

# SPONSORSHIP OBLIGATIONS

## Obligation to ensure equivalent terms and conditions of employment



A Standard Business Sponsor must also ensure that the wages of the relevant worker are no less than the earnings that were approved by the Minister for Immigration & Border Protection when the nomination was granted.

### WHAT YOU NEED TO CONSIDER

If you employ a UC 457/GK 482 visa holder as a primary sponsored person, you must keep that person's earnings at market rates and at least at the level the nomination was approved for (whichever is the greater).

## Obligation to ensure primary sponsored person works or participates in the nominated occupation

The obligation commences from the day the nomination is approved (or the primary sponsored person is granted a visa) and ends when a nomination is approved in favour of an alternate sponsor or a visa is granted to the primary sponsored person which is not a UC 457/GK 842.



### WHAT YOU NEED TO CONSIDER

Sponsors have a legal obligation to ensure not only does the person work in the business, they also need to ensure that they do so in the position which that person was nominated for. Don't just assume that by having the nomination approved and a visa granted that this is the end of the matter.

If the sponsored employee gets promoted within the business and performs higher duties, they may need to be re-nominated. In this regard, the obligation is assessed against specific occupation codes.

Many of these codes are very similar and often have crossover effect. For example, a breach can occur where a Motor Mechanic gets higher qualifications and starts working as a Diesel Motor Mechanic – technically this is a different occupation.

Because of that landscape, ongoing assessment of the tasks a sponsored person is carrying out needs to be undertaken by a sponsor to ensure compliance. This is especially the case where an overseas employee moves up through the ranks or gains higher skills.

## Obligation to cooperate with inspectors

A sponsor is taken not to have cooperated with an inspector where:

1

The sponsor hinders or obstructs the inspector when exercising his/her investigative powers;

2

The sponsor conceals/ attempts to conceal the location of a person, document or thing whilst the inspector's powers are being exercised;

3

The sponsor prevents, or attempts to prevent another person from assisting an inspector whilst his/her investigative powers are being exercised;

4

The sponsor assaults an inspector whilst exercising his/her investigative powers;  
or,

5

The sponsor intimidates or threatens, or attempts to intimidate or threaten, an inspector exercising powers under the Migration Act 1958.



## WHAT YOU NEED TO CONSIDER

This is an easy one to comply with. If inspectors come knocking on your door you are legally obliged to cooperate with them. Despite this, we have come across circumstances where this has not been the case and it leads to not only a sponsorship breach, but the Department taking a very aggressive stance with the sponsor in terms of any other non-compliance. Generally speaking, this obligation starts to apply on the day the sponsorship is approved and ends 5 years after the day the sponsorship ceases.

## Obligation to pay travel costs to enable sponsored persons to leave Australia

The Standard Business Sponsor must pay the Standard Business Sponsor must pay the travel costs of the UC 457/GK 482 visa applicant (including secondary applicants), if the visa applicant requests this in writing.



## WHAT YOU NEED TO CONSIDER

Generally speaking, these costs must be reasonable and necessary. Furthermore, the request must specify the person who is travelling and the country they are travelling to. The Standard Business Sponsor has approximately 30 days to pay for the costs which are for economy class air travel.

## Obligation to pay location costs for an unlawful non-citizen



The costs are up to a maximum of \$10,000.00 less any amount the sponsor has already paid under the corresponding obligation to pay travel costs.

## WHAT YOU NEED TO CONSIDER

This obligation is not one that is exercised too often by the Immigration Department. In this respect, most departing employees either obtain another visa or employment relationship or simply leave.

Despite this, \$10,000.00 is still a considerable exposure for any business and that in the event of a departure, a sponsoring employer needs not only manage that person correctly but also ensures they are doing so in a fashion that does not expose you to paying these costs.

Equally, it could also mean that a sponsor communicates with the former employee that it is willing to book and pay for travel costs in compliance with the parallel obligation to pay those costs expeditiously.

## Obligation to keep records

The type of records you need to keep include:

1

The written request by a sponsored person for payment of travel costs, including when it was received and how the request was complied with;

2

Any notification provided to the Minister under the overall obligation to provide information when certain events occur under Regulation 2.84;

3

A record of money paid to the sponsored person including any non-monetary benefits, a record of tasks performed by the primary sponsored person as well as where that work was carried out and a record of the terms and conditions of employment of any equivalent workers;

4

A copy of the written contract of employment under which the primary sponsored person is employed; and,

5

Records showing compliance with training obligations under Regulation 2.87B.

## WHAT YOU NEED TO CONSIDER

This obligation starts on the day the sponsorship application is approved and ends two (2) years after the date when the person ceases to be a sponsor and there ceases to be any sponsored persons associated with the sponsorship.

It is so important to keep records on your business anyway, so why run the risk of a sponsorship obligation breach and significant penalties by not doing so.

Other than the records being reproducible, there are no detailed guidelines to how these records must be kept. However, we always scan or electronically copy any related records, and of course have a backup copy.

## Obligation to provide records and information to Immigration

**The records the sponsor must provide are generally those records as set out in Regulation 2.82.**

The obligation commences on the date of sponsorship approval and ends two years after that person ceases to be a sponsor and there are no sponsored persons in relation to that sponsorship.



### WHAT YOU NEED TO CONSIDER

This obligation should speak for itself. Despite this, Immigration regularly makes adverse findings where they form a view that what has been requested from a sponsor has not been complied with.

In this regard, if there has been a sponsorship obligation breach then there is absolutely no point in making a situation even worse by trying to cover it up.

It is our experience that where a breach occurs and it is dealt with in a certain way by the sponsor, Immigration will usually take a different view if it is being dealt with in a transparent fashion.

If you have a compliance issue it is always better to take advice and then take steps to remedy the breach where at all possible. The last thing a sponsor needs is Immigration arriving at a business and looking for certain records and then not complying with the request.

It only causes Immigration to double down on the sponsor and makes a bad situation unnecessarily worse.

## Obligation to provide information to Immigration when certain events occur

If you are a Standard Business Sponsor you must notify Immigration about certain events. These include:

1. Cessation or expected cessation of a primary sponsored person's employment;
2. Change of work duties of primary sponsored person;
3. A change of information provided to Immigration in the sponsor's sponsorship application which goes to the training requirement and change of address and contact details;
4. Where the legal entity of the sponsor ceases;
5. The appointment of a new director;
6. Where the sponsoring entity is a partnership, the appointment of a partner;
7. Where the sponsoring entity is an incorporated association, the appointment of a new member of the managing committee;
8. The payment of travel costs of the primary and/or secondary sponsored person;
9. The sponsor becomes insolvent, enters into a debt agreement, a sequestration order is made, the sponsor becomes bankrupt, as well as a scheme of arrangement being presented for the sponsor under the Bankruptcy Act 1966;
10. If the sponsor is a company, the appointment of an administrator, a resolution is made to wind the company up, a liquidator is appointed, as well as procedures being taken for the deregistration of the company.



### WHAT YOU NEED TO CONSIDER

Depending on the event, the timeframe is generally within 28 days of it occurring however much depends on the particular circumstances. The obligation commences on the day the sponsorship is approved and ends after the first day the sponsor's approval ceases and there is no primary sponsored person in relation to the sponsor.

## Obligation not to recover, transfer or take actions that would result in another person paying for certain costs

The Immigration Department's interpretation of this obligation is relatively broad, in terms of what conduct is captured by the regulation.

As the regulation suggests, a sponsor cannot pass on, transfer or recover any costs towards the sponsor obtaining status as an approved sponsor. This would include any Departmental fees associated with that process as well as any migration agent's costs amongst other things.

By extension however, although Regulation 2.87 is narrowly worded in terms of nominations, the Immigration Department adopts a very broad position (even though the regulation refers just to recruitment costs) in terms of what conduct is picked up by it.

### WHAT YOU NEED TO CONSIDER

This obligation is now also being looked at in the context of parallel December 2015 changes to the Migration Act 1958 which criminalises certain payment for visa conduct.

Despite the loose wording of Regulation 2.87, a sponsor cannot pass on certain costs to an overseas worker. By doing so, a sponsor is not only potentially breaching a sponsorship obligation, it is also exposing itself to action being taken where it is viewed to run contrary to Section 245AR/245AS of the Migration Act 1958.

