

READY TO TAKE ON MIGRANT WORKERS AGAIN? NEW WORK VISA POLICY: ACCREDITED EMPLOYER WORK VISA

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With the New Zealand borders opening up, Immigration New Zealand's long-awaited Accredited Employer Work Visa (the **AEWW**) programme has been given a launch date. Employers who currently employ (or are considering employing) skilled migrant workers, and holders of current Work Visas may be affected by the AEWV.

The AEWV will be effective from 4 July 2022 and employers can apply for accreditation from 23 May 2022. Essential Skills Work Visa applications will cease on 3 July 2022.

The AEWV is intended to streamline the process for employers wishing to take on migrant workforce and will completely replace the previously employee-led Essential Skills Works Visa. The most effective way for employers to fill skilled roles with non-resident workers is to become accredited. The AEWV is also intended to replace six of the existing temporary Work Visa categories, including the Silver Fern Work Visas.

However, employers should note that working holiday visas and other visas with working rights will not be captured by the AEWV, and these schemes have started opening up on a rolling basis from mid-March to young holidaymakers from our partner countries

How do I become an accredited employer?

For an employer to be approved as an Accredited Employer, they must:

- be operating a genuine business;
- demonstrate a clear history of regulatory compliance; and
- adopt steps to minimize the risk of migrant exploitation.

Genuine Business:

To be considered a 'genuine business' an employer must:

- a) hold a New Zealand Business Number (NZBN);
- b) be registered with Inland Revenue;
- c) show their business is financially in a sound and robust position. In other words, the employer must show that their business is profitable, have positive cash flow, have sufficient capital or assets, or have a plan to secure its viability to sustain the business; and for individual employers:
- d) show that they are not bankrupt or subject to a 'No Assets Procedure'.

Clear History of Regulatory Compliance:

Immigration New Zealand must be satisfied that the employer does not have a recent history of non-compliance of immigration and employment standards. A qualified employer must show they have fully complied with the Immigration Act, Employment Relations Act, and all relevant regulations. An eligible employer must declare further they are not on the Labour Inspectorate 'stand-down list' for breaches, such as employing a migrant worker in breach of their visa conditions.

Now is a good time to ensure your employment agreement templates are up-to-date and compliant.

Minimise the Risk of Exploitation:

An eligible employer must take steps to minimise the risk of exploitation. They must allow migrant workers to complete online modules on employment rights and obligations and allow them the time to do so. They should also provide guidance to migrant workers about life and work in New Zealand, such as how to obtain an IRD number and how to access the health care system. Employers must declare that they have fully complied with the above and all recruitment requirements, including payment of recruitment fees in or outside of New Zealand.

Once accredited, how do I apply to hire a migrant worker?

Before being able to recruit migrant workers for a position, employers must show that they have genuinely attempted to hire New Zealand citizens or residents for that position.

The employer must show that they have advertised the job for at least two weeks with credible recruitment websites or agencies, without finding a suitable New Zealander to fill the role. A rejection of any New Zealand resident or citizen for any role must be for genuine reasons. For instance, the candidate lacks the experience or skills required for the role advertised or they did not show up for the job interview.

It is worth noting that for highly paid jobs, no advertising is required. A highly paid job is one that is paid a minimum of 200% of the median wage (\$55.52/ hour).

There are two levels of accreditation depending on the number of migrants an employer wishes to hire. Accreditation levels are:

- a) **Standard Accreditation:** The maximum number of migrant workers at any one time does not exceed 5 upon the AEWV.
- b) **High-volume Accreditation:** This is when an employer wants to hire 6 or more migrant workers at any one time.

Job quota

“Job quota” is the maximum number of migrants an accredited employer may employ or ‘place’ at any given time under accreditation type.

How this works is that, if an employer has standard accreditation, for example, and has four migrant workers already employed, it can apply for one future worker. The ‘place’ in the quota becomes unavailable until the worker’s visa is withdrawn or declined, OR:

- a) the expiry or cancellation of another employed migrant worker’s visa;
- b) the approval of a worker’s application for a variation of conditions to move to another work; or
- c) when the job check expires or is cancelled before issuing the visa.

Additional Requirements for Franchisees

In addition to the standard requirements, franchisee employers must:

- a) Have been operating for a minimum of 12 months; and
- b) Show that at least 15% of their employees are New Zealand citizens or residents who are guaranteed full time work (unless the employer has only one employee).

Placing AEWV holders with third parties

Businesses that typically place AEWV migrant workers into roles with other organisations or “controlling third parties”¹ are required to meet the following additional criteria:

- a) Operate good systems to oversee the employment and safety conditions of the workers who are placed with third parties;

¹ Section 5 of the Employment Relations Act 2000, defines controlling third party as a person: (a) who has a contract or other arrangement with an employer under which an employee of the employer performs work for the benefit of the person; and (b) who exercises, or is entitled to exercise, control or direction over the employee that is similar or substantially similar to the control or direction that an employer exercises, or is entitled to exercise, in relation to the employee.

- b) Place at least 15% of the workforce with the third party from New Zealand citizens and residents employed on full-time basis.
- c) Have employed staff in New Zealand in the past 12 months.

Such businesses may be for example, labour hire companies, secondment situations, or global companies looking to appoint candidates in their New Zealand branches or companies.

Migrant Check

The final step in the process is for the employer to invite the migrant worker to apply for the visa using Immigration Online. Immigration New Zealand will then check whether the employer is accredited, they have a valid job check and the details of the employment are approved as part of the job check. The applicant must be suitably qualified and meet generic requirements of health, character and bona fides. Immigration New Zealand must be satisfied that the applicant is qualified, experienced, and suitable for the job offered. If the migrant fails any of these checks, the application will be declined.

Key Points to note

- a) From 23 May 2022, Immigration New Zealand will start receiving and processing employers' applications for accreditation.
- b) Applications for Job Checks may be made from 20 June 2022.
- c) The final date for considering Essential Skill Work Visa Applications will be on 3 July 2022.
- d) On 4 July 2022, the new AEWV policy will be in force and Immigration New Zealand will start receiving Work Visa Applications under the AEWV.
- e) Although Work to Residence (WTR) applications have been closed since 31 October 2021, holders of this type of visa will not be affected by the AEWV. They can continue their pathway to residence and can apply for a subsequent and new WTR visa.
- f) The AEWV does not cover other types of visas with open work rights. Employers of working holiday visa holders, seasonal workers and students with work do not need to be accredited.
- g) An approved employer may be accredited for 12 months. However, accreditation is granted for 24 months when an accredited employer applies for a renewal.
- h) The relevant application fees:
 - Standard accreditation fee is \$740.
 - High volume accreditation fee is \$1,220.
 - Job check fee is \$610.
 - Placing migrants with controlling third parties fee is \$3,870.
 - Application for AEWV fee is \$540.

Importantly, Immigration New Zealand will introduce a new pathway to residence as part of the Skilled Migrant Category review. This will be available to migrants who have held an AEWV for two years and paid at least 200% of the median wage.

Further Advice

If you'd like further advice on the New Accredited Employer Work Visa Policy or any other Immigration matter, please contact Jenna Riddle at:

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