

## WORK VISAS

### APPLYING FOR EMPLOYER ACCREDITATION

#### OVERVIEW AND BENEFITS

An employer holding immigration Accreditation is able to support a potential employee to apply for an Accredited Employer Work Visa (“AEWV”). Migrants in most occupations can now get a 3-year Work Visa (increasing to 5 years from November 2023), although some industry sector agreements allow a shorter maximum duration (e.g., hospitality, rest home carers).

Securing a migrant worker involves a three-step process:

- ◇ securing Accreditation;
- ◇ carrying out a Job Check to demonstrate the need to employ migrants; and
- ◇ Work Visa application for a suitable migrant.

This Guide only deals with the first stage. Guides for the other stages are available on the [Work Visa page](#) of our website.

An application for Employer Accreditation is made online to Immigration New Zealand (“INZ”). If granted, Accreditation initially lasts for 12 months. Employers can apply to renew accreditation for further 2-year periods, unless they operate a franchise or they are in a “triangular employment arrangement” such as a labour hire company, who can only renew a year at a time.

Accreditation can also be a strategic option for an employer looking for a pathway to Residence for valuable staff. This is possible if their job is on the [Green List](#) or because they are “highly paid” (earning twice the median wage). See our Skilled Residence Guide for more details.

#### TYPES OF ACCREDITATION

An employer must first decide which category of accreditation it should aim for:

1. Standard: if the business wishes to employ up to 5 migrant workers at any one time;
2. High-Volume: if the business wishes to employ more than 5 migrant workers at any one time. An employer could start with Standard accreditation but must apply for High-Volume if it determines that its need for overseas workers has increased;
3. Franchisors: Additional requirements that the business must have traded for at least 12 months, and at least 15% of its full-time employees must be NZ Citizens or Residents;
4. Triangular Employment: In such arrangements, the accredited employer places workers with another employer – a “controlling third party”. Common examples are a labour hire business or a parent company which assigns staff to a subsidiary. The accredited employer:
  - a. must have a past history of employing staff for at least the last 12 months;

- b. will be expected to be satisfied that the controlling third party has good human resource practices and has a clean record with immigration and employment regulatory agencies (such as the ERA); and
- c. has additional obligations to have processes in place to handle complaints and disputes about workplace conditions at the assigned work site.

### **CRITERIA FOR ACCREDITATION**

An employer must show that:

5. it is a genuinely operating business – this involves looking at:
  - ◇ company history – if it has been running for less than 1 or 2 years, we recommend being able to provide a sound, documented plan to prove viability over the next 2 years, and/or proof of strong capital backing;
  - ◇ financial viability, including showing a past history of profitability to be able to pay wages – we would recommend 2 years of reliable financial statements;
  - ◇ managerial responsibility – none of the owners or directors have been made bankrupt.
6. it will provide migrant staff, in the first month of work, the ability and resources to complete settlement support activities which include:
  - ◇ an information pack about living conditions such as local availability of accommodation and social services;
  - ◇ time off to complete the online [Employee Modules](#) on the Employment NZ website.
7. the company and its key people have not been in breach of:
  - a. Immigration law – for example, by employing overstayers or giving false information to Immigration New Zealand;
  - b. employment law, by having been placed on a Labour Inspectorate “black list” for being penalized by the Employment Relations Authority or the Employment Court;
  - c. business law – for example, by being a phoenix company or its key people being prohibited from managing a company.

A “key person” in a company is someone having influence within the business such that their decisions could result in breaching employment or immigration standards. This ranges from company directors to HR managers. They are also required to commit to completing the Employer Modules on the ENZ website.

### **APPLICATION PROCESS**

The initial application mostly involves making declarations that the employer meets, or will meet, the above requirements. We require corporate clients to sign an omnibus declaration form so that we can make those representations on their behalf.

Initial accreditation is normally approved without further investigation by INZ about the claims the employer makes in the application. Franchisees and those in triangular employment arrangements are likely to undergo greater scrutiny.

In future, as the scheme settles down and the volume of applications evens out, more scrutiny of applications and renewals can be expected, although this will depend on INZ's capacity to manage the tens of thousands of company accreditations on its books.

If accreditation is declined there is a right of reconsideration for an additional fee, so long as it is filed within 14 days of the decline decision.

#### **AFTER ACCREDITATION IS APPROVED**

While employers usually do not have to provide documentary proof of the declarations that they made when making the first application, we recommend that they put processes in place to meet their obligations. These include:

- ◇ settlement support packs for their migrant staff, and written evidence when and how these have been provided to each migrant worker;
- ◇ a register recording when staff have been enabled to complete the Employee Modules, and their confirmation that they have done so;
- ◇ checking that their standard employment documentation is up to standard, including employment agreement templates, time and wage records, health and safety and other policies etc.;

This is firstly because it is likely that INZ will ask for this evidence in the course of an application for accreditation renewal. Secondly, the department is carrying out sample audits of employers to test whether they are in fact compliant. A failed audit could result in the loss of accreditation and make it difficult to regain it in future.

Employers must also advise INZ within 10 working days of any changes to their key persons; breaches of compliance with the Accreditation instructions (e.g., being penalized by the Employment Relations Authority); or change in business structure such as moving from a partnership to a limited company, or merging or amalgamating with another entity.

#### **OUR SERVICE**

As your immigration professionals, our job is to ensure that all criteria are met and that all documentation provided in support of your application is in the form required by INZ, that it assists your application, and it does not create confusion or difficulty.

We keep in contact with INZ to ensure that each application is processed promptly and in a manner that is fair and in accord with natural justice.

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