



Bulletin 152

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CHECKING RIGHT TO WORK IN UK IN TUPE TRANSFERS

Most employers are generally aware of their duty to check job applicants' visas and work permits to ensure they have the right to work in the UK at the recruitment stage. However, employers may not be aware that they must also carry out the same document checks in relation to employees who transfer to them under TUPE.

It is a criminal offence to knowingly or negligently employ an individual who does not have the right to work in the UK. The employer can be fined up to £10,000 for each illegally employed individual unless they can show that they checked the appropriate documents to establish whether the individual has the right to work in the UK. Employers are not expected to be skilled in identifying false documents, and will still be held to have fulfilled their obligation unless the falsity of the documents is reasonably apparent.

Employers who have knowledge of the illegal employment are liable to an unlimited fine and /or a prison sentence of up to 2 years.

The UK Border Agency has tightened its approach to document-checking obligations on a TUPE transfer. The transferee is obliged to check all transferred employees' have the right to work in the UK within 28 days of the transfer.

Practical Tips

To minimise the risk of prosecution, transferees should:

1. Within 21 days of the transfer thoroughly review each transferred employees' right to work in the UK by applying the document check applicable at the date of transfer.
2. Seek indemnities from the transferor in relation to the potential civil liabilities before the transfer.
3. Carry out a thorough due diligence process to identify any potential problems.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

If you no longer wish to receive the bulletin please let us know by return e-mail to helen.calvert@brabnerscs.com

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