

## Bulletin

11 February 2004

### **Immigration law and related changes: NEW GAZETTED SALARY LEVELS AS OF 11 FEBRUARY 2004**

To All Clients

This message provides advice of **THREE** important changes, with the first **TWO changes announced with effect from today**.

For further information please refer to the web links provided or contact me for further advice or referral.

#### **1. New minimum salary - \$46,620 for sponsored temporary workers who are Information and Communications Technology professionals**

On 11 February 2004, the Minister for Immigration and Multicultural and Indigenous Affairs, the Hon Amanda Vanstone, announced:

The minimum salary for professional ICT workers entering Australia on Business Long Stay (Subclass 457) Visas will increase from \$35,828 to \$46,620 (excluding superannuation and allowances), reflecting the typical salary for experienced workers in that industry.

The higher salary threshold for ICT professionals reflects the reduced demand in this industry.

The Subclass 457 Visa allows Australian businesses to recruit overseas staff to fill temporary skilled vacancies. The skilled occupations acceptable under this program are gazetted for this visa. To maintain the skill focus, all positions must pay a minimum annual salary.

The new minimum salary level will apply to applications lodged on or after 11 February 2004.

Employers in regional and low-population growth areas of Australia may apply for an exemption if the going rate in their area is below the gazetted minimum salary.

For more detailed information and a list of the gazetted ICT occupations, go to:

<http://www.immi.gov.au/legislation/amendments/lc11022004.htm>

#### **2. New minimum salary - \$37,720 for most sponsored temporary workers**

On 11 February 2004, the Minister for Immigration and Multicultural and Indigenous Affairs, the Hon Amanda Vanstone, announced:

The minimum salary for workers entering Australia on Business Long Stay (Subclass 457) Visas will increase from \$35,828 to \$37,720 for the majority of occupations.

The Subclass 457 Visa allows Australian businesses to recruit overseas staff to fill temporary skilled vacancies. The skilled occupations acceptable under this program are gazetted for this visa. To maintain the skill focus, all positions must pay a minimum annual salary.

The new minimum salary level will apply to applications lodged on or after 11 February 2004.

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Employers in regional and low-population growth areas of Australia may apply for an exemption if the going rate in their area is below the gazetted minimum salary.

For more detailed information and the full list of gazetted occupations, go to:  
[http://www.immi.gov.au/legislation/gazettals/gazettals04/040211\\_salary.pdf](http://www.immi.gov.au/legislation/gazettals/gazettals04/040211_salary.pdf)

### 3. "Direct employer" sponsorship of Subclass 457 Visa holders

For a number of years now many labour hire firms (and contract management companies) have been working in a complementary way to assist recruitment agencies in meeting client demands for skilled personnel. Under these arrangements labour hire firms have been able to sponsor people from overseas who have skills in demand in Australia, and then provide those personnel under contract to recruitment agencies to satisfy their clients' demands. This mechanism enabled recruitment and other agencies to place skilled expatriates at different client sites to meet changing client needs, whilst the expatriate remained a sponsored employee of the labour hire firm.

The immigration department has clearly stated its position and we understand it to be:

*The Migration Regulations require that the overseas employee be engaged by the direct employer only. Regulation 1.20D(2)(b)(iii) states that the sponsor "proposes to be the direct employer in Australia of the visa applicant as the holder of the visa (the visa holder)".*

*It is the department's view that an employer is the company or business or person that uses the services of a person or keeps the person in their service. The employer*

- is able to appoint or dismiss the employee;*
- provides the employee a place of work, material and equipment for their work,*
- manages contract relationship,*
- pays salary and remuneration,*
- deducts and contributes to superannuation and withholds taxation,*
- supervises the work they produce,*
- allocates tasks and sets the outputs to be delivered,*
- accepts liability for the work conducted, and insurance and other coverage,*
- is responsible for occupational health and safety*
- subject to industrial relations laws.*

*The department have accepted that in some situations the employer may not undertake all these functions and that they may be shared with another party under contract. However, this cannot be extended to third parties under the Migration Regulations.*

*Ideally the department would prefer the end user to be the direct employer and be the sponsor. The department have accepted that there will be special circumstances where a contract exists between the direct employer and the client company end user.*

*The department considers it is a significant concession to allow sponsors to devolve some of the role of direct employer to a second party. This concession can only be countenanced where the sponsor retains the substantial proportion of the characteristics of a direct employer. The insertion of a third party, even in a principal agent relationship with the sponsor, erodes the direct employer relationship to a point where it is not longer legally tenable.*

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*In the view of the department, Australia's requirements are more flexible and accommodating than those of other countries. The UK and the US for example do not provide the same degree of consideration as Australia provides with respect to labour hire companies.*

### **From 1 March 2004**

Regarding current sponsored visa holders, the immigration department has advised that existing sponsored employees who fall within the ambit of these multi-layered contract arrangements must have their visa arrangements regularised promptly to be in compliance with the law, but in any event no later than 1 March 2004.

That is, employees who have been sponsored by a labour hire firm and who have then been contracted to recruitment agencies for outplacement to client sites must hold a Subclass 457 visa on the basis of sponsorship by their direct employer. This seems to mean that the labour hire firm alone, or the recruitment agency alone, or the client end user alone, must be the sponsoring employer of the visa holder.

Compliance monitoring by the immigration department will identify any parties who engage in practices that are contrary to immigration law and policy. Sponsorship and visa cancellations may follow for non-compliance.

For more detailed information go to <http://www.immi.gov.au/faq/temporary/temporary05.htm#labour>

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