



Illegal Working

10th December 2007

The Government is committed to targeting illegal working. This is because the Government believes that illegal immigration and illegal working are very closely linked.

From next year there will be several changes that the Government intends will target illegal working. This information sheet highlights some of the most important of these.

Sponsorship

Under the Points Based System, which will be rolled out from next year, employers will need to obtain a licence from the Border and Immigration Agency (BIA) if they wish to employ migrant workers (other than European Economic Area (EEA) nationals). Licence-holders will be required to hold records of migrant workers that can be inspected by the BIA; and to report to the BIA if there are reasons to think that the migrant is not complying with immigration control – including (but not limited to) where the migrant has not turned up for work.

If the employer fails to meet these requirements, the employer may lose its licence. Without a licence, the employer will not be permitted to employ migrant workers (other than EEA nationals).

‘Migrant workers’ here means migrants who come to the UK in order to work; as opposed to migrants who may come to the UK for other reasons but be permitted to work.

More information on sponsorship is available from the information sheet on “Points Based System – Sponsorship”.

Civil penalties

Next year the Government will introduce a system of civil penalties for those found to be employing illegal workers. A civil penalty is a fine, and the current intention is that the fine may be up to a maximum of £10,000 for each illegal worker.

The precise level of a fine imposed will depend on the following factors:

- whether the employer has conducted checks on the worker’s right to work (if partial checks have been done, the level of the fine may be reduced; if full checks have been done, no fine will be imposed)
- whether the employer has reported the illegal worker to the BIA (if so the level of the fine may be reduced)
- whether the employer has been warned or fined previously (the more times the employer has been warned or fined previously, the larger the fine is likely to be)

The Government has recently published a draft code of practice relating to civil penalties. The draft code is available at:

http://www.ind.homeoffice.gov.uk/6353/6356/17715/Civil_penalties_code_of_pra1.pdf

Criminal prosecutions

Currently it is an offence to employ a migrant if that person does not have permission to work in the UK or is working in breach of his or her conditions of stay in the UK. This is an offence under section 8 of the Asylum and Immigration Act 1996; and the offence does not require that the employer knows the person is working illegally. The employer has a defence if the employer

ILPA information service

funded by JRCT

www.ilpa.org.uk/infoservice.html

Steve Symonds

ILPA legal officer

020 7490 1553

steve.symonds@ilpa.org.uk

Immigration Law Practitioners’ Association

www.ilpa.org.uk

T 020 7251 8383

F 020 7251 8384

Information sheets provide general information only.

ILPA members listed in the directory at www.ilpa.org.uk provide legal advice on individual cases. ILPA does not.

was shown a document that appeared to demonstrate the person was permitted to work in the UK and the employer retained a copy of the document – unless the employer knew, despite the document, that the person was not in fact permitted to work. An employer found guilty of the section 8 offence may be fined up to £5,000.

From 29 February 2008, the section 8 offence will be repealed and replaced by section 21 of the Immigration, Asylum and Nationality Act 2006. Under section 21, it will be an offence to knowingly employ a migrant who does not have permission to work. However, those found to be employing illegal workers may be subject to the civil penalty (see above) even though they did not know the person was working illegally. An employer found guilty of the section 21 offence may face a term of imprisonment of up to 12 months (in England and Wales) or 6 months (in Scotland and Northern Ireland). The employer may also be fined whether or not a prison sentence is imposed.

Biometric Immigration Documents

From next year, the Government intends to introduce an identity card system for all migrants. The UK Borders Act 2007, passed in October 2007, empowers the Home Secretary to make regulations for such a system. The cards will be Biometric Immigration Documents (BIDs); and migrants will be required to register their details (including fingerprints) and apply for one of these BIDs.

The identity card system will be rolled out in stages. It is intended that those making new applications to come to the UK in order to work or study will be among the first groups for whom the system is introduced. Eventually, employers will be able to check whether a migrant is permitted to work by checking the person's BID against the records held centrally by the BIA.

Nevertheless, the Government does not expect to complete the roll-out of the system for all migrants until 2011. It seems likely, therefore, that for a substantial period of time there will continue to be significant groups of migrants, who will have permission to work but will not have a BID. These groups may include:

- those who have already entered the UK with permission to work;
- those granted indefinite leave to remain in the UK;
- refugees; and
- those granted humanitarian protection or discretionary leave

Unlawful discrimination and wrongful refusal of employment

The Government has also recently published a draft code of practice offering guidance to employers on making checks on whether any prospective employee is entitled or permitted to work in the UK. This draft code is available at:

http://www.ind.homeoffice.gov.uk/6353/6356/17715/Anti-discrimination_code_of1.pdf

Difficulties are often faced by individuals who have made an application to extend their period of stay in the UK. While that application (or any subsequent appeal) remains outstanding, the individual will ordinarily continue to have permission to work. However, the documentation available to the individual will only demonstrate that the application has been made; but will not demonstrate whether or not it has been decided. In these circumstances, it has proved difficult to satisfy an employer that the individual may be legally employed. A more general concern is that, despite the code of practice, employers may be too quick to refuse employment to certain individuals in order to protect themselves against the risk of prosecution or the civil penalty, even though those individuals do have permission to work.