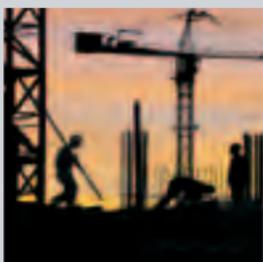




Australian Government

Department of Immigration and Citizenship

Do your employees have a valid
visa to work in Australia?



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Employing an illegal worker is a criminal offence

It is an offence under the *Migration Act 1958* to knowingly or recklessly allow workers to work, or to refer workers for work, where those workers are from overseas and either illegally in Australia or working in breach of their visa conditions.

People from overseas who work while in breach of their conditions of entry, or who work while illegally in Australia, are referred to in this booklet as illegal workers.

People convicted of these offences face fines of up to \$13 200 and two years' imprisonment.

Companies face fines of up to \$66 000 per illegal worker.

These provisions apply to employers and labour suppliers who engaged and/or referred illegal workers from 19 August 2007.

Who will be affected?

These provisions apply to employers, labour hire companies, employment agencies and anyone who either allows illegal workers to work, or refers illegal workers for work. They apply to taxi owners who bail or lease their taxi cabs to drivers and also to some people who rent or lease rooms to sex workers.

These provisions also apply to businesses that operate informal referral services such as organising harvest work for backpackers from hostels. Only businesses in a direct legal relationship with an illegal worker either by being a party to an employment contract or to an independent contractor arrangement, can commit the offence of allowing an illegal worker to work.



This means that a head contractor at a building site would not commit the offence of allowing an illegal worker to work where a subcontractor has engaged or employed an illegal worker. In this situation the subcontractor would be liable because the subcontractor would be in the contractual relationship with the illegal worker.

Similarly, if a worker is sourced through a labour hire company that remains the legal employer of the worker, the business using the services of the worker will not be liable, unless it also has a separate legal relationship with that worker. In this situation the labour hire company could commit an offence.

Avoiding discrimination

It is important not to single out particular applicants for work entitlements checking that is based simply on their appearance or accent. The easiest way to avoid discrimination and to ensure that everyone is treated equally is to check the work entitlements of all job applicants.

Warnings for first-time offenders

Most first-time offenders will be given a warning notice rather than being referred for prosecution.

The exceptions would be where:

- an employer actually knew that the worker was working illegally
- the illegal worker is being exploited
- the employer or labour supplier is involved in an organised employment racket.



Higher penalties apply where an illegal worker is being exploited

Where an illegal worker is being exploited through slavery, forced labour or sexual servitude, the maximum penalties are five years imprisonment, fines up to \$33 000 for individuals and \$165 000 per illegal worker for companies.

Where to find more information on the offences

For more information about the legislation including frequently asked questions and recruitment scenarios visit <http://www.immi.gov.au/employer-obligations>.

Information about the *Migration Amendment (Employer Sanctions) Act 2007* and its Explanatory Memorandum is available at <http://www.comlaw.gov.au>.

Employer awareness sessions

The Department of Immigration and Citizenship (DIAC) can provide free on-site information sessions about employing workers from overseas or checking work entitlements.

To organise a session or for more information on visa conditions please phone 1800 040 070 or visit <http://www.immi.gov.au/employers>.

Why you should check the work entitlements of new employees

Illegal workers are non-Australian citizens who are working in Australia without a visa, or who are in Australia lawfully but working in breach of their visa conditions. Work means any activity that normally attracts remuneration. In other words, even unpaid workers will be considered to be working if their work would normally attract remuneration.

Checking a prospective employee's entitlement to work in Australia

People found working without a valid visa can be removed from the workplace without notice to their employers.

To avoid the disruption and loss of investment caused by the sudden removal of an employee, employers should check the work entitlements of new employees.

Who can work in Australia?

- Australian citizens
- Australian permanent residents
- New Zealand citizens who entered Australia on a current New Zealand passport and were granted a visa with work entitlements on arrival
- non-Australian citizens holding a valid visa with work entitlements.

Evidence of entitlement to work

Not all visas allow people to work in Australia. Employers need to take reasonable steps to check job applicants' entitlement to work before employing them.

Each of the following is proof of a person's entitlement to work:

- an Australian passport
- an Australian citizenship certificate
- a certificate of evidence of Australian citizenship
- a valid visa with permission to work (checked through VEVO or Faxback)
- a full Australian birth certificate for a person born before 20 August 1986
- a full Australian birth certificate for a person born on or after 20 August 1986, showing that at least one parent was born in Australia.



If a job applicant cannot provide evidence of their entitlement to work in Australia they should be referred to the nearest DIAC office to obtain the necessary evidence.

The following is not proof of a person's entitlement to work:

- a tax file number
- a drivers licence
- a Medicare card
- Job Services Australia Job Seeker ID number
- a bank account
- referrals from other employment agencies or labour suppliers
- references from previous employers.

How do I check if a job applicant has a valid visa to work?

The Visa Entitlement Verification Online (VEVO) service is the safest, easiest and quickest way to check the work entitlements of all new workers from overseas.

If it is impractical for you to check every new worker, at a minimum you should check if:

- your business operates in an industry where DIAC locates a large number of illegal workers such as the hospitality, agriculture, manufacturing, construction, transport, retail or sex industries
- you have already been given a warning notice for employing or referring illegal workers
- you have information which suggests there is a possibility the people in question could be illegal workers.



If you have information to suggest that the applicants might not be Australian citizens, then it is possible that they are illegal workers.

This could include situations where applicants:

- mention they are only visiting Australia
- present a foreign passport
- provide overseas qualifications
- refuse to provide any documentary evidence to support a claim of Australian citizenship.

If applicants refuse to cooperate with the work entitlements check, you should explain that you will be unable to employ them until their entitlement to work can be verified.

What is VEVO?

VEVO is a free, Internet-based system that allows you to check the work entitlements of a visa holder online.

The service gives you current visa information and is available 24 hours a day, seven days a week.

How do I use VEVO?

To use VEVO you must register online at <http://www.immi.gov.au/managing-australias-borders/compliance/info-employers/evo-orgs.htm>.

When you register for VEVO you will receive a user ID and password by email within a day. You can change or update your contact details online at any time.



Before using VEVO to check that a person has a valid visa to work in Australia you need to:

- ask them for consent to check their work entitlements
- ask for their passport
- check that the passport photo matches the person presenting them to you.

To conduct a VEVO check, you need to enter the following details from the passport:

- name
- date of birth
- passport number
- country of issue.

The results from your check will be returned almost immediately.

How much time do I have to check work entitlements?

You should check if prospective employees have a valid visa and are entitled to work in Australia before you employ them.

However, if you do not have immediate access to the internet or a fax to check job applicants' work entitlements, you have 48 hours to check.

If the checks are initiated within 48 hours of an employee starting work and you do not actually know the person is an illegal worker, you will not be referred for prosecution.

If you discover an employee is an illegal worker you must end your working relationship with that person immediately.



You will need proof of the employee's start time when using the 48-hour grace period for checking work entitlements.

Examples of businesses and industries that may be able to make use of the 48-hour grace period are farmers during harvest time and builders in the construction industry where large numbers of workers are employed on site. Please note that if you are operating a referral service you are not eligible for the 48-hour grace period.

How often do I check?

Australian citizens and permanent residents need one single check at the time of employment. Temporary visa holders must be rechecked to ensure that no changes to their immigration status have occurred.

Where VEVO shows a visa expiry date, the person should be rechecked as soon as possible after that date. Where there is no visa expiry date, it is advisable for employers to check a temporary visa holder on VEVO every three months.

No internet access?

For employers without access to the internet, there is a toll-free Visa Entitlement Verification Faxback Service that provides written confirmation from the department of a visa holder's entitlement to work in Australia.

To use this service you will need to complete the Authority to Obtain Details of Visa Status form and fax it to 1800 505 550.

The form is available from the department's website or by calling 1800 040 070.

Referral

Question: Alan Nguyen is a horticulturalist who obtains workers from a reputable labour hire company. One of his new staff turns out to be an illegal worker. Is Alan liable?

Answer: No. Provided the labour hire company remains the legal employer of the illegal worker Alan would not be committing an offence. In this situation the labour hire company, not Alan, may be liable. However, once Alan discovers the employee is an illegal worker he must end his working relationship with the person immediately.

To prevent this circumstance from happening in future, Alan should ask the labour hire company to provide evidence that work entitlement checks have been conducted on the people being supplied.



Direct employment

Question: Bill Jones engages a person at the farm gate to pick fruit. Later that evening, after using VEVO to run a check of work entitlements, Bill discovers the person is an illegal worker. Is Bill liable?

Answer: No. Employers in certain industries who initiate work entitlement checks of new employees within 48 hours of an employee starting work, would not usually be prosecuted. However once Bill discovers that the employee is an illegal worker, he must end his working relationship with the person immediately.

Bill would also need to prove the time that the employee started work in order to get the benefit of the 48-hour grace period for checking work entitlements.



Question: A person seeking work as a site labourer approaches a subcontractor Colin Robertson, at a construction site. The person mentions that he has overseas experience. Colin asks whether he has permission to work in Australia. The person says ‘yes’ and shows Colin his safety card. Would Colin commit an offence if the person turns out to be an illegal worker?

Answer: Colin could be found to have committed an offence in this scenario because there is a possibility that the person is an illegal worker. The possibility arises because:

- Colin operates in a high-risk industry where the department locates a significant number of illegal workers
- the person mentioned overseas experience which raises the possibility they are only visiting Australia and may not have a work visa
- taking a person at their word is not a reliable method of checking work entitlements.

However, the department would usually only consider prosecution if Colin had previously been given a warning notice for employing illegal workers, or if there were other aggravating circumstances present, such as exploitation.



Subcontractor

Question: Jose Diaz is a head contractor who engages a plastering subcontractor with whom he has worked on many occasions. The subcontractor brings two assistants onto the work site to help him complete the job within the specified timeframe. One of the assistants is subsequently detained for overstaying his visa and as a result the subcontractor misses the deadline for completing the work. Has Jose committed the offence of allowing an illegal worker to work?

Answer: No, there is no contractual relationship between Jose and the assistants engaged by the plastering subcontractor. In this situation, the relevant work contract is between the plastering subcontractor and the assistants, and therefore the subcontractor could be found to have committed an offence.

Checking work entitlements

Question: Paul owns a busy restaurant and advertises for qualified chefs. Paul employs three new staff, two of whom are Australian citizens. The third person informs Paul that he is on a temporary work visa. One of the Australian citizens presents an Australian passport, confirming his entitlement to work. The other Australian citizen presents a birth certificate issued after 20 August 1986, which states both parents were born in Australia, also confirming his entitlement to work.

The third job applicant claims she was granted a Working Holiday visa. She supplies an Australian driver's licence and tax file number and promises to bring in her passport so that Paul can conduct a work entitlement check using VEVO. After several weeks and a number of reminders, the employee does not produce her passport or work visa. Two months later the employee is detained by the Department of Immigration and Citizenship as a long term visa overstayer. Would Paul have committed an offence under the Employer Sanctions legislation?

Answer: Paul could be found to have committed an offence in this case because there is a possibility the employee is an illegal worker. Paul also operates in a high-risk industry where the department locates a significant number of illegal workers. Paul should have ceased the person's employment until her entitlement to work had been verified. An Australian driver's licence and tax file number are not evidence of work entitlements. The department would usually only consider prosecuting Paul if he had previously been given a warning notice for employing illegal workers, or if there was evidence of exploitation.

All the names in these case studies are fictitious and have been created to demonstrate potential scenarios.

Work entitlement checklist

Is the person an Australian citizen?

- Yes. Go to 'Checking Australian citizens'.
- No. Go to 'Checking visa holders'.

Checking Australian citizens

Confirm an Australian citizen's entitlement to work by sighting one of the following:

- Australian passport
- Australian citizenship certificate or certificate of evidence of Australian citizenship and another form of photo identification such as a drivers licence
- Full Australian birth certificate for a person born before 20 August 1986 and another form of photo identification such as a drivers licence
- Full Australian birth certificate for a person born on or after 20 August 1986, showing that at least one parent was born in Australia and another form of photo identification such as a drivers licence.

If job applicants cannot provide evidence of their entitlement to work in Australia they should be referred to the nearest office of the Department of Immigration and Citizenship (DIAC) to obtain the necessary evidence.

Checking visa holders

Step 1

Sight passport as proof of identification.

Step 2

Ask for consent to check visa details through the Visa Entitlement Verification Online (VEVO) or Visa Entitlement Verification Faxback service.

Step 3

Perform work entitlement check through VEVO or the faxback service.

Did VEVO or the faxback service confirm that this person is entitled to work?

- No. You may not be able to employ this person.
Refer the applicant to the nearest DIAC office for discussion about their visa conditions or status.
To find the nearest office visit <http://www.immi.gov.au/contacts> or phone 131 881.
- Yes. This person has unlimited work entitlements.
You can employ this person.
- Yes. But this person has limited work entitlements and can only work for you within these limitations.
If you are unsure about what the limitations mean, phone the Employers Immigration Hotline on 1800 040 070.

To use VEVO go to <http://www.immi.gov.au/managing-australias-borders/compliance/info-employers/evo-orgs.htm>.

For instructions on how to use the faxback service phone 1800 040 070.