

Hiring Applicants on Temporary Visas

Understanding visa types and conditions

There are several visa types that allow visa holders to work in Australia. No matter the visa type, verify that applicants for vacancies in the WA public sector have the right to work in Australia in compliance with the *Migration Act 1958 (Commonwealth)*.

While some visa holders can lawfully work in Australia without conditions, other visa holders may have conditions on working in Australia including time limits. As a starting point, be aware that:

- Australian citizens, Australian permanent residents and New Zealand citizen special category visa holders are entitled to live and work indefinitely in Australia and work on an unrestricted basis
- other visa holders need to have a right to work in Australia to be employed in the sector
- appointing visa holders could imply contractual obligations for agencies to take reasonable steps to assist or sponsor them to obtain permanent or ongoing working rights in Australia.

Actions to consider

- Check applicants' visa types, conditions and expiry dates through [Check visa conditions online \(VEVO\)](#).
- Seek legal advice when considering appointing visa holders on temporary visas or with other work restrictions to permanent positions.
- Include a condition precedent clause in employment contracts requiring visa holders to comply with Australian employment and migration laws.
- Establish processes to regularly review the visa status of temporary visa holders.
- Keep and make accessible all records.

Example condition precedent clause

Seek legal advice on including this type of clause in the employment contract.

1. It is a fundamental condition of the contract that the employee has and maintains rights to lawfully work in Australia in accordance with the terms of this contract.
2. The employer can terminate the contract immediately if the employee fails to have and maintain rights to lawfully work in Australia in accordance with the terms of this contract.
3. Before starting employment, the employee must provide proof of their right to lawfully work in Australia in accordance with the terms of this contract.
4. The employee must inform the employer immediately if they no longer have a right to lawfully work in Australia in accordance with the terms of this contract.

Resources

- [Employing overseas workers](#)
- [Migration Act 1958](#)
- [Proving Australian citizenship](#)