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# A GUIDE TO EMPLOYING MIGRANTS

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*PARRY FIELD LAWYERS*

ParryField  
Lawyers



To the heart of what matters.



## About Parry Field Lawyers

We are a New Zealand owned company that has been serving our clients since 1948. Our aim is not only to provide sound legal advice, but to also find solutions which deliver the best practical outcome for those we represent.

### Our History

In 2023 we celebrated 75 years in practice. Our founder, Glynn Parry, was joined in partnership by Brian Field in the early 1950s. Since the later 1970s, Peter van Rij, Ken Lord, and Grant Adams have each led the firm into a new period of growth. Today we have grown to 11 partners, around 100 staff and operate from five locations. Parry Field Lawyers incorporated as a company under the Companies Act 1993 on 1 July 2021.

### To The Heart Of What Matters

We see our clients in a rounded way and wanted to help them with 'what really matters', for legal services and beyond, where appropriate. With our growing team, we are excited by what the future holds and look forward to continuing to provide exceptional legal services to our valued clients.

Find out more at [parryfield.com](https://parryfield.com)

Compiled by the Parry Field Lawyers Immigration Team

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## A GUIDE TO EMPLOYING MIGRANTS

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We offer professional, reliable, and practical immigration solutions to businesses by helping your employees' migration journeys from start to finish.

We are here to guide you through the process and offer tips to make your applications smoother.

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# EMPLOYER ACCREDITATION

## What is it and who can apply

To employ migrant workers, you must be an accredited employer. To become accredited, you must meet the following requirements.

- **Genuinely operating business:** You must be a genuinely operating business, i.e.:
  - must be registered as an employer with IRD; and
  - not be bankrupt or subject to a No Asset Procedure (if a partnership or sole trader); and
  - meet one of the following:
    - have not made a loss (before depreciation and tax) over the last 24 months;
    - have a positive cash flow for each of the last six months;
    - have sufficient capital and/or external investment (for example, funding from a founder, parent company or trust) to ensure your business remains viable and ongoing; or
    - have a credible, minimum two-year plan (for example, by having contracts for work) to ensure your business remains viable and ongoing.
- **'Viable and ongoing'** includes being able to:
  - meet financial obligations such as paying wages or salaries and all other operating costs and expenses; and
  - purchase inventory (if relevant).
- **No record of non-compliance:** You must not have a record of non-compliance, i.e.:
  - not be included in the immigration stand down list;
  - must be compliant with immigration law and not be subject to a permanent ban following a conviction for an immigration related offence(s);
  - not be prohibited from being a director; and
  - must not be a phoenix company.

- **Minimise exploitation:** You must take steps to minimise worker exploitation, i.e.:
  - pay all recruitment costs inside and outside New Zealand, including advertising, agency fees, accreditation and job check applications, training and induction, health and safety equipment, and uniforms, but excluding airfares;
  - provide your worker(s) with the following information about the local community and services and employee work-related matters within one month of employment:
    - accommodation options;
    - transportation options (including driving and driver license information, and public transportation options);
    - the cost of living;
    - how to access healthcare services;
    - Citizens Advice Bureau services;
    - relevant community groups;
    - how to obtain an IRD number from Inland Revenue;
    - any industry training and qualification information and options; and
    - specific job or industry hazards.
  - not receive a premium for employment, unlawfully bond the employee, nor make any unlawful deductions.
- **Suitably qualified:** You must take reasonable steps to ensure that the worker you are hiring meets the minimum skills threshold and is suitably qualified, by work experience or qualifications, to do the job offered.
- **Advise Immigration New Zealand (INZ):** You must advise INZ within 10 days:
  - of any changes to your key persons or business structure – note that where a change to your



business structure results in a change to the legal entity, that legal entity must apply for accreditation in its own right; and

- if one of your workers stops working for you. You do not need to let Immigration New Zealand know about workers that leave within a month of their visa expiry date.

If you are using triangular employment arrangements or a franchisee, there are extra requirements you must meet.

## How to apply

You can apply online. Many applications are assessed based on declarations and automated checks against publicly available information or information held by the Ministry of Business, Innovation and Employment (MBIE). However, INZ (Immigration New Zealand) may request evidence and additional information to assess your application.

## Tips

- **Understand your obligations as an accredited employer:** It is important that you, as an accredited employer, ensure compliance with immigration instructions as accreditation can be revoked (as discussed in the "Compliance / Investigations" section) and may not be renewed by INZ if you cannot show that you have met the accreditation requirements. You should seek advice from a qualified professional (such as an immigration lawyer), if needed.
- **Keep records:** Keep records of documents which show that you have met the accreditation requirements:
  - to provide to INZ with your renewal of employer accreditation application for faster processing; and
  - to provide to INZ, if requested, within the specified timeframe (as discussed in the "Compliance / Investigations" section).









## JOB CHECK

### What is it and who can apply

To employ a worker on an Accredited Employer Work Visa (AEWV), you must apply for a job check.

- **Multiple Jobs:** Multiple jobs may be included in a job check if the following details are the same for all jobs:
  - the occupation;
  - the job description;
  - the location;
  - the minimum guaranteed remuneration and maximum remuneration;
  - the type of employment agreement (permanent or fixed term); and
  - the minimum qualifications, work experience, skills or other specifications required for the job.
- **Labour Market Test (LMT):** The LMT must be met for all jobs, except where:
  - remuneration will be at least twice the median wage or the equivalent annual salary;
  - the occupation is included on the Green List, and the minimum requirements for the job include the requirements on the list for that occupation.

A LMT is a genuine attempt to recruit a New Zealand citizen or resident. For a LMT, you must:

- find the occupation within ANZSCO (Australian and New Zealand Standard Classification of Occupations) that most closely matches the job;
- advertise on a national job listing website, for example, SEEK or TradeMe Jobs, for at least 14 (or 21) calendar days; and
- assess New Zealand citizens or residents who apply for the job.

You may have to engage with Work and Income.

The advert must include:

- a job description detailing the key tasks and responsibilities; and
- the key terms and conditions of the employment, including:
  - the minimum and maximum rate of pay or salary;
  - where a significant portion of the actual earnings are not guaranteed, the estimated actual earnings (for example what the piece rates or commission rates are, or what the average bonuses are);
  - the minimum guaranteed hours of work; and
  - the location of the job.
- the minimum qualifications, work experience, skills or other specifications required for the job (only which are necessary to perform the work).
- **Remuneration:** The remuneration must be at or above the minimum wage and no less than the New Zealand market rate.

### How to apply

You can apply online. You will have to provide:

- a job description;
- a proposed employment agreement; and
- evidence you advertised.

You may have to provide:

- evidence you assessed the New Zealand citizens or residents who applied for the job; and
- evidence you engaged with Work and Income.

## Tips

- **Compliant employment agreement:** Have your employment agreement reviewed by a qualified professional to ensure it has all the clauses required by employment law and meets INZ's specific requirements.
- **Accurate ANZSCO code:** INZ will not give you more time to advertise or engage with Work and Income if you choose the wrong ANZSCO code. To find the right ANZSCO code, seek advice from a qualified professional.
- **Draft the advert carefully:** It must include the details as specified above.

For information on Accredited Employer Work Visa, please refer to our **"A Guide to Working in New Zealand"**.





## COMPLIANCE / INVESTIGATIONS

Immigration New Zealand (INZ) have investigations and compliance teams who investigate immigration offending.

Reports of immigration offending can be made anonymously to INZ, and these reports can be referred to an INZ Investigator or Compliance Officer, or MBIE (such as the Labour Inspectorate), for investigation.

INZ may also undertake monitoring during the accreditation period (they will audit about 15 percent of all accredited employers), such as conducting site visits and requesting documentation or evidence (which you will have to provide within 10 working days).

If you do not comply with immigration (and employment) legislation, you may:

- have your accreditation suspended and/or revoked (discussed further below);
- be placed on a stand-down list (so will not be able to support visas for migrants for a set period of time);
- be issued infringement notices.

Note that employers being actively investigated for any breach of the requirements of employer accreditation may have their accreditation suspended for up to three months or until there is an outcome of the investigation.

Accreditation can be revoked where:

- an employer has not provided information and/or documentation which has been requested by Immigration New Zealand within 10 working days without reasonable justification; or
- an employer refused Immigration New Zealand entry to conduct a site visit without reasonable justification; or
- Immigration New Zealand is not satisfied that an employer has continued to meet the accreditation requirements.

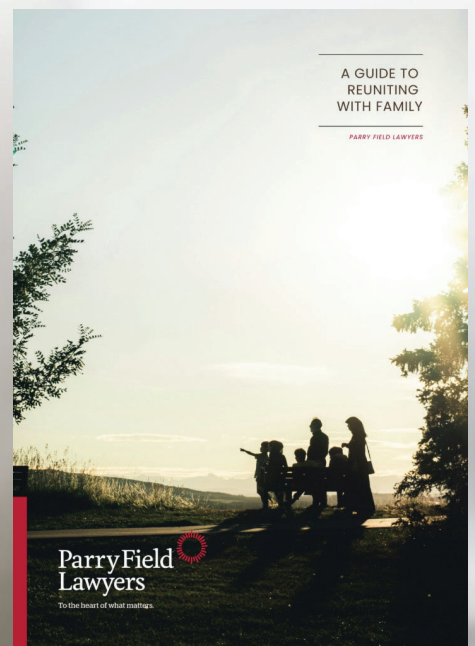
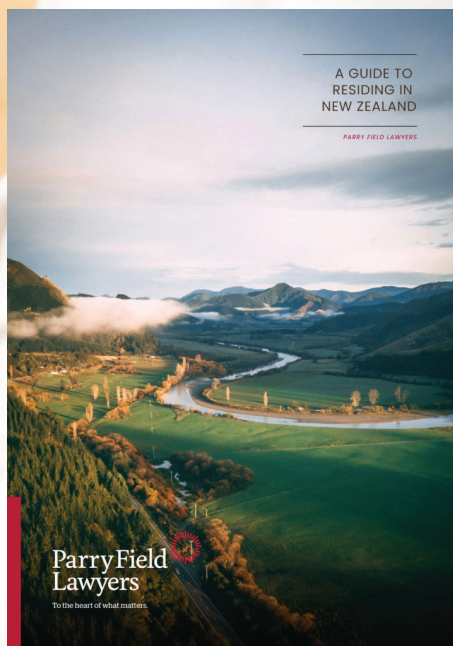
## Tips

- **Right to work:** Before a migrant begins working for you, check that their visa gives them the right to work for you. You can do so by having the migrant show you a document as evidence of their right to work for you in New Zealand (for example, their valid New Zealand work visa, New Zealand residence class visa, etc.) or by using VisaView. To access VisaView, you must use a RealMe account.
- **Unpaid work:** Do not allow a migrant to undertake volunteer/unpaid work if they are not legally entitled to work for you, as INZ may consider volunteering/unpaid work to be work, and if they do, they can deport the migrant, issue you an infringement notice, place you on the stand-down list, take action against you for not paying the minimum wage, etc.
- **Work visa conditions:** Read your migrant's work visa conditions carefully as you cannot employ a migrant in a way that is inconsistent with their work visa conditions. If their work visa specifies an occupation and/or region, they can only work in that occupation and/or region.





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