

Staying compliant as an employer when hiring migrant workers

Everyone working in Australia has basic rights and protections in the workplace, and *employers' responsibilities to comply with minimum pay and conditions apply to all workers regardless of their migration status*. This includes migrants who lack work rights or who are working in breach of their visa conditions.

Any business in Australia can help a worker stand up for their rights. Reporting workplace exploitation early means a worker can get the support they need as soon as possible, and it helps to create a level playing field for all businesses in Australia. In Australia, employers also have a legal responsibility to ensure that all of their workers have the legal permission to work. It is against the law to hire a migrant worker who does not have legal permission to work, or who is working in breach of their visa conditions.

These laws apply to all employers, from farms and cafés to large corporations and labour hire companies.

When is it unlawful to engage a migrant worker?

It is unlawful to hire, employ, refer, contract or use a migrant worker who:

- Doesn't have a visa or their visa expired
- Has a visa but isn't allowed to work
- Has a visa that limits their work, and they're breaking those conditions (e.g. working more hours than allowed)

Employers and contractors should not employ, refer or contract these workers without checking their visa status. This responsibility extends to all workers, whether hired directly or through labour hire companies.

Offences of hiring, employing and contracting migrants in breach of the Migration Act

▫ **Allowing an unlawful non-citizen to work (s245AB)**

It is an offence for a person to allow, or continue to allow, a person to work in Australia after the worker's visa has expired. Even if an employer or contractor does not know their visa had expired, they may still be penalised if they do not take reasonable steps to check. The employer or contractor must provide the evidence that they have not committed this offence. This evidence can include showing that the employer or contractor has taken reasonable steps at reasonable times to verify that the worker has a valid visa with work rights.

▫ **Allowing a legal non-citizen to work in breach of their visa (s245AC)**

It is an offence for an employer or contractor to allow, or continue to allow, a person to work in Australia, while the worker has a valid visa with a work-related condition, but they are working in breach of that visa condition, solely because of their work for the employer or contractor. This could include letting an international student work full-time in contravention of their visa condition which limits work to 48 hours per fortnight. There is no violation if the employer or contractor takes reasonable steps to verify if a work-related condition is breached or not.

▫ **Referring a migrant to work illegally (s245AE and 245AEA)**

Recruiter or contractor will also commit offences if they refer or supply a worker to another business in the circumstances outlined above.

▫ **Using workers supplied illegally (s245AEB)**

Using labour hire does not absolve a business from responsibility. If a labour hire provider provides workers in the circumstances outlined above, the host business can still be liable.

▫ **Aggravated offences (s245AD)**

These offences are aggravated where the employer knows, or is reckless to the fact that, the worker is being exploited.



▪ **Executive officers and recruiters are also responsible**

Executive officers of a body corporate can also be liable for the above offences, including a Director, CEO, CFO or Company Secretary. This executive officer will be liable if the employer contravenes a provision of the Act **and**:

- The officer knew that, or was reckless or negligent as to whether, the work related contravention or offence would occur; **and**
- The officer was in a position to influence the conduct of the body in relation to this work-related contravention or offence; **and**
- The officer failed to take all reasonable steps to prevent the contravention of offence.



In determining whether the officer acted reasonably, a court will consider what steps the officer took to ensure that employees, agents and contractors of the body corporate understood the immigration work requirements.

New laws affecting employers of migrants who lack work rights

In 2024, the Australian government introduced new laws to prevent exploitation of migrants working without work rights or in breach of their visa, and hold employers to account.

1

Every employee in Australia has basic workplace protections

New laws have clarified that workplace protections apply to all workers regardless of their work rights and migration status. Employers will be held to account for breaching their workplace responsibilities in relation to workers who do not have work rights or are working in breach of their visa or do not hold a valid visa. This includes responsibilities to pay workers their correct minimum pay and entitlements, ensure safe working conditions, and protection from discrimination and harassment. The Fair Work Ombudsman assists undocumented workers with workplace issues.

2

New visa protections for workers who report exploitation

From 1 July 2024, the Australian Government introduced new laws to strengthen reporting protections to give temporary visa holders confidence to report exploitation early and resolve their workplace issues. Under these new laws, migrant workers who have breached a work-related condition because of exploitation at work can now access protection against visa cancellation, if they take action to address the exploitation and commit to complying with their conditions in future. This includes, for example, international students who have worked more hours than permitted under their visa.

The government has also introduced a new Workplace Justice visa, a temporary visa that allows some temporary visa holders, or recent temporary visa holders, to stay in Australia to take legal action if they have been exploited at work.

3

New wage theft offence

From 1 January 2025, intentional underpayment of wages or entitlements can be a criminal offence. The Fair Work Ombudsman can now investigate suspected criminal underpayment offences and refer matters to the Commonwealth Director of Public Prosecutions or the Australian Federal Police for possible criminal prosecution. This includes underpayment of migrants who do not have permission to work in Australia.

4

New criminal offences for coercing migrants

It is now a criminal offence for employers and third-party providers to coerce temporary visa holders to breach their work-related visa conditions, such as working more hours than allowed.

It is now a criminal offence for employers and third-party providers to pressure an undocumented migrant worker to accept work arrangements. For example, it is a criminal offence to threaten to report a worker in to Immigration if the worker doesn't submit to inappropriate sexual comments, underpayment, unsafe working conditions, or poor accommodation.



5

Penalties related to noncompliance in this area have increased

Increased penalties are now in place:

- **Warning:** An Illegal Worker Warning Notice (IWWN) may be issued on the first offence.
- **Infringement Notices:** Up to \$15,840 for individuals and \$79,200 for companies per worker.
- **Civil Penalties:** Up to \$79,200 for individuals and \$396,000 for companies per worker.
- **Criminal Charges:** In serious cases, penalties can reach up to \$118,800 and/or two years imprisonment for individuals, and \$594,000 for companies per worker.
- **Aggravated Offences:** If the employer is found to have exploited or coerced a worker without legal work rights, penalties can increase to \$118,800 and/or two years imprisonment for individuals, and \$594,000 for companies per worker.
- **Sponsorship Sanctions:** Businesses sponsoring workers can face additional penalties, including the cancellation of sponsorship approval and being barred from future sponsorship.



Employers and labour hire firms who exploit or repeatedly mistreat migrant workers can now be placed on a new public [Prohibited Employer Register](#) and be **officially banned from employing more migrant workers for a period of time.**



How to stay compliant

This civil penalties regime for hiring a worker without work rights can be applied regardless of the employer's knowledge or intention.

An offence may be committed even where the employer has innocently allowed an employee to work without permission. The civil penalty can be avoided, however, if the employer has taken 'reasonable steps at reasonable times to verify' the worker's valid visa before employment begins and that the work is done in compliance with the visa.

Reasonable steps include using the free government provided Visa Entitlement Verification Online (**VEVO**) system, which provides up-to-date information on an individual's current visa, and work-related visa conditions. It is important to keep records of these checks and re-check visas regularly as visas and conditions can change. Employers and labour hire firms must ensure they pay all of their workers correctly and comply with their workplace responsibilities regardless of the worker's migration status.

Employers and labour hire firms must never use a worker's migration status to pressure them into accepting working or living conditions or other arrangements at work.

Employers can never cancel a visa, even if the worker has breached their visa conditions. Only the Department of Home Affairs, including the Australian Border Force, can grant, refuse or cancel visas.

Employers and labour hire firms must never pressure a migrant to breach their visa conditions.



Learn more about [workplace rights in Australia](#).