

#### Efficiency + Fulfillment + Integrity + Teamwork

From 19 August 2007 it will be a criminal offence under the Migration Act 1958 for a person to knowingly or recklessly:

- allow an illegal worker to work; or
- refer an illegal worker for work with another business.

The penalties are severe:

- Individuals face fines of up to \$13,200.00 and/or 2 years imprisonment
- Companies face fines of up to \$66,000.00 per illegal worker

The penalties are more severe where an illegal worker is being exploited through slavery, forced labour or sexual servitude.

It is important to note that the new offences only apply to employers who engage or refer illegal workers after 19 August 2007.

#### ***Who are illegal workers?***

Illegal workers are:

- unlawful non-citizens who are working, i.e. illegal immigrants; or
- lawful non-citizens who are working in breach of their visa conditions.

Work means "any work, whether for reward or otherwise".

It is important to note that "allows to work" extension captures a range of work relationships beyond traditional employment and most importantly will include contractor arrangements. It must be noted, however, that only businesses in a direct legal relationship with an illegal worker can commit the offence of allowing an illegal worker to work. This means that a head contractor would not commit an offence if a subcontractor engages an illegal worker.

**This legislation will place an important obligation on employers which if not fulfilled may have severe penalties on the employer. The obligation and the penalties do not exist prior to the legislation taking effect.**

At Ward Legal we recommend that all recruitment checklists should include:

- 1 Sight and copy birth certificate and if recruit was born in Australia this is adequate.
- 2 Sight and copy certificate of naturalization if available.
- 3 Sight and copy original passport and confirm that the name on passport is the same of the recruit.
- 4 Check that the passport has a visa and that the visa is in the name of the worker. Copy the visa.
- 5 Check the visa conditions. This is not an easy task as they refer to schedules in the Migration Regulations 1994. If unsure you should seek the advice of Ward Legal.
- 6 Diarise the end date for the visa.

The new offences only apply to the employment of illegal workers after 19 August 2007. However, at Ward Legal we recommend that it would be prudent to apply the above checklist to all of your current employees.

**Contact Ray Ward if you have any further queries**

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