Home Office

Code of Practice for employers:
Avoiding unlawful discrimination while preventing illegal working

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1. Introduction

Employers have a legal duty to prevent illegal working by ensuring that those they employ have the requisite right to work in the UK. An employer who does not carry out prescribed checks before employing someone whose immigration status does not entitle them to undertake the work in question, may be liable for a civil penalty. Employers who knowingly employ someone without the correct immigration status may be committing a criminal offence.

The purpose of this code of practice is to ensure that employers do not unlawfully discriminate contrary to the Equality Act 2010 ("the 2010 Act") and/or relevant legislation in Northern Ireland, when complying with the duty to prevent illegal working and in particular, when carrying out 'right to work' checks when recruiting or employing people.

The code provides practical guidance on what employers should or should not do, to avoid unlawful discrimination when complying with their responsibility to conduct 'right to work' checks. The code applies also to organisations, such as employment and recruitment agencies where they are employers. Employment and recruitment agencies have additional and separate statutory obligations under the Equality Act 2010, and the relevant Northern Ireland equality legislation, for example, those that apply to 'employment service-providers'.

This code of practice has been issued under section 23(1) of the Immigration, Asylum and Nationality Act 2006 ("IANA 2006"). It sets out guidance in relation to an employer's legal obligations in Great Britain under the Equality Act 2010, and in Northern Ireland, under the Race Relations (Northern Ireland) 1997 Order ("the 1997 Order"), as amended.

Although unlawful discrimination may occur in several different ways, for the purpose of this code of practice, the focus will be on the subject of avoiding race discrimination.

This is a statutory code that has been approved by the Secretary of State and laid before Parliament. As per section 23(2) of the IANA 2006, the Equality and Human Rights Commission and the Equality Commission for Northern Ireland have been consulted regarding the contents of this code. Employment Tribunals may take account of any part of this code which may be relevant to matters of discrimination.

Public authorities must also adhere to this code. In addition, they are subject to the public sector equality duty[1] which requires public authorities to have due regard to the need to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it ('protected characteristic' is defined below).

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

This code of practice has been issued alongside Home Office guidance about how to carry out right to work checks and the 'Code of practice on preventing illegal working: Right to Work Scheme for employers'.

References

In this code, references to:

'Civil Penalty Notice' means a notice given under section 15(2) of the IANA 2006 that requires an employer to pay a penalty of a specified amount.

'Digital verification service provider (DVSP)' is a service provider that enables people to digitally prove who they are, information about themselves or their eligibility to do something. Right to work DVSPs are registered and can be used by employers to conduct digital right to work checks on holders of relevant DVSP documents, and facial recognition checks according to the Right to Work Office of Digital Identity and Attributes Framework supplementary code.

'Document' means an original document which may include a digital document, where specified.

'Employer' means a person who employs an individual;

- under a contract of employment (a contract of service or apprenticeship),
- under a worker's contract,
- as an individual sub-contractor, or
- when operating as an online matching service providing the details of an individual who is a service provider to potential clients or customers.

In the context of this code of practice, the definition of 'employer' is in relation to the Right to Work Scheme only. References to 'employment' or 'employ' include the types of working arrangements described and references to a 'contract' include a contract that is express or implied, and whether oral or in writing.

'Employer Checking Service (ECS)' refers to the enquiry and advice service operated by the Home Office that employers are required to contact in certain circumstances to check whether an individual is allowed to work in the UK and, if so, the nature of any restrictions on that individual's right to do so.

'eVisa' is an online record provided by the Home Office of an individual's immigration status and the conditions of their permission to enter or stay in the UK.

'Home Office online right to work checking service' means the online system allowing employers to check whether an individual is allowed to work in the UK and, if so, the nature of any restrictions on that individual's right to do so. For the avoidance of doubt, this system is accessible for employers on the Check a job applicant's right to work: use

their share code page on GOV.UK. No other online portal relating to immigration status may be used instead for right to work checking purposes.

'Permission to Enter' also known as 'Leave to Enter'. Immigration documents and guidance may refer to either term, both are appropriate. This means that an individual has permission from the Home Office to enter the UK.

'Permission to Stay' also known as 'Leave to Remain'. Immigration documents and guidance may refer to either term, both are acceptable. This means that an individual has permission from the Home Office to be in the UK.

'Right to work' means allowed to be employed by virtue of qualifying immigration status.

'Right to work checks' refer to prescribed manual document checks, prescribed Home Office online right to work checks and prescribed use of a DVSP for these checks.

'Statutory excuse' refers to:

(a) an employer's defence against liability for payment of a civil penalty, which is established where the employer carries out prescribed right to work checks before the worker commences employment, and where applicable, retains that excuse by carrying out required follow-up checks for workers with a time-limited right to work (as shown by an expiry date), and

(b) a person's defence against extended liability for payment of a civil penalty, which is established where that person has complied with prescribed requirements in relation to the relevant contractual arrangements.

'Worker' means an individual who is engaged to carry out work or provide services under a contract of employment, a worker's contract, as a sub-contractor, or through an online matching service, as defined for the purposes of the Right to Work Scheme.

Who is this code of practice relevant for?

All employers in England, Scotland, Wales and Northern Ireland must adhere to this code of practice.

This version applies to all employment commencing on or after 1 October 2026. It also applies where a repeat check on an existing worker is required to be carried out on or after 1 October 2026 to retain a statutory excuse.

An employment agency or business also has additional responsibilities under the 2010 Act or, in Northern Ireland, under the 1997 Order and may be liable if practising unlawful discrimination, even if it is acting on the instructions of another employer, such as at the behest of one of its clients.

2. What is discrimination?

The Equality Act 2010 prohibits discrimination and other unlawful acts in employment practices on the following grounds, known as 'protected characteristics':

- age
- disability
- gender reassignment
- marriage or civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

In Northern Ireland, legislation prohibits discrimination on the grounds of:

- age
- disability
- gender reassignment
- political opinion
- pregnancy and maternity
- race
- religious or similar philosophical belief
- sex
- sexual orientation

The protected characteristic of race includes skin colour, nationality or ethnic or national origins.

Direct discrimination

This is when an individual is treated worse than another person or people because either:

- they have a protected characteristic.

- someone thinks they have a protected characteristic (known as discrimination by perception).

- they are connected to someone with that protected characteristic (known as discrimination by association).

Unless there is a statutory exception, such as the actions that employers are obliged to take in order to comply with their duties under the IANA 2006, direct discrimination cannot be excused or defended.

Examples of direct racial discrimination where there is no statutory exception are:

- rejecting job applicants because they do not have British nationality or another specified nationality.

- refusing to consider any non-British or Irish job applicants.

- where the assumption is made that people from certain nationalities or ethnic groups cannot work as a team.

- where individuals are intentionally only recruited from one nationality or ethnic group.

- where it is assumed without foundation that overseas qualifications and experience are inferior to qualifications and experience gained in the UK.

In the context of right to work checks, examples of direct discrimination might include:

- not interviewing someone from a certain nationality or ethnic group because it is assumed that they will not have the right to work in the UK.

- carrying out right to work checks for a foreign national worker but not for their UK-born colleague.

Indirect discrimination

Indirect discrimination occurs where:

- there is a policy that applies in the same way irrespective of protected characteristics, but disadvantages a group of people who share a protected characteristic, and

- an individual is disadvantaged as part of this group.

This will be unlawful, unless the provision, criterion or practice is objectively justifiable (proportionate and necessary). It makes no difference whether anyone intended the policy to disadvantage an individual or not.

For example:

- to require that a worker has been resident in the UK for over five years prior to starting employment is likely to be indirectly discriminatory since some individuals who have the right to work will not have been resident in the UK for that period of time.

Unlawful race discrimination in employment

As stated in the 2010 Act, race can mean any individual's colour or nationality (including citizenship). It can also mean an individual's ethnic or national origins, which may not be

the same as their current nationality. For example, an individual may not have been born in the UK but is living in the UK with a British passport. Race also covers ethnic and racial groups. This means a group of people who all share the same protected characteristic of ethnicity or race.

Employers must not discriminate because of race:

- in the arrangements they make to decide who should be offered employment.
- as to the terms on which they offer to employ a worker.
- by refusing or deliberately failing to offer employment.

It is also unlawful for employers to discriminate because of race against a worker:

- in the terms of employment provided.
- in the way employers make opportunities for training, promotion, transfer, facilities, services or other benefits available.
- by refusing access to such opportunities, benefits, facilities or services.
- by dismissing the worker or subjecting them to any other detriment.

Employers must also not subject job applicants or workers to harassment under the terms of the 2010 Act and the 1997 Order.

Harassment is unwanted conduct related to a protected characteristic that violates someone's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them. It should also be noted that under the 2010 Act and the 1997 Order, it is unlawful to victimise a person because it is believed he or she has done, intends to do, or might do, a 'protected act'. A protected act can be anything done for the purposes of or in connection with the 2010 Act or 1997 Order, such as making or supporting a complaint of discrimination, bringing legal proceedings, providing information, evidence or statements.

It is also unlawful to instruct or induce another person to discriminate, or to publish an advertisement or notice that indicates an intention to discriminate. Under the 2010 Act and the 1997 Order discrimination committed by a worker in the course of their employment, is treated as having been committed by their employer, as well as by the individual worker, whether or not the employer knew or approved the acts of the discrimination.

Employers should be mindful of all forms of discrimination when applying the provisions of the IANA 2006. If for example, people affected by religious discrimination are from a particular racial group, the discrimination might also amount to indirect race discrimination. For example, case law has established that Sikhs and Jews can be described as having an 'ethnic origin'. It should also be noted that in Northern Ireland,

the 1997 Order also expressly covers the Irish Traveller Community, which is also a racial group for the purposes of the 2010 Act.

Action against employers

Anyone who believes that they have been discriminated against, either directly or indirectly, by an employer, a prospective employer or an employment agency, may issue a claim in an Employment Tribunal, or an Industrial Tribunal in Northern Ireland. If the claim is upheld, the Tribunal will normally order the employer to pay compensation, for which there is no upper limit.

The content of this code of practice can be taken into account by a Tribunal in determining whether the employer has discriminated against a worker or prospective worker. The Equality and Human Rights Commission and the Northern Ireland Equality Commission can also take regulatory action against the employer if they publish a discriminatory advertisement or instruct, or induce, another person (including an employment or recruitment agency) to discriminate.

Where an employer is found to have committed an act of unlawful race discrimination, the Public Contracts Regulations 2015 provide that public authorities may disqualify them from entering into public procurement contracts.

3. How to avoid discrimination

Employers should:

- be consistent in how they conduct right to work checks on all workers, including British citizens.
- ensure job selections are made on the basis of suitability for the post.
- ensure that no prospective job applicants are discouraged or excluded, either directly or indirectly, because of known or perceived protected characteristics.

Employers can avoid this liability if they can prove that they took all reasonable steps to prevent such discrimination. For example, in the context of their duties to prevent illegal working, employers may provide training to workers on how to carry out right to work checks in accordance with this code of practice, both before and during employment. It would also be a reasonable step for an employer to have an equality policy in place and ensure that it is put into practice.

Employers should not:

- discriminate when conducting right to work checks.
- only check the status of those who appear to the employer likely to be migrants.
- make assumptions about an individual's right to work in the UK or their immigration status on the basis of their colour, nationality, ethnic or national origins, accent, surname or the length of time they have been resident in the UK.

Otherwise, an employer may be acting in a discriminatory manner and it could be used as evidence against them in proceedings under the 2010 Act or the 1997 Order.

All employers should take steps to ensure that discrimination, including racial harassment and victimisation, does not happen in the workplace. Employers should aim for a culture of zero tolerance of race discrimination. As a matter of good employment practice, employers should also have clear written procedures for the recruitment and selection of all workers based on equal and fair treatment for all applicants. Copies of these procedures should be made available to all relevant staff.

The best way for employers to ensure that they do not discriminate is to treat all applicants fairly at each stage of the recruitment process and when carrying out right to work checks.

For further information, employers may refer to the fair recruitment recommendations made by the Equality Human Rights Commission and the Equality Commission for Northern Ireland.

These recommendations are designed to help employers avoid unlawful discrimination on all of the protected equality grounds and in all aspects of the recruitment process and

employment relationship. This code of practice offers guidance in addition to these recommendations on the employer's specific task of preventing illegal working when conducting right to work checks.

Fair recruitment practices

Employers must be satisfied that a job applicant has the right to undertake the work in question in the UK.

An employer should therefore conduct a right to work check **before** they employ an individual to ensure their immigration status allows them to carry out the work in question. If an individual's right to work is time-limited, the employer should conduct a follow-up check shortly before it is due to come to an end.

There are three types of right to work checks: a check using a digital verification service provider (DVSP), a Home Office online check or a manual document-based check.

Conducting any one of these checks as set out in guidance about how to carry out right to work checks and in the 'Code of practice on preventing illegal working: Right to Work Scheme for employers' will provide employers with a statutory excuse.

If the employer is carrying out a right to work check on one applicant, they should make sure they check all applicants being considered at that stage.

Employers should only ask questions about a job applicant's or worker's immigration status where it is necessary to determine whether their status imposes limitations on the number of hours they may work each week or the type of work they may carry out. Employers should ensure that job applicants and workers are not asked about their immigration status because of their race, nationality or ethnic or national origins.

Job applicants and workers with a time-limited right to work

Job applicants must not be treated less favourably solely because they produce acceptable documents or their eVisa, showing a time-limited right to work in the UK.

Once an individual who has time-limited permission to stay in the UK has established their initial and ongoing entitlement to work, they should not be treated less favourably during their employment, including as to the terms of their employment, opportunities for training, promotion or transfer, benefits, facilities or services (where applicable). This includes dismissing the worker or subjecting them to some other detriment, other than further right to work checks as prescribed in the guidance about how to carry out right to work checks and 'Code of practice on preventing illegal working: Right to Work Scheme for employers'.

It is possible for an individual to apply to extend their permission to stay. If they do so before their previous permission expires, they continue to have any right to work that they previously held while their application and any associated administrative review or appeal is outstanding.

In certain circumstances, an employer will need to contact the Employer Checking Service such as where an individual has an outstanding application, administrative review or appeal, or if their immigration status requires verification by the Home Office, for example in the case of Crown Dependencies. Failing to conduct a check in this way where it is needed could result in the employer acting in a discriminatory manner.

Type of right to work check

Job applicants must not be treated more or less favourably on the basis they have an eVisa. This means employers cannot, for example, only employ individuals who have an eVisa and refuse to carry out manual checks or use the ECS for those who do not have or are unable to access the Home Office online checking service.

Where a right to work check has been conducted using the online service, the information is provided in real-time directly from Home Office systems and there is no requirement to carry out a manual document-based check. Workers should be invited to provide their share code in their application which, along with their date of birth, will allow the employer to check their immigration status via the Home Office online service.

Employers must not discriminate against any individual based upon the type of right to work check carried out. For instance, an individual may decide that they do not want a DVSP used for digital right to work checks and choose to demonstrate their right to work using a physical document instead (where this is permitted). Furthermore, some individuals with an eVisa will be able to demonstrate a right to work using the Home Office online service, and others may not. This may be due to a technical issue beyond the worker's control which results in the production of an incorrect share code, online right to work check result or because the worker is temporarily unable to generate a share code. These groups should not be discriminated against or treated less favourably.

Where an employer uses a DVSP as part of their recruitment and onboarding processes, the employer and their chosen DVSP must have systems in place to ensure this does not introduce or perpetuate discriminatory outcomes.

Job applicants who cannot evidence their right to work

Employers may encourage use of the online checking service, or use a DVSP and may support workers in completing checks in this manner (e.g. by providing access to hardware and the internet). However, employers are not permitted to mandate online or digital checks, except for those workers who have been provided with an eVisa.

Employers should use the Employer Checking Service in applicable circumstances.

Employers should try to keep the job open for as long as possible to provide all workers with reasonable opportunity to demonstrate their right to work, but they are not obliged to do so where the need to recruit someone is urgent. It is ultimately the decision of the employer whether or not to employ an individual.

4. If employers need more information

The Equality and Human Rights Commission (EHRC) and the Equality Commission for Northern Ireland (ECNI), provide further information on matters relating to the law on discrimination.

The EHRC has produced a Statutory Code of Practice on Employment which contains detailed and practical guidance to help employers to comply with the 2010 Act, together with guidance and good practice for small businesses. These publications are available on its website.

Home Office advice for employers about complying with the law on preventing unlawful individuals from working is available from the Sponsorship, Employer and Education Helpline on 0300 123 4699.

Information for workers

Workers should not be offended if an employer asks them to evidence their right to work. Employers are expected to conduct right to work checks on all job applicants. By performing the checks and keeping records of checks they have made, employers will protect themselves from payment of a civil penalty should it turn out they have inadvertently employed someone who is working unlawfully. The checks are not intended to do anything other than prevent illegal working.

The way workers can evidence their right to work may vary depending on their nationality or immigration status. If they are in possession of a UK or Irish passport (or Irish passport card) or they have access to the Home Office online checking service, the employer is unlikely to need to see any further documents. For documents that are encountered less frequently, the employer might need to make further checks, by consulting guidance about how to carry out right to work checks or where appropriate, by contacting the Home Office to verify their immigration status directly with us. Workers can assist employers and speed up the process for themselves by making sure their documents are ready for checking when the employer needs to see them.

Anyone who believes that they have been discriminated against, either directly or indirectly, by an employer or prospective employer on the basis of one or more of the protected characteristics may bring a complaint before a Tribunal.

It is unlawful to victimise a person because they have made or supported a complaint of race discrimination.

If expert advice and support is needed on discrimination, workers can call the Equality Advisory Support Service (EASS).

In Northern Ireland the advisory service is provided by the Equality Commission for Northern Ireland.