

VISA PAK ISSUE 405 — 21 JUNE 2019

ELIGIBILITY FOR 90 DAY TRIAL PERIOD

New employees may have a provision in their employment agreement for a 90 day trial period. This allows an employer to more easily dismiss an employee within this period as long as certain criteria are met.

However from 6 May 2019, only an employer with **19 or fewer employees** may include a 90 day trial period provision in an employment agreement for a new employee.

Any employment agreement entered into after 6 May 2019 containing a 90 day trial period provision when the employer has 20 or more employees may not be compliant with the Employment Relations Act 2000. Visas should not be granted on the basis of an employment agreement that is non-compliant with New Zealand employment law. See immigration instructions W2.10.15 and R5.110.

The effective date of the law change is 6 May 2019, so employment agreements entered into on 5 May 2019 or earlier may contain a 90 day trial period for a new employee irrespective of the number of employees the employer has. Note that this is the date on which the employment agreement was entered into, not the date of lodgement of the client's visa application.

The number of employees an employer has is calculated from the beginning of the day on which the employment agreement was entered into. Therefore it excludes the applicant and any other employees whose employment agreements were entered into on or after that same date.

i.e. if an employer has 10 employees, and hires 15 new employees who all enter into their employment agreements on the 1st of November, they can all contain a 90 day provision as at the beginning of the day on the 1st of November the employer only had 10 employees (though if one of them were to enter into the agreement on the 2nd of November the provision would be non-compliant).

Further information on trial periods is available on the [Employment New Zealand](#) website.