

Commercial Alert

26 February 2008

Employing Foreign Workers – beware potential pitfalls

If you wish to employ foreign workers you need to be aware of the dangers you may encounter if a worker is here illegally, or if he or she is not conversant with the English language.

Illegal Workers

With effect from 29 February this year an employer who employs someone subject to immigration control who is not entitled to undertake the work will be liable to pay a civil penalty of up to £10,000 per illegal worker.

The relevant legislation is the Immigration, Asylum & Nationality Act 2006. The authority which is charged with policing the Act is the Border and Immigration Agency.

The onus is on you as the employer to satisfy yourself that prospective employees can work for you legally. Provided you take the right steps you can establish a statutory excuse ('the excuse') against payment of the civil penalty.

These steps are broadly;

- 1 – Your prospective employee must provide one or more documents which establish he/she has permanent residency rights, such as a passport (of any EU country plus Switzerland) or birth certificate or residency permit OR one or more documents indicating they have permission to reside and work in the UK for up to 12 months, such as a work permit or an endorsed passport;
- 2 – You must check the validity of any documentation presented to you to satisfy yourself they are bona fide and allow the person concerned to do the work in question, and;
- 3 – Take photocopies of relevant pages of documents presented to you by the prospective employee and retain them during the period of the employee's employment and for a period of two years after the employment has ceased.

By taking the above steps you will establish an excuse against possible payment of a civil penalty.

Be aware also that if you *knowingly* employ a person who is not permitted to work then you will not be entitled to the excuse and could be prosecuted under the Act.

Conviction carries the potential of an unlimited fine and/or a prison sentence of up to two years.

In all circumstances, to avoid being prosecuted under race relations legislation, you must take care to show no discrimination against any individual on the ground of their race. In effect this means you should treat *all* prospective employees *in the same way*.

Linguistic Ability

A Romanian worker in the UK recently lost a leg in an accident at work. In a prosecution brought under health & safety regulations the employee claimed he had not understood the company's health and safety regulations because of the language barrier and this had, in part, been a cause of the accident since he had entered an area of the workplace where he should not have.

The employer was fined £35,000 as a result, despite the fact they had posted adequate safety notices and regulations (in English) on their premises. They should have ensured that the Romanian worker understood their notices.

Recommendations

If you are, or might be, employing foreign workers make sure you understand the new regulations. If you are unsure of the linguistic ability of any workers to understand any health and safety regulations make sure you employ the services of a *competent* translator to explain the rules to your employees.

Further Information

Please call Robert Hill (01494 525941 or email him at rrh@rpj.uk.com) for further information. Or you may want to obtain a copy of Prevention of Illegal Working - Guidance for Employers available from the Border & Immigration Agency at www.ind.homeoffice.gov.uk/employers/preventingillegalworking.

These notes are for guidance purposes only. We believe the contents to be correct but it should not be taken as sufficiently accurate or full to apply in any specific situation without first referring to us. We would be pleased to advise on any specific issue or problem.

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