



AUSTRALIA: The Australian Department of Immigration & Citizenship (DIAC) Releases a 457 Program Policy Update

The Australian government has introduced this change to assist DIAC decision-makers when assessing 457 Sponsorships, 457 Nominations and 457 Visa Applications due to the recent decline in the economy. Accordingly, *Sponsorship Applications* must meet at least one component of the "Benefit to Australia" Requirement. By adhering to this requirement, the Australian economy will thereby benefit.

In reference to *Nominations and Visa Applications*, overseas employment must follow the Nominated Salary Requirement by **respecting** existing salaries within Australia and the occupations for which the foreign national is applying.

"Benefit to Australia" Requirement:

When applying for 457 Sponsorships, one of these four key factors must be fulfilled: maintenance or creation of employment for Australian citizens or permanent residents must occur; there must be a development of Australian trade in goods or services; Australian business links with international markets must be enhanced; and/or, there must be competition within divisions of the Australian economy.

"Nominated Salary" Requirement:

With the new policy update, a 457 Visa holder's Minimum Salary Level (MSL) is confirmed by allowing DIAC officials to investigate the Australian standard for which occupation is being applied and if necessary, offer a higher salary. It will no longer be adequate for the the Minister for Immigration &

Citizenship to publish what is acceptable based on the MSL.

Additionally, this policy reform states that professionals who receive a salary package (e.g. pension, bonus, other allowances, etc.) who earn a minimum of A\$100,000 are exempt from further examination.

All other 457 applications will be reviewed based on standard Australian salaries for a particular occupation. Government officials will also consider pertinent employment agreements, industrial rewards, positions that equate to the sponsoring organization's salary offer, and data provided by the Australian Bureau of Statistics. A visa applicant will need to be appropriately qualified according to the position and salary tendered by the Australian employer as well. In this regard, skills assessments may be requested.

Due to this current global financial crisis and recession, it is expected that Clients will need to provide supporting documents on commencement of a 457 application. Therefore, if you have any questions, please contact your Pro-link Global Consultant for assistance.

UNITED KINGDOM: Indirect Race Discrimination As a Result of Automatic Rejection of Non-EEA Job Applicants

A recent decision by the Employment Appeal Tribunal (EAT) has caused employers to take heed to the possible risk of race-discrimination claims they could face if they fail to consider applications from non-EEA nationals.

A solicitation firm recently asked qualifying questions as well as current immigration status in an application to fulfill training contracts. In one particular case, the applicant stated he did not have a permit to work in the UK and thereby was not considered for the position. The solicitation firm argued that they had a policy not to accept applications for training contracts where applicants required permission from the UK Border Agency to work in the UK.

The EAT rejected the argument noting the lack of evidence and that the selection of an application should be based on qualifications and not immigration status, as this could be dealt with at a later stage of the process.

If an employer chooses to hire a non-EEA candidate, evidence still needs to be provided as to why the non-EEA candidate was chosen over the permanent resident in the current labor pool.

CHINA: Restatement of Requirement to Give 30 Days' Notice Prior to Labor Layoffs

As of February 3, 2009, the "Circular on Promoting Employment Under the Current Economic Situation" ("Employment Circular") is in effect.

The purpose of the Employment Circular is to standardize the employer's responsibilities and layoff procedures due to the current economic recession. The Circular reiterates current labor laws and regulations with an emphasis on enterprises and their plans to lay off employees. If the number of employees laid off is made up of more than 10 percent of the total number of those employed, then a report must be sent to its trade union **OR** to all employees 30 days prior to the planned layoff so that opinions may be solicited.

Since January 1, 2008 the law (provided under Article 41 of the Labor Contract Law of the People's Republic of China) states that the local labor administrative bureau must review the labor reduction

proposal **before** employees can be laid off.

It should be noted, however, that there are underlying circumstances in which the employee may not be laid off even though employers follow the regulations noted above. Some examples include when an employee is suffering from a work-related injury, is pregnant, on maternity/nursing leave, or is being medically treated.

Measures Are Being Taken to Reduce the Number of Layoffs

Local authorities such as the Shanghai Municipal and Guangdong provincial governments are working to protect the interest of the employees.

Effective January 8, 2009, the **Shanghai Municipal Bureau of Human Resource & Social Security** announced that enterprises must provide additional forms of documentation to the labor administration bureau. These stricter regulations are intended to aid in the decrease of layoffs and include obtaining such documents as a business license, trade union qualification certificate, personal information of the trade union or employee's representative, a written labor reduction proposal, and records showing that the enterprise has set forth an explanation of the layoff and the opinions of its trade union or employees.

Additionally, at the end of 2008, the **Guangdong provincial government** issued the *Guidance on Employees' Treatment During Enterprises' Economic Redundancy, Ceasing Production, Bankrupt ("Redundancy Guidance")*. This Redundancy Guidance states that employers must inform their trade union and employees of the layoffs and report their labor reduction proposal to the local labor administrative bureau 30 days in advance of its implementation.

Note to Employers

Employers need to increase their awareness of the local laws and regulations that are being introduced to ensure they remain compliant.

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