

## TEMPORARY BUSINESS (LONG STAY) VISAS – BUSINESS SPONSORSHIP (SUBCLASS 457)

**NOTE:** The Subclass 457 Visa has been replaced by the TSS Visa (Subclass 482). See our recent article for more information.

Employers in Australia who intend to employ foreign workers need to apply for their employees visa, Temporary Business (Long Stay) Visas – Business Sponsorship (Subclass 457).



### A. ABOUT THE SUBCLASS 457 VISA

The Subclass 457 Visa allows an overseas worker to work in Australia for a period of between three months and four years. The validity periods of the visa components when approved by the Department of Immigration and Citizenship (“DIAC”) are:

- Sponsorship – two years (or until the approved number of positions is filled, whichever is the earlier).
- Nomination – 12 months.
- Visa – Between three months and four years.

### B. EMPLOYERS

Employers can either be Australian or overseas businesses operating in Australia. There are several criteria that the employer must meet in order to be approved as a sponsor:

- The employer must be lawfully operating a business that is actually and actively engaged in business activities.
- The sponsor must be the direct employer of the employee.
- The employer must have a good business record and abide by immigration laws.
- The employment of skilled workers from overseas must benefit Australia.
- The employer must demonstrate that their Australian business operations will either:
  - a. Introduce, use or create new business skills; or
  - b. Introduce, use or create new or improved technology; or
  - c. Have a satisfactory record of, or a demonstrated commitment towards training Australian citizens and Australian permanent residents.
- An employer that has no formal operating base or representation in Australia may apply to bring employees to Australia to either:
  - a. Establish a branch or other business activity; or
  - b. Fulfill obligations for a contract or other business activity in Australia.

The employer must nominate a position that:

- Is full-time;
- Meets all relevant Australian laws and award conditions;
- Meets the minimum skills level; and
- Meets the minimum salary level.

An employer in a regional area may be eligible for concessions relating to minimum salary and skill level requirements for the nominated position.

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### C. EMPLOYEES

An employee sponsored under a Subclass 457 visa must meet all of the following requirements:

- Sponsorship by an employer to fill a nominated position.
- Possess skills, qualifications, experience and an employment background matching those required for the position.
- Possess English language skills equivalent to an average band score of 4.5 across the 4 test components in an International English Language Testing System (IELTS) test, or higher where required.
- Be eligible for any relevant licences or registration required for the nominated position.
- Demonstrate that they are to be paid at least the minimum salary level that applies at the time a decision is made on the visa.
- Relevant health, character, and other general requirements.

### D. EMPLOYER AND EMPLOYEE OBLIGATIONS

If the sponsorship, nomination and visa applications are successful, employers and employees are required to meet certain obligations.

At the time of the application, the Department of Immigration and Citizenship (“DIAC”) must be satisfied that the employer is able to meet sponsorship obligations for the employee and their accompanying family members. These obligations are summarised below.

The employer must:

- Be responsible for costs. This includes:
  - a. Cost of return travel;
  - b. Medical or hospital expenses for relevant treatments in public hospitals; and

c. Costs to the Australian Government for money spent as a result of the employee’s stay in Australia.

- Comply with immigration laws.
- Cooperate with DIAC.
- Comply with the terms of nomination, such as notifying DIAC of any change in the employee’s work location if the nomination approval is granted under conditions that the employee works in a particular location.
- Comply with workplace relations laws.

The employee must also undertake to meet certain obligations. For example, an employee must notify DIAC of any change in their circumstances.

If the visa application for a temporary visa is approved, the employee must not:

- Stop working for the employer who sponsored them;
- Work in a different position other than the position nominated in the visa application; or
- Work for another person or for themselves while working for the sponsor.

In the event that a sponsor ceases the employee’s employment, the employee must either:

- Find another employer who is willing to sponsor them and apply for another visa;
- Apply for another type of substantive visa; or
- Leave Australia within 28 days.

Comasters is able to prepare comprehensive applications to the Department of Home Affairs on behalf of clients.

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