

How to avoid employing illegals

I own a small chain of restaurants in Bristol, and often employ workers from outside the UK. I have heard that this week the Government is bringing in criminal penalties, and if I employ illegal immigrants I will face big fines. What do I need to do to protect myself, and make sure I am not liable for any of these penalties?

The Government's plans to shut down illegal working in the UK incorporate tough new civil and criminal penalties for rule-breaking employers, which come into force [today/29 February 2008]. Protecting yourself requires an understanding of the scope of the new penalties and their impact on the workplace.

The civil penalty applies if you *negligently* employ illegal migrants (for example, people who do not have leave to enter or remain in the UK). To limit liability, you should check, copy and retain certain documents before employment starts (these are listed in Border and Immigration Authority (BIA) guidance: <http://www.bia.homeoffice.gov.uk/>). For those with limited leave to be in the UK, document checks should be repeated every 12 months. Employers are also required to comply with other requirements, including taking all reasonable steps to check the validity of documents, retaining copies for at least two years after employment ends and checking photographs and dates of birth against the appearance of prospective employees.

The civil penalty is assessed on a sliding scale, ranging from a written warning to a maximum penalty of £10,000 for every employee employed illegally. The level depends on your compliance with the document checks, whether you have reported suspected illegal workers to the BIA, have co-operated with them and any previous offences.

If you *knowingly* employ illegal migrants, you may also be subject to the new criminal penalty. The current maximum penalty is up to two years' imprisonment and/or a potentially unlimited fine. Company directors convicted of this offence may also be disqualified.

You also need to be extremely careful that you adopt a recruitment procedure which avoids unlawful race discrimination. All applicants should be treated in the same way regardless of their apparent origin or nationality, and asked to provide evidence of their right to work in the UK. Ideally a transparent written policy regarding recruitment checks will be utilised, adopting the statutory code of practice on the avoidance of unlawful discrimination issued by the BIA, in order to ensure that all applicants are treated consistently and in a non-discriminatory manner.

As an employer with a diverse workforce, you should strive to ensure a consistent and careful approach in relation to the recruitment of all applicants, performing the necessary checks

which minimise the risk of being in breach of the new illegal working rules, and also avoiding claims of race discrimination.

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