



7 April 2022

IMMIGRATION NEW ZEALAND INSTRUCTIONS: Amendment Circular No. 2022-17

To: All Manual Holders

AMENDMENTS TO THE IMMIGRATION NEW ZEALAND OPERATIONAL MANUAL

Introduction

This circular outlines changes to immigration instructions. A copy of the amended instructions is attached.

All immigration officers dealing with immigration applications should read the amendments and operate in accordance with the amended instructions from the effective date.

Note

The amendments described in this circular will be published in the Immigration New Zealand Operational Manual in due course.

Information about these changes is available on our website www.immigration.govt.nz.

Description of changes

WA Accredited Employer Instructions

WA1 Objective and Overview of Accredited Employer instructions

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WA2 Employer accreditation instructions

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Appendix 11 – Employer accreditation stand down periods

Immigration instructions that give effect to the employer accreditation step of the new Accredited Employer Work Visa system are attached. Employers will be able to apply online to become accredited from 23 May.

More information is available on the INZ website - www.immigration.govt.nz/accredited-employer

Appendix 1: Amendments to Temporary Entry instructions effective on and after 23 May 2022

WA Accredited Employer Instructions

WA1 Objective and Overview of Accredited Employer instructions

WA2 Employer accreditation instructions

WA3 Job Check instructions

WA4 Accredited Employer work visa instructions

WA1 Objective and Overview of Accredited Employer instructions

WA1.1 Objective

The Accredited Employer instructions contribute to the overall work instructions objective (W1) by:

- a. incentivising employers to employ more New Zealanders to respond to skill and labour shortages over time; and
- b. ensuring that employers only recruit non-New Zealand citizen or residents for genuine shortages, while not displacing New Zealanders from employment opportunities or hindering improvements to wages or working conditions; and
- c. reducing risks around business models and practices that might enable migrant exploitation; and
- d. ensuring that employers are compliant with specific employment, immigration and business standards (WA2.10.10).

WA1.5 Overview of Accredited Employer instructions

There are three steps in the Accredited Employer Work Visa instructions. These are:

- a. employer accreditation - the employer must be granted employer accreditation (WA2); then
- b. Job Check - the accredited employer must have a Job Check approved by Immigration New Zealand (INZ) for any vacancy the employer needs to fill with a non-New Zealand citizen or resident worker (WA3); then
- c. work visa - a non-New Zealand citizen or resident worker must be granted an Accredited Employer work visa (WA4).

WA2 Employer accreditation instructions

WA2.1 Overview

WA2.5 Applying for employer accreditation

WA2.10 Requirements for all employers

WA2.15 Requirements for Standard and High Volume Accreditation

WA2.20 Requirements for employers using triangular employment arrangements

WA2.25 Requirements for franchisee employers

WA2.30 Subsequent applications for employer accreditation

WA2.35 Processing and verification requirements

WA2.40 Considering an application for employer accreditation

WA2.45 Currency and approval specifications for employer accreditation

WA2.50 Verification activities after accreditation has been granted

WA2.55 Suspending and revoking employer accreditation

WA2.60 Definitions

WA2.1 Overview

- a. There are two types of employer accreditation:
 - i. Standard Accreditation; and
 - ii. High Volume Accreditation.
- b. All employers must meet the generic requirements for employer accreditation set out at WA2.10 and the requirements for subsequent accreditation set out at WA2.30. These include requirements for the employer as an entity, as well as for key people (as defined at WA2.60.10) within the employer's organisation.
- c. Employers who place Accredited Employer work visa holders in triangular employment arrangements (as defined at WA2.60.15), including labour hire employers, must meet the additional requirements set out at WA2.20.
- d. Employers who are franchisees (as defined at WA2.60.20) must meet the additional requirements set out at WA2.25.
- e. All other employers who want to have more than 5 jobs associated to them (WA3.50.1) at any one time, must apply for High Volume Accreditation.

Note: If an employer accreditation application is approved for employers specified in (c) and (d), they will be granted High Volume Accreditation.

WA2.5 Applying for employer accreditation

- a. An employer accreditation application must be made using the approved online form provided on the INZ website.
- b. To make an application, the employer must have a New Zealand Business Number (NZBN), unless they are a foreign diplomatic or consular mission (such as an Embassy, High Commission or Consulate).
- c. The application must be accompanied by appropriate evidence that demonstrates the employer meets the requirements set out in the employer accreditation instructions, where requested by the approved online form.
- d. The relevant fee must be paid for an employer accreditation application.
- e. If an employer wishes to upgrade from Standard Accreditation to High Volume Accreditation, where the Standard Accreditation period has not expired, an application to upgrade must be submitted and the relevant fee must be paid.

Note: A Job Check or Accredited Employer work visa application will not be approved if the employment specified is:

- self-employment; or

- to plant, maintain, harvest or pack crops in the horticulture or viticulture industries (in this case the employer must apply to become a Recognised Seasonal Employer - WH1).

WA2.10 Requirements for all employers

- a. For an employer accreditation application to be approved, the employer must:
 - i. be a genuinely operating business or organisation, as set out at WA2.10.1; and
 - ii. complete the settlement support activities set out at WA2.10.5; and
 - iii. be compliant with the specific immigration, employment and business standards set out at WA2.10.10.
- b. If the employer is a sole trader, partners in a partnership or trustees in a trust, New Zealand must be the primary place of established residence for the sole trader (person), or at least one partner or trustee.
- c. The generic work visa requirements set out at W2.10 do not apply to employer accreditation applications made under these instructions.

WA2.10.1 Viable and genuinely operating business or organisation

- a. A viable and genuinely operating business or organisation is one where:
 - i. it is registered as an employer with the Inland Revenue Department; and
 - ii. if the employer is a general partnership or sole trader, the partners or sole trader must not be bankrupt or subject to a No Asset Procedure; or
 - iii. if the employer is a limited partnership, the general partners must not be bankrupt or subject to a No Asset Procedure.

Note: A general partner is defined in section 19 of the Limited Partnerships Act 2008

- b. The employer must:
 - i. have not made a loss (before depreciation and tax) over the last 24 months; or
 - ii. have a positive cash flow for each of the last 6 months; or
 - iii. have sufficient capital and/or external investment (for example funding from a founder, parent company or trust) to ensure the employer's business remains viable and ongoing; or
 - iv. have a credible, minimum two-year plan (for example by having contracts for work) to ensure the employer's business remains viable and ongoing.
- c. "Viable and ongoing" includes being able to:
 - i. meet financial obligations such as paying wages or salaries and all other operating costs and expenses; and
 - ii. purchase inventory (if relevant).
- d. Evidence of meeting the requirements set out at (a) to (c) above may include, but is not limited to:
 - i. financial statements such as an annual report and profit and loss statements;
 - ii. evidence of start-up capital and/or funding;
 - iii. a cash-flow statement and/or credible revenue forecast;
 - iv. contracts for work;
 - v. GST returns;
 - vi. income tax returns;
 - vii. PAYE returns;
 - viii. bank statements;
 - ix. stock lists/orders;
 - x. lease agreements for business premises or space.

WA2.10.5 Settlement support activities

- a. The employer must provide the following information about the local community and services and employee work-related matters to their Accredited Employer work visa holder employees:
 - i. accommodation options;
 - ii. transportation options (including driving and driver licence information, and public transportation options);
 - iii. the cost of living;
 - iv. how to access healthcare services;
 - v. Citizens Advice Bureau services;
 - vi. relevant community groups;
 - vii. how to obtain an IRD number from Inland Revenue; and
 - viii. any industry training and qualification information and options; and
 - ix. specific job or industry hazards.
- b. The employer must provide sufficient time during paid work hours for Accredited Employer work visa holder employees to complete all of Employment New Zealand's online employee modules.
- c. The settlement support activities must be completed within one month of the employee beginning their employment as an Accredited Employer work visa holder.

Note: For the avoidance of doubt, the settlement activities do not need to be completed multiple times by the employer for the same Accredited Employer work visa holder employee if the information initially provided has not changed.

- d. Evidence of meeting the requirements set out at (a) and (b) above may include, but is not limited to:
- i. copies of the settlement information;
 - ii. communications to Accredited Employer work visa holder employees with the settlement information;
 - iii. on-boarding or induction policies, guidelines or plans for new employees;
 - iv. confirmation of completed Employment New Zealand's employee online modules.

WA2.10.10 Compliance with specific employment, immigration and business standards

- a. The employer and any of its key persons (as defined at WA2.60.10) must not currently be included on a list of non-compliant employers for breaches of employment standards, maintained by the Labour Inspectorate. The rules for inclusion on the list are set out in Appendix 10.
- b. The employer and any of its key persons must not be subject to a stand-down period for an offence under sections 342(1)(a), 343(1)(d), 344(d), 347 or 350(1)(a) of the Immigration Act 2009, where the penalty was a fine only. The fines and corresponding stand-down periods for immigration offences are set out in Appendix 11.
- c. If the employer or any of its key persons have previously been subject to a stand-down period for an immigration offences or have previously been convicted for immigration offences listed in (b) and the penalty was a fine, the issue must have been rectified and the employer must have taken sufficient steps to prevent it from happening again.
- d. The employer or any of its key persons must not have:
- i. employed someone who is not entitled, under the Immigration Act 2009, to work in the role; or
 - ii. provided false or misleading information to INZ, or withhold relevant information from INZ that is prejudicial to the approval of an application (including the application being applied for), or to the outcome of any verification, investigation or compliance activities.
- e. Where any of the employer's key persons are not New Zealand citizens or residents, and who are not employed by the employer, that key person must not be:
- i. in New Zealand without a valid visa; or
 - ii. acting as the employer's key person in breach of the conditions of their New Zealand visa.
- f. The employer and its key persons must not have received a prison sentence for an offence under sections 343(1)(d) or 344(d) of the Immigration Act 2009, regardless of when the offence occurred.
- g. The employer and its key persons must not have been convicted at any time of an offence under:
- i. sections 343(1)(a), 345, 348, 342(1)(b), 351 of the Immigration Act 2009; or
 - ii. sections 98, 98C or 98D of the Crimes Act 1961.
- h. Where any of the employer's key persons have a history of immigration non-compliance in one or more other organisations that they have acted as a key person in, an immigration officer must be satisfied that the employer seeking accreditation has taken sufficient steps to prevent the same non-compliance happening in their organisation. For the purpose of this instruction, a history of immigration non-compliance:
- i. means two or more instances of the non-compliance set out at (b) to (f) above; and
 - ii. includes where it was only carried out by the other organisation rather than the individual, or where the other organisation was penalised rather than the individual, provided that the individual was acting as a key person in the organisation when the non-compliance occurred.
- i. The employer's key persons must not:
- i. be prohibited from being a director or promotor of, or being concerned or taking part in the management of, an incorporated company or unincorporated body, within New Zealand or overseas, by:
 - o being issued a prohibition notice by the Registrar of Companies (who have this power under section 385 of the Companies Act 1993); or
 - o virtue of section 382 of the Companies Act 1993; or
 - o being disqualified by a court (who have this power under section 233 of the Companies Act 1993); or
 - ii. have been convicted in the last five years of any offences listed in section 382 of the Companies Act that prohibit a person from managing a company, or any equivalent offence in any other country.
- j. Where the employer or any of its key persons have an active investigation or case pending for any non-compliance that, if proven, would result in the employer not meeting the requirements set out at (a) to (i) above but where they have not yet been prosecuted, the application may be put on hold and any existing accreditation suspended (WA2.55(a)) for up to 3 months at a time or until there is an outcome of the investigation, whichever occurs first. This decision must be approved by an Immigration Manager, and may take into account:
- i. how long it is expected to take to reach an outcome of the investigation; and
 - ii. the seriousness of the alleged offending and possible ineligibility period if the offending is proven; and
 - iii. the likelihood of further harm occurring before an outcome is reached; and

- iv. where the employer is not aware of the investigation, whether the investigation will be jeopardised by putting the application on hold or by suspending any existing accreditation (WA2.55(a)).
- k. Where the employer or any of its key persons is being prosecuted for any non-compliance that, if proven, would result in the employer not meeting the requirements set out at (a) to (i) above, the application for accreditation must be put on hold and any existing accreditation suspended (WA2.55(b)), until there is an outcome of the prosecution. This decision must be approved by an Immigration Manager.
- l. The employer must not pass on recruitment, training or equipment costs, in New Zealand and outside of New Zealand, to Accredited Employer work visa holders, including, but not limited to:
 - i. advertising costs; and
 - ii. recruitment agency fees; and
 - iii. employer accreditation and Job Check application fees, and any other associated costs such as immigration adviser fees; and
 - iv. compulsory training and induction costs related to the job (including on-the-job training); and
 - v. health and safety equipment required to undertake employment safely; and
 - vi. branded uniforms; and
 - vii. trade testing (including testing centre, tester accommodation and salary costs); and
 - viii. tools where the ownership of the tools is retained by the employer.
- m. The employer must not charge fees to Accredited Employer work visa holders outside of New Zealand, that would be unlawful in New Zealand, including, but not limited to:
 - i. any payment to secure or retain an employment relationship; and
 - ii. bonding agreements for an unlawful purpose; and
 - iii. deductions from wages or salaries for accommodation, travel or food that are unreasonable or have not been consented to in writing by the worker and included in the employment agreement.
- n. Everyone who makes recruitment decisions within the employer's organisation (for example hiring managers, human resource managers, sole traders, and partners), must complete Employment New Zealand's online employer modules once within every accreditation period.

WA2.10.15 Employers that are substantially the same as another organisation

- a. An immigration officer may decline an application if they are satisfied that the employer is substantially the same as another organisation that does not meet the requirements for accreditation, and has been re-established as a new legal entity (the employer applying for accreditation).
- b. In determining whether an employer is substantially the same as another organisation, an immigration officer may consider, among other things, whether the organisations:
 - i. have the same key people, or share a large proportion of their key people (as defined at WA2.60.10); and
 - ii. are operating in the same sector or providing the same goods or services; and
 - iii. have the same telephone number, email addresses, trading location, website or social media site; and
 - iv. have the same fixed assets.

WA2.15 Requirements for Standard Accreditation

In addition to meeting the requirements for all employers set out at WA2.10 and WA2.30, employers applying for Standard Accreditation must have no more than 5 jobs associated to them (WA3.25 and WA3.50.1) at any one time.

WA2.20 Requirements for employers using triangular employment arrangements

An employer who places, or wants to place, Accredited Employer work visa holders in triangular employment arrangements (as defined at WA2.60.15), must:

- a. only place Accredited Employer work visa holders with organisations that meet the requirements set out at WA2.20.1; and
- b. monitor the employment conditions and safety of Accredited Employer work visa holders that are placed in a triangular employment arrangement, as set out at WA2.20.5; and
- c. respond appropriately to any issues regarding the employment conditions and safety of Accredited Employer work visa holders that are placed in triangular employment arrangements, as set out at WA2.20.10; and
- d. place New Zealand citizens and residents in work, as set out at WA2.20.15; and
- e. have a history of employing staff, as set out at WA2.20.20.

WA2.20.1 Organisations an employee can be placed with

- a. The employer must only place Accredited Employer work visa holders with an organisation who:
 - i. has an NZBN, unless they are a foreign diplomatic or consular mission (such as an Embassy, High Commission or Consulate); and
 - ii. is not currently included on a list of non-compliant employers for breaches of employment standards maintained by the Labour Inspectorate, as set out in Appendix 10; and
 - iii. has declared that it, or any of its key persons:
 - o are not subject to any ineligible stand-down period for specific offences under the Immigration Act 2009 as set out at WA2.10.10(b); and
 - o have not received a prison sentence for the specific offences under the Immigration Act 2009 set out at WA2.10.10(f); and
 - o have not been convicted of the specific offences under the Immigration Act 2009 or the Crimes Act 1961 set out at WA2.10.10(g); and
 - iv. has declared that it, or any of its key persons, are not aware of any cases pending, prosecutions underway, or investigations which, if proven, would result in failure to meet (ii) or (iii) above; and
 - v. has agreed with the employer that INZ may conduct a site visit to their organisation; and
 - vi. has agreed with the employer to provide them with records detailing placement information for the Accredited Employer work visa holders placed with the organisation, including, but not limited to starting and finishing dates, hours worked, locations of work and employment or safety issues identified.
- b. Evidence of meeting the requirements set out at (a) above may include, but is not limited to:
 - i. information about which organisations Accredited Employer work visa holders are placed with, including the entity name and NZBN;
 - ii. declarations provided to the employer by the organisation an Accredited Employer work visa is being placed with;
 - iii. information from the Labour Inspectorate.

WA2.20.5 Monitoring the employment conditions and safety of employees in triangular employment arrangements

- a. The employer must have a plan in place to monitor the employment conditions and safety of Accredited Employer work visa holders that covers the requirements set out at (b) to (g) below.
- b. The employer must carry out checks to ensure the organisation where an Accredited Employer work visa holder is placed:
 - i. has effective processes in place to prevent and address workplace bullying, including a complaints process for the Accredited Employer work visa holders to report bullying to the organisation they are placed with and a process to address and resolve any issues reported; and
 - ii. has effective processes in place to assess and prevent risk, including a risk register; and
 - iii. carries out health and safety inductions for Accredited Employer work visa holders on starting their placement with the organisation; and
 - iv. understands the visa conditions of Accredited Employer work visa holders being placed with them (including the occupation and location(s) the visa holder may work in); and
 - v. does not require or force Accredited Employer work visa holders that are placed with them to undertake work that is inconsistent with their employment agreement and/or visa conditions (including hours of work); and
 - vi. does not require or force Accredited Employer work visa holders that are placed with them to work hours that do not align with health and safety standards (taking into account the occupation and industry). For example, not allowing rest breaks, not allowing for reasonable sleep and recovery time between shifts or work days, or requiring workers to work excessive hours on high risk or critical tasks to the extent that the worker's health and safety is put at risk.
- c. The employer must check whether an organisation meets the requirements set out at (b) above:

- i. before an Accredited Employer work visa holder is placed in a triangular employment arrangement with that organisation; and
 - ii. throughout the period that an Accredited Employer work visa holder is placed in a triangular employment arrangement with that organisation.
- d. Checks carried out before an Accredited Employer work visa holder is placed in a triangular employment arrangement must include, but are not limited to:
- i. assessing documentation from the organisation about their:
 - o processes to prevent and address workplace bullying; and
 - o processes to assess and prevent risk (including a risk register); and
 - o health and safety induction material; and
 - ii. providing information to the organisation about the visa conditions and employment terms and conditions of the Accredited Employer work visa holders that will be placed with them; and
 - iii. acquiring declarations from the organisation that they meet the requirements set out at (b) above.
- e. Checks carried out throughout the period that an Accredited Employer work visa holder is placed in a triangular employment arrangement must include, but are not limited to:
- i. having contact with the Accredited Employer work visa holder:
 - o at least once per fortnight for the first two months of a new placement, and then at least once per month; or
 - o more frequently where appropriate, for example where the duration of the Accredited Employer work visa holder's placement is for less than one month, or when the employer is in the process of resolving a dispute or complaint about the organisation the Accredited Employer work visa holder is placed with; and
 - ii. carrying out an on-site visit where the Accredited Employer work visa holder is working:
 - o at least once within every six month period that an Accredited Employer work visa holder is placed at the site; or
 - o less frequently (or not at all), where there is evidence that the risk of breaching the requirements relating to employment conditions and safety of employees is low, or the site cannot be accessed for safety reasons or due to being in a remote location.
- f. The employer must provide a complaints process and guidance for Accredited Employer work visa holders to directly report issues to the employer.
- g. The employer must maintain records detailing which organisation each Accredited Employer work visa holder is placed with, including, but not limited to, starting and finishing dates, the working locations, hours paid and hours worked (this includes hours for salaried Accredited Employer work visa holders).
- h. The checks may consist of desk based checks and site visits to the organisation an Accredited Employer work visa holder is placed with.
- i. Evidence of meeting the requirements set out at (a) to (g) above may include, but is not limited to:
- i. a documented plan that covers the requirements set out at (b) to (g) above;
 - ii. copies of the process documents and health and safety induction material provided by the organisation an Accredited Employer work visa holder will be placed with, such as contractual undertakings, workplace policies and guidelines, and records of communications with Accredited Employer work visa holders;
 - iii. declarations and/or terms of business between the employer and the organisation an Accredited Employer work visa holder will be placed with;
 - iv. records of the communications with Accredited Employer work visa holders while they are placed in a triangular employment arrangement;
 - v. placement details of Accredited Employer work visa holders, including starting and finishing dates, regions and sites where the Accredited Employer work visa holders are working;
 - vi. information obtained from site visits of the organisation an Accredited Employer work visa holder is placed with;
 - vii. information from Accredited Employer work visa holders;
 - viii. wage and time records for Accredited Employer work visa holders;
 - ix. independent third party audit findings.

WA2.20.10 Responding appropriately to issues

- a. The employer must have in place:
- i. an informal disputes and complaints resolution process for issues that can be resolved early, are one-off or are unlikely to recur; and
 - ii. a formal disputes and complaints resolution process for serious issues (for example working outside visa conditions, or recurring or numerous breaches).
- b. The resolution processes must include:
- i. investigating the issues identified and recording findings of the investigation; and
 - ii. working with Accredited Employer work visa holders and the organisations they are placed with to resolve the issues, where practicable; and

- iii. implementing actions and reviewing the organisations policies and processes to ensure they are effective to prevent the issues recurring; and
- iv. where issues cannot be resolved internally, seeking help from an external party, for example the Ministry of Business, Innovation and Employment's Early Resolution Service or Employment Mediation Services; and
- v. reporting significant breaches to the relevant authority, for example breaches of employment law to the Labour Inspectorate, and breaches of immigration law to INZ. Significant breaches include, but are not limited to:
 - o breaches that create a risk of harm to the Accredited Employer work visa holder;
 - o requiring or forcing Accredited Employer work visa holders that are placed with them to undertake work that is inconsistent with their employment agreement and/or visa conditions;
 - o requiring or forcing Accredited Employer work visa holders that are placed with them to work unrecorded overtime;
 - o recurring or numerous employment, immigration or workplace safety issues where the cumulative effect is comparable to a significant breach; and
- c. Where a significant breach in (b)(v) above has been identified or the organisation no longer meets the requirements set out at WA2.20.1(a), the employer must remove the Accredited Employer work visa holder from the organisation they are placed with as soon as practicably possible. They may only place that visa holder or any further Accredited Employer work visa holders with the organisation when the issue has been resolved.
- d. Where a moderate issue (such as poor workplace culture or workplace bullying) has been identified, the employer must:
 - i. promptly adhere to their disputes and complaints resolution processes to resolve the issue with the organisation the Accredited Employer is placed with; or
 - ii. remove the Accredited Employer work visa holder from the organisation they are placed with as soon as practicably possible and not place any further Accredited Employer work visa holders with them until the issue has been resolved. This includes where the issue cannot be resolved, or where the employer chooses to remove the visa holder rather than resolve the issue with the organisation they are placed with.
- e. Where the issue or non-compliance affects more than one Accredited Employer work visa holder, those visa holders must also be removed from that organisation.
- f. Evidence of meeting the requirements set out at (a) to (e) above may include, but is not limited to:
 - i. documented complaints and disputes resolution processes;
 - ii. records of issues raised in relation to Accredited Employer work visa holders, how the issue was investigated and resolved, the outcome of issue resolution and corrective actions taken to prevent the issue recurring. This includes information directly from Accredited Employer work visa holders and the organisations they are placed with;
 - iii. terms of business, contract or agreement documentation between the employer and the organisation where Accredited Employer work visa holders are placed;
 - iv. records of site specific safety inductions of Accredited Employer work visa holders;
 - v. site visit and inspection findings;
 - vi. safety audit compliance updates, including findings;
 - vii. communication records between the employer and both the Accredited Employer work visa holders and the organisations they are placed with (including emails, file notes, and records of meetings and conversations).

WA2.20.15 Placing New Zealand citizens and residents in work

A minimum of 15% of the employer's employees who are placed in triangular employment arrangements must be New Zealand citizens or residents who are guaranteed at least 30 paid hours per week, unless the employer is placing no more than one employee in a triangular employment arrangement.

WA2.20.20 History of employing staff

- a. The employer must have employed staff, who is not a key person, in New Zealand for the 12 months prior to the application being made.
- b. An employer may use another legal entity's history of employing staff in New Zealand to meet (a) above if at least 66% of the ownership of the employer and the other entity is the same, and the employer and the other entity are in the same sector and provide the same goods and/or services.
- c. Evidence of meeting the requirements at (a) and (b) above may include, but is not limited to:
 - i. employment records;
 - ii. audited accounts;
 - iii. evidence of owners of the employer (organisation) and affiliated organisation.

Note: Where these instructions state 'employer,' they refer to the employer applying for accreditation, not the organisation that Accredited Employer work visa holders are placed with.

WA2.25 Requirements for franchisee employers

- a. An employer who is a franchisee (as defined at WA2.60.20) must meet the following requirements:
 - i. The employer must have been operating (trading or carrying out business) in New Zealand, as a franchisee, for at least 12 months prior to the application being made (see (b) below); and
 - ii. a minimum of 15% of the employer's employees must be New Zealand citizens or residents who are guaranteed at least 30 paid hours per week, unless the employer has no more than one employee.
- b. An employer may use another legal entity's history of operating as a franchisee to meet (a)(i) above if at least 66% of the ownership of the employer and the other entity is the same, and the employer and the other entity are in the same sector and provide the same goods and/or services.
- c. Evidence of meeting the requirements set out at (a) and (b) above may include, but is not limited to:
 - i. certificates of occupancy or lease agreements for business premises or space;
 - ii. evidence of bank transactions;
 - iii. tax records;
 - iv. stock lists/orders;
 - v. evidence of owners of the employer (organisation) and affiliated organisation.

WA2.30 Subsequent applications for employer accreditation

- a. In assessing whether an employer meets the following requirements, an immigration officer must assess whether the employer has complied with them since their previous accreditation was granted under these instructions:
 - i. settlement support activities, as set out at WA2.10.5; and
 - ii. specific immigration standards, as set out at WA2.10.10(d) and (e); and
 - iii. business standards, as set out at WA2.10.10(l), (m) and (n); and
 - iv. if the employer is using triangular employment arrangements, complying with WA2.20.1(a), WA2.20.5(a) to (g) and WA2.20.10(a) to (e).
- b. If an employer has not complied with the requirements in (a) above since their previous accreditation was granted, the employer accreditation application must be declined unless the employer:
 - i. has rectified the non-compliance promptly; and
 - ii. has taken sufficient steps to address the cause of the non-compliance; and
 - iii. satisfies INZ that they will comply with the requirements in (a) in future accreditation periods.
- c. In determining whether an employer meets the requirements in (b) above, an immigration officer may consider such factors as:
 - i. the seriousness of the non-compliance, including the number of instances of non-compliance with the requirements in (a) above since their previous accreditation was granted; and
 - ii. whether the employer has complied with the requirements in (a) above in any previous accreditation periods; and
 - iii. evidence that the employer has put in place appropriate measures to prevent similar non-compliance in future, such as processes and training.
- d. The onus is on the employer to satisfy INZ that they meet (b) above.

WA2.35 Processing and verification requirements

- a. Employers must advise INZ within 10 working days of any changes to their key persons, compliance with these instructions or business structure (including changes to the employer's legal entity, such as changing from a partnership to a limited company, or merging or amalgamating with another entity).
- b. Where a change to an accredited employer's business structure results in a change to the legal entity (and NZBN) employing Accredited Employer work visa holders (such as changing from a partnership to a limited company, or merging or amalgamating with another entity), that legal entity must apply for accreditation in its own right under that legal entity (and associated NZBN).

Note: An employer's accreditation status cannot be transferred to another legal entity, with a separate NZBN. Accreditation cannot be acquired by a non-accredited employer entity amalgamating or merging with an accredited employer.

- c. As part of assessing an employer accreditation application, INZ may, where necessary:
 - i. take steps to verify whether information, including evidence provided as part of an application for accreditation, is genuine, true and accurate, including conducting interviews or site visits to the employer's premises; and
 - ii. request evidence and additional information that is not specified in these instructions from employers, organisations that an Accredited Employer work visa holder is placed in a triangular employment arrangement with, employees, members of the public and other relevant parties such as other parts of the Ministry of Business, Innovation and Employment, WorkSafe, the Labour Inspectorate, the Companies Office, the Inland Revenue Department or other government agencies to:
 - o determine whether an employer meets the requirements for employer accreditation; and
 - o determine whether an organisation that an Accredited Employer work visa holder is placed in a triangular employment arrangement with meets the requirements as set out at WA2.20.1; and
 - o confirm the identity of key persons within an organisation and their role with an employer; and
 - iii. take into account information in addition to that collected from the parties detailed above or from interviews or site visits, including:
 - o information supplied by an employee to INZ at any time; and
 - o information about the employer held by INZ from their current or previous accreditation or Job Check application(s) or from other interactions the employer has had with INZ (e.g. visa applications they have supported); and
 - o publicly available information about the employer.
- d. An employer accreditation application may be declined if the employer refuses INZ entry to conduct a site visit without reasonable justification, where this results in the immigration officer not being satisfied that the employer meets the accreditation requirements set out in these instructions.
- e. An employer accreditation application may be declined where an employer does not give consent for INZ to disclose relevant information. Before disclosing information to third parties, such as other government agencies, for the purposes of assessing an accreditation application or carrying out verification, INZ will seek the consent of the employer for the disclosure of information that is:
 - i. identified by the employer as commercially sensitive; and
 - ii. provided in confidence to INZ; and
 - iii. considered by INZ as necessary to disclose for the determination of an application.

WA2.35.1 Processing and verification requirements for employers who use triangular employment arrangements

- a. INZ may, where necessary, directly verify information with the employer, the organisation that an Accredited Employer work visa holder is placed with, or employees in relation to the requirements for accreditation set out in these instructions, including by carrying out site visits.
- b. If the organisation that an Accredited Employer work visa holder is placed with refuses INZ entry to conduct a site visit without reasonable justification, and an immigration officer is not satisfied that the employer meets the requirements in these instructions, Accredited Employer work visa holders may not be placed with that organisation.

WA2.40 Considering an application for employer accreditation

- a. Employers submitting an employer accreditation application will be given the opportunity to comment before a decision to decline an application is made on the basis of any potentially prejudicial information (PPI).
- b. For the purpose of assessing employer accreditation applications, PPI is factual information or material that will or may adversely affect the outcome of the application.
- c. If an application fails to meet the requirements of the employer accreditation instructions, immigration officers may consider if a waiver of specific requirements in these instructions is appropriate, taking into account:
 - i. all the circumstances of the application; and
 - ii. the objectives of the instructions; and
 - iii. the situation of the employer.
- d. Any decision to waive specific requirements in these instructions must be approved by an Immigration Manager or higher.

WA2.40.1 Reconsideration process for employer accreditation applications that are declined

- a. There is no statutory right of appeal against the decision to decline an employer accreditation application under these instructions.
- b. INZ may reconsider a declined employer accreditation application where the reconsideration request is made within 14 calendar days of the date of decision on the application.
- c. Where the request is accepted, the application should be reconsidered:
 - i. under the employer accreditation instructions applying to the original application; and
 - ii. by another immigration officer to the one who made the decision to decline the application.
- d. An immigration officer is not obligated to consider new information that is provided with a request for reconsideration, or a change in circumstances that occurred after the decision on the employer accreditation application was made.
- e. In deciding whether to consider new information that is provided with a request for reconsideration, or a change in circumstances, an immigration officer should consider whether these would be better considered as part of a new application.
- f. A fee for reconsideration of an employer accreditation application must be paid.

WA2.45 Currency and approval specifications of employer accreditation

- a. Employer accreditation may be granted for a duration of 12 months where the employer is being granted accreditation:
 - i. for the first time under these instructions; or
 - ii. as an employer who places Accredited Employer work visa holders in triangular employment arrangements; or
 - iii. as a franchisee employer; or
 - iv. where the previous accreditation has lapsed for 12 months or more.
- b. Employer accreditation may be granted for a duration of 24 months where:
 - i. the employer has previously been granted accreditation under these instructions; and
 - ii. the previous accreditation has not lapsed for 12 months or more; and
 - iii. the employer is not being granted accreditation as an employer who places Accredited Employer work visa holders in triangular employment arrangements, or as a franchisee employer.
- c. Where an employer's accreditation is upgraded from Standard to High Volume Accreditation under WA2.5(e), the expiry date of the initial accreditation remains the same.
- d. An accreditation approval will specify the:
 - i. employer's legal name; and
 - ii. employer's New Zealand Business Number; and
 - iii. employer accreditation type, that is:
 - o Standard Accreditation or High Volume Accreditation; or
 - o High Volume Accreditation – Triangular Employment, and/or
 - o High Volume Accreditation – Franchisee; and
 - iv. employer accreditation commencement date; and
 - v. employer accreditation expiry date.
- e. An employer may only place an Accredited Employer work visa holder in a triangular employment arrangement (as defined at WA2.60.15), if they hold High Volume Accreditation – Triangular Employment.

WA2.45.1 Interim employer accreditation

- a. Subject to (b) and (c) below, interim accreditation may be granted to an employer who:
 - i. has submitted a subsequent application for accreditation that has been accepted for processing before their current accreditation has expired; and
 - ii. continues to meet the requirements for the accreditation they hold, as set out in these instructions.
- b. Where the subsequent application is for Standard Accreditation, interim accreditation will only be granted where an employer does not have more than 5 jobs associated to them (WA3.50.1).
- c. Where the subsequent application is for franchisee accreditation, interim accreditation will only be granted where an employer currently holds franchisee accreditation.
- d. The interim accreditation will start when the current accreditation expires.
- e. The interim accreditation will be valid for three months or until the subsequent application has been decided, whichever occurs first.
- f. The type of interim accreditation granted will be:
 - i. Standard Accreditation, where either the current accreditation or the accreditation applied for is Standard Accreditation; or
 - ii. High Volume Accreditation, where both the current accreditation and the accreditation applied for is High Volume Accreditation; and
 - iii. High Volume Accreditation – Triangular Employment, where the current accreditation and the accreditation applied for is High Volume Accreditation – Triangular Employment; and
 - iv. High Volume Accreditation – Franchisee, where the current accreditation and the accreditation applied for is High Volume Accreditation – Franchisee.

Note: Where the interim accreditation granted is different to the accreditation applied for, an employer must adhere to the requirements of the interim accreditation.

WA2.50 Verification activities after accreditation has been granted

- a. INZ may conduct verification activities during the period that Accredited Employer work visa holders are employed by the employer or the employer accreditation period to assess whether:
 - i. an employer is compliant with the requirements of employer accreditation at any time during the period of an employer's accreditation; and
 - ii. an organisation that an Accredited Employer work visa holder is placed in a triangular employment arrangement with meets the requirements as set out at WA2.20.1.
- b. Where necessary, INZ may conduct a site visit, with permission, to the premises of an employer or of the organisation where an Accredited Employer work visa holder is placed, and request documentation or evidence as part of the verification.

WA2.55 Suspending and revoking employer accreditation

- a. An immigration officer may suspend an employer's accreditation for up to 3 months at a time or until there is an outcome of the investigation, whichever occurs first, where there is an active investigation or case pending for potential non-compliance with WA2.10.10(a) to (i), taking into account the factors as set out at WA2.10.10(j).
- b. An immigration officer must suspend an employer's accreditation where there is a prosecution underway for potential non-compliance with WA2.10.10(a) to (i). Suspension will remain in place until the outcome of the prosecution.
- c. Any decision to suspend employer accreditation must be approved by an Immigration Manager.
- d. Employer accreditation remains with the legal entity that was granted accreditation. Where an accredited employer merges or amalgamates with a non-accredited employer, accreditation will be deemed to be revoked where that amalgamation or merger results in the final entity being a new entity, or the existing non-accredited entity.
- e. An immigration officer will revoke an employer's accreditation where:
 - i. as a result of verification, an immigration officer determines that the employer does not meet the requirements of employer accreditation set out in these instructions; or
 - ii. as a result of verification an employer refuses INZ entry to conduct a site visit without reasonable justification, and this results in the immigration officer not being satisfied that the employer meets the accreditation requirements set out in these instructions; or
 - iii. an employer does not provide information to INZ within 10 working days, without reasonable justification, where that information has been requested as part of verification or compliance activities being carried out by an immigration officer.
- f. Any decision to revoke employer accreditation must be approved by an INZ Head of Operations.
- g. Employers that have their employer accreditation suspended or revoked will be notified and informed of the reasons in writing.

WA2.60 Definitions

WA2.60.1 Definition of 'accredited employer'

An accredited employer is a New Zealand employer who has had an employer accreditation application or interim accreditation approved by INZ under these instructions, and that accreditation has not expired and has not been revoked.

WA2.60.5 Definition of 'direct employer'

A direct employer is the employer who is named on the employment agreement and is:

- a. a legal entity including, but not limited to, an incorporated company or society; or
- b. legal persons that comprise the employer organisation accredited under these instructions including, but not limited to, partners in a partnership, a sole trader in a sole trader organisation and trustees in a trust.

Note: The direct employer that is named on the employment agreement is responsible for, but does not necessarily carry out, such things as payment of salaries, PAYE tax instalments, determining the hours the employee will work and determining conditions of employment.

WA2.60.10 Definition of 'key person'

- a. A key person is:
 - i. in a company, any person occupying the position of a director of the company regardless whether they hold the title Director; or
 - ii. in a partnership, any partner; or
 - iii. in a sole trader, the sole trader; or
 - iv. in a trust, any trustee; or
 - v. in a crown entity (including schools), a chief executive officer or school principal; or
 - vi. in a tertiary education facility, a vice-chancellor or chief executive; or
 - vii. in a body corporate or an unincorporated body, other than a company, partnership, or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company; or
 - viii. any other person that occupies a position (including an unofficial, undocumented or undeclared position) in relation to the organisation that allows the person to exercise influence over the organisation or undertaking (for example a chief executive officer or other head person of the organisation, or a 'shadow director' who acts as a director or gives instructions to the appointed director(s) on how they should act), where such influence could result in non-compliance with employment or immigration regulatory standards.
- b. In determining whether a person occupies a position in relation to the organisation that allows them to exercise influence over the organisation, as set out at (viii) above, INZ will take into account a range of factors including, but not limited to, whether that person:
 - i. provides the overall direction and management of an organisation;
 - ii. assesses and manages business operations and financial performance (including handling of budgets and engaging accountant);
 - iii. prepares and files statutory documents with the Companies Office or other government agencies;
 - iv. ensures the organisation complies with company law and other relevant legislation;
 - v. binds the company to contracts with suppliers, lenders and others dealing with the company, (including securing funding and assets);
 - vi. ensures the organisation's policies and procedures are followed by staff;
 - vii. decides what roles are needed in the business (this may include making hiring and employee management decisions);
 - viii. purchases inventory & resources;
 - ix. materially (for example earns a salary, takes drawings or receives dividends), or otherwise, profits from the organisation or undertaking.

WA2.60.15 Definition of 'triangular employment arrangement'

- a. A triangular employment arrangement is when a direct employer places an employee with a controlling third party. The employee is employed by the direct employer but works under another business or organisation that directs or controls the employee's day-to-day work (the controlling third party).
- b. For the purpose of these instructions a controlling third party means an entity or person who:
 - i. has a contract or other arrangement with an employer, contractor or sub-contractor, under which an employee performs work for the benefit of that entity or person; and
 - ii. exercises, or is entitled to exercise, control or direction over the employee that is similar to the control or direction that the employer exercises, in relation to the employee.
- c. Employers using triangular employment arrangements include, but are not limited to:
 - i. labour hire employers; and
 - ii. other employment agencies who send employees on work assignments to a controlling third party (including labour-for-hire, labour-on-hire, temping and contingent labour employers, and employers that place workers with sub-contractors); and

- iii. employers who send employees on secondments to a controlling third party; and
- iv. parent, group or umbrella companies who place their employees with a controlling third party, such as a subsidiary company that is a separate legal entity.

WA2.60.20 Definition of 'franchisee employer'

For the purposes of this policy, a franchisee employer is an employer (organisation) that:

- a. purchases the right to use a pre-existing business system mandated by a third party business; and
- b. is substantially or materially associated with a brand, trademark, advertising, marketing channels, or a commercial symbol owned by that third party; and
- c. has that third party controlling certain activities or structures within their business, set out through an agreement, operational guideline or through a terms and conditions document that covers one or all of the following features:
 - i. continuing financial performance or reporting obligations to that third party;
 - ii. an ongoing obligation to pay that third party any fee, or percentage of profits generated by the business from the 'rights to use' detailed in (a) and (b) above;
 - iii. restrictions, expectations, or control imposed by that third party, over where the business can source goods and services and/or how to set up or run their business;
 - iv. restricted ability to refuse requests by that third party, raise concerns or complaints regarding that third party, and/or lack of ability to easily exit or terminate the agreement.

Appendix 11 – Employer accreditation stand down periods

The table below sets out the rules for stand down periods due to breaches of the Immigration Act 2009, for the purpose of the WA2 Employer accreditation instructions.

Immigration Act 2009 fines and relevant stand down periods where accreditation will be declined (or revoked)

<i>Fine imposed on the employer or key persons (as determined by the courts)</i>	<i>Stand down period where accreditation will not be granted (or will be revoked) by INZ</i>
Up to and including \$999.99	6 months from the time the penalty is imposed
\$1,000.00 - \$9,999.99	12 months from the time the penalty is imposed
\$10,000 - \$24,999.99	18 months from the time the penalty is imposed
\$25,000.00 and above	24 months from the time the penalty is imposed