

Complying with Immigration Law

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Complying with Immigration Law

On 1 July 2015, the Australian Border Force (ABF) came into being. Since then, there has been a rise in the number of investigations and enforcement action being taken against businesses that have failed to provide pay and work conditions in accordance with immigration and workplace laws.

Under Australian immigration law, businesses are obliged to only employ staff who are authorised to work in Australia, and to employ those workers in conditions as permitted by their visas ie total hours of work restrictions.

The Migration Amendment Act – a reform of the Employer Sanctions Act – creates a strict liability offence for any business that employs a person, allows a person to be employed, or refers a person for work without work rights in Australia. Employers need to take ‘reasonable steps’ to verify that a person is authorised to work in Australia. Failing to do so is a breach of these laws.

How can your business ensure compliance?

1. Maintain personal records for all new and existing employees, including:
 1. Australian citizenship (Australian Birth Certificate or Australian Passport), Permanent Residency or New Zealand Citizenship (NZ Passport)

Note: You are still required to complete a verification check of any NZ Citizens, which is explained below

1. A copy of any temporary visa holder’s work rights and conditions ie student visa with total hours of work restrictions
2. Conduct regular checks of work rights for each employee who is a temporary visa holder

Note: A good rule of thumb is to review these records every three months for the duration of their employment.

3. Monitor the tasks & duties performed by ‘sponsored’ temporary visa holders to ensure they are consistent with the occupation for which the visa holder was granted their visa.
4. Ensure that procedures and training provided to relevant persons to maintain compliance with immigration laws are documents
5. Keep documentation related to the verification of individual workers.

Completing Visa Verification Checks

Part of the process of accessing the information required in step 1 & 2 above, may require you to complete a check on the visa status and eligibility to work in Australia. This can be done via the Department of Immigration and Border Patrol’s Visa Entitlement Verification Online System (VEVO). Brismark currently has a business VEVO account and checks all applicants and candidates prior to referring them to

businesses.

Consequences of non-compliance

Fair Work Inspectors have the power to check that employers are complying with the relevant legislation. The onus is on the employer to be able to either produce records or demonstrate that steps to verify a person's work rights were taken.

Employers that fail to comply with immigration laws can incur significant penalties, ranging from \$15,300 and up to \$76,500, for each employee found to be working illegally in Australia. In addition, where an employer is 'knowingly or recklessly' in breach of the law, the executive officers of the business can be fined or sentenced to a period of up to two years imprisonment.

If you need the assistance of Brismark to complete a VEVO check or any questions regarding compliance with immigration laws, contact Brismark Business Services on 3915 4213 or esm@brismark.com.au, we are here to assist you in complying with the legislation.

Note: The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Source: HC Online, by Chloe Taylor, 8 December 2015