

Many of you will have read about some of the more significant changes introduced to the subclass 457 visa scheme on 1 July 2013, such as the introduction of labour market testing and the right of 457 visa holders to remain in Australia for 90 days, rather than 28 days, to look for new work before their visa is cancelled.

Several other less publicised changes were also however also introduced.

Scrutiny of Training Benchmark Compliance

Business sponsors would have been familiar with the requirement to demonstrate a commitment to meeting the training benchmark on applying for sponsorship. Although sponsors were expected to continue to meet that benchmark for the duration of the sponsorship, DIAC had limited powers to enforce this requirement.

As part of the 1 July 2013 reforms, the requirement to provide training in accordance with the training benchmark has now become a sponsor obligation. As a result, sponsors now face potential sanctions for failing to meet this requirement, including for example, the imposition of a civil penalty or enforceable undertaking.

Introduction of Nomination Cap

Historically a sponsor was free to nominate as many 457 visa holders as it desired once their sponsorship application had been granted. In future, all sponsor applicants will be required to stipulate the number of nominations which it intends to make during the period of the sponsorship and the rationale to support this. It is currently unclear how DIAC will decide whether to approve the number proposed (e.g. whether it will be based on a percentage of the total workforce) or if an alternative cap should be imposed. Sponsors will be required to submit a further sponsorship application if they wish to exceed the nomination cap.

English Language Requirements

It remains the case that 457 visa applicants are required to demonstrate proficiency in the English language unless they fall within one of the exemptions. Significantly, however, the reforms have removed the occupational exemption which applied to a substantial number of roles. Now applicants will need to:

- demonstrate a score of 5 on all 4 components of the IELTS test; or
- be paid a base salary above the ELSET – currently AU\$96,400; or
- be a passport holder from Canada, US, UK, Republic of Ireland or New Zealand; or
- have completed at least five consecutive years of full-time secondary/higher education study where the instruction was delivered in English.

The removal of this exemption could accordingly have a significant bearing for employers who traditionally recruit from non-English speaking countries.

Contact

Andrew Burnett

Partner

T +61 8 9429 7414

E andrew.burnett@squiresanders.com

Registered Migration Agent

MARN1174849



The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations nor should they be considered a substitute for taking legal advice.

© Squire Sanders.