



## ARE YOU EMPLOYING STAFF IN 2021 ? ENSURE YOU UNDERSTAND THE NEW RULES POST BREXIT !

### BACKGROUND

Following BREXIT on 1<sup>st</sup> January 2021, new immigration rules, and therefore rules on the employment of **non UK** employees, came into force. These now impact potential employees of UK businesses that are citizens from **the EU, Iceland, Liechtenstein, Norway and Switzerland (except Ireland) !**

Where employees, or potential new employees, are citizens of the EU etc., (and their families) and were already in the UK **before 31<sup>st</sup> December 2020**, they do **NOT** need a visa for employment purposes, but must either

- have obtained a UK passport, where necessary, or
- alternatively applied for **'settled'** or **'pre-settled'** status as part of the **EU Settlement Scheme** by 30th June 2021.

Any potential employees from the EU etc., who have come to the UK for work purposes **after 1<sup>st</sup> January 2021** MUST have a visa.

### WHAT IS AN EMPLOYER REQUIRED TO DO NOW ?

When you are considering recruiting a potential new employee for your business, you need to be aware that an Employer is now **legally required** to carry out a **'Right to Work'** check – which involves seeing the individual's passport.

- **For a UK citizen (or an Irish citizen):** there are no further requirements ahead of employing them
- **For a non UK/Non EU/EEA citizen:** the usual visa and checks of such visas are required ahead of employing them
- **For an EU/EEA (Iceland, Liechtenstein, Norway and Switzerland) citizen:** then they must have a **'settled'** (or **'pre settled'**) status or a visa as per the above, ahead of employing them

- **Until 30 June 2021**

Employers were not allowed to ask employees, or potential employees, if they have **'settled'** or **'pre-settled'** status, or to provide any evidence of application for such status, but Employers could continue to check passports or national identity cards as proof of their right to work in the UK.

There was also no requirement to ask when they arrived in the UK.

- **From 1st July 2021**

From 1st July 2021, Employers are no longer able to accept passports and national identity cards employees or potential employees from the EU/EEA etc. to prove their right to work in the UK.

Instead Employers must carry out the **'Right to Work'** checks, either online or manually.



Two lists have been released detailing the documents Employers may accept when completing '**Right to Work**' checks — List A and B.

An example of acceptable documentation from **List A** is a passport (current or expired) showing the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK.

An example of acceptable documentation from **List B** is A current passport endorsed to show that the holder is allowed to stay in the UK and is currently allowed to do the type of work in question.

- **From 31st August 2021**

The temporary provision to conduct these checks virtually is to be discontinued from 31 August onwards meaning that, Employers will need to manually carry out '**Right to Work**' checks i.e. the business will need to be sent the original versions of the important documents, not copies, which may cause inconvenience for the employees in question.

## **PROBLEMS FACING EMPLOYERS WITH NEW EMPLOYEES IN 2021 !**

The changes following on from 1<sup>st</sup> January 2021, and then the subsequent changes in requirements later in 2021 means that recruiting new (non UK) employees being some additional '**administrative**' headaches e.g.

- With the ongoing impact of the COVID-19 Coronavirus pandemic, Employers are legally required to manually check an employee's documents, however there are various practical/HR reasons that it may need to be possible to do this e.g. working from home guidance, reluctance to return to offices etc
- Employers will be required to ensure that they recheck the '**Right to Work**' of employees who have time-limited permission to work in the UK e.g. a follow-up check may need to be included as part of any recruitment and induction processes.
- Employers need to ensure that they are not seen to discriminate against an employee on the basis of their nationality (for any reason).
- Given the nature of the post BREXIT border checks that have been in place in practice in the UK, there is a likelihood that EU/EEA citizens may have arrived in the UK post 1<sup>st</sup> January 2021 and were unaware of, or not required to have a visa prior to entry into the UK e.g. if as an Employer you have employed such a person between 1st January and 30th June 2021, even while following the Government applicable at that time, you may have an employee who isn't entitled to work in the UK

## **NEXT STEPS**

Where an Employer is found to have hired someone illegally and have not carried out the prescribed checks, they may face sanctions including:

- a civil penalty of up to £20,000 per illegal worker
- in serious cases, a criminal conviction carrying a prison sentence of up to five years and an unlimited fine
- closure of the business and a compliance order issued by the court; and more.



Therefore the additional steps that each Employer should now take include the following:

- If you've employed any **EEA or Swiss nationals** since 1 January 2021, check whether they were already living in the UK **by 11pm on 31 December 2020**.
- If they arrived after this, it's likely that they need a visa to work here, and you need to take action to avoid any criminal liability (even if you mistakenly employed them having done the basic checks).
- Where there is a visa issue with any employee then as an Employer your options include
  - Suspending them whilst you investigate when they entered the UK and if they have a visa – keeping the suspension as short as possible; or
  - Dismissing them. However, this risks a potential tribunal claim, however as this is a potentially sensitive area, so **before** doing anything, you **must** take legal advice.
  - Update your recruitment and induction processes and policies, to include a clear '**Right to Work**' check for all new or potential employees that are in line with the new 1 July 2021 changes.

**Contact us at Sakura if you have any queries around the risks that may be applicable to your business and/or you need advice on how to manage it more appropriately. Contact us on 0207 952 1230 or [damian@sakurabusiness.co.uk](mailto:damian@sakurabusiness.co.uk)**