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**WORKFORCE (IMMIGRATION NEW ZEALAND)
INTERNAL ADMINISTRATION CIRCULAR NO: 09/05**

To: All Workforce/Immigration New Zealand (INZ) staff **Date:** 17 July 2009

WORK POLICY AND CHANGES IN THE LABOUR MARKET

Please **READ** this information and ensure that all staff members who may be affected are aware of what is required of them.

Introduction

1. This Internal Administration Circular (IAC) outlines good process for labour market testing, balancing Work and Income advice and considering applications for Variations of Conditions under current work policy.

Background

2. One of the key principles of temporary work policy is that work opportunities for New Zealanders are protected. The current Government has endorsed this principle and it is crucial that branches actively take this into consideration when processing work permits and visas under current work policy.
3. Essential Skills policy replaced General work policy on 28 July 2008. Essential Skills policy has many of the same concepts as General work policy, but uses the Australian and New Zealand Standard Classification of Occupations (ANZSCO) to differentiate between occupations at different skill levels. Skill levels (1 high - 5 low) are attached to each occupation. Occupations at skill levels 1-3 are considered higher skilled, and those at skill level 4-5 are considered lower skilled.

Availability of New Zealanders

4. For applications under Essential Skills policy visa and immigration officers must be satisfied that there are no suitable New Zealanders available to take up the position in question by way of a Labour Market Test (LMT). For Essential Skills applications a LMT is mandatory for all applications in occupations that are not on either the Immediate Skill Shortage List (ISSL) or Long Term Skill Shortage List (LTSSL).
5. In addition, for all occupations at skill levels 4 and 5, advice must also be sought from Work and Income (W&I), to see if suitable New Zealanders are available to fill the positions in question. Advice from W&I can also be

sought for occupations at skill levels 1-3 at the discretion of visa or immigration officers.

6. To enhance the efficiency of the W&I referral process, Immigration New Zealand (INZ) introduced a portal for the exchange of information on positions and to improve business intelligence. In order to use the portal effectively, visa and immigration officers must use the correct ANZSCO codes and record all relevant information on the referral.
7. It is vital for reporting purposes that the most appropriate ANZSCO occupation is selected from the table in AMS in an Essential Skills work application, rather than manually typing in the occupation or selecting 'not stated'. The occupation as stated on the job offer should be entered on the label.

Genuine attempts to recruit New Zealanders

8. In order to satisfy the labour market test, employers must make a genuine attempt to attract New Zealanders to fill positions and, for lower skilled occupations, should be encouraged to engage with W&I before an application for a work permit is lodged. The table below gives examples of evidence of employers genuine and non-genuine attempts to attract New Zealanders:

| Evidence of Genuine Attempts | Non Genuine Attempts |
|---|---|
| Vacancy lodged with W&I | No engagement with W&I |
| Recruitment company contracted for appropriate industry | Vacancy not advertised |
| Vacancy advertised in national news paper and / or website well before the position needs to be filled | Vacancy advertised just prior to application being lodged |
| Level of advertising appropriate to vacancy e.g. local paper for a cleaner, national paper for an executive position | Vacancy advertised in such a way that would not be attractive to New Zealanders |
| Reference / vacancy number from W&I | Inappropriate level of qualification / experience required by an employer |
| | Hours / remuneration advertised do not match those submitted to INZ in support of work permit application |

9. An application should not be automatically declined solely because the examples of non genuine attempts are present. Visa and Immigration officers must consider the full circumstances of the case.

Other relevant information in a labour market test

10. If there are suitable NZ citizens or residents available to take up the position on offer, or can be readily trained in the position then the LMT is not satisfied. W&I will provide advice on all applications for lower skilled jobs, and can also provide advice on applications for other jobs if requested.
11. The following factors should also be considered:
 - whether the employer made workers redundant in the six month period prior to the position being offered, and/or state they envisage the need for redundancies in the coming six months;
 - whether the employer considered workers made redundant by other companies; and
 - advice from other sources, such as Industry Training Organisations, unions and/or other sources specified in policy (see WK2.10.1(b)(iv) that the employer sought advice on the availability of New Zealand citizens or residents.

Balancing Work and Income advice against an employer case

12. Visa and immigration officers must take into account all information available including advice provided by W&I. Where W&I advise that suitable New Zealanders are available, the information should be put to the applicant as potentially prejudicial information (PPI).
13. Employers may respond with information on why suitable New Zealanders are not available, despite the W&I advice. A good case from an employer should include evidence of genuine attempts they have made to recruit a New Zealander for the position, and why they were unsuccessful.
14. The factors bulleted below are irrelevant to determining the availability of New Zealanders and therefore must not be considered in determining a LMT:
 - whether an applicant is well regarded/highly valued by their employer;
 - whether the applicant is claimed to have specialist skills/be well trained in a job that is readily trainable;
 - whether the applicant (and family) is well settled in New Zealand; and
 - whether the applicant is willing to undertake the work at pay and conditions that would not be attractive to a New Zealander.

Approval in Principle

15. Employers may apply for approval in principle to recruit workers from overseas prior to an application for a work visa/permit being submitted. Visa and immigration officers must be satisfied that there are no suitable New Zealanders available to take up the position/s in question by way of a LMT (the same process as outlined above should be used). Employers must specify the number of temporary workers they are seeking.

Varying the conditions of temporary permits

16. Holders of temporary permits should apply for a Variation of Conditions (VoC) to their permit if they hold an employer-specific work permit and wish to change employers or the place of employment within the same region.
17. A VoC application must not be approved to change the job type (i.e. in a case where job roles are combined). In these cases, a new work permit application must be made and a LMT conducted for the new position. This applies even if the new position is with the same employer. A new work permit application must also be made if the applicant is seeking to move to another region within New Zealand.
18. If an applicant for a VoC holds a current work visa, visa and immigration officers should also vary the conditions of the associated work visa at the time of varying the permit. The existing VoC template letter V27 has been amended and now states:

If you hold a current work visa you will note that we have endorsed your visa to indicate the new conditions set out above will also apply to any subsequent work permit you are granted should you leave New Zealand and return during the currency of the visa.

19. There may be other cases where a new work permit application and LMT is more appropriate than a VoC application. To assess the need for this, immigration officers should consider whether a new work permit application is appropriate to ensure the Essential Skills policy objectives, including that New Zealanders' job opportunities and terms and conditions, are protected.

Declined work permit applicants

20. On a case by case basis consideration may be given to granting visitor permits, for a limited duration, as an exception to policy to applicants whose work permit application has been declined. This will allow an applicant to make arrangements to submit a new work permit application or leave New Zealand. Officers should consider:
 - How long the applicant has been in New Zealand
 - How settled is the applicant
 - Has the applicant been made redundant
21. Consideration should be given to the amount of available funds held by the applicant as this will directly affect the expiry date of any visitor permit issued.

22. If this IAC is inconsistent with any previous IAC, the instructions contained here prevail.