

Migrant Workers

The Health and Safety Executive (HSE) defines a migrant worker as: "someone who is or has been working in Great Britain (GB) in the last 12 months, and has come to GB from abroad to work within the last 5 years". Migrant workers can contribute significantly to an organisation; however, their presence in the workplace does require consideration to ensure that any health and safety risks to both them and others are properly controlled.

Key risk factors:

- language barriers
- cultural barriers and differences
- possible lack of willingness to integrate
- different perceptions of risk
- limited understanding of the UK's health and safety law and operational good practice
- possible employment of illegal immigrants.

Recommendations for employers:

- assess and monitor labour providers, ie recruitment agencies and gang masters
- establish mutual responsibilities with labour providers and develop contracts and service level agreements
- check the entitlement of migrant workers to work in UK and keep specified evidence – a failure to do so can result in prosecution
- ensure risk assessments consider risks specific to migrant workers
- assess previous training, qualifications and experience to ensure their validity in the UK for the specific work being undertaken
- provide appropriate induction training
- ensure all training and information is comprehensible to migrant workers and understood in practice
- establish any need for translation and investigate services available, eg through Citizens Advice Bureau or Google translate
- ensure transport used for transporting workers is suitable and is maintained in good condition
- consider a programme of support and mentoring, eg help with forms and claims, information packs, mentoring and English language training etc
- ensure managers have the tools, skills and knowledge to manage migrant workers appropriately and increase supervision when needed to allow for cultural differences and language difficulties
- ensure terms and conditions are comparable with non-migrant workers
- develop team working and people management to ensure migrant workers are engaged and integrated by virtue of effective consultation and good communication
- where acting as a private landlord, ensure checks are made of the immigration status of tenants.



Legal duties

- Health and Safety at Work etc. Act 1974
- Immigration Act 2016
- Management of Health and Safety at Work Regulations 1998
- Working Time Regulations 1998
- Workplace (Health, Safety and Welfare) Regulations 1992.

Case law

The best known case of the health and safety of migrant workers being mis-managed is that of the cockle-pickers who drowned in Morecambe Bay in 2005, as a result of the fast changing tides. The gang master who was responsible for them was sentenced to 21 years in prison, for their manslaughter and for causing illegal immigrants to work in the UK.

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Migrant worker recruitment after Brexit

As an employer, you will continue to have a responsibility under the law to prevent illegal migrants working in the UK. This means that you must be satisfied that anyone who comes to work for you is legally entitled to work in Britain. If you fail to make the necessary checks then civil penalties can be up to £20,000 per illegal worker, under the Immigration, Asylum and Nationality Act 2006. Knowingly employing an illegal worker is a criminal offence and can result in prosecution. The maximum penalty for this offence is an unlimited fine and two years imprisonment.

According to home office, the figures between 1 January and 31 March 2019 show that there were 530 penalties issued with a total value of £9,365,000. During this period 747 illegal workers were identified and apprehended.

Great Britain's departure from the EU will result in changes in 2021 to the Right to Work Checklist as free movement for EU citizens will cease and these people will require permission to work in the UK unless they arrived before 31 December 2020, in which case they would gain entitlement to stay in the country (to both live and work) in accordance with the EU Settlement scheme. EU citizens living in the UK before 31 December 2020 have until 30 June 2021 to apply for settled status, so any EU citizen hired between 1 January and 30 June 2021 will continue to benefit from the current Right to Work checks. From 1 July 2021, the situation is likely to alter with EU citizens no longer having preferential immigration status over non-EU migrants and the government will need to amend the Right to Work checklist.