



ARRIVAL

Migration Alert
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KATIE MALYON
& Associates, Lawyers

❖ TIP

- insert a clause in contracts of employment requiring 457 visa holders to notify the sponsor regarding medical treatment and to retain records of payment of costs
- to ensure current sponsorship undertakings and any future obligations cease at the earliest possible date:
 - notify DIAC as soon as a former employee ceases employment
 - unless another visa is granted, provide a one-way, non-refundable return ticket and obtain a signed acknowledgement, or arrange to reimburse the cost of return travel
 - facilitate provision of professional migration advice so the former employee can consider other visa options
 - consider nominating 457 visa holders or expat hires for permanent residence as no sponsorship obligations apply.

SPONSORSHIP OBLIGATIONS BILL

With the Federal Election being called, the Migration Amendment (Sponsorship Obligations) Bill 2007 that was before Parliament has lapsed. As the Bill had received bipartisan support, it is likely to be re-introduced before Parliament in some form in early 2008.

If passed, the Bill will introduce (among other things):

- civil penalties for employers for breach of sponsorship obligations
- new investigative powers for Department of Immigration and Citizenship (DIAC) inspectors
- obligation for sponsors to pay "prescribed medical costs" (to be defined)
- obligation for sponsors to pay costs associated with licensing, registration, membership and recruitment and migration agents.

More details will be provided in the New Year.

MINIMUM SALARY LEVEL & DEDUCTIONS

The definition of MSL has been redefined to exclude any deductions other than PAYG taxation and amounts that are 100% tax deductible or otherwise exempt from FBT.

DIAC is closely scrutinising contracts with regard to deductions to ensure compliance with MSL and requires evidence of payment of MSL when a sponsor is monitored.

ENHANCED SPONSOR MONITORING

In anticipation of the Bill becoming law, DIAC has released a new comprehensive monitoring form requiring:

- information on any legal court proceedings including employment related disputes for the business and related entities

- superannuation fund and residential address for all temporary visa holders
- evidence of 457 visa holders' agreement to any salary deductions
- record of any workplace compensation paid to 457 visa holders
- record of hours worked by 457 visa holders
- for 457 visa holders who applied for their visa before 1 November 2005, details of all medical costs incurred and how costs were met
- for 457 visa holders who applied for their visa after 1 November 2005, details of all medical costs incurred in a public hospital and how costs were met.

CRIMINAL CHARGES FOR EMPLOYMENT OF ILLEGAL WORKERS

From August 2007 employers or labour supply companies who knowingly or recklessly employ or supply illegal workers will face criminal charges.

Maximum proposed penalties for each illegal worker are:

- 2 years imprisonment and/or
- penalty of \$66,000 for companies and \$13,200 for individuals

First time offenders may be issued with a warning notice. Higher penalties may apply where exploitation, forced labour or sexual servitude are involved.

❖ TIP

Check work rights status of all new recruits and keep records of checks see www.immi.gov.au/employers to verify work entitlements online or call DIAC on 1800 040 070. It is necessary to check the status of existing employees only when their contracts are renewed or extended.



English – all 457 visa applicants are now required to detail their English language skills.

Tip

Before giving a statement of service or reference for a former employee check their work rights status.

ENGLISH LANGUAGE TESTING FOR SOME 457 VISAS

All 457 visa applicants are now required to detail their English language skills on their visa applications. Some applicants may be required to demonstrate that they possess satisfactory English language skills, which generally involves sitting a formal English language test, International English Language Testing System (“IELTS”), and achieve at least an average band score of 4.5 in the test.

Applicants who may be required to sit a test are tradespersons who:

- do not hold a passport from Canada, UK, USA, New Zealand, Ireland AND
- will be paid less than A\$75,000 base salary AND
- have not completed at least 5 years continuous study at secondary and/or tertiary level where at least 80% of instruction was conducted in English.

NEW POLICY – WORKING ON BUSINESS VISITOR VISA

New immigration policy now states employment on a short stay Business Visitor visa or Business ETA may be appropriate when it is:

- highly specialised in nature and not ongoing OR
- an emergency or urgent situation and not ongoing OR
- in Australia’s interest.

“Not ongoing” means that the period of work in Australia should generally not exceed 21 days. However, longer periods up to the maximum period of 3 months could be considered appropriate in some circumstances.

LABOUR AGREEMENTS FOR CERTAIN INDUSTRIES

To more closely monitor compliance with sponsorship obligations and their commitment to the recruitment and training of Australians, DIAC now requires that all 457 visas for employees of all on-hire recruitment companies be processed under a Labour Agreement (LA).

Similar requirements are already in place for the meat industry.

The changes, which took effect from 1 October, have taken on-hire companies by surprise. One of these peak industry associations has argued that these changes will have severe downstream effects, in particular, on the resources and healthcare industries, which traditionally rely upon on-hire companies to provide contract labour.

RECIPROCAL WORK & HOLIDAY ARRANGEMENT WITH USA

From 31 October 2007, US citizens may apply for a subclass 462 visa if they meet the following requirements:

- aged between 18 and 30
- outside Australia when they apply
- be enrolled in or completed tertiary study.

The new visa will allow:

- 12 months stay in Australia
- max 6 months work with any one employer
- max 4 months study.

USA is finalising procedures for Australian citizens to apply to work and holiday in USA.

NEW VISAS FOR GRADUATES

Two new visas were introduced on 1 September 2007. There is no need for an employer to sponsor or pay MSL to these visa holders who can remain in Australia for 18 months with unlimited work rights:

- Skilled Graduate visa for overseas students who have recently graduated in Australia
- Off-shore Skilled Graduate visa for recent Engineering graduates of certain overseas institutions.

CONTACT US

For further details contact
Katie Malyon & Associates, Lawyers
T: +61 2 8247 8247
E: info@malyonlaw.com



Senior Associate Sasko Markovski.

INTRODUCING NEW SENIOR ASSOCIATE

We are pleased to welcome Sasko Markovski to our firm. Sasko is a highly experienced immigration lawyer having practised in this area since 1996.

Sasko has significant experience in providing immigration advice and global mobility assistance. He has a particular interest in assisting clients with development of internal policies and procedures as well as training client’s staff on immigration procedures and policies.

Sasko is MARN 9687325

Under Australian law, anyone who uses knowledge of immigration law or procedures to offer advice or assistance to a person wishing to sponsor or nominate an expatriate for residence or to obtain a visa to enter or remain in Australia must be registered with the Migration Agents Registration Authority.

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