

## Accredited employers - What Employers need to know

2019 was a year of many 'immigration-related' headlines shedding light on a range of issues from migrant exploitation, through to the crisis many employers faced in recruiting suitably qualified staff from the local labour market which culminated with the Government introducing a new employer led work visa application process.

For many businesses, obtaining accreditation status was a means by which they could recruit offshore workers and save both time and money in the process. Those that were already accredited were able to benefit from fast-track application processing and simplified documentation requirements which meant that applications were relatively straightforward.

### What does it mean to be an accredited employer?

Immigration New Zealand's (INZ) Operational Manual is a key document relied upon by all stakeholders working within the immigration field in New Zealand. The Instructions, defines an accredited employer as "a New Zealand employer who has had an application for accreditation to employ persons under the Talent (Accredited Employers) Work Instructions approved by INZ".



As a summary, the requirements are as follows:

- That an employer must be in sound financial position;
- That an employer must have human resource policies that are of a high standard;
- That an employer has a demonstrable commitment to training New Zealand citizens or residence class visa holders;

## **What is the new visa application process?**

In what is presumably intended to make the process of hiring a foreign worker easier and more straightforward for employers, the Government is introducing a new employer-led visa application process that includes:

- 1.0 An employer check, where employers would be accredited to enable them to hire a migrant; and
- 2.0 A job check, where the job is checked to ensure that no New Zealander is able to fill the job being recruited for, subject to skill, sectoral and regional differentiation; and
- 3.0 A worker check, where checks will be made to ensure the foreign worker is of good character and health.

### **1.0 EMPLOYER CHECK**

Through the employer check, all employers will be required to be accredited before they are able to employ a foreign worker. This will be the first step in the application process.

Requiring all employers to be accredited will help ensure that employers are compliant with minimum employment and immigration standards. This will create a level playing field and ensure that non-compliant businesses aren't at an advantage over compliant employers.

Once an employer is accredited, the job check will then assess whether the job the employer is seeking to recruit for is genuine, has terms and conditions (including pay) that are consistent with New Zealand standards and that the employer has made a real attempt to recruit a New Zealander.

The job check will also provide a new streamlined process for higher-paid jobs to allow foreign workers to fill these in parts of the country where there are few New Zealanders available, which will help make it easier to fill vacancies in areas outside of the main cities.

Once an employer has passed the employer and job checks, they will be able to support a foreign worker for a temporary work visa. The worker check is the last stage of the application process and will check that the foreign worker meets health and character requirements. This application will continue to be made directly by the foreign worker or their representative, not the employer.

Under the new application process, there will only be one type of employer assisted temporary work visa to apply for. This visa will be called the **Temporary Work Visa** and will replace the six current work visa categories:

- 4.0 Essential Skills
- 5.0 Approval in Principle
- 6.0 Work to Residence – Talent (Accredited Employer)
- 7.0 Work to Residence – Long Term Skills Shortage List Occupations
- 8.0 Silver Fern Job Search
- 9.0 Silver Fern Practical Experience

The new visa and framework system will have a phased implementation in 2021. This will ensure that all employers are not required to be accredited on the same day. Existing accredited employers will have a streamlined transition into the new system.

Under the new process, all employers wanting to employ a foreign worker will be required to be accredited. Employers will need to be accredited before they can move onto the next part of the application process.

There will be two types of accreditation, depending on how many foreign workers an employer employs in a 12-month period. Labour hire companies will have specific accreditation requirements.

The Ministry of Business, Innovation and Employment will work with employers and others in coming months to develop the detail of the accreditation requirements.

### Accreditation requirements for employers

	Standard Accreditation	High-volume accreditation	Labour Hire Companies
Type of employer	Employers who employ between one and five employer-assisted foreign workers in a 12-month period	Employers who employ more than five employer-assisted foreign workers in a 12-month period	All labour hire companies
Accreditation standards/ requirements	Employers would be required to be a genuinely operating business, have no recent history of regulatory non-compliance, and take steps to minimise exploitation.	Same as standard accreditation AND: Must demonstrate a commitment to training and upskilling New Zealanders and must demonstrate a commitment to improving pay and conditions over time.	Same as high volume accreditation AND: specific requirements for labour hire companies
Duration	Initial accreditation lasts for 12 months and 2 years for subsequent renewals.		

## **Standard accreditation (employers who recruit between one and five employer-assisted foreign workers in 12 months)**

The majority of employers who currently employ foreign workers will require standard accreditation, given that they employ five or less employer-assisted temporary foreign workers.

The process for standard accreditation will be set at an achievable level for most employers so that it is simple and quick and will impose minimal compliance costs for the majority of employers.

Non-compliant employers will not be approved accreditation and will therefore be unable to recruit employer-assisted temporary workers.

For standard accreditation, the employer must be a genuine business (or organisation) with a financial presence and must:

- not be on the non-compliant employer stand down list;
- be compliant with any relevant industry specific or other regulatory standards;
- have no history of non-compliance with the immigration system

Employers will also be expected to meet the costs of recruiting foreign workers. If an employer decides to use an agent to help with the recruitment process, any fees charged by the agent would need to be covered by the employer, not passed onto the prospective foreign worker.

Accreditation will enable Immigration New Zealand to better target riskier employers and identify non-compliance, and to work more closely and share information with other labour market regulators, such as Employment Services (the Labour Inspectorate). This means that employers won't need to provide this information as often.

## **High-volume accreditation (employers who employ more than five employer-assisted foreign workers in 12 months)**

As well as meeting the same requirements as standard accreditation, high-volume accredited employers will also be required to make specific commitments to training and upskilling New Zealanders, and to improving pay and conditions.

High-volume accredited employers will need to indicate how they propose to meet these commitments in their initial accreditation application.

### **Labour Hire Companies**

Labour Hire companies will be required to meet all the same standards as high-volume accreditation, but would be subject to more robust verification and assurance. There will also be upfront assessments to ensure that commitments are being met.

Labour hire companies will also need to demonstrate that they:

- have a history of contracts for the supply of labour and of placing/ employing New Zealanders (i.e. can't have been established for the sole purpose of recruiting migrants);
- will only contract migrant labour to businesses who are compliant with immigration and employment law; and
- have good systems in place to monitor employment and safety conditions on site.



## **2.0 THE JOB CHECK**

Once an employer has had their accreditation approved, they will then need to pass the job check before they can recruit a foreign worker. This will assess whether the job the employer is seeking to recruit for is genuine, has terms and conditions (including pay) that are consistent with New Zealand standards and that the employer has made a real attempt to recruit a New Zealander.

The purpose of the job check is to ensure that:

- temporary work visas are not used to fill low-paid jobs on an ongoing basis;
- employers place more New Zealanders into jobs; and
- foreign workers are not exploited and have wages and conditions that are consistent with New Zealand standards.

The job check can be met in three ways – via **the highly-paid pathway**, the **sector agreement pathway** or the **regionalised labour market test pathway**. These options exist to enable immigration settings to respond to the needs of regions and sectors, without adding significant complexity to the system.

### **Highly-paid pathway**

Employers whose job is paying 200 per cent, or twice, the median wage (currently \$50.00 per hour or \$104,000 per annum based on a 40-hour week) will be able to apply through the

highly-paid pathway. This means that the employer will not be required to do a labour market test, regardless of what the occupation is and what region the job is in.

Foreign workers recruited under this pathway will also have a pathway to permanent residence once they have worked in a highly-paid job in New Zealand for two years.

### **Sector Agreement pathway**

Sector Agreements will be negotiated with sectors that have a high reliance on temporary foreign workers (especially in lower-paid occupations).

Sector Agreements will enable the government to agree a workforce plan with the sector and the conditions to be met for recruiting foreign workers for a specified sector.

The following sectors have been identified for initial negotiations – residential care (including aged residential care), meat processing, dairy, forestry, road freight transport, tourism and hospitality. The construction and horticulture and viticulture sectors are also potential candidates.



### **Regionalised labour market test pathway**

The regionalised labour market test pathway will include a streamlined process for higher-paid jobs, and a strengthened labour market test for lower-paid roles.

The requirement to undertake a labour market test will be removed for employers in the regions (outside of the major cities) wanting to recruit for jobs that pay above the New Zealand median wage, which is currently \$25 an hour. This will effectively mean that all employers recruiting for higher-paid jobs in the regions will have open access to recruit foreign workers.

As a result of this change, skills shortage lists will not be needed for each individual region and will only exist for the following five cities – Auckland, Hamilton, Wellington, Christchurch and Dunedin.

Removing the labour market test for all jobs paying above the median wage in the regions should make it easier for the regions to recruit higher-skilled foreign workers.

All lower-paid jobs will be required to pass a labour market test, which includes a requirement for the employer to advertise the job with pay rates and to check with the Ministry of Social Development whether they have any clients who are considered suitable, available and trainable that can be matched to the job. The new requirements for the check with the Ministry of Social Development are discussed in the next section.

Following the labour market test, the immigration settings for lower-paid jobs that meet the labour market test will take into account the differences in regional labour markets.

Jobs in parts of the country with fewer New Zealanders available to work or wanting more work will enable the foreign worker to get a visa of up to three years' duration. After three years the foreign worker will need to leave the country for at least 12 months (unless during the three years the foreign worker is approved for a job that pays above the median wage)

### **3.0 WORKER CHECK**

Foreign workers will only be able to apply for a visa once the employer has completed the employer and job checks. The worker check will largely remain as it is with checks on identity, health and character, but with fewer requirements for a foreign worker to produce evidence of the qualifications and experience where it is not relevant to the application or it has already been checked.

There will be some situations where Immigration New Zealand would not need to assess the skills and experience of a worker. These include:

- where a worker is applying for a further visa for the same or similar position and skill and experience have already been assessed;
- where the position is lower-paid and does not require qualifications or previous experience; or
- where the migrant already holds occupational registration

The Temporary Work Visa will continue to be tied to an individual employer and location (as is currently the case). However, under the new system, the variation of conditions rules (which enables a foreign worker to apply to work for a different employer) will be streamlined to ensure that the process is simple and quick if the worker is applying to move between accredited employers. Sector Agreements may vary some of these rules if negotiated.