

# Work Rights Obligations Checklist

## Migration Amendment (Reform of Employer Sanctions) Act 2013

In 2013 the Migration Act was amended to allow Home Affairs to better address illegal work hire practices. The amendment introduced graduated tiers of sanctions and a new civil penalty regime as well as criminal.

“A person may contravene a civil penalty provision **without knowing or being reckless** as to a foreign national’s migration status or visa entitlements relating to work.”

If a business is found to have an illegal worker, Home Affairs can impose civil penalties on the business of up-to \$94,500 per worker in breach of their work rights (\$18,900 per worker on a director or officer). And these fines can apply whether the business even realised or not: the DIBP does not need **proof that the business, director or officer even knew or were being reckless** to impose the penalties!

If the act is considered to be known or reckless, criminal proceedings can lead to \$315,000 fines imposed on the business and up to \$63,000 in fines and 5 years jail for directors & officers!

The Migration Amendment Legislation allows you to establish a defence and avoid these penalties by taking ‘reasonable steps’ at ‘reasonable times’ to check visas. Undertaking a check before employment on an employee’s visa status is not sufficient. An employee’s visa status can change after commencement of employment, consequently putting the employer at risk. For instance, a working holiday maker may be able to work full time for six months, but can only work for 40 hours per fortnight if they move onto a student visa. Therefore VEVO checks need to be run at regular intervals, throughout the employee lifecycle.

## Checklist

Obligation	How to meet your obligations
1. To seek consent from passport holders to perform Visa Entitlement Verification Online (VEVO) checks to confirm Work Rights status	Ensure employment contracts of foreign workers include a clause that provides consent for the employer to perform VEVO checks throughout their term of employment.
2. Have recruitment processes that ensure that the Work Rights of ALL workers are checked at the time of onboarding	<ul style="list-style-type: none"><li>○ Citing of an Australian Birth or Citizenship certificate or Certificate of Residence + photo ID; OR</li><li>○ New Zealand Passport; OR</li><li>○ Certificate of Status for New Zealand Citizens in Australia (CSNZCA) + photo ID; OR</li><li>○ Citing foreign passport and performing a VEVO check</li></ul>
3. Ensure the Work Rights of ALL existing workers	Per above
4. Regularly check Work Rights for all foreign employees and contractors	Performing a VEVO check for all foreign workers at “reasonable times”. As some visas are 28 days in nature, 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

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