

vSure Illegal Worker Compliance Checklist for Employers

Penalties for Illegal Workers

In 2013 the Migration Act was amended to allow the Department of Home Affairs (DHA) to better address employees working in breach of visa conditions. The amendment introduced graduated tiers of sanctions and a new civil penalty regime as well as criminal offences.

Civil penalties apply on a strict liability basis - this means that businesses may face fines if they have illegal workers on staff ***even if they are not aware of this.***

If a business is found to have an illegal worker, the DIBP can impose civil penalties on the business of up-to \$95,400 per worker in breach of their work rights.

Company Directors and officers can be personally liable if they do not put in place processes to check temporary workers.

For intentional breaches, criminal proceedings can lead to \$270,000 fines imposed on the business and up to \$54,000 in fines and 5 years jail for directors & officers.

Avoiding the Penalties

The only way to avoid these penalties is to take 'reasonable steps' at 'reasonable times' to check visas.

Just doing a visa check before employment is not sufficient because an employee's visa status can change after commencement of employment.

For instance a working holiday maker can work full time for 6 months with an employer, but if they change to a student visa, they can only work for 40 hours per fortnight. Unless visa checks are done at regular intervals, throughout the employee lifecycle, the employer may unwittingly be in breach of the legislation.



Employer Compliance Checklist

Obligation	How to meet your obligations
1. Seek consent from passport holders to perform visa checks to confirm Work Rights status	Ensure employment contracts of foreign workers include a clause that provides consent for the employer to perform visa checks throughout their term of employment.
2. Recruitment processes that ensure that the Work Rights of ALL workers are checked at the time of onboarding	<ul style="list-style-type: none">○ Sighting an Australian Birth or Citizenship certificate or Certificate of Residence + photo ID; OR○ New Zealand Passport; OR○ Certificate of Status for New Zealand Citizens in Australia (CSNZCA) + photo ID; OR○ Sighting foreign passport and performing a visa check
3. Ensure the Work Rights of all existing workers	Per above
4. Regularly check Work Rights for all foreign employees and contractors	Performing a visa check for all foreign workers at "reasonable times". As some visas may cease within 28 days, monthly is considered best practice, though quarterly appears the consensus bare minimum amongst the experts.
5. Record keeping	Keep clear and detailed records to show a clear audit trail and evidence of compliance

How vSure Can Help

vSure automates the visa checking process, giving you peace of mind that your business is fully compliant with the legislation.

The main features of vSure are:

- **Easy to set up your staff:** you can import staff using a scan of their passports, a CSV file or request passport details via automated emails
- **Comprehensive Reports:** you will receive regular reports on the visa status of all your staff. Any staff with issues will be highlighted for your action
- **Scheduled Checks:** you can schedule regular checks to ensure that you pick up any changes which could affect staff member's ability to work legally in Australia
- **Visa Expiry Reminders:** you can set up expiry date reminders via email, SMS or calendar invitations
- **Audit Trail:** vSure automatically keeps records of all visa checks completed, so that these can be provided to the Department in the case of any issues

If you would like to know more, [request a demo](#) and we can talk about how vSure can meet your business' individual requirements.

