

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 22 May 2006

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

(83) Output 1.1: Migration and Temporary Entry

Senator Webber asked:

Labour Hire Companies

1. Can you confirm that some workers wait significant periods of time between jobs?
2. Can you outline the legal responsibilities of a labour hire company to a 457 visa holder on their books?
3. Would it surprise the Department to know that 457 visa holders, who complain about their rate of pay, often are not placed on a job for several weeks?

Answer:

1. It is possible for there to be a gap for some Subclass 457 workers when they are between contracts. However, it should be noted that Subclass 457 holders must be paid in accordance with the relevant industrial instrument or the applicable Minimum Salary Level (MSL) whichever is the higher, irrespective of such gaps. If the sponsor is found by the Department not to be appropriately paying the Subclass 457 holder during a period between contracts, the sponsor will be asked to remedy the underpayment.
2. Labour hire companies who sponsor Subclass 457 entrants must comply with the same sponsorship undertakings as other sponsors, as set out in Regulation 1.20CB of the *Migration Regulations* 1994. The sponsorship undertakings require that sponsors:
 - ensure the cost of return travel by the Subclass 457 entrant is met;
 - ensure that all medical or hospital expenses for a Subclass 457 entrant arising from treatment administered in a public hospital (other than expenses met through health insurance or reciprocal health care arrangements) are paid;
 - pay at least the gazetted minimum salary level where one applies to the position;
 - do not employ a person that would be in breach of Australian immigration laws as a result of being employed;
 - comply with their responsibilities under the immigration laws of Australia;
 - cooperate with the Department's monitoring of them and Subclass 457 entrants;
 - notify immigration within 5 working days of a Subclass 457 entrant ceasing employment (in the instance of labour hire companies, this relates to employment with the labour hire company);
 - notify immigration of any change in circumstances that may affect their capacity to honour their sponsorship undertakings;

- notify immigration of any change to the information that contributed to the applicant being approved as a sponsor, or the approval of a nomination.
 - comply with laws relating to workplace relations that are applicable to the them;
 - comply with any workplace agreement that they may enter into with a Subclass 457 entrant, to the extent that the agreement is consistent with workplace relations laws;
 - ensure the Subclass 457 entrant holds any licence, registration or membership that is mandatory for the performance of work by the person;
 - ensure they notify immigration if the Subclass 457 entrant is required to change work location where any change in location would affect the nomination approval;
 - make any superannuation contributions required for the Subclass 457 entrant while they are in the sponsors employment;
 - deduct tax instalments, and make payments of tax, while the sponsored person is in their employment; and
 - pay the Commonwealth an amount equal to all costs incurred by the Commonwealth in locating, detaining, removing and processing an application for a protection visa made by the Subclass 457 entrant.
3. Irrespective of gaps between jobs, Subclass 457 visa holders must be paid at the MSL or industrial instrument whichever is higher. The level of any wages above the minimum is a matter between the labour hire company and the visa holder. The Department would note that it is always open to the visa holder to seek out a new sponsor if they are unhappy with their rate of pay.