

## RIGHT TO WORK CHECKS – END TO COVID-19 TEMPORARY MEASURES

The temporary COVID-19 right to work check measures introduced on 30 March 2020 will be coming to an end on 16 May 2021, but what does this mean for employers?

### WHAT TEMPORARY MEASURES ARE CURRENTLY IN PLACE?

The temporary measures currently in place will apply until 16 May 2021 (inclusive). Until then, employers can continue to:

- ask employees to send them a scanned copy or photograph of their original document via email or using a mobile app;
- carry out checks over video calls with employees holding up their original documents to the camera; and
- marking the check '***adjusted check undertaken on [insert date] due to COVID-19***'.

Alternatively, if employees have been issued with a form of status that allows them to request a '[share code](#)' from the Home Office, employers can carry out right to work checks online.

If an employee cannot provide an acceptable document for an appropriate right to work check to be carried out, employers should use the [Employer Checking Service](#). Where a negative result is received, the employee will not be able to begin or continue working with you.

### WHAT IS CHANGING?

From 17 May 2021, employers will need to either:

- Check employees' original documents; or
- Check employees right to work online if they are able to provide a share code.

This means that employers will need to be in physical possession of the original document(s) when carrying out the check. It is therefore still possible to carry out a right to work check by video call if an employee is happy to send you their original document(s) in advance.

#### Key issues

- The temporary right to work check measures are set to end on 16 May 2021.
- From 17 May 2021 employers will need to be in physical possession of documents when carrying out a right to work check unless this can be done online.
- Employers are no longer required to carry out retrospective checks.
- These measures apply equally to prospective new employees or existing employees who have had a change of status or are extending their visas.
- A further update is expected by 17 May 2021.

A check carried out solely by video call, where an employer was not in physical possession of the required original documents, will not be sufficient to attract a statutory excuse from 17 May 2021.

## **DO RETROSPECTIVE CHECKS NEED TO BE CARRIED OUT?**

When the temporary measures had originally been introduced there was an expectation for employers to carry out retrospective checks within 8 weeks of these measures ending.

As a reflection of the length of time the temporary measures have been in place, the Home Office has confirmed that employers are no longer required to carry out retrospective checks on employees whose right to work has been checked in line with the COVID-19 measures between 20 March 2020 and 16 May 2021.

Employers will continue to hold a defence against a civil penalty for these checks so long as they were carried out correctly.

## **WHAT POTENTIAL ISSUES SHOULD EMPLOYERS BE AWARE OF?**

The changes rely on employees being willing to attend an employer's work premises in the current climate or agreeing to not be in possession of original important documentation for a short period of time.

They also do not take into account circumstances where a prospective employee has newly arrived in the UK and is required to quarantine or does not have a form of status that can be checked electronically (i.e. British and Irish nationals).

Where possible, employers should consider carrying out any virtual checks on employees set to begin their roles on or after 17 May 2021, by 16 May 2021.

Concerns have already been raised in respect of these changes not being in line with the UK government's own guidance on returning to work. Employers should therefore keep an eye out for any changes in the Home Offices right to work guidance or an update on these changes before 17 May 2021.

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