

Immigration Law Client Alert

Monday 12 July 2010

**SPONSORING FOREIGN WORKERS:
1 JULY 2010 SALARY INCREASES AND COMPLIANCE**

Companies sponsoring overseas personnel on a temporary basis under the subclass 457 visa program must review the terms and conditions of employment provided to the sponsored worker to ensure that they are no less favourable than the terms and conditions the employer provides to its Australian staff, who perform work in an equivalent position in that workplace.

That means that sponsored workers must be paid in accordance with the market salary rate for that occupation in that location.

However, no subclass 457 visa worker's base rate of pay can be less than the Temporary Skilled Migration Income Threshold (TSMIT). The TSMIT increased from \$45,220 to **\$47,480** gross per annum (in addition to superannuation) from 1 July 2010.

For subclass 457 visa holders, whose visas were granted subject to the English Language Exemption Threshold. The base salary increased from \$81,040 to **\$85,090**.

Employers sponsoring subclass 457 visa holders must ensure that from 1 July 2010 the increased salary is paid.

There are some instances where the Department of Immigration and Citizenship (Department) may consider it reasonable to approve a subclass 457 nomination application, on the basis that the 457 visa holder's base rate of pay is below the TSMIT provided that the "guaranteed annual earnings" are above the TSMIT.

Subclass 856 visa update: Salary increase

The Minimum Salary Level (MSL) of \$45,220 for subclass 856 visa holders nominated under the Employer Nomination Scheme (ENS) has also been indexed and increased to **\$47,480** gross per annum (in addition to superannuation) from 1 July 2010.

Employers of subclass 856 visa holders must now ensure that the annual base salary is not less than \$47,480 gross per annum.

No transitional arrangements

There are no transitional arrangements in place for the indexing of both the TSMIT and English Language Exemption Threshold.

This means all subclass 457 nomination applications which were on-hand and un-finalised on 1 July 2010 must meet the relevant new salary threshold.

There are also no transitional arrangements in place for ENS applications. This means all subclass 856 nomination applications which were on-hand and un-finalised on 1 July 2010 must meet the new salary threshold as described above.

Living Away From Home Allowance (LAFHA) clarified

The Department has provided clarification regarding LAFHA reimbursement payments.

The Department has advised that LAFHA reimbursements are to be treated as "earnings" for the purposes of determining a subclass 457 visa holder's "guaranteed annual earnings".

LAFHA and salary packaging arrangements for subclass 457 visa holders may cause their base rate of pay to fall below the TSMIT. In some circumstances, the Department may allow this where the subclass 457 visa holder's "guaranteed annual earnings" are above the TSMIT.

ASCO to ANZSCO

From 1 July 2010, all occupations will be classified in accordance with the Australian and New Zealand Standard Classification of Occupations (ANZSCO). The Australian Standard Classification of Occupations (ASCO) is no longer in use.

This means that any nomination application received on or after 1 July 2010 must be assessed with reference to the ANZSCO.

Subclass 457 and 856 nomination applications which were on-hand and un-finalised on 1 July 2010 will continue to be processed using the ASCO codes.

Monitoring and sanctions

Following the commencement of the *Migration Legislation Amendment (Worker Protection) Act 2008* (Worker Protection Act) on 14 September 2009, sponsoring employers are subject to a broad range of obligations.

In the case of a breach of a sponsorship obligation, the Department can take a range of measures.

Depending on its severity, a breach may result in:

- Administrative action, such as cancelling the sponsorship approval or barring the business from accessing the program further
- Infringement notices, namely fines
- Civil penalty orders

For example, if a sponsor fails to satisfy a sponsorship obligation, an individual may be liable for a fine of \$6,600 and a body corporate may be liable for a fine of \$33,000.

Failure to cooperate with an inspector leaves an individual subject to a fine of \$6,600 and a body corporate to a fine of \$33,000.

Compliance culture

The Department recently announced that it had issued the first infringement notice following the commencement of the Worker Protection Act. Companies sponsoring overseas workers on the subclass 457 visa should review their risk management strategies to avoid breaches which can result in administrative, civil and/or punitive penalty orders.

Employers should adopt a compliance framework which includes a review of systems and procedures and a compliance checklist, signed off by senior management.

Risk management strategies are a vital part of managing risk and maintaining a company's good standing.

Please contact Maria Jockel of Russell Kennedy's Immigration Law team if you have any queries in relation to sponsoring overseas workers, sponsorship obligations and how you can best manage your recruitment and risk management needs.



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