

## Are you employing an illegal immigrant?

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The Australian Parliament assented to the ***Migration Amendment (Employer Sanctions) Act 2007*** on 19<sup>th</sup> February 2007 which imposes sanctions on persons who are connected with work by unlawful non-citizens or work in breach of visa conditions.

This new legislation amends the *Migration Act 1958* and is expected to take effect in August 2007. It is targeted at those employers or labour suppliers who employ, assist or exploit illegal workers from overseas such as tourists, illegal immigrants or people who have overstayed their visas.

The new law states the following categories of offence:

- **Allowing an unlawful non-citizen to work** (Section 245AB)  
This section prohibits the employment of an illegal immigrant – whether the employer is aware or reckless of the fact that the employee is an illegal immigrant
- **Allowing a non-citizen to work in breach of a visa condition** (Section 245AC)  
This section prohibits an employer from hiring a non-citizen who does not have an appropriate work visa.
- **Referring an unlawful non-citizen for work** (Section 245AD)  
This section prohibits the referral of an illegal immigrant to work, for example by a labour agency or a recruitment agency
- **Referring a non-citizen for work in breach of a visa condition** (Section 245AE)  
This section forbids the referral of a non-citizen without a work visa to work – for example by a recruitment company or a labour agency.

Currently, employing a non-Australian citizen who has no right to work is an offence under the *Criminal Code Act 1995*, and leads to a penalty of up to \$10,000. Under the new law, employers who are committing one or more of the above offences have to face tougher penalties. Thus, an offence either allowing or referring an unlawful non-citizen to work is punishable with a maximum penalty of 2 years imprisonment and/or fines of \$13 200 for individuals and \$66 000 for companies.

When the offence is considered as an *aggravated offence* (i.e. when an illegal worker is being exploited through slavery, forced labor or sexual servitude) employers can be punished per illegal worker with a maximum penalty of 5 years imprisonment and/or fines up to \$33 000 for individuals and \$165 000 for companies.

The new offences only apply to persons who engage or refer illegal workers on and from the date that the Amendment Act commences. Therefore, it would be advisable to check the work rights of existing workers specially if their contracts are renewed or extended on or after August 2007.

The offences can also apply to businesses that perform informal labor referral services such as backpacker hostels that organise harvest work for backpackers. Furthermore, Migration agents who occasionally refer clients for work with other businesses could also commit the referral offences in case the client is an illegal worker.

There are various reasons why the Australian Government decided to implement this law. First, the new law is part of the continued attempts of the Australian government to take drastic measures on people-smugglers as well as organized crime groups who profit from illegal workers. Secondly, Australia suffers from tremendous problems associated with the high number of illegal workers, like for example the heavy burden it places on taxpayers, and thirdly, illegal workers take away the job opportunities from Australian citizens and lawful migrants.

In order to be able to identify illegal workers and their employers, the Australian Government has to rely on collaboration with employers and employer groups. The DIAC website includes the comprehensive publication “guide to work rights”, which is also designed to help Australian employers to check work rights. Complying with the new laws should be relatively easy for employers:

First, the government plans to provide extensive information material and guidance on how to check work rights.

Secondly, the Department of Immigration and Citizenship (DIAC) plans to run a campaign in order to increase employers’ awareness of their new obligations under this law.

Thirdly, checking work rights of all prospective workers using the Entitlement Verification Online system (EVO) which is available on the DIAC website or the Work Rights Fax Back Facility.

*This information is of a general nature and should not be taken as authoritative legal advice for specific cases. The writer, Atty. Imelda Argel is a practising Filipino lawyer and a registered migration agent in Sydney, Australia. She is a Solicitor of the Supreme Court of New South Wales, the High Court of Australia, Attorney at law in the Philippines and in the State of New York, USA. Her Registered Migration Agent no. is 9682957. More information is available at [www.iargel.com.au](http://www.iargel.com.au)*

*Readers of the Philippine Community Herald Newspaper are invited to send their comments to “The President, Filipino Migrants Forum” c/o Imelda Argel & Associates, Solicitors & Attorneys, by email at [info@iargel.com.au](mailto:info@iargel.com.au) or by fax at (+612) 9699 3210 or by post to Suite 41, Ground Floor, 61-89 Buckingham St. SURRY HILLS NSW 2010.*