

ARTICLE: Onus On Employer To Check Work Visa

A law change will put the responsibility on employers to check that their migrant staff have valid work visas.

At the moment, employers don't have to take responsibility for knowing their staff's legal entitlement to work here. But a new scheme whereby the Department of Labour will share a person's work visa status with employers will put pressure on them to check their staff out.

The online system will provide information about a non-citizen's entitlement to work here and any relevant conditions, such as the length of time the work visa is valid for.

The Labour Department says best practice for employers is to ask migrant staff about their entitlement to work, ask to see their work visas, check the evidence and keep a record of it. Just because a person may have an IRD number, this doesn't mean they are entitled to work here, it says.

Grant Hewison, a senior associate at Brookfields Lawyers, says that at the moment employers have a "reasonable excuse" provision in the law that means they are not held liable if they unwittingly employ someone without a valid work visa. But that provision is to be removed.

"There is a new immigration bill going through Parliament and they have taken out that provision," says Hewison. "That now puts a lot more onus on the employer to check staff's entitlement to work here."

Hewison's firm works with both employers and individuals. In a recent case he was called to help a firm that had been visited by immigration officers to remove and deport one of its key members of staff.

"The whole thing was a shock to the employer," says Hewison. "Losing that person set the firm back between six and 12 months. The employer was not aware that the worker was here unlawfully."

Hewison says they helped to get the migrant worker out of custody and returned to the employer, but it was just a matter of time before the person was returned to China.

The employer's biggest concern was the disruption to the business, not the prospect of prosecution, says Hewison. "It is a clothes designer and the person they lost was a very good sample machinist, the person that makes up dummy garments to be shown to overseas buyers."

Hewison says that despite the potential hiccups, employers struggling to find staff have plenty of options when it comes to employing people from abroad. But he warns employers to take note of the legal minefield as they take steps to draw talented people here to start a new life.

Hewison says overseas workers can bring invaluable skills and experience as well as overseas networks to their roles - particularly handy for exporters. But he says there are plenty of legal considerations that need to be understood to ensure successful employment and avoid immigration officials knocking on your door.

"When it comes to employment, business operators need to ensure that potential employees are legally allowed to work in the country, and have legitimate paperwork," he says.

"There are several ways for people from outside the country to legally work here. If an employer wants to recruit workers from offshore, they will need to decide on the best option for bringing them in while taking into account the employee's needs as well."

Options for employers include the skilled migrant category, becoming an accredited employer, the long-term and immediate skill shortage lists, approval in principle and the general work visa category.

"To be eligible for lawful employment in New Zealand, workers from overseas need to meet a number of general conditions, such as being in good health and having good character," says Hewison. "While they are working here, they must meet any conditions specified in their permit and only stay here for the time allowed."

He recommends employers note down the date staff need to renew their work visas by and have a chat with them three months before that date.

"By reminding your staff to keep their permits up to date, you are making sure you do not lose a valuable resource."

IMMIGRATION CATEGORIES

Under the Skilled Migrant Category, overseas workers with the right mix of skills, qualifications and experience can apply for residence. It is a two-stage process where the applicant makes an Expression of Interest under a points system, and may then be chosen from a pool by the Immigration Service. Changes have been made recently to give more points for New Zealand work experience and qualifications.

Accreditation with the Immigration Service allows an employer to recruit employees from abroad without having to show each time that there are no local people available to fill the position. Accreditation may be a good option when you need to recruit talented staff overseas on an ongoing basis.

The Long Term and Immediate Skill Shortage Lists identify overseas workers needed for certain occupations in New Zealand. Employers looking for staff in occupations on the lists do not have to prove they cannot find staff in New Zealand. Occupations on these lists are wide-ranging and include a number of trades as well as professional occupations.

An Approval in Principle from the Immigration Service allows an employer to employ workers from overseas for a specific job that is not on the Long Term or Immediate Skill Shortage Lists. To have a request for an Approval in Principle accepted, employers have to show that there are no New Zealanders available locally who can fill the position. Approval in Principle is a useful option where an employer has a number of vacancies for the same type of job.

Employers can also make an offer under the General Work category, but must be able to show, through advertising or other means, that there are no New Zealanders available locally who can fill the position.

Date: Saturday April 26, 2008

Source: New Zealand Herald.