

POL80 Right To Work Policy and Procedure

Serendipity Healthcare Ltd
Unit 5 Millennium Way, Dunston, Chesterfield, Derbyshire, S41 8ND



1. Purpose

- 1.1 To ensure that Serendipity Healthcare Ltd does not commit offences of illegal working.
- 1.2 To support Serendipity Healthcare Ltd in meeting the following Key Lines of Enquiry:

WELL-LED

W2: Does the governance framework ensure that responsibilities are clear and that quality performance, risks and regulatory requirements are understood and managed?

To meet the legal requirements of the regulated activities that Serendipity Healthcare Ltd is registered to provide:

- Immigration Act 2014
- Asylum and Immigration Act 1996
- Immigration Act 2016
- Immigration, Asylum and Nationality Act 2006
- General Data Protection Regulation 2016
- Data Protection Act 2018

2. Scope

- 2.1 The following roles may be affected by this policy:
All staff
- 2.2 The following Service Users may be affected by this policy:
Service Users
- 2.3 The following stakeholders may be affected by this policy:
Commissioners

3. Objectives

- 3.1 To ensure that Serendipity Healthcare Ltd carries out all required Right to Work checks on all potential new staff before employing them.

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4. Policy

- 4.1 Serendipity Healthcare Ltd will carry out document checks to ensure they meet its responsibilities under the Immigration, Asylum and Nationality Act 2006, and its regulations, and thereby ensures that only persons who are entitled to work in the UK are employed and that those who are employed, are employed in accordance with any restrictions imposed on their employment. Checks should be made on everyone before they begin work with Serendipity Healthcare Ltd.
- 4.2 Should Serendipity Healthcare Ltd become aware that an individual does not have the right to work in the UK, Serendipity Healthcare Ltd will ensure that it does not continue to employ such an individual if they do not have the relevant permissions.
- 4.3 Rights to Work
- UK nationals have unrestricted rights to work and be employed in the UK
 - None UK Nationals with a current biometric immigration document (Biometric permit)
 - Migrant workers may not be employed unless the employer has registered with UK Visas and Immigration as a sponsor for that purpose, and the applicant is eligible, according to UK Visas and Immigration rules, to work in the UK
 - An asylum seeker may only work in the UK if they possess a Home Office issued Application Registration Card. Serendipity Healthcare Ltd must check the validity of the card with the Home Office
 - Specific rules apply to students studying in the UK

5. Procedure

- 5.1 There are three steps to be taken for all applicants for employment to avoid contravening the Act and being subject to substantial fines which are:

Step 1 – for Physical Check

Serendipity Healthcare Ltd, will obtain a copy of an original document from either List A or List B of the Home Office Right to Work Check List.

Step 2 – Check

Please refer to the Home Office Right to Work Checklist.

Serendipity Healthcare Ltd must take all reasonable steps to check that the document is genuine and to satisfy itself that the holder is the person named in the document.

Serendipity Healthcare Ltd should also check that the document allows them to do the work in question.

For each document given to you, you must:

- Check any photographs are consistent with the appearance of the person; and
- Check any dates of birth listed are consistent across documents and that you are satisfied that these match with the appearance of the person; and
- Check that the expiry dates of any limited leave to enter or remain in the UK have not passed; and
- Check any UK Government endorsements (biometric residence permits, stamps, stickers, visas) to see if the person is able to do, or can continue to do, the type of work you are offering; and

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- Satisfy yourself that the documents are genuine, have not been tampered with and belong to the holder; and
- If you are given two documents which have different names, ask them for a further document to explain the reason for this. The further document could, for example, be a marriage certificate or a divorce decree absolute, a deed poll or statutory declaration.

Step 3 – Copy

Serendipity Healthcare Ltd will make a clear copy of each document in a format that cannot later be altered. The copy must be retained securely either electronically or in a hard copy. Please refer the Home Office Right to Work Check List.

Take a copy of the relevant page or pages of the document, in a format which cannot later be altered, for example, a photocopy or scan (where an electronic copy is made of a document, it must be made using a non-rewritable format, such as CD-R). In the case of a passport or other travel document, the following parts must be photocopied or scanned:

- The document's front cover and any page containing the holder's personal details. In particular, you should copy any page that provides details of nationality, their photograph, date of birth, signature, date of expiry or biometric details; and
- Any page containing information indicating the holder has an entitlement to enter or remain in the UK and undertake the work in question

You must copy other documents in full; this includes both sides of a biometric permit. It is recommended that you write on the copy, the date on which you took the copy.

You must then keep a record of every document you have copied. It is recommended that you keep copies of the documents securely for the duration of the person's employment and for a further two years after they stop working for you. By doing this, the UKBA (UK Border Agency) will be able to check whether you have complied with the law or if you are required to pay a civil penalty if you are found to have anyone working illegally for you.

The UK Border Agency recommends that you use the UKBA 'Employers' Right to Work Checklist' and FULL GUIDE FOR EMPLOYERS ON PREVENTING ILLEGAL WORKING IN THE UK to help you make sure that

you have correctly carried out all the steps required of you in your duty to prevent illegal working and to get, and then keep a statutory excuse.

You are only required to carry out these document checks for people who started working for you on or after 29 February 2008. The rules of the Asylum and Immigration Act 1996 still apply to staff who started working for you between 27 January 1997 and 28 February 2008.

5.2 Know the type of Excuse Serendipity Healthcare Ltd has

Using the Home Office Right to Work Check List, we will ensure that the required 'Excuse' is completed. Please see Home Office Right to Work Check List.

5.3 Online Right to Work Checking Service

UK Online Right to Work Checking Service to carry out right to work checks for staff. Should Serendipity Healthcare Ltd wish to do so, it will seek authorisation from the prospective member of staff who will then be expected to share details of their right to work in the UK through the online service. So long as Serendipity Healthcare Ltd ensures that the Online

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Right to Work Checking Service process is followed correctly and in full, it will have a defence to any civil penalty should it subsequently be the case that the individual does not, in fact, have the right to work.

5.3 **False Documents Provided**

If Serendipity Healthcare Ltd is given a false document, it will only be required to pay a civil penalty if it is reasonably apparent that it is false. The UKBA considers the falseness to be reasonably apparent if an individual, who is untrained in the identification of false documents, examining it carefully, but briefly, and without the use of technological aids, could reasonably be expected to realise that the document in question is not genuine. Equally, where a person presents a document and it is reasonably apparent that the person presenting the document is not the person referred to in that document, even if the document itself is genuine, then you may be liable to prosecution for knowingly employing an illegal worker.

Serendipity Healthcare Ltd will not have an excuse against payment if Serendipity Healthcare Ltd knew that the document, or documents, were false or did not rightfully belong to the holder.

5.4 **When an Existing Employee no Longer has the Right to Work**

If Serendipity Healthcare Ltd has carried out repeat checks and found that an existing employee is no longer allowed to work in the UK or to carry out the work in question, then Serendipity Healthcare Ltd will no longer have an excuse against payment of a civil penalty. If Serendipity Healthcare Ltd continues to employ a person who no longer has the right to work for Serendipity Healthcare Ltd, then Serendipity Healthcare Ltd will be committing the criminal offence of knowingly employing an illegal worker.

If Serendipity Healthcare Ltd is considering the potential dismissal of an employee, it should seek independent legal advice.

5.5 **Follow up Checks for those Needing Immigration Permission**

If an employee commenced employment between 29 February 2008 and 15 May 2014 at Serendipity Healthcare Ltd and presents documents listed in List B as they have limited leave to remain or enter the UK for a particular period, Serendipity Healthcare Ltd must repeat the three step process set out above within 12 months of the employee's start date and then every 12 months until such time as the individual no longer has a limit on the duration of their stay in the UK.

If Serendipity Healthcare Ltd fails to conduct the checks every 12 months, Serendipity Healthcare Ltd will not be able to establish the statutory excuse and may incur a civil penalty.

6. Definitions

6.1 **Migrant Worker**

A "migrant worker" is a person who either migrates within their home country or outside it to pursue work such as seasonal work. Migrant workers usually do not have an intention to stay permanently in the country or region in which they work. A migrant worker is, or has been, working in Great Britain (GB) in the last 12 months and has come to GB from abroad to work within the last 5 years

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6.2 **Asylum Seeker**

An asylum seeker is a person who has made an application to be recognised as a refugee under the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol on the basis that it would be contrary to the UK's obligations to remove them from the UK

6.3 **British National**

The term "United Kingdom national" is not defined in the nationality law of the United Kingdom. It has been defined in various ways and at various times for the purposes of other United Kingdom legislation, international agreements, and treaties. The significance of the term "national" in international law is that it signifies a person connected with a State by a special legal tie entitling that State to protect the person in its relations with other States. Generally speaking, the term "United Kingdom national" or, more colloquially, "British national" covers:

British citizens

British Dependent Territories citizens

British Overseas citizens

British subjects (under Part IV of the BNA 1981)

British protected persons

British Nationals (Overseas)

Last Reviewed:

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