

Immigration alert

How to approach an immigration breach

Background

To qualify (and maintain) employer accreditation, key people within an organisation must not have employed anyone who is ineligible to work under the Immigration Act 2009. Also, these key people must not have provided false or misleading information to Immigration New Zealand (INZ), or withheld anything material in previous dealings.

If an employer's key people have a history of non-compliance, including with a previous company, INZ needs to be satisfied that steps have been taken to avoid a similar incident happening again. When assessing whether there is a 'history of non-compliance' INZ will look at whether there have been two or more breaches, at any time.

What this means for accredited employers

Employers are required to disclose previous immigration breaches in an accreditation application form. INZ also requires the disclosure of immigration breaches that happen during an accreditation period. This includes minor issues, for example when an employee:

- Works on an interim visa that has visitor conditions only.
- Moves to another office location without updating visa conditions.
- Works more than the 20 hours allowed for weekly on a student visa.

These disclosures must be made to INZ within 10 working days of becoming aware of them.

What to do if there is an immigration breach

1. Correct the breach

When an immigration breach occurs, it should be quickly corrected. For example, if an individual has been working on an interim visitor visa, they should stop working until the substantive work visa is decided. If an

employee has transferred to a different office but does not have location conditions allowing for this, they should return to the office listed on the eVisa, until a visa application is made to allow the transfer.

2. Take steps to ensure it doesn't happen again

Once the breach has been corrected, an employer should review its processes and take steps to prevent a similar incident in future. This could include:

- A 'right to work' check on all existing employees to show the breach was a one-off error. This involves checking that all employees have one of the below on file:
 - NZ passport or birth certificate.
 - NZ residence visa.
 - Australian passport or permanent residence visa.
 - A NZ visa with conditions allowing work for the company, in the occupation and location listed on the eVisa.
- Appoint an individual (or team) responsible for immigration compliance. This person should review visa conditions before an individual starts employment or changes are made to employment terms e.g. location or job title.

Further compliance tips

We recommend the individual(s) responsible for immigration compliance put the below in place:

- Update job application forms to ask 'do you have the right to work in New Zealand?'
- Sight a work visa or other evidence before an individual starts employment. This will include checking the employer, occupation and location conditions.
- Sign up to [VisaView](#) and run all eVisas through this verification portal before an individual begins

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employment.

- Review changes to employment terms before they are approved e.g. location or hours.
- Track the expiration date of all work visas in an Outlook calendar or HR system.

Summary

An accredited employer must disclose immigration breaches to INZ within 10 working days.

While one-off (minor) issues are unlikely to be a concern, the way these are disclosed and the actions taken to prevent a repeat incident are important. If a company doesn't address immigration compliance issues or make the required disclosures, it could impact on the ability to maintain or renew employer accreditation, which is now required to support most migrant workers for visas. Concerns that are not addressed or disclosed could be raised at accreditation renewal stage, or if a business is selected for an INZ compliance check.

Want to know more?

If you have any questions about this article, please contact [Tash Rae](#) or a member of our specialist [Employment Team](#).