

Consultation published on tough new laws for employing illegal workers

Jail sentences of up to 2 years and higher civil penalties for anyone employing illegal workers are to come into force under the Immigration, Asylum and Nationality Act 2006.

All employers in the leisure industry should be aware that it is currently a criminal offence to employ someone who has not been granted leave to enter or remain in the UK, to work in the UK, or to do the work being offered. It is an employer's responsibility to ensure, before employing anyone, that the person has the right to work in the UK. A potential defence exists if an employer can show it checked and retained copies of certain documentation before the commencement of employment. The maximum fine for the employer and any responsible managers is currently £5,000 for each person found to be illegally employed. However, new legislation due to be introduced next year provides for jail sentences for employers found to be deliberately employing illegal workers.

The Immigration, Asylum and Nationality Act 2006 received royal assent on 30 March 2006. The provisions relating to illegally employing migrant workers are designed to make more of a distinction between minor negligence and flagrant abuse of the law. They will have a significant impact on the leisure sector where casual and unskilled work may often be carried out by migrants. These provisions are intended to come into force in early 2008 and the government is currently consulting on some of the ways in which they will be implemented.

One of the biggest changes is that knowingly employing illegal workers (even if the appropriate checks have been made) will be an imprisonable offence and may also be accompanied by an unlimited fine. The consultation seeks views on the current proposal that company directors found guilty of knowingly employing an illegal migrant worker would also be disqualified from forming or managing a company.

Civil penalties for employers who have failed to carry out the correct checks may be as much as £10,000 per illegal worker, and may also result in the business being prevented from employing future migrants legally. The new law will require continued checks to be made at specified intervals for migrant employees who have limited leave to enter or remain in the UK. What those intervals will be forms part of the consultation.

The consultation is aimed at specific participants representing a range of institutions, individuals and employers, but it is understood that other interested parties may respond to it. The consultation closes on 7th August 2007.

A client information sheet on proving the right to work whilst avoiding racial discrimination may be found on our employment pages by visiting www.bllaw.co.uk.

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