

# Employers, Brexit and the right to work: are you prepared?

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We have received a number of queries recently from our employer clients asking what Brexit may mean for their non-UK/EEA workforce. To help answer some of these queries, where possible, we have set out a simple Q&A below.

What happens to EEA employees after Brexit?

The EU Settlement Scheme enables EEA and Swiss employees, and their family members, to secure their right to live and work in the UK after Brexit. Under the Scheme, those who have been continuously resident for 5 years in the UK can apply for Settled Status (aka Indefinite Leave to Remain), allowing them to stay indefinitely. Those who have been resident for less than 5 years can apply for Pre-Settled Status (aka Limited Leave to Remain), allowing them to stay in the UK for up to 5 years, by which stage they could be eligible for Settled Status.

From 31 December 2020 EEA and Swiss citizens will be subject to immigration control. This means that they may be questioned at the UK border or before boarding flights to the UK, and be asked to prove their immigration status. If they are unable to show that they have status under the EU Settlement Scheme or under another category of the immigration rules, they could be limited to a maximum of six months in the UK, with no right to work.

The EU Settlement Scheme is available to those who are living in the UK before 31 December 2020, and the deadline for applying is 30 June 2021. Employees will need to provide evidence of their UK residence when making their applications, so starting sooner rather than later may assist.

What should we do now?

Encourage any EEA and Swiss employees to apply for the EU Settlement Scheme as soon as possible. Having documentation demonstrating their status may assist when travelling in and out of the UK after Brexit and proving that they have the right to work in the UK.

Consider whether EEA and Swiss employees who live outside the UK but travel frequently to the UK for work could also benefit from having status under the Scheme, as they may be eligible for Pre-Settled Status.

Also consider that EEA and Swiss employees who have lived in the UK for at least 5 continuous years in the past may be eligible for Settled Status based on their historic period of UK residence.

Prudent employers will check employees' nationality and immigration status, so you should ensure their records are up to date.

What happens after the EU Settlement scheme closes?

After then, employees face losing the right to live and work in the UK unless they have status under the EU Settlement Scheme, or status under another category of the Immigration Rules such as a Tier 2 or Tier 5 visa.

The impact on employers is to increase the complexity and costs of recruitment and right to work compliance. If employees do not have the necessary documents in place, it may also put you in a position where you cannot continue to employ them or offer employment to certain applicants, which can cost the business in terms of talent acquisition and retention.

Getting it wrong can also result in criminal liability, as well as civil penalties and fines of up to £20,000 per person found to be working unlawfully.

This is an important moment to look at your options and ensure that you are compliant with right to work obligations to avoid disruption for your

employees and for your businesses.

If you have any questions, or would like any further information, please contact us.

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