

To Whom It May Concern

We are writing this letter to highlight known technical problems with online right to work checks and to inform employers how to verify the right to work in such cases. Employers must follow this process to balance their obligations to conduct immigration checks with their duty to avoid discrimination.

When a prospective employee has reported a digital status error to the Home Office, their prospective employer should use the Employer Checking Service (ECS). This involves a straightforward online process, and the Home Office should return a Positive Verification Notice (PVN) within a few days. The Government's Employers' Guide to Right to Work Checks (www.gov.uk/government/publications/right-to-work-checks-employers-guide) states that a PVN constitutes a "statutory excuse" if an employer is "unable to carry out a check using the online service."

Full instructions are given on the ECS website: www.gov.uk/employee-immigration-employment-status.

The Home Office online service for right to work checks requires a share code that needs to be verified by a potential employer. This process became compulsory for most EU citizens in July 2021, and it was extended to virtually all non-British and non-Irish residents in the UK in April 2022. As the guidance sets out, the employer must follow the process of share code verification to obtain a "statutory excuse" against a civil penalty in the event of illegal working.

However, the guidance for employers also refers to *Avoiding discrimination while preventing illegal working: code of practice, 2014* (www.gov.uk/government/publications/right-to-work-checks-code-of-practice-on-avoiding-discrimination). This code of practice states that "some individuals who hold immigration leave will be able to demonstrate a right to work using the Home Office online service, and others will not. Neither group should be discriminated against or treated less favourably." Therefore, employers must use the ECS when the online checks fail, as to do otherwise would be discriminatory.

Since the online system was launched, individuals have encountered a range of technical problems. For example, "**entangled status**" - where the online check shows can show a mixture of the prospective employee's details and those of different individual, and "**corrupted status**" - where the individual's photograph is not displayed on their digital status profile, and attempting to generate a share code results in an error. People who face issues generating a share code are directed to report the technical problem to the Home Office's EU Settlement Resolution Centre, who should raise an incident and rectify the problem. We are aware of many cases where it can take weeks or even longer for the Home Office to resolve someone's digital status.

The Right to Work guidance for employers was updated in September 2024 to acknowledge this, specifically in the context of follow-up checks for existing employees:

If an employee is unable to provide evidence that they have continuing permission to work when you conduct a follow-up right to work check, this may not necessarily mean that they no longer have permission to work. **For example**, in cases where an employee benefits from section 3C leave while their in-time application is being considered, or **in the event of a technical issue beyond the employee's control which results in the production of an incorrect share code**, online right to work check result or they are temporarily unable to generate a share code.

The guidance goes on to direct employers to give employees reasonable opportunity to prove their right to work, and to make use of both the UKVI Resolution Centre and the Employer Checking Service (ECS).

About the3million

the3million was formed after the 2016 EU referendum to protect the rights of EU citizens who have made the UK their home. Our work includes monitoring the implementation of the Withdrawal Agreement, and informing people of their rights. For more information see www.the3million.org.uk.