

457 visas and health disclosure

Applicants and their sponsors need to understand the health disclosure requirements.

By Emma Mackey

Most 457 visa applicants are unaware that information about their health – even everyday medical conditions that might not affect their ability to work – is disclosable in the visa application to the Department of Immigration & Citizenship (DIAC). They may also be unaware that their family's health will be scrutinised as well.

Health aspects such as taking prescription medication or a diagnosis of a medical condition can delay processing of an Australian visa application – and the issue applies both to the applicant



or a dependent family member included in the application.

A costly failure

If medical conditions are not disclosed and the condition later comes to the attention of DIAC, the applicant may be found in breach of Public Interest Criteria 4020 for having either given information that is false or misleading or having relied on bogus documents. This could affect their current visa as well as applications for other visas in the future.

A matter of timing

To avoid undue stress, delay and expense in a visa application, it is good practice for applicants to get immigration advice early in the process. It is also important that the prospective employee tells the employer or migration agent about the medical issue early in the recruitment process and before the employee resigns from an existing position.

Often medical conditions are only disclosed to advisers after the employment agreement is concluded and the new employee has resigned from their current position. This changes the application from one likely to be processed in under a month to one which will take several months to conclude. The result can sometimes be a visa refusal.

In some visas categories, a medical condition will result in the

visa application being refused, but some visa subclasses – including the 457 – have a medical 'waiver' provision so that, in certain circumstances, visas can be issued even if the applicant or a dependent does not meet the medical requirements.

I recommend sending potential candidates information about the health disclosure requirement in the visa application for DIAC early in the recruitment process and giving the applicant access to immigration advice before any employment agreement is concluded. In this way, candidates can take advice about potential issues and decide whether they wish to proceed with the recruitment process.

What's under scrutiny?

A wide range of medical conditions is specifically canvassed in the visa application. The range includes tuberculosis, blood disorders, cancer, heart disease, hepatitis or liver disease, HIV infection (including AIDS), kidney disease (including dialysis), mental illness, pregnancy, respiratory disease or mobility issues. Visa applicants are also asked to disclose 'any other' medical conditions. DIAC policy specifically mentions the following 'other' conditions (but this list is by no means exhaustive): endocrinological, gastroenterological, hearing, ophthalmological, rheumatological and neurological conditions, developmental disorders and any conditions requiring disability support services such as respite, special education and supported housing.

What the employer should know

The employer must consider relevant privacy and equal opportunity laws when discussing the disclosure of health issues with the prospective employee. A common example is pregnancy

– which is disclosable to DIAC – as some visa applicants will be required to undergo a chest x-ray to ensure that they do not have tuberculosis. The Australian Government does not recommend that pregnant women undertake a chest x-ray and it is rare for this requirement to be waived, given the prevalence of tuberculosis in some countries. Therefore, DIAC cannot complete visa processing until the woman undertakes an x-ray after her baby is born. If her partner has been offered employment with an immediate start in Australia, he would have to travel to Australia before his family or delay his start date until after the birth of the child.

Employers should avoid the possible delays, stress and unnecessary expense of medical issues by identifying the disclosure requirements with candidates early in the recruitment process. Knowledge of potential issues will enable the candidate to obtain immigration advice before deciding whether to accept the position and make the visa application. ○

Reality checklist

- 1 There are stringent disclosure requirements for 457 visa applicants regarding their health and that of their family, even for medical conditions that do not directly affect their ability to perform work.
- 2 Applicants should get immigration advice early in the process to avoid undue stress, delay and expense.
- 3 Employers should also discuss disclosure requirements with applicants from the outset.



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