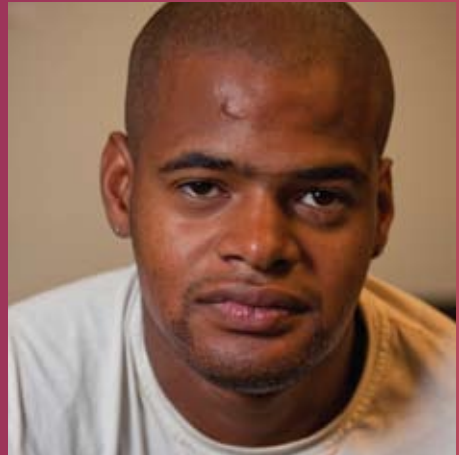


Immigration Document Checks and Workplace Raids



a negotiators' guide

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This booklet will:

- help you deal with document checks by negotiating agreements with management
- give you guidance on what to do in an immigration raid.

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Photos in this booklet are used for illustrative purposes only and are not of individuals affected by workplace immigration controls.

The information in the booklet is a summary only and should not be relied upon as a full statement of immigration or discrimination law.

Foreword by Brendan Barber



By bringing immigration enforcement into British workplaces, the Government has presented new challenges to trade unions in protecting the rights of our members.

The latest regulations, which came into force in February 2008, have introduced tougher penalties and higher fines for employers of undocumented migrant workers. The likely result is an increase in friction and suspicion between employers and workers.

We should all be concerned about the potential damage to equal opportunities and race relations of these regulations, as ethnic minority workers are more likely to be targeted for document checks. The almost daily reports of workplace raids by the UK Border Agency, assisted by some employers, are causing division and fear in our workplaces.

These developments present trade unions with a number of challenges. We need to ensure that:

- employers do not use these regulations to divide and rule workers and exploit those that are the most vulnerable
- workers who are suspected of being undocumented workers are not harassed or discriminated against as a result, and
- as trade unionists we are fulfilling our responsibility to protect the dignity and rights of all workers in the workplace.

These challenges can only be met if we are proactive in negotiating with employers to ensure that only necessary document checks are carried out, and that these are carried out consistently and fairly. This should deny any unscrupulous employer the opportunity to exploit migrant workers, to divide workers or to threaten those that stand up for their rights.

This guide is intended to assist trade unionists at all levels to meet these challenges through negotiation and collective bargaining.

Background to workplace immigration controls

Britain, like other expanding capitalist economies, relies on the contribution of a substantial number of migrant workers. In 2009, migrant workers made up over 13 per cent of the UK labour force.

In addition to migrant workers from outside the European Union (EU), the UK has opened its labour markets to nationals of 10 central and eastern European countries since 2004, although – especially for Bulgarian and Romanian workers – restrictions remain on their access to the UK labour market.

The increase in migrants coming to the UK has been accompanied by a tougher political approach towards immigration. Since the 1990s, successive British governments have stepped up their efforts to manage immigration to the UK and to control migrants once they are in the country. The government has increasingly relied upon ‘in-country’ enforcement measures. This means it has assigned new responsibilities to both the public and private sectors to monitor migrants living and working in the UK.

Workplaces became important for monitoring migrants in the UK in the mid 1990s, when employers were first brought into formal immigration control. There is no evidence that employers or the business community wanted to take on immigration control responsibilities.

Legislation in 1996 specified that employers could avoid criminal prosecution if they checked the immigration documents of their new recruits, despite

concerns that this would result in race discrimination of ethnic minority workers by employers. Further legislation passed in 2002 and 2006 deepened the responsibility of employers for the immigration status of their workers.

The 2006 regulations are part of a renewed effort by the Government to crack down on undocumented working in the UK. These regulations, which came into force on 29 February 2008, are tougher than those in many other countries, introducing a new level of responsibility for employers and higher civil and criminal penalties. They have been accompanied by an increase in high-profile immigration raids, intended to deter employers from breaking the rules.

The issue of immigration checks in the workplace has become more complicated as a result of changing immigration rules. Migrant workers from outside the EU, EU nationals, students, refugees and some asylum seekers are all likely to hold different documentation showing their entitlement to work in the UK and any limitations on their access to the labour market. This can make it more complicated to protect their rights at work.

The recent introduction of a points-based system for economic migration has made it more difficult for many people from outside the EU to enter the UK for work and study, or to renew their permission to be here. Employers have new responsibilities as ‘sponsors’ of certain migrant workers under the points-based system.



The swift pace of change to immigration laws and regulations means that migrant workers need the protection provided by trade unions now more than ever.

For trade unions, addressing the issues presented by immigration enforcement in the workplace is part of a bigger challenge – to support the rights of all workers, regardless of immigration status. The swift pace of change to immigration laws and regulations means that migrant workers need the protection provided by trade unions now more than ever.

What the law says

The Immigration, Asylum and Nationality Act 2006 has increased employers' responsibility for the immigration status of their employees. The new regulations have created a greater risk of unlawful race discrimination by employers. To be better prepared to protect their members, trade union representatives now need to have some understanding of immigration law as well as the law prohibiting race discrimination.

This information should assist collective bargaining in support of workers who are likely to be affected by immigration document checks and workplace raids.

Workplace immigration controls

Before 1996, employers generally did not face sanctions if they employed someone who did not have permission to work in the UK, and they had no reason to check their employees' documents.

The Asylum and Immigration Act 1996 made it a criminal offence for an employer to take on, from 27 January 1997, an employee who did not have the right to enter, stay or be employed in the UK. Employers found to have done so would however have a defence if they could show that they had checked one identity document from a Home Office list before the employment began. The employer had no reason to check employees' documents again after that. The 1996 Act was amended in 2002, establishing two lists of documents that a worker would



be expected to produce at the point of recruitment.

The Immigration, Asylum and Nationality Act 2006 substantially increased employers' responsibility for the right to work of their employees from 29 February 2008. Employers can now be issued a civil penalty fine of up to £10,000 for each undocumented migrant worker who began as an employee on or after that date. An employer can avoid a civil penalty fine if they can show that they had carried out the relevant document checks on the worker in accordance with government guidance.

This legislation is enforced by the UK Border Agency (UKBA), the Home Office agency responsible for controlling the national borders and migration in the UK.

Employer document checks

Employer document checks are now more complicated than under the previous

legislation. As before, in order to avoid a fine, new employees' documents need to be checked at the point of recruitment. However, to remain exempt, employers must carry out repeat checks every 12 months throughout the employment of those employees who began on or after 29 February 2008 who do not have the permanent right to work in the UK.

The Act does not require employers to check their employees' documents; it simply makes it unlawful to employ undocumented migrant workers. Carrying out the checks according to regulations under the 2006 Act is, however, the only way that an employer can avoid a fine if they have employed an undocumented migrant worker. This means there is a strong incentive for employers to carry out document checks.

If an employee cannot produce documents showing their right to work in the UK, this alone is not proof that the person is an undocumented migrant worker. While employers are entitled to protect themselves from a fine or prosecution, in recent cases the courts held that employers in this situation were not entitled to dismiss their employees without notice. It is recommended that employers should follow their normal disciplinary procedures, including granting the worker the right of appeal.

List A and List B

According to regulations under the 2006 Act, employers need to check one or more of the types of documents that are set out in List A and List B (see Appendix).

Checking a worker's documents includes verifying that they are genuine, making and keeping copies. If before starting work a person cannot produce documents from either List A or List B, then an employer will have a valid reason not to take them on.

List A: List A documents confirm that a person has the permanent right to stay and work in the UK. People holding List A documents need only be checked once, at the point of recruitment.

List B: List B documents confirm that a person has the limited right to stay and work in the UK. People holding List B documents need to be re-checked every 12 months until they end their employment or are able to produce a List A document, in order for their employer to maintain a defence against being fined.

Penalties and prosecutions

Employers can be fined up to £10,000 for each undocumented migrant worker they employ if they have not carried out the required document checks. A civil penalty fine may be reduced by £2,500 for each suspected undocumented migrant worker the employer reports to the UKBA. The fine may also be reduced if the employer cooperates with the UKBA during a workplace raid.

The 2006 Act makes it a criminal offence knowingly to employ a migrant worker who does not have the right to enter, stay or work in the UK. This offence carries a sentence of up to two years' imprisonment and/or an unlimited fine.

Agency staff, self-employed workers and TUPE transfers

The 2006 Act only applies to direct employees. This means that an employer will not be fined or prosecuted under this Act if they have working on their premises any undocumented migrant worker who is self-employed, working under a contract for services, or is the employee of an agency or a separate contractor. Responsibility for the immigration status of agency staff and the checking of their documents is held by the employment agency or gangmaster, as their direct employer.

A TUPE transfer occurs when a new employer A takes over the work previously done by employer B; B's employees doing that work are automatically transferred and become employees of A, retaining all of their existing terms and conditions. The UKBA advises that the new employer should conduct 'appropriate checks' on the documents of their workforce acquired through the TUPE transfer, within 28 days of the transfer. Case law has not yet established what is meant by 'appropriate checks' in these circumstances.



Race discrimination and immigration document checks

Under the Race Relations Act (RRA) 1976 and its subsequent amendments it is unlawful for an employer to discriminate against their employees or prospective employees on the grounds of race, colour, nationality (including citizenship), or ethnic or national origin. This applies to both public and private sector employers.

The RRA prohibits direct and indirect discrimination, harassment and victimisation of workers at every stage of employment, including recruitment; selection; promotion; treatment as an employee including terms and conditions, pay, training, access to benefits; discipline and dismissal. It recognises four main forms of discrimination. Definitions can be found in the glossary at the end of this guide:

- direct discrimination
- indirect discrimination
- victimisation
- harassment.

Complaints of race discrimination at work are heard by an employment tribunal, which can award compensation for financial loss and for 'injury to feelings'. There is no upper limit to awards for race discrimination.

The Equality Act 2010 maintains, with some improvements, protections against race discrimination. The Equality Act 2010 will replace the Race Relations Act 1976 from a date in 2010. At the time of writing this date had not been announced.

How to avoid race discrimination in immigration document checks

In February 2008, the UKBA issued a code of practice on avoiding unlawful discrimination to accompany the new regulations on document checks. This code includes guidance on the steps employers should take while conducting document checks on workers. According to this guidance employers should:

- avoid making assumptions about job applicants based on their appearance or accent
- ask for the specified documents from all job applicants being considered, at the same stage of the recruitment process
- avoid treating job applicants differently if they produce documents from List B rather than List A
- avoid treating employees with limited leave to remain less favourably than other employees, other than subjecting them to repeat checks.

A series of legal cases has demonstrated that employers cannot rely on their assumptions about the right to work of migrant workers to justify discrimination against them.

Workplace raids

Under certain circumstances, the UKBA may conduct workplace 'compliance and enforcement visits' or 'raids'. Before conducting workplace raids, the UKBA is required to have a 'reasonable suspicion' that immigration laws have been or are being breached. In each case, the UKBA must have some objective basis for that suspicion based on facts, information and / or intelligence relevant to the workplace or to individual workers. Reasonable suspicion

cannot be based on generalisations that certain groups are more likely to commit immigration offences. The Race Relations Act 1976 makes it unlawful for the police or UKBA to identify persons for search, arrest or questioning solely on racial grounds.

The UKBA now has various enforcement powers that may be applied to employees or workers. These include the following:

- Entry and search. If authorised, UKBA officers can enter and search a workplace without a warrant to arrest someone for an offence relating to entry, stay or working in breach of conditions in the UK.
- Questioning. UKBA officers may question any person at a workplace about their immigration status if they hold a reasonable suspicion that that person may have committed an immigration offence.
- Arrest. UKBA officers may arrest an employee or worker without a warrant if they hold a reasonable suspicion that the employee or worker is committing an offence relating to entry, stay or working in breach of conditions in the UK.
- Seizure. UKBA officers may seize and retain any evidence relating to an employee or worker who has been arrested at the place where the arrest was made.
- Taking further action. Following arrest, UKBA may issue a notice to remove an undocumented migrant from the UK. Once a notice for removal is issued the migrant can be held in detention. They may be released on bail or on temporary admission subject to residence, employment and reporting conditions. In most cases an appeal can only be made following their removal from the UK.

Issues arising for trade unions

Trade union representatives and members are increasingly likely to encounter immigration document checks and/or immigration raids in their workplace. This section outlines a number of issues that may arise in relation to document checks and immigration raids. You may also experience other issues in relation to these regulations or to other laws relating to migrant workers.

This section suggests collective bargaining strategies that may pre-empt or address unlawful discrimination or other problems. The best outcome of collective bargaining will be to agree a document check agreement with your employer that minimises the risks of damage to the workforce in the case of immigration document checks or workplace raids. The principles of this agreement should also be included in wider policies, such as your employer's recruitment policy.

Document checks during recruitment

As the statutory code of practice accompanying the 2006 Act advises that document checks are carried out on all workers at the same point of the recruitment process, this should form a part of the company recruitment policy. If your employer does not have a recruitment policy, you should try to get one in place.

If your employer already has a recruitment policy in place, it should contain provisions on how document checks will be carried out on new recruits, at which stage this

will be done, and how the employer will avoid unlawful discrimination in doing so. The recruitment policy should be applied evenly and fairly to all new recruits. Look at the points below. If any of these points are not included in your company's recruitment policy, you need to negotiate with your employer to make sure that they are included.

Checklist for your company's recruitment policy:

- Does the recruitment policy specify that document checks will be carried out on all new recruits, and not on specific job applicants on the basis of their race, colour, nationality, ethnic or national origins, in order to avoid unlawful discrimination?
- Does it confirm that the checks will be carried out at the point of recruitment, but before the person begins work?
- Does it specify that any of the documents from Lists A and B, in the combinations specified by the Home Office, can be produced for checking, not just a passport?
- Does it make clear that documents will only be withheld by your employer for long enough to make copies, recommended by the Home Office to be no longer than 24 hours?
- Does it specify that any new recruit who cannot produce documents will be given a period of grace in which to try to produce the documents or to seek legal advice?
- Does it allow for trade union representation in the case that new

recruits have problems in producing documentation for employers?

Bargaining in action

Chinua Adebayo, originally from Nigeria, has British citizenship. He has worked as a security guard in the same hotel in Birmingham for years.

In May 2009 he noticed that his employer had put a notice up in the staff changing room, with a list of people who were being asked to present their documents to management. Chinua's name was on the list.

He felt intimidated and upset. Following advice from his trade union representative, Chinua challenged his employer and the notice was taken down.

Repeat document checks

As a result of the 2006 Act, trade unions will find some of their members subjected to document checks on a regular basis, with the potential for unlawful discrimination. This will apply to workers who hold 'List B' documents, who began work on or after 29 February 2008. Some employers may also want to check the documents of other workers or their whole workforce, even if their contracts of employment began before 29 February 2008, and even if such checks offer no additional protection to employers.

You should negotiate an agreement with your employer about the way that repeat document checks are carried out in the workplace. They should only be carried out when absolutely necessary for the employer to stay within the law. They should also be carried out in a way that avoids unlawful discrimination.

The following should be included in your document check agreement:

- Only List B document holders, who began work on or after 29 February 2008, will be repeat-checked by employers.
- There will be agreement with the union about when repeat checks will be carried out, and advance warning will be given to employees and the union.
- Union officials will be able to monitor the way that document checks are carried out and to give advice to workers during this process.
- An appropriate grace period, as agreed with the union, will be granted to employees who cannot produce documents for repeat-checks when asked by employers, in order to seek trade union or legal advice.
- Documents will only be withheld for long enough to make copies, recommended by the Home Office to be no longer than 24 hours.
- Any correspondence between the employer and the UKBA, for example telephoning the UKBA Employer Checking Service, will only be entered into with the consent of the employee concerned.

- The employer will take all necessary steps to avoid any form of unlawful discrimination in carrying out repeat document checks on employees.

Workplace raids, arrests and detention

You may need to negotiate with your employer to reduce the risk of an immigration raid happening in your workplace. You should try to extract an agreement from your employer that they will not contact the UKBA to report any of the workforce. An agreement with your employer about workplace raids should form part of your document check policy.

You should also think about your response if a raid on your workplace were to take place. It is possible that a raid could result in the arrest of one or more of your members.

Checklist if a UKBA raid takes place at your workplace:

- Contact your union full time officer or union regional office to see if they can get a legal representative down to your workplace.
- Try to find out whether the workplace raid has happened as a result of your employer reporting workers to UKBA.
- Ask the UKBA official to let you or a legal representative sit in on any interviews that they conduct with your members.
- Keep a record of those members who were interviewed and the reason given for UKBA's suspicion that they might have committed an immigration offence.



- Keep a record of workers who are arrested by UKBA and try to find out where they are taken to be detained.
- Try to contact the worker in the police station or detention centre if they have been detained and find out if you can help by: informing family members or friends of the situation; informing a legal representative who may already be dealing with the worker's immigration status; seeing if the union or a local refugee and asylum NGO can provide or help find appropriate legal representation for members if needed.
- See if the workers want the union to help run an anti-deportation campaign. There are specialist organisations which may be able to help. See the 'useful organisations' section at the end of this guide for their contact details.
- Try to secure suitable arrangements with the employer, to make sure that any money owed to an arrested worker is paid.

Other document check and immigration raid issues

TUPE transfers

There is still some ambiguity about the way that employers should check the documents of a workforce acquired through a TUPE transfer, as the regulations only specify that ‘appropriate’ document checks should take place.

You should seek a meeting with the new employer before the TUPE transfer has taken place in order to:

- establish the terms of document checks on the workforce
- insist that the employer allows a 28-day period in order to carry out any checks.

Try to persuade the new employer to agree that the requirement for document checks should be complied with by checking the previous personnel records for newly acquired workers, rather than by asking all workers to produce their documents.

Difficulties proving the right to work
Some migrants who do have the right to work may face difficulties in proving they have the right to work when asked by an employer. This could include migrants with less common documentation such as refugees, or migrant workers whose documents have been sent to the Home Office as part of a visa application.

Any worker who is having difficulties in satisfying their employer that they have the right to work should seek legal advice as soon as possible. Employers should allow a reasonable grace period for the worker concerned to seek legal advice on their situation. If an employer does not do

Bargaining in action

In June 2009, a workplace raid was carried out by the UKBA at a major London university. The target of the raid was the university’s cleaning staff, employed by a multi-national cleaning company which held a contract with the university. Many of the cleaners there had been involved in collective action to improve their pay and working conditions.

That day, all the cleaners were summoned into a room for what they were told was a staff meeting. The cleaners were met instead by immigration officials. Nine cleaners were arrested on suspicion of an offence, and eight were deported during the following week.

Sustained action in support of these workers by the university students and the union following the arrests led to the university cancelling the contract with the agency concerned.

so and dismisses a worker on the incorrect assumption that they don’t have the right to work, the worker may be able to bring a case of unfair dismissal to the employment tribunal.

Document checks on trade union activists

Some employers may seek to disrupt collective action by carrying out document checks on key trade union activists, or reporting them to the UKBA. This may be a deliberate attempt to undermine trade union negotiations over working

conditions. Such actions could constitute discrimination against workers on the grounds of their trade union membership.

You should involve your union full time officer in any situation where trade union activists are being singled out for immigration checks or where collective action is being disturbed by immigration checks or raids. It may be helpful to bring this to the attention of other trade unions and the local media.

Undocumented migrant workers

Undocumented migrant workers have few enforceable employment rights. This means that some employers exploit them by paying them low wages, making them work unpaid overtime, or failing to make sure that working conditions are safe. Immigration regulations may be used as a further pretext for employers to take advantage of undocumented migrant workers. Employers may seek to gain a reduced fine by reporting their undocumented migrant workers to the UKBA.

Any attempt by an employer to exploit undocumented migrant workers through the threat or use of document checks and immigration raids should be challenged by union members. Migrant workers who lack the documentation necessary to do their job should seek legal advice as soon as possible.

Some employers may seek to disrupt collective action by carrying out document checks on key trade union activists, or reporting them to the UKBA. This may be a deliberate attempt to undermine trade union negotiations over working conditions.

Bargaining in action

Jose Toledo has been living in Manchester for 10 years. He works for a hotel as a porter. Jose has been a union member for several years.

When he was first recruited, Jose's manager did not bother to ask him for his papers. After the new regulations came into force in February 2008, his manager sent out a letter to all the hotel staff asking them to produce their papers.

Jose got together with the other staff, all of whom had been employed before 2008. They agreed that they would collectively refuse to show their papers. When he realised that no one was going to show their papers, Jose's manager dropped the request.

What you can do – a recap

Some or all of the issues that have been raised in this guide may arise as a problem in your workplace. There is a critical role for trade union representatives in helping to support the rights of migrant workers, and in promoting positive race relations in workplaces generally.

In order to avoid or address any of the issues raised in the previous section, you will need to:

- prepare yourself in advance
- develop a course of action
- talk to management and your members.

Prepare yourself in advance

If issues relating to immigration checks and raids become a problem within your workplace, events could unfold quickly, making it more difficult for you to protect the rights of the workers concerned.

Think about your own workplace. Is your employer aware of the regulations about immigration enforcement in the workplace. Do they know what they are and are not required to do? Do you think your workplace is at risk of an immigration raid? You should try to anticipate any problems that might arise.

You do not need to know everything about immigration laws in order to negotiate on behalf of migrant workers, but you should consider how your members could be affected by immigration document checks or a workplace raid. Find out where your

members could get legal advice about their immigration status in advance.

Develop a course of action

Your aim should be to use collective bargaining to agree a document check policy with your employer that minimises the risks of damage to the workforce in the case of immigration document checks or workplace raids. The principles of this agreement should also be included in wider policies, such as your employer's recruitment policy.

There may be particular issues on which you want to negotiate with your employer. You will need to develop a course of action, based on the following considerations:

- What problems are likely to emerge in your workplace?
- What are the winnable goals for negotiations?
- What is the likely management response?
- How can the trade union best achieve these goals?

Talk to management and your members

Negotiation is the most valuable tool you have available for protecting workers' rights in the context of immigration checks. You will need to:

- involve your members
- be clear about the goals you are pursuing

- put forward positive solutions
- show your management that you are aware of the legislation around these issues and that you may know more than they do about best practice
- include migrant members on the negotiating team – consider bringing in other people with wider expertise on issues related to immigration checks
- ensure that all members are aware of the outcome of discussions and are clear what is likely to happen and what they are expected to do.

Undocumented migrant workers have few enforceable employment rights. This means that some employers exploit them by paying them low wages, making them work unpaid overtime, or failing to make sure that working conditions are safe.

Further information

Useful organisations

Advisory, Conciliation and Arbitration Service

www.acas.org.uk

ACAS aims to prevent and resolve employment disputes. It operates a helpline for employers and employees on key issues arising in the workplace: 08457 47 47 47.

Bail for Immigration Detainees

www.biduk.org

BID works with asylum seekers and migrants in removal centres and prisons, to secure their release from detention. It can be contacted at its offices in London (020 7247 3590); Portsmouth (023 9281 6633) and Oxford (0845 330 4536).

Equality Commission for Northern Ireland

www.equalityni.org

The Equality Commission promotes equality and human rights in Northern Ireland. It runs a general enquiry line: 028 90 890 890.

Equality and Human Rights Commission

www.equalityhumanrights.com

The EHRC promotes equality and human rights in Great Britain. It runs helplines in England (0845 604 6610); Scotland (0845 604 5510) and Wales (0845 604 8810).

National Coalition of Anti-Deportation Campaigns

www.ncadc.org.uk

NCADC brings together families and individuals fighting deportation. Visit the website for resources on how to develop and mount a campaign against deportation.

Refugee and Migrant Justice

www.refugee-migrant-justice.org.uk

Formerly known as the Refugee Legal Centre, RMJ provides legal services for refugees and migrants, from its offices across England. It runs a helpline for foreign nationals detained in removal centres or prison: 0800 592 398 or 020 7780 3333 and a general emergency helpline: 07831 598 057.

The Immigration Advisory Service

www.iasuk.org

The IAS provides representation and advice in immigration and asylum law, from its offices across Great Britain and overseas. To be directed to your nearest IAS office, telephone: 0844 974 4000.

The Migrants' Rights Network

www.migrantsrights.org.uk

The Migrants' Rights Network (MRN) works in support of the rights of all migrants in the UK, regardless of immigration status. Although MRN doesn't provide direct advice services to migrants, its website contains useful resources and analysis for people concerned about immigration issues in the UK.

The Refugee Council
www.refugeecouncil.org.uk

The Refugee Council provides legal advice and support to refugees and asylum seekers in the UK. Contact its regional advice lines for London (020 7346 6777); Yorkshire and Humberside (0113 386 2210); East of England (01473 297 900); and the West Midlands (0121 234 1971).

UK Border Agency
www.ukba.gov.uk

UKBA operates a helpline for employers, which can give advice about document checks: 0300 123 4699.

Useful reading

Anti-Deportation Campaigns Guide, TUC and National Coalition of Anti-Deportation Campaigns, 2009.
Order from www.tuc.org.uk.

Code of Practice on Racial Equality in Employment, Commission for Racial Equality, 2005
www.equalityhumanrights.com.

Enforcement Instructions and Guidance, UKBA, Home Office, 2010. This is a living document and subject to change
www.ukba.homeoffice.gov.uk

'Papers Please': The Impact of the Civil Penalty Regime on the Employment Rights of Migrant Workers, Migrants' Rights Network, 2008
www.migrantsrights.org.uk

Prevention of Illegal Working: Code of Practice, Guidance for Employers on the Avoidance of Unlawful Discrimination in Employment Practice while Seeking to Prevent Illegal Working, UKBA, Home Office, 2008.
www.ukba.homeoffice.gov.uk

Prevention of Illegal Working: Comprehensive Guidance for Employers on Preventing Illegal Working, UKBA, Home Office, 2008. www.ukba.homeoffice.gov.uk

Tackling Racism in the Workplace: A Negotiators Guide, TUC, 2009
Order from www.tuc.org.uk.

Glossary

Asylum seeker

Someone who has made a claim for asylum under the Refugee Convention or under Article 3 of the European Convention on Human Rights.

Civil penalty fine

A fine that can be imposed without the need for a court conviction.

European Economic Area (EEA)

The 27 European Union member states plus Iceland, Lichtenstein and Norway.

UK Border Agency (UKBA)

Home Office agency responsible for controlling the UK borders and migration in the UK.

Points-based system

New immigration system for people from outside the European Union coming to the UK for work or study.

Refugee

Person who has been granted asylum (protection) in the UK on the grounds that they would be likely to face persecution, often as a result of direct state action, if returned to their home country.

Undocumented migrant worker

Person who lacks the documentation to carry out the job they are doing. Referred to by the government as ‘illegal migrant workers’.

Terms under the Race Relations Act

Racial grounds

Grounds of colour, race, nationality (including citizenship) or ethnic or national origins.

Direct discrimination

Treating a person less favourably on racial grounds than an employer treats or would treat another person. For example, an employer requires all non-UK employees but not others to produce their passports within 24 hours.

Indirect discrimination

Applying to everyone a requirement or criterion or practice which on its face says nothing about race, colour, nationality, or ethnic or national origins, but which disadvantages people of a particular racial group and cannot be objectively justified. For example, an employer says job applicants must have UK qualifications; this requirement would disadvantage workers of different nationalities and is unlikely to be justified where workers have equivalent qualifications which they obtained in other countries.

Harassment

When on grounds of race or ethnic or national origins a person engages in unwanted conduct that has the purpose or effect of violating a person’s dignity or creating for that person an intimidating, hostile, degrading, humiliating or offensive environment. For example, a migrant worker finds it humiliating and offensive that his line manager regularly mocks the way he speaks English in front of other employees.

Victimisation

A form of discrimination which occurs when a person has made or supported a complaint of race discrimination or is suspected of doing so or intending to do so, that person is treated less favourably than another person is or would be treated. For example, a union representative in a workplace is bypassed for promotion after she had assisted a migrant worker to bring a case against the employer for race discrimination.

Refugee

Person who has been granted asylum (protection) in the UK on the grounds that they would be likely to face persecution, often as a result of direct state action, if returned to their home country.

Appendix

List A documents

1. An ID Card (issued to the holder under the Identity Cards Act 2006) or¹³ a passport showing that the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom; or
2. An ID card (issued to the holder under the Identity Cards Act 2006), a national identity card or a passport which has the effect of identifying the holder, or a person named in the passport as the child of the holder, as a national of the European Economic Area or Switzerland; or
3. A residence permit, registration certificate or document certifying or indicating permanent residence issued by the Home Office or the Border and Immigration Agency to a national of a European Economic Area country or Switzerland; or
4. A permanent residence card issued by the Home Office or the Border and Immigration Agency to the family member of a national of a European Economic Area country or Switzerland; or
5. A Biometric Immigration Document issued by the Border and Immigration Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom, or has no time limit on their stay in the United Kingdom; or
6. A passport or other travel document endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the United Kingdom, has the right of abode in the United Kingdom, or has no time limit on their stay in the United Kingdom; or
7. An Immigration Status Document issued by the Home Office or the Border and Immigration Agency to the holder with an endorsement indicating that the person named in it is allowed to stay indefinitely in the United Kingdom, or has no time limit on their stay in the United Kingdom, when produced in combination with an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (e.g. P45, P60, National Insurance Card); or
8. A full birth certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's parents, when produced in combination with an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (e.g. P45, P60, National Insurance Card); or
9. A full adoption certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's adoptive parents, when produced in combination with an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (e.g. P45, P60, National Insurance Card); or
10. A birth certificate issued in the Channel Islands, the Isle of Man, or Ireland, when produced in combination with an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (e.g. P45, P60, National Insurance Card); or
11. An adoption certificate issued in the Channel Islands, the Isle of Man, or Ireland, when produced in combination with an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (e.g. P45, P60, National Insurance Card); or

12. A certificate of registration or naturalisation as a British citizen, when produced in combination with an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (e.g. P45, P60, National Insurance Card); or
13. A letter issued by the Home Office or the Border and Immigration Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom, or has no time limit on their stay, when produced in combination with an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (e.g. P45, P60, National Insurance Card).

List B documents

1. A passport or other travel document endorsed to show that the holder is allowed to stay in the United Kingdom and is allowed to do the work in question, provided that it does not require the issue of a work permit; or
2. A Biometric Immigration Document, issued by the Border and Immigration Agency to the holder which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work in question; or
3. A work permit or other approval to take employment issued by the Home Office or the Border and Immigration Agency, when produced in combination with either a passport or another travel document endorsed to show that the holder is allowed to stay in the United Kingdom and is allowed to do the work in question, or a letter issued by the Home Office or the Border and Immigration Agency to the holder, or the employer or prospective employer confirming the same; or
4. A certificate of application issued by the Home Office or the Border and Immigration

Agency to or for a family member of a national of a European Economic Area country or Switzerland, stating that the holder is permitted to take employment, which is less than 6 months old, when produced in combination with evidence of verification by the Border and Immigration Agency Employer Checking Service; or

5. A residence card or document issued by the Home Office or the Border and Immigration Agency to a family member of a national of a European Economic Area country or Switzerland; or

6. An Application Registration Card (ARC) issued by the Home Office or the Border and Immigration Agency stating that the holder is permitted to take employment, when produced in combination with evidence of verification by the Border and Immigration Agency Employer Checking Service; or

7. An Immigration Status Document issued by the Home Office or the Border and Immigration Agency to the holder with an endorsement indicating that the person named in it can stay in the United Kingdom, and is allowed to do the work in question, when produced in combination with an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or previous employer (e.g. P45, P60, National Insurance Card); or

8. A letter issued by the Home Office or the Border and Immigration Agency to the holder or the employer or prospective employer, which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work in question, when produced in combination with an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or previous employer (e.g. P45, P60, National Insurance Card).

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