

BREXIT UPDATE: RIGHT TO WORK CHECKS



Last week the EU agreed to postpone the date on which the UK leaves the EU (which was originally 29 March). If the UK parliament approves the Withdrawal Agreement by end of March, the UK will leave the EU on 22 May 2019. If it does not, then the UK will leave the EU on 12 April 2019 - without a deal being reached... unless a further extension is agreed or the UK decides to revoke Article 50 and remain in the EU.

RIGHT TO WORK CHECKS – FOLLOWING A DEAL

Assuming the UK leaves on the 22 May 2019 with a deal, there will be no change to the right to work checking process for your EU employees until the end of the planned implementation period on 31 December 2020. EU nationals who enter the UK before the 31 December 2020 will need to apply under the EU Settlement Scheme for status and most will automatically be granted pre-settled or settled status. The deadline for EU nationals to apply under the EU Settlement Scheme is 30 June 2021. However, despite having to apply for such status, the statutory checks required to verify their right to work will remain unchanged. You should therefore:

- Continue to apply the current 'right to work' checking process on your EU national employees until the end of 2020.

- Continue to accept the prescribed documents set out on List A & B of the Right to Work Checklist as proof of your employee's right to live and work in the UK, for example, passport establishing EEA nationality, national identity card establishing EEA nationality, registration certificate and document certifying permanent residence.
- Once your EU national employee has submitted their application for status under the EU Settlement Scheme and received their digital document confirming their settled or pre-settled status, your employee may choose to share this evidence of their right to work with the business (or any future employer) by using the online right to work checking system.

It is important to note that the business can rely upon any right to work checks that were undertaken prior to the UK leaving the EU. The business will not be required to recheck the status of any EU employees post-Brexit. In addition, although the employee can opt to share a copy of their right to work authorisation using the online system it is not obligatory to do this.

When making an offer of employment and verifying an EU national's right to work, you shouldn't distinguish between those who arrived in the UK before or after the date the UK leaves the EU and nor should you discriminate between those who have been granted status under the EU Settlement Scheme and those who have not.



RIGHT TO WORK CHECKS – NO DEAL

- In the event of a no-deal Brexit the UK Government will end free movement on the 12 April.
- EU employees living in the UK prior to the "no-deal Brexit" will be covered under the EU Settlement Scheme and can apply for pre-settled or settled status.
- EU national employees and their family members who come to the UK after a "no-deal Brexit" will require permission to enter the UK. They should be granted permission to enter for a 3 month period during which time they will be able to live and work in the UK. However, if they wish to remain for a longer period they will need to apply for European Temporary Leave to Remain which will be valid for a 3 year period.
- The Home Office has confirmed that the existing right to work checking process will continue up to the 31 December 2020 system and they will not require employers to undertake retrospective right to work checks on existing EU employees hired before Exit Day.

LOOKING AHEAD TO THE FUTURE

All EU nationals will be required to have applied for status under the EU Settlement Scheme by the 30 June 2021. Therefore, it may be prudent to plan on completing an audit of the right to work documentation for your EU national employees just before this deadline in April/ May 2021. This will help ensure that all of your EU employees have applied for status and have obtained a digital document confirming their right to work and for any that may not have, this will give them a final window of opportunity to adjust their status.



There should be no change to the Right to Work checking process until the 31 December 2020.