

Employer Obligations for Employing Non New Zealand Citizens

QUICK GUIDE

This Quick Guide provides summarised information about the changes to employer obligations under the Immigration Act 2009.

WHAT HAS CHANGED?

As an employer, your obligations under the Immigration Act 2009 remain essentially the same as under the Immigration Act 1987: you must not employ a non-New Zealand citizen who is not entitled to work in New Zealand. The Immigration Act 2009 will come into effect on 29 November 2010.

The key change for employers in the Immigration Act 2009 is that holding an IR 330 form will no longer be a “reasonable excuse” for employing a non-New Zealand citizen who is not entitled to work in New Zealand. Instead, you will have to show that you took “reasonable precautions and exercised due diligence” to check whether they are entitled to work in New Zealand.

The change in the “reasonable excuse” will take effect when the Immigration Act 2009 comes into full effect on 29th November 2010. The change will not apply in relation to workers who were employed before the change takes effect.

CHECKING ENTITLEMENT TO WORK IN NEW ZEALAND

It is strongly recommended that you confirm a person’s entitlement to work before making a job offer. To show that you have taken ‘reasonable precautions and exercised due diligence’ a suggestion would be that your job application forms include the following:

- Are you a New Zealand citizen?

Please ensure you can provide evidence if requested. You can apply online at www.bdmonline.dia.govt.nz for a copy of your birth certificate.

- If you are **not** a New Zealand citizen:

Do you have permanent residency in New Zealand? Or

Do you have a permit and/or visa to work in New Zealand?

Please ensure you can provide evidence if requested such as a passport with the visa/permit status.

There is no positive statutory obligation to check entitlement to work, nor is it an offence not to check. However, if you are an employer and do not check a person’s entitlement to work, and the person is not entitled to work for you, you could be prosecuted.



POTENTIAL PENALTIES

The penalties for offences committed by employers will remain the same as under the Immigration Act 1987:

- The maximum penalty for allowing a foreign national who is not entitled to work in the employer's service to do that work is a fine of \$10,000.
- The maximum penalty for allowing or continuing to allow a foreign national to work while knowing that person is not entitled to work is a fine of \$50,000.
- The maximum penalty for exploitation of a foreign national whom the employer has allowed to work while knowing that person was not entitled to work is:
 - imprisonment for 7 years, or
 - a fine of \$100,000, or both.

WHO CAN WORK IN NEW ZEALAND?

- New Zealand citizens, including nationals from Cook Islands, Niue and Tokelau
- New Zealand residents and permanent residents
- Holders of Australian current permanent residence visas (including a resident return visa) and who are granted a New Zealand residence visa on arrival
- Australian citizens who entered New Zealand on a current Australian passport
- Non-New Zealanders holding a valid visa (or permit) with work entitlements.

Under the Immigration Act, work means any activity for gain or reward. Gain or reward includes any payment or benefit that can be valued in terms of money, such as board and lodging, goods (e.g. food or clothing) and services (e.g. transport).

WHAT IS A GOOD PROCESS TO FOLLOW?

Employers are encouraged to have robust systems around checking entitlement to work and to keep copies as evidence of the documents they have checked.

Immigration New Zealand recognises there are many employers who already have good practices in place to check work entitlement. The following are suggestions for employers, by employers, to help get started or to improve existing processes:

- Ensure all job advertisements advise that evidence of entitlement to work in New Zealand will need to be provided if requested
- Ensure all job application forms advise that evidence of entitlement to work in New Zealand will be required from both New Zealand citizens and non-New Zealanders during the recruitment stage
- Give advice to New Zealand citizens on job application forms that they can apply online at <https://www.bdmonline.dia.govt.nz> to obtain a full birth certificate
- Undertake document checks and identity checks with photo identification at the interview or pre-employment stage
- Ensure copies of documentation are retained on an employee's record or file
- If records are held electronically, record work eligibility checks and the visa (or permit) expiry date.

NOTE: Employers have reported that this last suggestion has saved a lot of time and resource. Employers are able to check this information against their payroll and have been able to remind their employees to extend their visa in advance of the date of expiry.

Should you decide to implement this, Immigration New Zealand recommends that an additional tick box be added to application forms to allow people to give authority for you to use their information for this purpose.



VISAVIEW - ONLINE CHECKING SYSTEM

The Department of Labour wants to support you to meet your obligations and is doing this in a number of ways.

An online system which will allow you to easily obtain information on a potential employee's work entitlement has been introduced. The system is called 'VisaView' and will enable all New Zealand employers to enquire about the work entitlement of a job applicant who is a foreign national. You will simply need to provide information such as a passport number and the last name of the applicant.

VisaView will check against the Department's database and in most cases provide you with a 'Yes' or 'No' answer, together with any specific work conditions that may apply. VisaView also maintains a history of your enquiries, which will be a useful way for you to demonstrate due diligence in relation to Immigration Act requirements.

It is intended that this tool will be extended once further law changes have occurred to allow checks to cover all New Zealand citizens, including those who have never held a passport.

For more information about VisaView, see: www.immigration.govt.nz/visaview

The Department has also developed '[A guide to help employers check work entitlement \[577KB\] PDF](#)' and a '[Work entitlement checklist \[494KB\] PDF](#)' – both of which are available from the www.immigration.govt.nz website. These were put together in close consultation with employers from around New Zealand.

For further information regarding Employer obligations under the Immigration Act 2009 or other aspects of Employment Relations, please contact the Canterbury Employers' Chamber of Commerce, email es@cecc.org.nz or phone 03 366 5096.

