

WORKING CONDITIONS OF FILIPINO WORKERS IN AUSTRALIA

As of 1 July 2013

Australia has one of the more progressive labour markets among the OECD member countries, combining superior working terms and conditions, a vigorous labour enforcement machinery through Fair Work Australia and an open pathway towards permanent residency and citizenship, if so desired.

MIGRATION PATHWAY

Although there are several modes of migration to Australia for employment purposes, the most common and the fastest is the Temporary Business (Long Stay) 457 sub-category visa, which allows a visa holder to work for up to four (4) years and bring his family upon entry or later to Australia. Family members are allowed to work and study in Australia without restrictions. The other pathways are the General Skilled Migration program where foreigners may apply independently of an employer, but which could take longer than the 457 visa process. Another pathway is when the worker enters Australia already with a permanent visa, the Employer Sponsored Migration.

PAY

457 visa holders in Australia enjoy the same working terms and conditions as Australians. Effective 14 September 2009, 457 visa holders are paid the market salary rate, which is the same salary rate to be paid to an Australian working in the same workplace at the same location. Employers who underpay their 457 workers may find their business sponsorship approval (which entitles them to hire foreign skilled workers) cancelled or summoned by either the Department of Immigration and Citizenship or Fairwork Australia, the counterpart of the Department of Labor and Employment and NLRC in Australia.

The Temporary Skilled Migration Income Threshold (TSMIT) is currently set at AUD53,900 a year but this is not the salary rate that employers of 457 workers are obliged to pay. Effective 14 September 2009, the DIAC has enforced the so-called market salary rate rule, which obliges employers to pay 457 workers the market salary rate, meaning that sponsored Subclass 457 visa holders will benefit from the same terms and conditions of employment as are provided to an Australian doing equivalent work in the same workplace at the same location. The DIAC uses the TSMIT rate to evaluate applications lodged by employers in the nomination process. For example, if the market salary rate for, say, a carpenter is AUD30,000 a year (the salary rate paid to an Australian or permanent resident working as carpenter at the same workplace in the same location, which is basically determined by applicable industrial arrangements, such as enterprise agreements, award or customary law), then the application would be denied by DIAC as it is lower than the threshold income. Employers also cannot offer a 457 worker a salary rate higher than the threshold income just to be able to satisfy the requirements of the nomination process, as it is the market salary rate for the position that is material and not the actual salary rate proposed.

The current national minimum wage is A\$16.37 per hour or A\$622.20 per week for workers who are not covered by specific awards or enterprise agreements. It is set by the National Minimum

Wage Panel under Fairwork Australia and headed by the President himself of Fairwork Australia. Currently, the National Minimum Wage Panel has completed its review of the national minimum wage and its decision took effect by July 1, 2013.

WORKING HOURS

The maximum number of working hours is 38 a week, the same condition which applies to all working Australians.

FOOD AND ACCOMMODATION

Unlike in most Middle Eastern countries, food and shelter is for the account of the 457 visa holder, as it should be, because not even Australians are provided free food and accommodation, unless specifically provided for in the employment contract as some kind of incentive for foreign workers, for example, to live and work in regional areas, or in remote mining areas. 457 visa holders don't have to live in accommodations supplied by the employer, and may choose to live anywhere he wants.

HEALTH INSURANCE

Health insurance is mandatory and payment of the costs of the insurance cover is dependent on agreement between the employer and the 457 visa holder. Prior to 14 September 2009, employers of 457 visa holders were ultimately responsible for the medical costs incurred in a public hospital by the 457 worker or his dependents. After this date, it became a matter of agreement between the employer and the 457 visa holder as to who would pay for health insurance as it is not mandatory for employers of 457 visa holders to provide free health insurance cover. It is condition for the grant of the 457 visa that the applicant obtains an adequate health insurance cover for himself and his dependents.

TAXATION

Just like all working Australians, 457 visa holders are obliged to pay personal income tax to the Australian Tax Office (ATO), ranging from a low effective tax rate of 0% to a high of 45%, depending on the amount of income. Employers are obliged to deduct the tax from the 457 visa holder's salary and remit the same to the ATO. The 457 visa holder is entitled to an annual payment salary from the employer, to have a tax file number and to file annual tax returns.

SUPERANNUATION

Superannuation is a retirement fund for Australians, including temporary migrants. It has a compulsory element whereby employers are required by law to pay an additional amount based on a proportion of an employee's salaries and wages (currently 9.25%) into a complying superannuation fund, which can be accessed when the employee meets one of the conditions of release, such as retirement, death, termination of employment, severe financial hardship, permanent incapacity or attaining the age of 65. The 457 visa holder may choose his own superannuation fund. Contributions to a superannuation fund are an employer's obligation and cannot be deducted from the salary of 457 visa holders and must be passed on to the superannuation scheme chosen by the 457 visa holder. Temporary work visa holders who return

to their countries of origin and whose visas have already expired may claim their superannuation contributions online through www.ato.gov.au/departaustralia.

OCCUPATIONAL SAFETY AND HEALTH

Like all working Australians, 457 visa holders have as much right to be protected against occupational safety and health risks in the workplace. 457 visa holders have as much right to be provided with health and safety training and equipment by the employer, and where the English language competency is limited, the right to understand health and safety procedures.

UNION RIGHTS

457 visa holders have as much right to form and join a union as working Australians. They cannot be discriminated against in the enjoyment of the right of membership in a union simply because of their status as 457 visa holders.

RIGHT AGAINST UNFAIR DISMISSAL

Employers may only dismiss or lay off 457 visa holders under the same conditions as any other Australian worker. What constitutes unfair, unjust or harsh dismissals are defined under the Fair Work Act of 2009 and under applicable industrial arrangements, such as an award or enterprise agreement. The unfairness of the dismissal may also depend on whether the employer is categorized as small (with employees number 14 and below), where employees may not claim unfair dismissal unless he has worked for at least 12 months. 457 visa holders are protected against unfair dismissal or lay off as much as any Australian worker. When dismissed, the 457 visa holder has 90 days to find a new sponsor and apply for a new 457 visa. Within this 90-day period, he must phone or approach the DIAC for advice to ensure the visa remains valid. When dismissed, the 457 visa holder must inform the DIAC as the sponsor may be required to pay the 457 visa holder his salary for the 90 days.

ELIGIBILITY FOR PERMANENT RESIDENCY

457 visa holders may apply for permanent residence as long as the employer is willing to sponsor them. In certain cases, the 457 visa holder may qualify for permanent residence on their own, without need of sponsorship of employer.

RIGHT TO CHANGE JOBS

457 visa holders may change jobs for as long as the new employer has had his nomination for the 457 visa holder approved by the Department of Immigration and Citizenship (DIAC).

OTHER BENEFITS

Aside from the above benefits, 457 visa holders are also entitled to:

1. Flexible working arrangements,
2. parental leave and related entitlements,
3. annual leave,
4. personal/carer's leave and compassionate leave,

5. community service leave,
6. long service leave,
7. public holidays,
8. notice of termination and redundancy pay, and
9. provision of a Fair Work Information Statement

These benefits may either be set in the applicable industrial arrangement, such as an award, enterprise agreements or customary law, or when applicable, in the Fair Work Act of 2009 and Fair Work Regulations of 2009, copies of which may be downloaded from:

Fair Work Act of 2009, http://www.fwa.gov.au/documents/legislation/download/fw_act.pdf

Fair Work Regulations of 2009,

http://www.fwa.gov.au/documents/legislation/download/fw_regs.pdf

(Source of Information: Fairwork Australia website, Department of Immigration and Citizenship website and Fair Work Act of 2009)

FOR INQUIRIES ON THE ABOVE, PLEASE EMAIL TO:

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