

## Steps to comply

New penalties take effect on 1 June 2013 that can apply where a person or business employs, refers or contracts an illegal worker. The department's focus is to effectively respond to the few businesses that wilfully take part in illegal work – not to penalise businesses which act in good faith.

The *Migration Act 1958* and *Migration Regulations 1994* prescribe certain actions which are steps businesses can take to confirm that non-citizens are allowed to work. In addition to this, the department only expects businesses to take reasonable steps, at reasonable times, to confirm that a non-citizen is allowed to work. Examples which the department considers as satisfying this expectation to check permission to work follow under 'reasonable steps'.

Businesses may take a risk-based approach to deciding whether to check and how to check. This might vary from business to business and will depend on the nature of the business, industry and related risks. For example:

- If a business operates in an industry where illegal workers are often detected (such as the hospitality, agriculture, manufacturing, construction, transport, retail or sex industries) it may be prudent to check all of their non-citizen employees through VEVO.
- Where a business has a workforce which comprises seasonal labour and has a high and frequent turnover of workers, a practical approach may be to have a formal contractual arrangement with a labour supplier, such as an employment agency, obligating them to undertake checks and to only supply workers who are allowed to work in Australia on behalf of the business.

## Legal defences

The following are defences under migration law in the event of allegations of hiring, contracting or referring of a non-citizen who is not allowed to work. This is provided the action has been taken within a reasonable timeframe:

- viewing evidence of the worker holding an unrestricted right to work in Australia including evidence of Australian citizenship or permanent residence
- using the Visa Entitlement Verification Online ([VEVO](#)) service to check that a non-citizen holds a valid visa that allows them to work
- entering into binding contractual arrangement with another party to verify that workers that are allowed to work in Australia and/or supply workers that are allowed to work in Australia.

## Reasonable steps

Occasionally a person may not be able to readily produce documents that indicate their Australian citizenship or permanent residence and their unrestricted entitlement to work in Australia. If this is the case and the business has no reason to believe the person is not an Australian citizen or permanent resident, ascertaining the following information about a worker would generally be accepted by the department as being reasonable and sufficient.

If the worker:

- has been an employee for five or more years

- provides information they were born here and lived in Australia until they were at least 10 years old
- provides information that their primary or secondary education was in Australia
- the employer or contractor has personal knowledge that the person has lived in Australia long term (10 years or more).

It is also open to the employer (or labour supplier) to consider other reasonable steps to confirm if a person is allowed to work which reflect their business circumstances. Businesses can decide the most suitable method or arrangement for checking if a person is allowed to work.

## **Australian citizens, permanent residents and New Zealand citizens**

Sighting appropriate evidence of Australian citizenship, permanent residence or New Zealand citizenship is confirmation that a person can work. In most cases, this is straight-forward as most people have some form of government-issued photo identification.

Employers will be considered to have taken reasonable steps by sighting any of the following:

- an Australian or New Zealand passport; or
- a passport issued by the government of another country and using a VEVO check confirming they are still a permanent resident and therefore still allowed to work; or
- another form of photo identification issued by an Australian government agency and:
  - an Australian or New Zealand birth certificate or
  - an Australian or New Zealand citizenship certificate or
  - confirmation of enrolment to vote in Australian state or federal elections.

It is recommended copies of any sighted documents be kept in the employee's record.

If a person is unable to readily produce a form of Australian government-issued photo identification, employers can consider a broader range of supporting documents, such as:

- an Australian or New Zealand birth certificate or an Australian or New Zealand citizenship certificate; and
- as many as possible of the following Australian-issued documents:
  - Medicare card
  - tax file number
  - references from previous employers
  - tenancy agreements or home ownership details
  - tertiary qualifications certificate
  - trade certificate
  - change of name certificates (if applicable).

## Using Visa Entitlement Verification Online (VEVO)

You can check if a non-citizen is allowed to work in Australia by using VEVO. It will also tell you if there are any work limitations associated with a visa. Note: VEVO will only supply information about non-citizens (not Australian citizens).

VEVO is a secure and free government web-based service and is the preferred method of checking if non-citizens are allowed to work. VEVO checks can be used as evidence that reasonable steps have been taken to check that a non-citizen is allowed to work.

Employers registered to use VEVO can see relevant information about workers, including:

- the type of visa the person holds
- when the visa was granted and when it will expire
- if they are allowed to work or if there are any conditions that may have been placed on the visa that will limit their capacity to work.

Employers can also ask the visa holder to send their current visa entitlements directly from the department's VEVO Email service. The visa holder can do this when they login to VEVO as a visa holder, using their date of birth, passport number and country, and one of the following reference types:

- visa transaction reference number
- visa grant number
- visa evidence number
- password.

VEVO cannot confirm the identity of a person. Employers should always sight a passport or other identity document that was used by the visa holder for the VEVO check, to confirm their identity and ensure that it matches the details shown by the system.

If VEVO returns a notification that a non-citizen does not have a VEVO record, and the person claims to be an Australian citizen or permanent resident or New Zealand citizen, businesses should consider one of the options listed in the reasonable steps section above. If needed, the person should be encouraged to contact us to confirm their immigration status and to have their records updated.

## Using a contractor or labour hire company

Businesses are still responsible for hiring legal workers even if they use a contractor or labour hire company. Businesses can contract out this obligation so that contractors and labour hire companies are responsible for checking that people are allowed to work. They can do this by adding a clause to their contract **or** by specifying in writing that the supply of labour includes only non-citizens with the required permission to work.

Examples of suitable wording for a business to add to their contracts are available.