

Immigration Law Client Alert

10 September 2009

Minimum Salary Rates from 14 September 2009 – Subclass 457 Visas Further Reforms of Temporary Residence Visas

On 7 September 2009 the Minister for Immigration and Citizenship announced details of the requirement for temporary skilled overseas workers to be paid market salary rates.

All new and existing 457 Visa holders must be paid the Temporary Skilled Migration Income Threshold (“**TSMIT**”), which will replace the Minimum Salary Level (“**MSL**”).

The aim is to ensure that the salaries and conditions of employment of overseas workers are the same as those provided to an Australian worker performing equivalent work in the same workplace.

If there is no Australian equivalent worker on site, the employer may reference collective agreements or awards for that position to substantiate the market rate.

Otherwise, other evidence, such as remuneration surveys or earnings data, must be provided to demonstrate that overseas workers are to be paid market salary rates.

The *Migration Legislation Amendment (Worker Protection) Act 2008* (“**Worker Protection Act**”) and associated regulations come into effect from 14 September 2009.

As from 1 July 2009, the Minimum Salary Level for Subclass 457 Visa holders is:

- \$61,920 for Information and Communications Technology (ICT) occupations; and
- \$45,220 for all other skilled occupations.

For Subclass 457 Visa holders who are granted their visa under the certified regional employment arrangements, it is:

- \$55,725 for ICT occupations; and
- \$40,705 for all other occupations.

For English language exemption for trade occupations, where it can be shown that there is a “*benefit to Australia*” or a waiver of the English language requirements are met, it is:

- \$81,040.

Transitional arrangements allow employers currently paying the Minimum Salary Level to commence paying market rates from 1 January 2010.

Overseas workers whose annual earnings are \$180,000 or more are exempt from the market salary rate requirements, which will apply to all new Subclass 457 Visa holders from 14 September 2009.

All employers must also comply with the *Fair Work Act 2009* (“**Fair Work Act**”) which, from 1 January 2010, will cover minimum standards for employees including wages, hours of work, leave entitlements, and notice of termination.

Current Nomination Applications will be assessed against the new nomination criterion. Current Nomination Approvals, where the 457 Visa Applicant is specified, will be processed under the new legislation.

DISCLAIMER

The information contained in this alert is intended as general commentary and should not be regarded as legal advice. Should you require specific advice on this topic, please contact the author/s directly.

From 14 September 2009, it is mandatory that the 457 Visa Applicant is specified in Nomination Applications. Current nomination approvals, where the 457 Applicant is not specified will not be valid.

The enhanced sponsorship obligations also take effect on 14 September 2009 and are backed up by a robust monitoring and compliance scheme. This includes officers with investigative powers to monitor workplaces, conduct site visits and gather information to determine compliance with the enhanced sponsorship obligations.

Breach of sponsorship obligations could result in fines of \$33,000 and may include barring and suspending Sponsors from participating in the sponsorship of overseas workers.

The *Taxation Administration Act 1953* has been amended to enable the Commissioner for Taxation to disclose tax information to ensure correct salary levels are paid to overseas workers.

If you require any assistance or have any queries, please contact Maria Jockel.

Maria Jockel
Principal
Accredited Immigration Law Specialist
MARN 9802742
Ph: +61 3 8602 7213
E: mjockel@rk.com.au



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