Are you responsible? New right to work rules extend liability beyond direct employers

From 1 October 2026, employers will become obliged to conduct 'right to work' checks on a wider range of individuals, extending beyond those who have a standard contract of employment. The Home Office has now published an updated guide to these changes which clarifies these new requirements.

The changes to the 'right to work' regime will come into force under Section 48 of the Border Security, Asylum and Immigration Act 2025.

What are right to work checks, who is currently subject to them and who is responsible?

It is against the law for employers to employ someone who does not have the right to reside and work in the UK, or who is working in breach of any conditions applicable to their stay. Employers have a duty to prevent illegal working and must be able to demonstrate that they have carried out checks on employees' permission to work before starting employment. They must also carry out follow-up checks for employees whose right to work is time-limited and must keep records of all checks that are carried out. Additional requirements will apply if the employer is a sponsor for UK visa purposes.

Employing someone who does not have the right to work will expose the employer to civil penalties, criminal sanctions, reputational damage and a potential impact on their ability to sponsor employees in the future.

Currently, these obligations only apply to contracts of employment, service or similar arrangements, such as apprenticeships. Businesses are not required to carry out checks on workers who are genuinely self-employed, albeit that the worker may be committing an offence themselves if they are working illegally. Nevertheless, many employers opt to voluntarily carry out such checks to avoid reputational damage, comply with safeguarding obligations or ensure they are protected if the worker is reclassified as an employee.

What is changing?

As confirmed by the newly published guidance, working arrangements such as worker contracts, sub-contractors or those engaged via online job-matching services will now be in scope for right-to-work checks. This means that those who are not ‘employees’ will come within the mandatory scope of the regime for the first time.

The guidance confirms that, where illegal working is identified, the Home Office will firstly look to identify the employer who has a direct contractual relationship with the worker. They will be responsible for carrying out the relevant checks to establish any statutory excuse. However, a new concept of “*extended liability*” will apply in certain circumstances. This means that civil liability penalties may be applies to parties beyond those who are part of the direct contractual relationship with the employee.

The guidance states that this will <u>not</u> apply to every business that purchases work or services from another business, nor will it apply to a client, customer or end-user who is purchasing work or services for their own internal operations.

The guidance gives several helpful examples to illustrate when extended liability may arise:

- Extended liability is likely to apply wherever there is a chain of contracts, or where an online matching service is used to match contractors or other workers with work. The examples that the guidance states <u>would</u> qualify include:
  - A property developer engaging multiple businesses through a chain of contracts to provide workers for various elements of the project, in which case the developer may become liable.
  - A homeowner using an online matching service to find an electrician, resulting in a contract between the homeowner and the chosen business (who then send their worker to carry out the task). In this case, the matching service may become liable.
  - An individual signing up to work through a food delivery platform, who engages them as an independent contractor and pays them for each completed delivery (with permission to substitute a friend if they are unavailable). In this case, the platform may become liable.

- It appears that standard outsourcing, temporary worker and agency arrangements will not be caught, provided that the work or services are being provided directly to the contractual counterparty and not passed on to a third party.
    - Under the examples given, a retail business entering into a contract with a facilities management company to provide cleaning services will <u>not</u> lead to extended liability for the retailer, because the retailer is not arranging work or providing services onwards to a third party. Only the facilities management company will remain liable for conducting checks on the employees they engage for this work.

    - A similar analysis applies to a company hiring temporary workers to support day-to-day operations within a business during a surge of demand, as again the work or services is being provided directly.

The guidance also describes the "*prescribed requirements*" which are in effect the steps that the employer (or other party) must complete in order to have a statutory excuse for civil liability. For direct employers, this will involve carrying out right-to-work checks on the relevant individual; for those caught by extended liability, they must show that they had appropriate contractual terms, substitution controls and identity verification systems in place prior to the work /

services commencing.

What should employers do?

Employers will need to assess all categories of worker that are used by their business, and identify any that will come into scope for right-to-work checks as of 1 October 2026. For any arrangements where extended liability may apply, they will then need to liaise with the relevant third party to ensure that proper checks have been carried out or are undertaken prior to the new regime coming into force, and that the necessary contractual safeguards are in place. They should also review training for their HR teams and their onboarding policies to ensure that they have a proper process in place for any new engagements going forwards.

Employers who are in any doubt as to their obligations should seek specialist immigration advice as soon as possible.

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