

## Establishing the Right to Work: Directors banned after avoiding illegal worker fines

The directors of six restaurants who put their businesses into liquidation to avoid paying fines for employing illegal workers have received bans from being company directors or being involved in the management of companies for between six and eight years<sup>1</sup>.

It is unlawful to employ an individual who does not have the appropriate right to live and work in the UK or who is working in breach of their conditions of stay in the UK.

On 12 July 2016, the criminal offence of knowingly employing an illegal migrant was extended by the Immigration Act 2016 to include circumstances where an employer has "*reasonable cause to believe*" that person is an illegal worker.

An employer needs to carry out "right to work" checks, before an individual starts employment, to conduct follow-up checks on those who have a time-limited permission to work, and to keep a record of all the checks it has carried out.

An employer may face civil and criminal penalties for employing an individual who does not have the right to work. With regard to the civil penalty, an employer may face a maximum fine of £20,000 for each individual who does not have the right to work. If a fine is not paid within a certain period of time, it may be registered with the civil court, after which enforcement action may be taken immediately. In terms of criminal liability, on summary conviction, an employer may receive an unlimited fine or imprisonment of up to six months (or both).

### Upcoming legal change: Directors must be natural persons

Section 87 of the Small Business, Enterprise and Employment Act 2015 brings in a new requirement that directors of companies must be natural persons and that corporate directors are banned (at present, corporate directors are permitted provided that at least one director is a natural person). This provision is expected to be brought into force in October 2016. There will be a grace period of 12 months from when the provision comes into force, after which any corporate directors will cease to be directors by operation of law.

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<sup>1</sup> <https://www.gov.uk/government/news/no-escape-for-restaurant-directors-who-employed-illegal-workers>

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If you would like more information on the above changes, or any related matter, please contact a member of Rooks Rider Solicitors' Employment team.



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