

Immigration Law Client Alert

27 January 2010

Overhauling risk management and compliance strategies in light of recent changes to international recruitment and subclass 457 work visas

The Department of Immigration and Citizenship (DIAC) is continuing to undertake a broad range of legislative and policy changes that have the potential to expose businesses and its officers to serious penalties.

Market salary rates - pay rise?

From 1 January 2010 businesses that are sponsors of subclass 457 visa holders must pay these visa holders the market salary rate unless it is less than the applicable prescribed salary level. This means sponsors must pay subclass 457 visa holders the greater of either the market salary rate or the prescribed salary level for the duration of their visa. Businesses are urged to consider whether those subclass 457 visa holders whose visas were granted before 14 September 2009 should get a pay rise so they are paid the higher of market salary rates or the relevant prescribed salary rate.

There are five prescribed salary levels:

- \$81,040 for subclass 457 visa holders who benefited from the English language exemption
- \$55,725 for subclass 457 visa holders working in Information and Communication Technology (ICT) occupations who were granted their visa under certified regional employment arrangements
- \$61,920 for all other subclass 457 visa holders working in ICT occupations
- \$40,705 for all other subclass 457 visa holders who were granted visas under certified regional employment arrangements; and
- \$45,220 for all other subclass 457 visa holders

Radical changes to employers' sponsorship obligations

These changes are extensive and include:

- keeping certain records in relation to the person's approval as a sponsor and the visa holders they sponsor
- providing certain information and records to DIAC; and
- providing information to DIAC when prescribed events occur

Monitoring of sponsors

DIAC has extensive powers to ensure employers meet their sponsorship obligations in regard to sponsored overseas employees who hold a subclass 457 visa.

DIAC's powers include a "desk audit" as well as conducting a site visit to business premises.

DIAC can require employers to provide extensive records including:

1. Records of the money paid to the visa holder for the relevant period of employment with the business.
2. If there is an equivalent worker or workers in the workplace, records of the terms and conditions that apply, or did apply, to the equivalent worker or workers, including the period over which the terms and conditions applied.
3. Records of the hours worked by the visa holder for the relevant period.

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4. Records of the tasks performed by the visa holder in relation to the work undertaken in relation to the nominated occupation.

It is of note that DIAC has the power to verify the visa holder's pay with the financial institution into which it has been paid.

Penalties for non-compliance

DIAC has significant monitoring, compliance, sanctions and enforcement powers. Actions that may be imposed against a sponsor for failing to satisfy a sponsorship obligation include:

1. Cancelling one or more of the sponsor's existing approvals as a sponsor.
2. Barring the sponsor, for a specific period, from sponsoring more people under the terms of one or more existing approvals as a sponsor for different kinds of visas.
3. Barring the sponsor, for a specific period, from making future applications for approval as a sponsor in relation to one or more classes of sponsor.
4. Applying to a court for a civil penalty order of up to \$33,000 for a corporation and \$6,600 for an individual for each failure.
5. Issuing an infringement notice, as an alternative to civil penalty proceedings, of up to \$6,600 for a body corporate and \$1,320 for an individual for each failure.
6. Requiring and taking security.
7. Enforcing a security already taken.
8. Issuing a warning.

Review of risk management processes

Traditional and current risk management processes are no longer appropriate to protect organisations undertaking international recruitment.

DIAC's monitoring, enforcement and sanctioning powers and their potential adverse impact on business operations, means that businesses are advised to review their risk management protocols to ensure they comply with the new immigration regime.

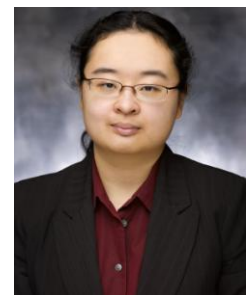
If you require any assistance or have any queries, please contact Maria Jockel or a member of the Russell Kennedy Immigration Law team.



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