone will feel comfortable with passports and suchlike being sent back and forth in the mail.

The change will largely affect British citizen workers as online right to work checks will continue to be available for people with a biometric residence permit and those in the UK under the EU Settlement Scheme (EUSS).

Don't get caught out by third party services carrying out checks

The last minute change adds to the misapprehensions and pitfalls employers face with right to work checks. There is confusion for instance about what suffices as a right to work check on employees from the EEA and Swiss nationals.

The Home Office guidance says a passport and ID cards are all that need checking until 30 June 2021 as they have a grace period until then to apply for the EUSS. But this does raise questions for employers who are aware of candidates who arrived in the UK for the first time after 31 December 2020 and so aren't eligible to apply for status under the EUSS.

I am also increasingly hearing from HR staff that they use third party companies to carry out right to work checks. This concerns me greatly as without directly seeing the evidence the Home Office requires them to, employers aren't technically afforded the statutory protection from penalties if anything goes wrong.

Using a third party is better than nothing, but the Home Office guidelines are clear: checking the validity may be delegated to staff members, but the employer will remain liable for any penalty in the event the employee is found to be working illegally and the prescribed check has not been correctly carried out. "You may not delegate this responsibility to a third party." Third parties such as recruiters and professional advisers may provide systems for such checks, but the responsibility for conducting them (and the consequences for not conducting them) remains with the employer.

If you would like to discuss any of the issues raised or if you have any other queries related to UK immigration, please get in touch with immigration partner [Vanessa Ganguin](#).