

New Law Means Crackdown On Illegal Workers Has Begun

Businesses Face Immediate "No-Fault" Fines of \$15,300

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The Migration Amendment (Reform of Employer Sanctions) Act 2013 commenced on 1 June 2013. Without needing to prove fault, negligence or intention, the Department of Immigration can now issue infringement notices of \$15,300 to businesses employing workers in breach of visa conditions or work rights.

There are currently 1.6 million people in Australia holding temporary visas, each with different visa conditions and expiry dates. Keeping track of all the details to make sure staff are working legally can be overwhelming.

Employer Sanctions Legislation

The Department of Immigration introduced the Migration Amendment (Reform of Employer Sanctions) Bill in 2012. The House of Representatives passed the Bill in November last year and it has just taken effect this past weekend on 1 June 2013.

The new legislation puts the onus on businesses to thoroughly check the work rights of employees.

People most affected by the new legislation are:

Employers – who are responsible for direct employees as well as any contractors they have working on site.

Recruitment companies – who need to check every candidate before referral to an employer.

Company directors and officers – who may be personally liable if they don't implement adequate systems and processes to check work rights.

If a business is found to have engaged illegal workers, the Department of Immigration can impose an instant fine of \$15,300 - for each person in breach of visa conditions. This can rise to \$76,500 per worker if they decide to take the business to court.

It is already an offence for businesses to have illegal workers. The new legislation allows the Department of Immigration to levy fines on a strict liability basis, without needing to show any intent, knowledge or recklessness by the business.

Keeping Compliant

To avoid the new fines, employers must check work rights prior to employment and also keep a record of visa expiry dates so that the employee does not continue to work after their visa ceases. Records of visa checks should be kept just in case there is an inquiry from the Department of Immigration.

Most employers currently check work rights before an employee commences employment. However, this does not guarantee that the employee continues to have work rights on an ongoing basis - for instance:

The employee's visa may be cancelled meaning that they no longer have work rights - this is particularly common for international students. For bridging visa holders and temporary partner visa holders, the employee's main visa application may be refused, in which case work rights would generally cease within 28 days.

An employee may move onto a visa with less favourable work rights – for instance a working holiday maker may be able to work full time, but can only work for 40 hours per fortnight if they move onto a student visa.

Unless visa checks are being conducted regularly, a business may unknowingly be breaching the Migration Regulations by engaging workers without proper work rights.

Conclusion

The Employer Sanctions Bill significantly raises the immigration compliance bar for businesses. Many will need to revise their visa checking systems and processes to avoid the hefty fines and embarrassment of breaching the new legislation.

-- Ends --

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Mark has been a Registered Migration Agent since 1999, and a member of the Migration Institute of Australia (MIA) since 2001. He is the immediate past NSW/ACT MIA President.

Mark frequently presents seminars on Australian Immigration Law for IARC, the MIA and for Acacia Immigration. He has also presented for the University of NSW, and worked on the General Skilled Migration topic for the MIA's migration agent entry course. He was a major author of the MIA submission to the Joint Senate Committee on Migration on skills assessment.

A recognised expert in the field, Mr. Webster has been quoted in print numerous times, including in Phillippe Legrain's 2007 book, *Immigrants: Your Country Needs Them* (Princeton University Press).

Mark wrote the chapters on General Skilled Migration and Temporary Workers for the current edition of the *Immigration Kit* (Federation Press), which is the definitive Immigration Law textbook used by migration agents.

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About vSure

vSure is a cloud-based immigration compliance system which makes it easy for businesses to do regular, automated visa checks for employees and contractors. It maintains an audit trail of visa checks to avoid the new penalties, as well as providing calendar, email and SMS notifications of visa changes and expiries. www.vsure.com.au

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