

HR & Tax Alert



Quality In Everything We Do

Australia – Immigration Alert – Amendments to the “457 Visa Program”

July 2007

Executive Summary

The Minister for Immigration and Citizenship has announced new changes to the Temporary Business Long Stay Visa Program (or “Subclass 457 visa program”) which will be introduced this year.

This HR and Tax Alert highlights the changes and implications for employers. The changes include:

- A higher English language requirement for visa applicants
- Faster processing of applications for some employers
- New sponsorship obligations to replace the current undertakings
- New sponsor sanctions for employers who breach the law.

Changes to the Subclass 457 Visa Program

1. English Language

With effect from 1 July 2007 the Department of Immigration & Citizenship (“DIAC”) may request formal evidence of the applicant’s English language skills through an International English Language Testing System (IELTS) test. All applicants will be required to evidence an acceptable level of English language unless they qualify for an exemption.

Existing Subclass 457 visa holders will not be impacted unless seeking to apply for a further Subclass 457 visa. In this case, current and relevant regulatory requirements would apply.

2. Fast Tracking

In response to the current shortage of skilled workers in Australia and business’ pressing needs to source skills from overseas, DIAC will extend formal arrangements to certain employers to fast-track applications. Employers who have a “strong and demonstrated record of complying with the Subclass 457 visa program” are likely candidates for this fast-tracking facility. More detail on the operation of fast-tracking or when it will take effect has yet to be announced.

3. Sponsorship Obligations

To ensure that employers of temporary skilled workers are better aware of and abide by their obligations as a business sponsor, new formal obligations were proposed to Parliament on 21 June 2007. These changes enhance current undertakings, with an increased focus on employer record keeping and covering the costs of a sponsored worker’s assignment (such as salary, licence / registration / membership payments, medical costs and travel costs).

4. Sponsor Sanctions

As part of their commitment to strengthen the integrity of the 457 visa program the DIAC have enhanced their powers to investigate employers who are not complying with their sponsorship obligations and contravening immigration law.

As mentioned in our March 2007 Alert, the DIAC have introduced new penalties under the Migration

Amendment (Employer Sanctions) Act 2007 for those employers who allow an individual to work illegally or in breach of their visa conditions. These new penalties will come into effect in August 2007.

The DIAC will also be given stronger powers to enforce employer compliance with the Subclass 457 visa program, including the power to conduct unannounced audits of employers and their premises. This will be complemented by greater powers for the Office of Workplace Services to investigate breaches of the minimum salary level, and the Australian Taxation Office to ensure that sponsors are complying with the relevant taxation and superannuation laws.

Ernst & Young is monitoring the progress of the changes and will continue to provide updates as they happen. Should you have any questions concerning these regulatory developments, please contact your local Ernst & Young Human Capital advisor, or in Australia:

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What do these changes mean for employers?

The enforcement of tougher penalties and increased monitoring powers highlights DIAC's commitment to protecting and enhancing the 457 visa program. Employers should consider reviewing their sponsorship obligations to ensure compliance with their obligations and immigration laws.

On a positive note, by identifying non-compliant employers, DIAC will be able to direct more resources into streamlining the processing of 457 visa applications for compliant employers. Faster processing of visa applications will benefit Australian businesses trying to overcome labour shortages.

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