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Is it the beginning of the end for physical immigration documents?

With new rules on 'Right to work' checks in force from April 2022, what better time than now for a refresher on how to stay compliant in this area?

I frequently advise organisations on right to work checks and what to do when things go wrong. Establishing someone's right to work in the UK can be complex, with a wide variety of different immigration statuses which permit work, some with time limits, or with restrictions on precisely what work can be carried out.

Right to work checks should form part of any organisation's onboarding processes. If carried out correctly, they provide a statutory defence to an illegal worker penalty. This means that you could avoid substantial fines if it turns out your new potential recruit doesn't have the right to work.

In simple terms, right to work checks are currently conducted either manually or online. A manual check involves the inspection of a physical immigration document, ensuring the document relates to the prospective employee, and the retention of a copy.

An online check allows an employer to confirm a right to work through a 'share code' provided by a prospective employee and a video call or in-person meeting can be used to rule out impersonation.

As a result of the pandemic employers conducting a manual check have been permitted to utilise digital copies of documents and hold video calls with prospective employees rather than meeting in-person. This process will remain in force until September 2022.

The changes which are coming at the beginning of April will end manual checks for holders of Biometric Residence Card, Biometric Residence Permit and Frontier Worker's Permits. From 6 April 2022, holders of these documents will evidence their right to work using the Home Office's online service only and presentation of a physical document will no longer be acceptable.

Manual checks will still be possible for holders of British passports and Irish passports. However the Home Office is introducing a new system which will allow an employer to confirm the identity of a British or Irish national online via a certified Identity Service Provider or IDSP. These third party commercial organisations will no doubt herald a new marketplace in which organisations can choose which IDSP to rely on.

Carrying out right to work checks on all prospective employees, including British and Irish nationals, is important to avoid discrimination. The IDSP service should complement the existing online checks to provide an additional layer of reassurance that your employee is lawfully able to work.