



Australian Government
**Department of Immigration
and Citizenship**

**Subclass 457-Business (Long Stay) visa
Employer sponsorship requirements**





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Introduction

When you sponsor a worker under the Subclass 457 visa program you are required to fulfil a set of specific requirements - also known as undertakings.

It is important that you understand that these undertakings are a part of immigration law. You must comply with the undertakings as part of your sponsorship.

The Department of Immigration and Citizenship continuously monitors the activities of Subclass 457 visa program sponsors to ensure they comply with the undertakings. If the department believes you are not complying with the undertakings you will be issued with a breach notice. Processing of any applications pending under your sponsorship will be suspended from the time a breach notice is issued until such time as the matter is resolved. The breach notice will provide you with an opportunity to rectify the area of non-compliance before a decision is made on subsequent sanction action.

The sanctions currently available to the department are:

- cancellation of your sponsorship
- a bar, preventing you from sponsoring any more overseas workers under the program for up to five years
- issuing you with a formal warning – this will be considered when you apply for more overseas workers under the Subclass 457 visa program.



In the nine months to 31 March 2008, the department has issued warnings to over 470 sponsors, barred over 150 sponsors from using the program for periods between three months and five years, and cancelled several sponsorship approvals.

Undertakings

The current sponsorship undertakings for the Subclass 457 program are set out below.

Cooperate with monitoring

You must fully cooperate with the department's monitoring of your sponsorship.

Monitoring can include a desk audit or a visit in person – announced or unannounced – by departmental officers to your workplace. Officers can perform a number of checks, such as examining financial and payroll records and interviewing sponsors, company directors and staff, including sponsored workers.

Cooperating with monitoring can mean providing access to premises, producing and providing documents, completing forms in the time requested, providing officers with access to interview any person and complying with any request by officers in relation to the monitoring they are conducting. You should also keep appropriate records to allow the department to verify that you meet other undertakings.

Travel costs

You must ensure that your sponsored worker's return travel costs are met. Your options include meeting the cost yourself or negotiating for your sponsored worker to pay for the travel.

You will have to compensate the Australian Government if it has to pay for your sponsored worker's return to their home country. The government's costs can include locating and detaining a sponsored worker who overstays their visa. Ultimately the sponsor remains responsible for these costs.

This situation also applies to any of the sponsored worker's dependants who you have agreed to sponsor.

Medical and hospital expenses

If your sponsored worker applied for their visa before 1 November 2005, you are responsible for paying all medical or hospital costs, other than those met by health insurance arrangements, including Medicare, where eligible.

If your sponsored worker applied for their visa on or after 1 November 2005, you are responsible for any costs incurred in a public hospital, other than those met by health insurance arrangements, including Medicare, where eligible.

Your sponsored worker may be eligible for Medicare if they are from a country that has a reciprocal health care agreement with Australia. For more information about reciprocal health arrangements go to:
www.medicareaustralia.gov.au/yourhealth/going_overseas/vta.htm



If your sponsored worker is not eligible for Medicare, it is strongly recommended that you arrange for health insurance for your sponsored worker. If your sponsored worker is not insured and they incur a medical cost covered by the undertaking, you must pay this cost. These costs can be very expensive if they are not met by health insurance arrangements, including Medicare, where eligible. For example, you may need to pay for your sponsored worker to be medically evacuated to their home country, or you may need to pay for ongoing treatment and care costs if the sponsored worker is seriously injured or ill.

This situation also applies to any of the sponsored worker's dependants who you have agreed to sponsor.

Workplace laws

You must comply with all relevant workplace laws. Workplace laws are separate from immigration laws and you must comply with both. The department regularly refers workplace matters to industrial relations agencies for investigation.

Work entitlements

It is a criminal offence to knowingly or recklessly allow a person to work for you while in breach of their visa conditions, or illegally in Australia. People convicted of these offences face fines up to \$13 200 and two years' imprisonment, while companies face fines up to \$66 000 per illegal worker. For example, you must not employ a Subclass 457 visa holder:

- after their visa has expired
- who is employed by another sponsor
- for a position in which they were not nominated.

You can check work entitlements by using the Visa Entitlement Verification Online service at www.immi.gov.au/vevo or by using the Visa Entitlement Verification Faxback service. Phone 1800 040 070 to find out how to use the faxback service.

Minimum Salary Level (MSL)

You must pay your sponsored worker either the Minimum Salary Level or the industrial instrument (such as an award or collective agreement) that applies to the person in relation to the position they were nominated for – whichever is higher.

The Minister for Immigration and Citizenship sets Minimum Salary Levels for sponsored workers. Minimum Salary Levels do not override requirements that you pay workers in accordance with Australian industrial instruments and conditions of employment. If the relevant instrument requires a higher salary to be paid than the prescribed minimum salary level, then you must pay the higher amount.

Minimum Salary Levels vary depending on the occupational level of your sponsored worker and whether the visa was approved under a regional concession. For more information about Minimum Salary Levels go to:

www.immi.gov.au/skilled/skilled-workers/sbs/occupations.pdf

Employment ceasing

You must notify the department when a sponsored worker ceases to be in your employment. You have five working days from the date your sponsored worker ceases employment to notify the department.



Change of circumstances

You must notify the department as soon as possible of any changes in circumstances that may affect your business' capacity to honour its sponsorship responsibilities – this may occur before the event has happened. For example, if your business is moving location you should notify the department as soon as the location has been confirmed, not after moving.

Change of circumstances includes but is not limited to:

- changes to information you submitted to the department about the sponsorship or nomination
- changes to a company's structure
- change of address
- merger and termination of business activities for any reason, including liquidation.

These changes may affect the legal status of a sponsored person.

Licensing, registration, membership

You must ensure that your sponsored worker holds any licence, registration or membership that is mandatory for their duties. This includes licensing, registration, certification or compliance with standards required by Australian law and/or industry bodies.

Tax and superannuation

Your tax and superannuation obligations for sponsored workers are the same as for your Australian employees, unless you are eligible for an exemption from the Australian Taxation Office.

For information about tax and superannuation obligations go to:

www.ato.gov.au/employers

Regional concessions

Sponsors operating in regional Australia who had nominations approved under a regional concession by a Regional Certifying Body must notify the department of any change in work location of their sponsored worker.

A sponsored worker approved under regional arrangements may have their visa cancelled if they work in an area that is not defined as regional for the purposes of the Subclass 457 visa program.

Pathways to permanent visas

The Employer Nomination Scheme

The Employer Nomination Scheme enables employers to nominate skilled workers for a permanent visa to work in Australia. Employers must be lawfully operating in Australia, the position must provide full time employment for at least three years, and meet the Minimum Salary Level.

The Regional Sponsored Migration Scheme

The Regional Sponsored Migration Scheme enables employers to nominate skilled workers to permanently fill vacancies in regional Australia. Employers must be lawfully operating in regional Australia and the position must provide full time employment in regional Australia for at least two years, and meet all relevant Australian legislation and awards for wages and working conditions.



Further information and contacts

For further information about your undertakings as a sponsor go to:

www.immi.gov.au/skilled/skilled-workers/sbs/obligations-employer.htm

For more information about employer sponsored migration go to:

www.immi.gov.au/skilled/

To find your nearest Department of Immigration and Citizenship office, or to speak to a departmental officer in your area, go to:

www.immi.gov.au/contacts/australia/business-centres/index.htm

You can also call the department's general enquiry line on 13 18 81.