



A guide to help employers check work entitlement

FEBRUARY 2011





Contents

INTRODUCTION	2
NEW LEGISLATION	2
What has changed?	2
BEST PRACTICE	2
Reasonable precautions and due diligence	2
What is good process to follow?	3
Avoiding discrimination	3
WHO CAN WORK IN NEW ZEALAND	3
BEST PRACTICE STEPS FOR CHECKING ELIGIBILITY	4
Job application forms	4
How to check work eligibility	4
VisaView	4
HOW TO CONFIRM THE IDENTITY OF POTENTIAL EMPLOYEES	8
CAN I PROVIDE IMMIGRATION ADVICE?	9
PENALTIES FOR EMPLOYING AN ILLEGAL WORKER	9
NEW ZEALAND VISA LABELS	10



INTRODUCTION

This guide outlines changes introduced by the Immigration Act 2009 that affect employers. These changes came into effect on 29 November 2010.

To help employers meet their obligations under the new Act, the Department of Labour has developed the free online tool VisaView for checking work entitlement. A work entitlement checklist is also available, and employers can access other Department of Labour employment resources at www.ers.govt.nz.

The Immigration Act 2009 continues the principle that employers must not employ non-New Zealanders who are not entitled to work for them.

Employers' obligations essentially remain the same as under the previous Act – the key change is to the 'reasonable excuse' provisions for employing non-New Zealanders not entitled to work here.

NEW LEGISLATION

What has changed?

The provision of an IR330 tax declaration form is no longer a reasonable excuse for employing a non-New Zealander who is not entitled to work for you.

This means employers need to be more diligent when checking whether prospective employees can work for them.

The Immigration Act 2009 introduced a 'universal visa' system to replace the old visa and permit regime. This means that all non-New Zealanders coming here now receive visas only, and the terms 'permit' and 'exemption' are no longer used. All permits granted prior to 29 November 2010 remain valid until their expiry date (but are deemed to now be visas).

BEST PRACTICE

Reasonable precautions and due diligence

The Immigration Act 2009 provides that an employer has a defence to a charge of employing a person without entitlement to work if:

- The employer did not know the person was not entitled **and** they took 'reasonable precautions and exercise due diligence' to ascertain whether the person was entitled to do the work.

What is good process to follow?

The Department of Labour encourages employers to have robust systems for checking entitlement to work – and to keep good records of this.

The Department 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
- Use VisaView and/or documents at the interview or pre-employment stage to check work entitlement
- Undertake 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
- Retain good records of work eligibility and identification checks
- Keep good records of visa expiry dates.

Employers have reported that this last suggestion about visa expiry dates has saved a lot of time and resource. Employers are able to check expiry information against their payroll and remind employees to apply for a new visa before their current one expires.

The following pages outline more detail about each of these steps.

Avoiding discrimination

The easiest way to avoid discrimination and to ensure that everyone is treated equally is to check the work entitlement of all potential employees.

WHO CAN WORK IN NEW ZEALAND?

- New Zealand citizens, including Cook Islands, Niue and Tokelau nationals
- 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 class visa on arrival



- Australian citizens who entered New Zealand on a current Australian passport
- Non-New Zealanders who hold a valid visa with work entitlements.

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 (such as food or clothing) and services (such as transport).

For more information about employing workers from overseas, see Immigration Guide for Employers.

BEST PRACTICE STEPS FOR CHECKING ELIGIBILITY

Job application forms

The Department of Labour recommends the following questions are in your job application forms. We also suggest that should you decide to include these questions, you also include a tick box for applicants to give their authority for you to use their information for the purpose of confirming work entitlement and identity.

Are you a New Zealand citizen?

Please ensure you can provide evidence if requested.

A passport is an easy way to show you are a New Zealand citizen (even if it has expired). If you do not have a passport, a birth certificate and another form of ID that includes your photograph, such as a driver's licence, is another good option. You can find details about how to apply for a copy of your birth certificate at www.bdm.govt.nz.

If you are not a New Zealand citizen:

Do you have a New Zealand resident or permanent resident visa? Or

Do you have visa to work in New Zealand?

Please ensure you can provide evidence.

The visa in your passport is the best option to show evidence of your entitlement to work. If your visa was issued online, include your letter or email from Immigration New Zealand to show this.

I agree that the information I provide can be used to confirm my work entitlement and identity.

How to check work eligibility

VisaView

VisaView is a free online enquiry system run by the Department of Labour to help employers easily confirm potential and current employees' work entitlement.

VisaView allows registered employers to verify that prospective and current employees who are not New Zealand citizens can work for them. This includes whether potential employees hold valid visas, the conditions of the visa and the date of expiry. Express consent from the potential or current employee is not required.

Employers who have a Department of Internal Affairs disclosure agreement may also use VisaView to confirm New Zealand passport information provided by jobseekers, and so confirm New Zealand citizenship and entitlement to work in any job.

VisaView usually responds to enquiries within seconds. It also helps employers to retain a record of enquiries, which can be used as evidence of compliance with the Immigration Act 2009.

The VisaView website address is: www.immigration.govt.nz/visaview

The VisaView pages include comprehensive written information and short video training guides about how to register and use the system.

Where does the VisaView information come from?

Immigration New Zealand, which is part of the Department of Labour, holds records of the visa status of all people in New Zealand who are not New Zealand citizens.

The Department of Internal Affairs holds records of New Zealand passport and citizenship information.

Do most New Zealanders have a passport?

About three-quarters of New Zealanders between the ages of 16 and 65 hold, or have held, a passport.

Legislation is before Parliament that would, if passed, allow registered employers to confirm the citizenship of most New Zealanders via confirmation of birth or citizenship information.



Privacy obligations

Employers must treat any information received about an employee or potential employee in accordance with the Privacy Act 1993.

This means that information collected for one purpose cannot be used for another, unrelated purpose. Therefore, the information provided to you about an individual's entitlement to work can only be used by you for that purpose.

Before confirming New Zealand passport information, the consent of the passport holder must be gained.

What if I have questions?

Once you are registered as a VisaView user, you can make an enquiry by calling the Department's dedicated employer phone line on 0508 967 569 (WORK NZ). Note that this contact number is for employer enquiries only. General visa enquiries should be directed to 0508 55 88 55.

After checking your VisaView account details to confirm you are an authorised user, Customer Service Officers will be able to clarify any questions about the answers you receive from VisaView.

What if I don't have a computer?

The following table shows the documents that can be accepted as evidence of entitlement to work in New Zealand. We recommend you ask to see original documents and that you make copies for your records.

Non-New Zealanders

- ✓ Foreign passport with a valid New Zealand work visa
- ✓ Foreign passport with any valid New Zealand visa allowing work
- ✓ Foreign passport with a New Zealand residence class visa
- ✓ Australian passport
- ✓ Foreign passport with an Australian permanent resident visa and/or a current resident return visa.

New Zealanders

- ✓ New Zealand passport
- ✓ Full New Zealand birth certificate issued prior to 1 January 2006 showing parents' names (with photo identification)

- ✓ Full New Zealand birth certificate issued on or after 1 January 2006 that positively indicates New Zealand citizenship (with photo identification)
- ✓ Certificate of grant of New Zealand citizenship (with photo identification)
- ✓ Registration as a New Zealand citizen by descent under the Citizenship Act 1977 (with photo identification)
- ✓ An evidentiary certificate issued under the Citizenship Act 1977 confirming the person to be a New Zealand citizen (with photo identification)
- ✓ Foreign passport with an endorsement indicating the fact of New Zealand citizenship
- ✓ New Zealand citizens include people from the Cook Islands, Niue and Tokelau. Full birth certificates from the Cook Islands, Niue or Tokelau are acceptable (with photo identification).

What does a genuine visa look like?

Document fraud has become extremely sophisticated. Fraudsters can produce a quality fake document and visa label that may be very difficult to distinguish from a genuine one. To help you identify a valid visa, an example has been provided at the end of this guide.

What do I do if I suspect a document is fraudulent?

We encourage you to ring the Immigration Contact Centre on 0508 55 88 55 to report suspicious documents.

How often do I need to check?

New Zealand citizens and residence class visa holders need one single check at the time of employment.

The Department of Labour suggests it is good practice to monitor expiry dates for temporary visa holders to ensure they continue to be entitled to work for you.



HOW TO CONFIRM THE IDENTITY OF POTENTIAL EMPLOYEES

It is important to be confident that the person applying for the job is in fact that person. The Department suggests you confirm the identity of someone face-to-face by using original photo identification.

What is acceptable photo identification?

Non-New Zealanders:

All non-New Zealanders who are eligible to work in New Zealand should have a valid travel document that can be used as photo identification.

New Zealand citizens:

- ✓ A New Zealand passport or emergency travel document or
- ✓ A New Zealand birth certificate or New Zealand citizenship certificate and
- ✓ A New Zealand drivers' licence, 18+ Card, firearms' licence or Community Services Card with a photo.

If a person is unable to produce one of the photo IDs listed above, then other possible IDs include:

- ✓ A university ID card
- ✓ An employee ID card – where verification of previous employment is taking place with a referee and a publicly listed telephone number
- ✓ A secondary school ID card.

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

All potential employees

- ✗ IR330 tax code declaration form from Inland Revenue
- ✗ New Zealand driver's licence
- ✗ New Zealand bank account
- ✗ New Zealand credit card
- ✗ References from previous employers
- ✗ Membership certificate for any regulatory organisations or industry governing bodies.

If a person is unable to provide any photo identification, you may wish to contact www.eoistandard@dia.govt.nz to clarify other documents an individual may be able to use.

CAN I PROVIDE IMMIGRATION ADVICE?

No - unless you are a licensed immigration adviser or are exempt under the Immigration Advisers Licensing Act (for example, lawyers and Citizens Advice Bureau staff). Giving people publicly available information, such as information that is on the Immigration New Zealand website, is not classified as immigration advice.

If you are asked for immigration advice or assistance, we recommend you refer the person to Immigration New Zealand's website www.immigration.govt.nz; the Immigration Contact Centre general enquiry phone line 0508 55 88 55; or suggest they contact a licensed adviser to discuss their immigration options.

Information about licensed advisers, including fees, is available at www.iaa.govt.nz.

PENALTIES FOR EMPLOYING AN ILLEGAL WORKER

The maximum penalty for employing a foreign national who is not entitled to work in New Zealand 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 exploiting a foreign national who the employer has allowed to work while knowing that person was not entitled to work is imprisonment for seven years or a fine of \$100,000, or both.

