



Recent Changes to 457 Visa Program

Our November newsletter highlighted the significant changes to immigration legislation affecting the Temporary Business (Long Stay) Visa Subclass 457 program came into effect on 14 September 2009. This month we examine two key questions arising from the changes:

How will the changes affect new sponsorship, nomination and visa applications?

Longer Validity and Unlimited Nomination Places: The validity of sponsorship approval has been increased to 3 years and sponsorship now allows for an unlimited number of nomination applications.

Benefit to Australia Replaced by Training Benchmarks: Employers no longer have to show how the employment of foreign employees will benefit Australia. Instead, employers must demonstrate that they have a good record of, or commitment to, training and employing Australian citizens and/or permanent residents.

Obligations: The following sponsorship undertakings and obligations now apply to employers:

1. cooperate with Department of Immigration & Citizenship (DIAC) inspectors;
2. ensure that the terms and conditions of employment provided to a sponsored foreign employee are no less favourable than those which the business provides, or would provide, to an Australian citizen or permanent resident performing work in an equivalent position in the same workplace at the same location;
3. pay reasonable and necessary travel costs to enable the sponsored foreign employee to leave Australia;
4. pay the costs incurred by the Commonwealth to locate and/or remove the sponsored person from Australia;
5. keep records of compliance with obligations;
6. provide records and information to DIAC;
7. inform DIAC within 10 days of any sponsored person ceasing to be employed by the business or of any change in the directors of the sponsor company;
8. ensure that the sponsored person does not work in an occupation other than the occupation approved in the nomination; and
9. not recover or seek to recover any of the costs (including migration agent costs) for 457 visa applications from the sponsored person.

Monitoring: DIAC now has greater powers to monitor sponsors to ensure that they are fulfilling their obligations. DIAC can also now exchange information with other Commonwealth, state and territory government agencies including the Department of Employment, Education and Workplace Relations and the ATO.

Sanctions: DIAC has also been given greater powers to take administrative and civil actions against sponsors who breach their sponsorship obligations. These include barring sponsors for specified periods from sponsoring people, cancelling sponsorships and issuing fines.

Period of Employment: The period of employment of the foreign employee may now range from 1 day to four years.

Position: The position in which the foreign employee is to be employed must be one of the approved occupations listed in the new Specification of Occupations for the Temporary Business Long Stay and Occupational Trainee Visas.

Minimum Salary Level Replaced with Market Salary: The position must now be remunerated with an Australian market rate salary or above.

If the business sponsoring the foreign employee also employs Australian citizens or permanent residents in a similar occupation in the same workplace at the same location then the foreign employee must receive at least the same level of remuneration.

If there are no equivalent Australian employees then the business must provide evidence to DIAC that the foreign employee's terms and conditions of employment are equivalent to those which would be offered to an Australian citizen and/or permanent resident.

In addition, the Australian market rate salary for the position must be at or above the Temporary Skilled Migration Income Threshold (TSMIT) specified by a Gazette Notice (currently \$45,220.00 p.a.).

Skills Assessments: Some sponsored persons for certain occupations may be required to undergo a skills assessment.

English Language Requirement Level Increased: All new 457 visa applicants must have English language skills equivalent to a score of at least 5 in each of the four test components of speaking, reading, writing and listening in an International English Language Testing System (IELTS) test unless they are exempted persons.

Requirement to Hold and Maintain Health Insurance: All new 457 visa holders must have and maintain health insurance for the life of their visa. The visa application must include evidence that the visa holder has health insurance for themselves and any accompanying family members. Some visa holders from qualifying countries may have access to reciprocal health cover. However, this is not always automatic and health insurance may have to be applied for once the applicant arrives in Australia.

How will the changes affect current business sponsors and 457 visa holders?

As from 1 January 2010, employers of existing 457 visa holders must pay employees market salary rates. A transition arrangement is in place until 1 January 2010 to allow sponsors time to comply with the obligation to pay their existing foreign employees Australian market rate salaries.

Businesses should ensure that they meet the obligation to provide existing foreign employees holding 457 visas with equivalent terms and conditions as provided to Australian employees as from 1 January 2010.

One of the aims of renewing the 457 visa program is to allow 457 visa holders greater flexibility and mobility in order to stop the bonding and exploitation of some foreign employees by unscrupulous Australian sponsors. As a result, 457 visa holders who wish to change employers no longer have to apply for a new 457 visa. If the new employer is already an approved sponsor, the new employer must only lodge a new nomination application in relation to the new position.

If you have any questions in relation to 457 visas or the new conditions, please contact Michael Kobras (Migration Agent Registration Number (MARN) 0638733) on +61 2 9223 9399.



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