

## Right to Work checks after 30 June 2021 for EU staff employed before 30 June 2021

The deadline for applying to the EU Settlement Scheme (EUSS) passed on 30 June 2021. The Home Office recently updated their [Right to Work employer's guide](#) to clarify how Right To Work (RTW) checks need to be carried out from 1 July 2021 for EU and EEA citizens who were employed on or before 30 June 2021.

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### Do employers need to carry out retrospective checks on their existing EU staff from 1 July 2021?

Employers are not required to carry out retrospective RTW checks on their EU & EEA staff employed on or before 30 June 2021. As long as they had obtained a copy of the individual's passport in the prescribed manner before the start of employment, employers will be protected by the statutory defence if it turns out that the employee did not have the right to work in the UK.

However, some employers may consider encouraging their EU & EEA employees to share with them their immigration status retrospectively. Such a decision may be beneficial in the long run to avoid the late discovery of individuals in their workforce who do not have the right to work in the UK. As long as the checks are carried out in a non-discriminatory manner and provide individuals with every opportunity to demonstrate their right to work, they will provide certainty and stability for both employers and employees.

There is no fixed approach to making a decision on whether to carry out such retrospective RTW checks. Any decision should be made after a careful assessment of a particular workforce taking in account feasibility, risks and benefits for both employers and employees.

### How to carry out right to work checks after 1 July 2021 on existing staff?

An employer may invite their EU & EEA employees to demonstrate that they have successfully obtained pre-settled or settled status for those employed before 30 June 2021.

For all EU & EEA citizens with settled or pre-settled status under the EUSS, employers will need to be familiar with the use of the online right to work check procedure on the [Right to work service](#). The required information is the applicant's date of birth and a share code (which the employee will have obtained online).

### What steps will an employer need to take if EU & EEA nationals employed before 30 June 2021 are unable provide evidence of their settled or pre-settled status?

There may be situations where an EU/EEA employee whose employment started before 30 June 2021 is not able to demonstrate their pre-settled or settled status. Depending on the circumstances, it may be disproportionate to terminate their employment. A fair process will need to be followed and the correct procedures will need to be implemented to avoid any breach of immigration law or employment law.

- The individual may have an outstanding application to the EUSS and still have a right to work until it is finally determined. In that case, the employer will need to check that the employee holds a valid Certificate of Application and obtain a share code from them to check their right to work from the Employer Checking Service (ECS).
- EU & EEA individuals who can show they missed the 30 June 2021 deadline through no fault on their part will be given a further opportunity to apply to the EUSS. In such a situation, the employer should advise the individual they must make an application to the EUSS within 28 days. Employers will be able to obtain confirmation from the Employers Checking Service that such an application has been made. If no application is made within 28 days or if the application is unsuccessful, the employment will normally have to be terminated.

RTW checks procedures can be complex and should be correctly implemented in these rare and challenging situations. Specialist advice is recommended to ensure employers act in compliance with both immigration law and employment law.

## Contact



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