

18 September 2009

CHANGES TO 457 VISA PROGRAM – MARKET SALARY RATES

The Minister for Immigration and Citizenship, Senator Chris Evans, has announced changes to the requirements for temporary skilled overseas workers.

Employers sponsoring temporary skilled workers on 457 visas approved after **14 September 2009** will have an obligation to pay “**market salary rates**” to ensure that visa holders are provided with equivalent terms and conditions of employment to Australian workers undertaking equivalent work.

This will apply to all new 457 visa holders except where annual earnings are \$180,000 or more.

Under transitional arrangements, employers currently paying less than the market salary rate to existing 457 visa holders employed in Australia will have until **1 January 2010** to commence paying market rates.

Employers will no longer have to pay health insurance for workers on 457 visas granted after 14 September 2009. For sponsors of 457 visa holders whose visa was granted prior to 14 September 2009, the sponsor retains ultimate responsibility for the cost of treatment in a public hospital. Sponsors who fail to meet the relevant costs may be subject to administrative sanctions.

In summary:

1. Market salary rates will apply for all new applications for a 457 visa approved after 14 September 2009.
2. Where there is an equivalent Australian worker in the workplace, the market rate will be determined by the industrial arrangements that apply to the worker, for example, a collective agreement, award, award conditions with above award salary rates, or a common law contract.
3. Where there is no equivalent Australian worker on-site, the employer may reference collective agreements or awards for that position to substantiate the market rate. If there is no applicable agreement or award, other evidence such as remuneration surveys or earnings data must be provided.
4. Transitional arrangements will apply. These ensure that sponsors currently paying the existing Minimum Salary Level (MSL) to 457 visa holders already in Australia have until 1 January 2010 to move to paying market salary rates.
5. For those whose market salary rates are lower than the MSL, the transitional arrangements require sponsors to continue to pay at least the MSL for the duration of the existing visa (currently set at \$45,220 per annum for most occupations).

Summary

Employers sponsoring temporary skilled workers on 457 visas approved after **14 September 2009** will have an obligation to pay “**market salary rates**” to ensure that visa holders are provided with equivalent terms and conditions of employment to Australian workers undertaking equivalent work.

Transitional arrangements will apply to existing 457 visa holders and the new rates will not apply to those paid above \$180,000.

Employers will not be required to pay for health insurance for holders of visas granted after 14 September but will have a continuing responsibility to cover health costs for existing 457 visa holders who are uninsured.

Assistance

For further information or assistance please call the Department of Immigration and Citizenship outreach officer based with Ai Group, Stephen Reynolds, on telephone (03) 9867 0221 or email stephen.reynolds@aigroup.asn.au.

Publications

Copies of many workplace relations publications can be ordered from the Publications Department on (03) 9867 0209 or email publications@aigroup.asn.au.

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The Australian Industry Group

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6. A Temporary Skilled Migration Income Threshold (TSMIT) (currently set at \$45,220 per annum) commenced on 14 September 2009. Where market salary rates are below the TSMIT, nominations will in most cases not be approved. Note: Although currently set at \$45,220, TSMIT is not the same as the old MSL.
 7. Market salary rates do not apply for incomes set above \$180,000.
 8. Employers will not be required to pay health insurance for visas granted after 14 September 2009 but will have a continuing responsibility to cover health costs for existing 457 visa holders who are uninsured.

The announced approach to implementing the Government's market rates policy, is in line with proposals put forward by Ai Group as part of our role on the Skilled Migration Consultative Panel. Membership of the Panel also includes representatives of the Federal Government, State Governments, industry bodies, and unions.

Alternative market rates proposals pursued by construction and manufacturing industry unions, together with proposals recommended through an inquiry conducted by Australian Industrial Relations Commissioner Barbara Deegan have pleasingly been rejected by the Government. These proposals were strongly opposed by Ai Group as they were costly, complex and unworkable for employers.

Explanatory Information and Frequently Asked Questions

Explanatory information and Frequently Asked Questions published by the Department of Immigration and Citizenship is **attached**.

Further Information or Assistance

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Tony Melville
DIRECTOR – GOVERNMENT AFFAIRS AND PUBLIC RELATIONS

**EXPLANATORY INFORMATION AND FREQUENTLY ASKED QUESTIONS PUBLISHED BY
THE DEPARTMENT OF IMMIGRATION AND CITIZENSHIP****Market Rates****How will market salary rates be assessed?**

Market salary rates arrangements mean that Subclass 457 visa holders will benefit from the same terms and conditions of employment as are provided to an equivalent Australian undertaking equivalent work in the same workplace at the same location.

Where there is an equivalent Australian in the workplace, the market salary rate will be determined by the industrial arrangements that apply to this worker.

Examples of these industrial arrangements include: Collective agreement, award, award conditions with over award salary rates, common law contract.

Where there is no Australian performing equivalent work in the same workplace, the employer may demonstrate the market rate by reference to the applicable modern award or collective agreement. In absence of an award or collective agreement the employer is to provide a range of evidence to substantiate the market salary rate. The evidence could include remuneration surveys, published earnings data or evidence of what employees are paid in similar workplaces. The employer will have to satisfy the department that the proposed terms and conditions of employment were appropriate for that location and industry.

The Temporary Skilled Migration Income Threshold – currently \$45,220 per annum

The Temporary Skilled Migration Income Threshold (TSMIT) commences on 14 September 2009. The TSMIT is intended to ensure that all Subclass 457 visa holders have sufficient income so that they can independently provide for themselves in Australia.

The TSMIT will also help ensure that Subclass 457 visa holders do not impose undue costs on the Australian community or find themselves in circumstances which may put pressure on them to breach their visa conditions. This is particularly important given these workers do not have access to a range of government support available to Australian citizens and permanent residents.

Subclass 457 nominations and the TSMIT

The TSMIT has no bearing on what the Subclass 457 visa holder should be paid in the workplace. A nomination under the Subclass 457 visa program will be refused in most cases if the market salary rate for the nominated position is below this level of income.

For the purposes of a Subclass 457 nomination it is not possible for a 457 sponsor to inflate a nominated worker's proposed salary in order to pass or meet the TSMIT requirement. It is the market salary rate for the nominated position that is compared to the TSMIT. The claimed intended salary in the nomination should reflect the terms and conditions of employment.

Example: If the market salary rate for an occupation is \$39,500 – that is, the market salary rate amount that is paid to equivalent Australian in the employer's workplace – then the nomination would normally be refused, as the salary is below TSMIT. Even if the sponsor decided to offer the nominee a salary of \$45,220, then the nomination could still be refused, as it is the market salary rate that the department compares to TSMIT, not the actual salary proposed.

Upper salary threshold for providing evidence of market salary rates

Where the nominated salary is above \$180,000 (which equates to the threshold for the top personal income tax rate), Subclass 457 nomination applications are not required to provide evidence that this salary is set according to a market salary rate.

Transitional arrangements for existing visa holders

There are some transitional arrangements for current sponsors and current visa holders. These ensure that sponsors currently paying the existing Minimum Salary Level (MSL) to Subclass 457 visa holders already in Australia have until 1 January 2010 to move to paying market salary rates.

Until this time, sponsors must continue to pay existing visa holders a salary that is not less than the MSL set out in the relevant legislative instrument. This represents a temporary continuation of the existing arrangements as they apply to existing visa holders.

Until 1 January 2010, sponsors must continue to ensure that Subclass 457 visa holders' base rate of pay is not less than the prescribed salary levels, especially where the market salary rate would otherwise be below the MSL. There are five such levels.

- \$81 040 for Subclass 457 visa holders who benefit from the English language exemption
- \$55 725 for Subclass 457 visa holders working in Information and Communication Technology (ICT) occupations who were granted their visa under certified regional employment arrangements
- \$61 920 for all other Subclass 457 visa holders working in ICT occupations
- \$40 705 for all other Subclass 457 visa holders who were granted visas under certified regional employment arrangements
- \$45 220 for all other Subclass 457 visa holders.

These transitional arrangements no longer apply if an existing Subclass 457 visa holder applies for a new Subclass 457 visa, changes their employer sponsor, or is the subject of a new nomination varying their occupation. The new nomination would be considered against the new requirements, including the TSMIT.

For those whose market salary rates are lower than the present Minimum Salary levels, the transitional arrangements have a safety net requiring sponsors to continue to pay at least the minimum salary level for the duration of the existing visa.

Health Insurance

When do the changes to health insurance requirements come into effect?

The *Migration Legislation Amendment (Worker Protection) Act 2008* comes into effect on 14 September 2009. It applies in relation to all Subclass 457 visas granted on or after 14 September 2009.

For sponsors of Subclass 457 visa holders whose visa was granted prior to 14 September 2009, the sponsor retains ultimate responsibility for the cost of treatment in a public hospital. Sponsors who fail to meet the relevant costs may be subject to administrative sanctions.

I currently employ a Subclass 457 visa holder whose visa was granted before 14 September 2009. Do I still need to provide for their health cover?

Yes, for Subclass 457 visa holders whose visas were granted prior to 14 September 2009, sponsors retain ultimate responsibility for the cost of treatment administered in a public hospital for the validity of the visa. Additionally, if you take on new workers that already have a subclass 457 visa that was granted prior to 14 September 2009, the responsibility for the cost of treatment administered in a public hospital for those workers and their dependants transfers to you.

Sponsors who fail to meet the relevant costs may be subject to administrative sanctions.

I currently pay health insurance for my Subclass 457 visa holders. Can I still do this?

Yes. This can be done with agreement with your 457 visa holders.

What happens if my employees that have to provide their own health insurance do not maintain it?

All visas granted on or after the 14 September 2009 are subject to Condition 8501 requiring visa holders to maintain adequate arrangements for health insurance for the duration of their stay in Australia. Departmental officers will use information provided by health insurers to monitor compliance with Condition 8501 and visa holders who fail to comply may have their visas cancelled.

What are reciprocal health care agreements (RHCA)?

Reciprocal health care agreements (RHCA) are agreements between the Australian Government and other governments to cover some medically necessary treatments for ill-health or injury which occurs while you are in Australia and requires treatment before you return home.

The Australian Government has RHCA with the governments of the United Kingdom, Sweden, the Netherlands, Finland, Norway, Malta, Italy, Belgium, the Republic of Ireland and New Zealand. New RHCA may be negotiated at any time.

For the latest list of countries and further information on RHCA, including what Medicare services are available under RHCA, you should refer to the Medicare Australia website.

See: [Medicare Australia – Visitors to Australia](#)

Which health insurance companies can provide the adequate cover?

There are a range of products available for 457 visa holders. While all suitable products will cover at least the minimum requirements, level of cover provided in addition will vary among providers from policy to policy. The department does not recommend a particular product. Further information about private health insurers in Australia can be found on the Australian Government website.

See: www.privatehealth.gov.au