



PUBLICATION OF NON-COMPLIANT EMPLOYER DETAILS

BACKGROUND

1. The introduction of new, tough civil penalties for employers of illegal migrant workers in the Immigration, Asylum and Nationality Act 2006 provides a clear signal that Parliament expects UK employers to take seriously their long standing responsibility for ensuring that they avoid employing illegal workers by carrying out proper document checks, in accordance with the published regulations.
2. The Government is committed to working with employers to ensure that the immigration system provides an effective, straightforward and lawful means of sourcing the skilled labour the economy needs from overseas, and to support employers in verifying the status of migrant workers seeking employment in this country. The creation of the Migration Advisory Board by non-EEA nationals will provide an objective and informed basis for decision making. This, combined with the recent expansions in the European Union labour market, means there can be no excuse for knowingly employing illegal workers in the United Kingdom.
3. We are determined to work with employers to prevent illegal jobs that encourage people subject to immigration control to take illegal journeys to the UK or to remain here in breach of our laws. Tragedies in recent years clearly show that those who seek to enter and remain in this country clandestinely place their own lives at risk, and are vulnerable to maltreatment at the hands of criminal gangs who facilitate illegal migration. The use of illegal labour can also present a risk to legitimate competition and businesses' compliance with other obligations under tax and employment law.
4. Our preferred approach is to encourage employers to comply with the regulations and codes under the 2006 Act approved by Parliament, through the provision of guidance and support services. But the UK Border Agency is also fully prepared to use the new powers it has to impose penalties and in some cases prosecute employers who have failed in their legal responsibilities. Penalties encourage employers to comply with the law by ensuring they have appropriate checking systems in place, deter deliberate law breaking, and remove any economic advantage to be derived from exploiting illegal labour.
5. To promote these objectives and provide transparency for the public on the operation of the penalty system, the UK Border Agency has set out in this document the circumstances in which it will publish the details of employers on whom penalties have been served.

DETAILS OF THE CIVIL PENALTY SCHEME

6. The civil penalty system for employers was introduced on 29th February 2008. Under section 15 of the 2006 Immigration, Asylum and Nationality Act, employers found to be using illegal migrant workers will be served with a Notification of Potential Liability (NOPL) by immigration officers carrying out enforcement visits. In each case, the central UK Border Agency Civil Penalty and Compliance Team will consider evidence submitted by the visiting officer or team and determine whether to issue the employer with a Notification of Liability (NOL) and a civil penalty of up to £10,000 per illegal worker.
7. In cases where a NOL is issued and a civil penalty imposed against an employer found to be using illegal migrant workers, the employer must, within a period of 28 days:
 - a) pay the penalty in full; or
 - b) submit a request to the Civil Penalty Compliance Team to pay the civil penalty in a series of monthly instalments; or
 - c) submit an objection against the service of the civil penalty to the UK Border Agency; or
 - d) lodge an appeal against the service of the civil penalty to the County Court (England, Wales and Northern Ireland), or the Sheriff's court (Scotland).
8. The penalty system operates on a sliding scale of amounts, based upon the nature of the eligibility checks undertaken by employers, the number of occasions on which a warning has been issued or civil penalty imposed, and the degree of co-operation provided to the UK Border Agency by the employer. This is detailed in the code of practice available at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking>
9. The new penalty scheme sits alongside a tough new criminal offence of knowingly employing an illegal migrant worker (section 21 of the 2006 Act). This will be used in the more serious cases where rogue employers knowingly and deliberately use illegal workers, often for personal gain. This will carry a maximum two year custodial sentence and/or an unlimited fine.

PUBLICATION OF INFORMATION ABOUT NON-COMPLIANT EMPLOYERS

10. From June 2009, the UK Border Agency will change the frequency of publishing details of non compliant employers from monthly to quarterly. This information will continue to be published on the UK Border Agency preventing illegal working website, to include details of all employers who have been found to be liable for the payment of a civil penalty for employing illegal migrant workers or convicted of an offence under section 21. The first set of quarterly data will be published in June 2009, and will cover all employers that have been found liable for a civil penalty. This will include instances where –
 - No objection or appeal is received within 35 days after service of the Notice of Liability (NOL) and no extension request has been received or granted ; and
 - The appeal process against service of the NOL has been fully exhausted.

11. UK Border Agency will not publish details of those employers whose case is still subject to investigation, objection, appeal or where operations are ongoing.
12. The information about each employer to be published will include the following information:
 - Name of business;
 - Size of the penalty levied;
 - Number of illegal workers found;
 - Whether a prosecution under section 8 of the Asylum and Immigration Act 1996 or under section 21 of the Immigration, Asylum and Nationality Act 2006 has been successful.
13. The Home Office Press Office will also release the information to local media organisations, such as local newspapers and broadcast news media.