

Illegal working Q&A

When will an employer not have a statutory excuse?

A. As an employer, you will not have an excuse if:

You have not conducted the prescribed right to work checks before employment commenced;

You have accepted a document which clearly does not belong to the holder;

You have accepted a document which clearly shows the person does not have the right to work/stay in the UK and/or do the job in question, eg, a student who has restrictions on the number of hours that they are allowed to work in term time;

The endorsement demonstrating work entitlement or the biometric residence permit has expired;

You know you are employing someone who is not allowed to work in the UK, regardless of whether you have carried out checks;

Your statutory excuse has expired; or

You have not detected a 'reasonably' apparent forgery.

What should I do if my employee cannot demonstrate a continued right to work?

A. When you perform a repeat right to work check on an existing employee whose limited right to work in the UK has expired, if they are unable to demonstrate an ongoing right to work, you risk a civil penalty if you continue to employ them and they are no longer permitted to undertake the work in question.

If Immigration Enforcement identifies illegal workers operating in your business for whom you have obtained a statutory excuse and we inform you, if you continue to employ them, you risk prosecution. Conviction on indictment i.e. Crown Court carries a maximum prison sentence of five years, and/or an unlimited fine.

What should I do if I want to report illegal working in my business or someone else's?

A: If someone gives you a false document or a genuine document that does not belong to them, you should use this link to report the individual to us at <https://www.gov.uk/report-immigration-crime>

Alternatively, you may call our Sponsorship, Employer and Education Helpline on 0300 123 4699, (Monday to Thursday, 9am to 5pm, Friday, 9am to 4:30pm).

If you do not employ the person, or you have done so after making all the correct checks, you have no liability for a civil penalty.

Is a National Insurance number on its own sufficient evidence for the right to work?

A. No. A National Insurance number (NINo) will only provide a statutory excuse when given to you in combination with one of the acceptable documents, as specified in the acceptable document lists (A and B) in the employer guidance.

Not all NINo holders will be allowed to work in the UK and if they can work, they may be subject to conditions. You must check acceptable documents showing the NINo and name of the holder **together with** one of the combinations specified in the acceptable document lists.

Do I need to check contractors and sub contractors?

A. If you, as the employer, are contracting out specific jobs or services to individuals (contractors and sub-contractors), there is no requirement for you to conduct a right to work check because you are not the employer of those individuals. However, there are good reasons for you to establish that a right to work check has been conducted. It can cause disruption to your business operations when illegal workers are apprehended and reputational damage, as well as concerns about whether those workers have the knowledge and skills they said they have, and possible invalidation of your insurance.

A card issued under the Construction Skills Certification Scheme (CSCS) will not demonstrate a right to work. Nor does it confirm whether an immigration check has been undertaken on the individual.

CSCS cards issued since August 2016 carry the statement 'Cards issued by CSCS do not confirm the holder's right to work in the UK'.

Can I employ someone who has made an asylum claim?

A. Asylum claimants are issued with an Application Registration Card (ARC) to acknowledge that they have claimed asylum. Usually asylum claimants are not permitted to work. However, some asylum claimants may be granted permission to work by the Home Office and, if so, the ARC will state that work is permitted. The ARC will state that employment is only permitted in a job on the Shortage Occupation List. This list may be viewed on gov.uk.

When the ARC indicates that work is permitted, the employer must still verify that the work is permitted through the Employer Checking Service in order to obtain an excuse against a penalty liability. It will also confirm that the ARC is authentic and valid. This excuse will expire six months from the date of the Positive Verification Notice when a further check must be undertaken, if the statutory excuse is to be retained.

How does a migrant who has been granted asylum (a refugee) demonstrate their work entitlement?

A. A refugee may demonstrate their work entitlement through their Biometric Residence Permit or Immigration Status Document. When the Immigration Status Document indicates that the holder has limited permission to be in the UK, the check must be repeated to retain the excuse.

Are international students, from outside the EEA, allowed to work while they study in the UK?

A: Students under Tier 4 of the Points Based Scheme from outside the European Economic Area (EEA) are allowed to take limited employment in the UK during term time and can work full time during vacations, providing their conditions of entry to the UK permit this. The limits on a student's working hours will be clearly indicated by the passport endorsement or BRP. If you are employing a student you must undertake the usual right to work check, and also obtain and retain evidence of their academic and holiday dates. Some non-EEA national students are not allowed to work at all.