



# Welcome

## Right to Work after 1 January 2021

SH $\infty$ SMITHS

RIGHT TO WORK CHECK CHANGES

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# Topics covered today

- Right to work checks
- Prevention of illegal working
- Tricky issues
- Employment Law considerations
- New Immigration Rules update
- Common themes



# Right to Work – initial considerations

- Why do we need to carry out right to work checks?
- What is the ‘statutory excuse’?
- Who do we carry out checks upon?
- When do we carry out checks?

# Manual Right to Work – initial check procedure (1)



## OBTAIN original documentation:

- What documents should you be checking?
- List A & List B
- How should they be checked? In person, copies, Skype?

## CHECK the documentation is genuine:

- Does the document relate to the migrant?
- Has the document been tampered with?
- Has the document expired? Validity issues

# Manual Right to Work – initial check procedure (2)

**COPY, SIGN & DATE** the documentation as a minimum

- Passport or
- Any other documentation
- The documents **MUST** be signed & dated
- Further additional requirements - “Original seen and verified by (name of verifier), (date)” then signed by verifier
- Where right to work check takes place on the day work starts – “Time right to work check undertaken (time). Time work due to commence (time)”
- Complete the “right to work” checklist

**RETAIN** the documentation

- For the duration of employment
- For a period of 2 years thereafter

# Online Right to Work

- 28 January 2019
- Only available in certain circumstances
- Online check not mandatory if manual check has been completed
- How does the system work?
- Three step check



# Tricky issues

- Checking the Right to Work for new EU nationals from 1 January 2021
- Establishing entry date
- Knowledge of entry date
- Possible sanctions



# Employment Law Considerations

- Asking difficult questions
- Possible discrimination allegations
- Termination

# Immigration Law Update

- Skilled Worker Route
- Frontier Worker Visa
- Further routes



# Common Themes

- What can we accept as evidence of right to work and settlement status, post 1 January 2020, and how do we check it we have done the right procedure and determined whether that EU migrant was here before or after 31 December 2020?
- Can right to work evidence be checked online, what does the share code actually show the employer (as some codes don't show settlement status), and will this aid me in all foreign documents I may be unfamiliar with?
- As there are no retrospective right to works check, are we okay to ask for the employee share codes and ask them to prove their settlement status, and whilst waiting on the Home Office, can I still employ that EU migrant.
- Can we terminate/refuse employment if EU migrant right work check is failed or their settlement application is refused?
- Should we re audit our work force when we have identified expired documents like an EU id card, and if we currently have very few rights to work checks and little paper trails, should we re audit everyone or just the ones where no record exists, and what are my obligations as an employer with right to work checks.