

Temporary Changes to Right to Work Checks

In light of the practical challenges of verifying original documents during the coronavirus disease 2019 (COVID-19) pandemic, the Home Office has finally issued [guidance](#) clarifying temporary adjustments when carrying out right to work checks. This will be a relief to employers having to recruit at short notice, as well as those required to conduct a follow-up check for existing employees with expiring visas.

Ordinarily, the employer must see the original right to work document in the presence of the holder prior to making a certified copy. This can include seeing the employee in person or via a live video link, but still leaves the requirement to see the original document. The Home Office introduced an [online right to work service](#) in 2019, but this only works in limited circumstances and does not apply to those presenting British passports, for example.

Conducting Checks During COVID-19 Measures

The Home Office has confirmed that until further notice employers should:

- Ask the worker to submit a scanned copy or a photo of their original documents via email or using a mobile app
- Arrange a video call with the worker – ask them to hold up the original documents to the camera and check them against the digital copy of the documents
- Record the date you made the check and mark it as “adjusted check undertaken on [insert date] due to COVID-19”

If the worker has a current Biometric Residence Permit or Biometric Residence Card or status under the EU Settlement Scheme, use the online right to work checking service while doing a video call

Employers should read the guidance in full to understand how to conduct checks while the adjustments apply – it will remain an offence to knowingly employ anyone who does not have the right to work in the UK.

Conducting Checks After COVID-19 Measures End

The Home Office says it will advise employers before the need to carry out adjusted checks comes to an end. Employers will then have eight weeks to carry out retrospective checks on existing employees who started work while the adjustments were in place. We recommend that employers who had no option but to conduct adjusted checks before the Home Office guidance was published follow the same approach. Employers should then revert to the full checking process set out in the Home Office’s [right to work checks: an employer’s guide](#).

Importantly, the Home Office has said it will not take enforcement action against employers if they have carried out adjusted and retrospective checks in line with the guidance. This is reassuring but does create an additional administrative burden for already hard-pressed HR and in-house recruiters to ensure that they gain the protection of a statutory excuse against a civil penalty in the event of unknowingly employing someone without the right to work. While not an excuse to cut corners, employers may take some comfort from knowing that they cannot be penalised simply for not having done a right to work check properly if the employee in question does, in fact, have the right to work.

If you have any questions regarding COVID-19 and how it might affect your employees’ immigration status, please contact your usual firm Business Immigration team lawyer.

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