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# ARRIVAL

Migration Alert  
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KATIE MALYON  
& Associates, Lawyers

## ❖ TIP

To ensure sponsorship undertakings cease at the earliest possible date:

- notify DIAC as soon as a former employee ceases employment
- provide a one-way, non-refundable return ticket and obtain a signed acknowledgement
- facilitate provision of professional migration advice so the former employee may consider other visa options
- consider nominating 457 visa holders or expat hires for permanent residence as no sponsorship obligations apply

## SPOTLIGHT ON 457 VISAS

Following a number of high profile cases of underpayment of 457 visa holders in 2006, two Government Committees have been asked to investigate and report on 457 visas. These reviews are yet to be finalised. In the meantime, the Department of Immigration (DIAC) has tightened up processing.

What this will mean for you now:

- contracts will be closely scrutinised to ensure compliance with minimum salary levels (MSL) and sponsorship undertakings
- visa holders paid at or near MSL must be also paid for any additional hours or overtime above 38 hours
- signed contracts of employment may be requested for sponsorship and nomination applications
- cases of suspected underpayment referred to the Office of Workplace Services (OWS)
- sponsor monitoring may be initiated if any applications (or other documents) indicate possible underpayment or if any adverse publicity
- DIAC is taking a tough line on enforcing sponsorship undertakings on termination of employment – this can include payment of minimum salary for up to 28 days after notification to DIAC of termination of employment

What this will mean from 1 July 2007:

*Monitoring & penalties*

- DIAC & OWS powers to access premises and documents strengthened, unannounced site visits
- increased information sharing and cooperation between DIAC and other agencies
- improved provision for recovery of underpayment and inappropriate deductions
- new civil penalties for employers

*English*

- employers to attest expats have vocational English (IELTS 4.5) or level necessary for registration/licensing
- formal IELTS testing may be requested
- sanctions for employers found to have made misleading attestation of language skills

*Fast tracking for some employers*

- employers with a record of compliance will have applications fast tracked

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Co-hosted by HLB Mann Judd and sponsored by International Medical Assistance Network

5.30pm for 6.00pm – 7.30pm  
American Club  
131 Macquarie Street, Sydney

Enquiries and registration  
Connie Kennedy  
T: 02 9020 4221 or E: ckennedy@hlbnsw.com.au

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





Monitoring – from 1 July 2007 DIAC and OWS will have increased powers to access premises and documents. Are you ready for an unannounced site visit?

**Tip**

Check work rights status of all new recruits and keep records of checks. It will only be necessary to check the status of existing employees if their contracts are renewed or extended.



English – from 1 July 2007, employers will be required to attest expats have vocational English: IELTS 4.5 or level necessary for registration.

### SPOTLIGHT ON 457 VISAS (CONTINUED)

What this may mean for you in the future:

#### Costs

Employers to meet costs of:

- public health and health insurance for all family
- State public education charges (\$4,500 pa for each child in NSW, approx \$10,000 pa in ACT)
- recruitment and migration agents
- visa application fees
- English and health tests
- travel to Australia (currently must meet cost return travel only)

#### Minimum Salary Level

- MSL to be indexed annually irrespective of date of 457 visa grant
- MSL to be paid each pay period irrespective of fluctuating hours
- 457 visa holders to be paid in Australia and in A\$
- employee deductions to be fairly priced and freely authorised in writing
- visa holders to be paid at least fortnightly

#### Commitment to local labour force

- employers to confirm no redundancies in past 4 months
- sponsorship only approved on basis commitment to training Australians, new technology exemption removed
- training benchmarks to be set such as minimum level of training expenditure, minimum % of Graduates/Apprentices/Trainees, participation in labour market programs, contribution to approved Industry or State Government training fund per expat

#### Expat awareness

- contracts to be provided in English and expat's first language
- DIAC approval letter to alert visa holders to a sponsor's obligations and complaint procedures

#### Labour hire businesses

- only permitted to sponsor under a Labour Agreement involving DEWR and possibly State/Territory government
- not permitted to sponsor 457 visa holders if charge employees for services

### CRIMINAL CHARGES FOR EMPLOYMENT OF ILLEGAL WORKERS

The Migration Amendment (Employer Sanctions) Act 2007 will come into effect in mid-August 2007.

Knowingly or recklessly employing or supplying illegal workers will attract criminal charges. Maximum proposed penalties for each illegal worker are:

- 2 years imprisonment and/or
- penalty of \$66,000 for companies and \$13,200 for individuals

First time offenders may be issued with a warning notice. Higher penalties may apply where exploitation, forced labour or sexual servitude are involved.

### SKILLED MIGRATION

On 1 September 2007 numerous changes to skilled migration visas will be implemented including:

- new 18 month Skilled Graduate visa with unlimited work rights for recently graduated overseas students in Australia (no MSL)
- new 18 month Offshore Skilled Graduate visa with unlimited work rights for recent graduates of certain overseas institutions in disciplines where there is a recognised skill shortage (no MSL)

### CITIZENSHIP

In legislation currently before Parliament, applicants for Australian Citizenship will need to show:

- 4 years lawful residence in Australia, and
- 12 months residence in Australia as a permanent resident

Persons already holding permanent visas will need to meet the current requirements (at least 2 years presence in Australia as a permanent resident) for 3 years after the new law takes effect.

### 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.

