

ARRIVALS

Migration Alert
November 2010

KATIE MALYON
& Associates, Lawyers

Katie Malyon & Associates is announced Winner of the ACQ Law Award 2010 for *Corporate Immigration Law Firm of the Year - Australia*, wins Human Capital's Silver Medal for Preferred Migration & Mobility service provider and is recognised as one of BRW's Fast Starters

:: TIP: Are you ready for a DIAC audit? Complete your own DIAC health check. Ask us for a full copy of a sponsor's obligations and consider your level of compliance

:: TIP: Review all contracts of employment with sponsored employees to ensure compliance with sponsorship obligations and minimise risk

UPDATE ON SPONSORED EMPLOYEE VISAS

Following the 14 September 2009 sweeping changes to the temporary residence sponsored employee regime including the 457 visa program DIAC has just recently confirmed it is "actively monitoring" sponsors for compliance with the strengthened sponsorship obligations. This includes assessing whether a sponsor is meeting the new training benchmarks, has given notice to DIAC of certain notifiable events as well as whether sponsored employees are paid market salaries and otherwise employed on equivalent terms and conditions.

At a Senate Estimates hearing on 19 October 2010, DIAC confirmed that while it is still in the post rollout educative phase and giving sponsors the opportunity to meet their obligations, DIAC inspectors are making site visits to monitor compliance – and sanctioning sponsors where obligations are not met or misleading information has been provided.

In FY 2009-10 DIAC made 1,421 site visits. This represents approximately 8% of sponsors. 520 formal Warnings were issued. There were 164 sanctions issued – mostly bars and cancellations. But, monitoring activity is increasing with 82 formal warnings issued in July and August 2010 alone. As well, three infringement notices have been issued. An initial breach attracts a penalty of \$3,300 and a subsequent breach \$6,600.

We are still yet to see the impact of information sharing powers that DIAC has with the ATO, Fair Work Ombudsman and State OH&S agencies.

Audit hotspots

- payment of market salaries
- inform DIAC of notifiable events including changes in duties of a sponsored employee, appointment of new Directors, termination of employment of a sponsored employee, payment of return travel costs
- keep a copy of all notifications to DIAC
- ensure the sponsored employee works in the nominated occupation only
- health insurance for pre 14 Sept 2009 visa holders.

At the coal face of 457 visas

Sponsors must have incurred a level of expenditure on training Australian citizens which meets at least one of the following benchmark requirements:

- Benchmark A – at least 2% of payroll is allocated to an industry training fund or
- Benchmark B – at least 1% of payroll expenditure is on training Australian citizens

The challenge for many employers is that while they provide training to staff through on-the-job/internal training, under the new regime this may not be sufficient to satisfy DIAC requirements.

STOP PRESS!

State Migration Plans now issued by Victoria and ACT. Contact us for more details.

T: +61 2 8247 8247 F: +61 2 8247 8200
E: kmalyon@malyonlaw.com
MARN: 9580358

Katie Malyon & Associates, Lawyers
Suite 1803, Level 18 Australia Square
264 George Street, Sydney NSW 2000 Australia





:: TIP: If nominating a person as a Marketing Specialist or any backpackers for a 457 visa ensure you have undertaken reference checks



INTRODUCING OUR NEW PRACTICE MANAGER

We are very pleased to welcome Pauline O'Loughlin to the Firm. Pauline is a highly experienced migration professional having worked previously with PWC, Fragomen and, more recently, in Ireland with Ernst & Young where she established their firm's Irish migration practice.

Pauline has significant experience in assisting clients with their global mobility needs. She has a particular interest assisting clients with the development of internal policies and procedures to assist manage sponsorship obligations as well as training staff in immigration compliance.

DIAC has published a one page on-line Fact Sheet with information for overseas workers in relation to their work rights in Australia. The Fact Sheet is available in multiple languages and contains links to websites including Fair Work Australia and Unions Australia.

One of the obligations is that a sponsor cannot seek to recover "certain costs" from a sponsored employee. This includes recruitment costs and costs of becoming a sponsor. DIAC has clarified that genuine visa related costs can be recouped from a 457 visa holder so long as there has been no coercion.

Since July 2010 many students who could formerly proceed directly to permanent residence after completing their studies in Australia are looking to employers to sponsor them on a 457 visa.

DIAC is conducting background checks to verify employee experience and/or qualifications of persons who are nominated for Marketing Specialist positions.

Current processing time for 457 visas is from **1 day – 6 weeks**.

BACKPACKER FRAUD

DIAC has formed an Integrity Unit to investigate fraud in the Working Holiday 417 visa as well as the Work & Holiday 462 visa program. These visa holders are restricted – except in very limited exceptions – from working with one employer for more than 6 months.

ENS/RSMS PR UPDATE

With the points-tested General Skilled Migration list now providing for just 181 occupations (down from 408), many former 457 visa holders are looking to their employers to nominate them for permanent residence under the Employer Nomination Scheme (ENS) or Regional Sponsored Migration Scheme (RSMS).

Processing times

Since mid-July 2010, DIAC has introduced new priority processing arrangements for certain skilled migration visas. Applicants who apply under the ENS or RSMS program receive the highest level of priority processing.

However, due to a significant increase in the volume of ENS/RSMS applications lodged, DIAC processing time is currently 6 – 7 months.

To expedite processing DIAC has announced a new scheme from 8 October 2010 where registered migration agents can certify that an ENS/RSMS application is "fully documented and decision ready". Inappropriate certification will result in an agent being removed from the scheme. Our RMA certified applications are now taking just **1 – 2 weeks**.

Monitoring of ENS/ RSMS program

Following a review of the ENS/RSMS program, recommendations have been made to increase integrity in the program with emphasis on a demonstrated commitment to training Australians, the genuine business need for the position to be filled and the sponsored person remaining in the position after visa grant. DIAC has power to cancel permanent residence visa granted under RSMS in limited circumstances. It is possible this may be extended to ENS visas. To date, the power has not been used.

NSW JOINS HEALTH WAIVER PROGRAM

With effect from 22 September 2010 New South Wales joined the Health Waiver program for ENS and RSMS permanent residence applications – the last of the States and Territories to do so.

The Health Waiver program allows applicants to seek a State/Territory sanctioned waiver to the health criteria where an applicant's health condition might otherwise have lead to visa refusal.

CONTACT US

For further details contact Katie Malyon & Associates, Lawyers
T: +61 2 8247 8247
E: info@malyonlaw.com

Under Australian law, anyone who uses knowledge of immigration law or procedures to offer advice or assistance to a person wishing to sponsor or nominate an expatriate for residence or to obtain a visa to enter or remain in Australia must be registered with the Migration Agents Registration Authority.

Disclaimer: This material is produced by Katie Malyon & Associates, Lawyers. It is intended to provide general information in summary form on legal topics, current at the time of first publication. The contents do not constitute legal advice and should not be relied upon as such. Formal legal advice should be sought in particular matters.

