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Employers struggle with 457 visa obligations

Many employers are struggling to meet their training obligations under the 457 visa scheme, says immigration lawyer Emma Mackey.

The director of Mackey Lawyers says employers must recognise and meet their sponsorship obligations or risk substantial penalties from the Department of Immigration and Citizenship or the courts, including a ban from further sponsorship or receiving a civil penalty.

She says sponsors often mistakenly believe once a visa is issued, they have no further obligation until it expires but "this is not the case".

"The convenience of being able to access the global labour market, when skills shortages exist in Australia, comes with sponsorship obligations.

"Although 457 visa holders have some obligations, the sponsor bears the heavier burden, particularly in relation to applications lodged after September 14, 2009. There are a significant number of current sponsor obligations - of which many employers appear ignorant."

One of the key obligations is meeting specific training benchmarks and Ms Mackey (pictured) says this caused many problems.

"Most sponsors are required to meet one of two training benchmarks every year of the sponsorship.

"These are either spending the equivalent of 1% of payroll on formal, structured and independently verifiable training of their Australian workers; or paying at least 2% of payroll expenditure to an industry training fund for the training of



Australian workers operating in the same industry as the business.

"Sponsors typically fail to comply with this obligation at all or comply on a 'one-off' basis, failing to appreciate that this is an ongoing obligation.

"Further, most sponsors without dedicated human resources staff are unable to appropriately document training to provide evidence of spending on Australian workers.

"Some sponsors are required to prepare auditable plans for future training and are unsure how to prepare these plans."

Ms Mackey says another problem for sponsors relates to salary, wages and duties.

"Sponsors' annual salary review processes must ensure reviews for visa holders meet all the sponsorship requirements including paying market rates, meeting the Temporary Skilled Migration Income Threshold and allowing for TSMIT indexation.

"A change in duties may require a sponsor to lodge a further nomination request applying for approval to DIAC for the 457 visa holder to work in a new position."

Ms Mackey says that sponsors

routinely ignore keeping the DIAC abreast of changes.

This includes notifying changes in corporate details and keeping specific records and providing them to the department when requested.

"Some sponsors are unaware that something as routine as a change of director or contact address must be advised ... under current sponsorship obligations. This is an area where company secretarial practice needs review."

She says record keeping vexes sponsors with many failing to keep adequate records of their compliance with all sponsorship obligations, as these obligations usually fall outside standard HR practices.

"An annual sponsor's obligation compliance audit is a good risk management measure to ensure you can remain a sponsor, receive prompt processing of new applications and avoid sanctions...."

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