

Workers on 457 – workers' rights in Australia

See: 'Your rights and obligations – immigration facts for workers'

<http://www.immi.gov.au/skilled/rights-obligations-workers.htm>

Do 457 visa holders have the right to join a union?

Yes. Everyone in Australia has the right to join a union, including 457 visa holders.

Employers cannot discriminate against 457 visa holders because of their union membership.

Do 457 visa holders have the right to the same pay and conditions as Australian workers?

Yes. Employers are obliged to pay 457 visa holders at least the same wages and conditions as they pay to Australians doing the same work in the same workplace.

457 visa holders are entitled to the same conditions under awards and agreements as Australian workers, including leave provisions and overtime rates. For more information see the Market Salary Rates fact sheet.

If 457 visa holders have signed contracts overseas, are they valid here?

Contracts signed overseas are only enforceable in Australia as far as they are consistent with Australian laws. 457 visa holders have the same rights as Australian workers under an award or agreement, regardless of any contract signed overseas.

Do employers have to follow OH&S laws in relation to 457 visa holders?

Yes. Employers have the same health and safety obligations in relation to all workers, whether Australian or overseas workers. Employers must provide 457 visa holders with health and safety training and equipment. They must take special steps to ensure that 457 workers with limited English language skills understand health and safety procedures.

Can employers deduct visa fees or accommodation costs from 457 visa holders' pay?

Your employer must not recover, or seek to recover, all or part of the costs (including migration agent costs) from the worker or any of their family members:

- if the costs relate specifically to the recruitment of the skilled worker
- if the costs are associated with your becoming or being an approved sponsor
- or former approved sponsor.

Employers who try to recover these costs are in breach of their sponsorship obligations and DIAC can impose sanctions on them. Employers also have an obligation to pay for the cost of return travel to the visa holder's country. Any other deductions, including for accommodation, can only be made with the understanding and written agreement of the 457 visa holder.

Do 457 visa holders have to live in accommodation chosen by the employer?

No. 457 visa holders have the right to choose their own accommodation and make their own rental and transport arrangements.

Do 457 visa holders have the right to superannuation?

Employers have the same obligations to make superannuation contributions for 457 holders' as they do for Australian workers. Superannuation contributions cannot be deducted from 457 workers' salary, and must be passed on to a superannuation scheme. 457 workers have the same right to choose their own superannuation fund as Australian workers.

Do 457 visa holders have to pay tax?

Yes. Employers should withhold tax from 457 visa holders' salaries and pass it on to the Australian Taxation Office. 457 visa holders should receive an annual payment summary, have a tax file number and file annual tax returns.

Do 457 visa holders' wives or children have the right to work?

Yes. 457 visa holders' dependents have full work rights. They can choose not to work. They can choose who they work for, and what occupations they work in. They are entitled to the same pay and conditions as Australian workers under the relevant award or agreement.

Can employers sack 457 visa holders?

Employers can only sack or lay off 457 workers in the ways allowed by Australian laws or the relevant award or collective agreement. They are protected from unfair dismissal to the same extent that Australian workers are protected.

Can employers cancel 457 workers' visas, or have them deported?

No. Employers can't cancel visas or have people deported. What an employer who has sponsored a 457 visa holder must do is notify the Department of Immigration and Citizenship (DIAC) if the visa holder stops working for them.

DIAC will give the visa holder 28 days to find a new sponsor, apply for another visa or depart Australia. If the 457 visa holder does not find a new sponsor or apply for a new visa their visa may be cancelled by DIAC and they will have to leave Australia.

Do 457 visa holders have the right to change jobs?

Yes. The new employer must have a nomination for the 457 holder approved, and then the visa holder can start work with the new sponsor. For more information see the fact sheet on Changing Employer.

Can 457 visa holders apply for permanent residence?

Yes. Their employer can sponsor them for permanent residence. In some cases, they might be able to meet the criteria for a permanent visa in their own right, without needing a sponsor. To find out more information they can call the Department of Immigration and Citizenship on 131 881 or go to www.immi.gov.au.

How can 457 visa holders find information or protect their rights if they don't speak English?

457 visa holders can call 131 450 for the free Translating and Interpreting service. They need to say the name of their language (eg "Vietnamese") and they will be connected to an interpreter. The interpreter can then call the worker's union, Fair Work Ombudsman, the Department of Immigration and Citizenship or other government departments.

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

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