

Workers on 457 – market salary rates

On 14 September 2009, important changes to salary requirements for workers on 457 visas were introduced. These changes are designed to ensure that workers on 457 visas receive the same wages and conditions of employment as Australian workers (Australian citizen or Australian permanent resident) doing the same job at the same workplace.

What does the requirement to pay market salary rates mean?

The introduction of market salary rates is part of a wider package of reforms to the Subclass 457 visa program designed to ensure that it continues to provide industry with needed skills, while not undermining local training and employment opportunities or exploiting overseas workers.

The requirement to pay market salary rates means that sponsored Subclass 457 visa holders will benefit from the same terms and conditions of employment as are provided to an Australian undertaking equivalent work in the same workplace at the same location.

Employers must provide workers on 457 visas with wages and conditions of employment that are no less favourable than those provided to Australian workers doing the same work at the same workplace.

Where there is an equivalent Australian in the workplace, the market salary rate will be determined by the industrial arrangement that applies to this worker. The Subclass 457 visa holder must be provided the same terms and conditions that are provided to the equivalent Australian worker.

Examples of industrial arrangements include enterprise agreement, industrial award, award conditions with over award salary rates and common law contract.

How do I know what the market salary rate is?

The market salary rate is the wages and conditions that the employer currently provides to Australian workers doing the same work in that workplace. These wages and conditions of employment may be set by an award, collective agreement or common law contract.

Information and advice about pay and conditions in Australia can be obtained from Fair Work Australia including:

- minimum safety net terms and conditions of employment including award coverage and
- collective agreements in similar workplaces.

See: <http://www.fairwork.gov.au>

Telephone: 13 13 94

What if there are no Australian employees doing the same job?

If there are no Australian employees doing the same work at the workplace, the employer must identify the market rate. They may refer to an applicable award or agreement, or if necessary, to remuneration surveys or earnings data. The Department of Immigration and Citizenship must be satisfied that the rate nominated by the employer is fairly set.

What is the Temporary Skilled Migration Income Threshold?

The Temporary Skilled Migration Income Threshold (TSMIT), is currently set at \$51 400 per annum, from 1 July 2012. The TSMIT is set at that level to ensure that all Subclass 457 visa holders have sufficient income to independently provide for themselves in Australia.

The TSMIT helps to ensure that Subclass 457 visa holders do not impose undue costs on the Australian community or find themselves in circumstances which may put pressure on them to breach their visa conditions. This is particularly important given these workers do not have access to a range of government support available to Australian citizens and permanent residents.

So employers need to pay at least the TSMIT?

No. Employers need to pay workers on Subclass 457 holders the market salary rate, that is, the same pay and conditions of employment as they provide to Australian workers doing the same work at that workplace (or the MSL during the transitional period.)

The TSMIT has no bearing on what an employee should be paid. However, 457 visas will not be granted in relation to positions for which the market rate is below the TSMIT.

How does the market rate requirement affect those workers granted a 457 visa before 14 September 2009?

The transitional arrangements for Subclass 457 visa holders whose visas were granted on the basis of nominations approved before 14 September 2009 ceased on 1 January 2010.

From 1 January 2010, sponsors must pay these visa holders the market salary rate unless it is less than the applicable prescribed salary level. In other words, sponsors must pay these Subclass 457 visa holders the greater of either the market salary rate or the prescribed salary level for the duration of their visa.

There are five such prescribed salary levels or 'base rates of pay' depending on the circumstances surrounding the grant of the current visa.

Workers on 457 visas needing clarification of which salary level applies should contact the Department of Immigration and Citizenship on 131 881.

For more information about the 457 visa program or other visa issues, contact your union, the ACTU on 1300 362 223 or:

Caroline Petricola
Union Outreach Officer to the ACTU
Department of Immigration and Citizenship
cpetricola@actu.org.au
Caroline.Petricola@immi.gov.au
Mob: 0466 153 108