

EMPLOYERS PROVIDING IMMIGRATION ADVICE AFTER 4 MAY 2009

From 4 May 2009 employers will no longer be able to provide immigration advice and assistance to their employees, as doing so will put the employer in breach of the Immigration Advisers Licensing Act 2006 (**Act**).

The Act has been introduced to regulate Immigration Advisers. There have been many cases of foreign nationals in New Zealand being provided incorrect immigration advice, charged exorbitant fees, and provided very poor service from Immigration Consultants who held themselves out as being professional Immigration Advisers.

Whilst the Act is aimed to regulate those working in the immigration advice industry the effect of its provisions essentially limit the types of people who can give advice on an immigration matter. Advice is defined under the Act as:

“Using, or purporting to use, knowledge or experience in immigration to advise, direct, assist or represent another person in regard to an immigration matter relating to New Zealand, whether directly or indirectly and whether or not for gain or reward.”

Employers who advise an employee or potential employee on how to prepare an application to Immigration New Zealand (**INZ**) will (even though they charge no fee) be in breach of the Act.

Although an employer cannot provide advice, they can still continue to provide general immigration information to their employees that is readily available from INZ (e.g. application forms) and continue to support their employee's applications by providing the required documents and employer forms requested by INZ.

Certain individuals are however exempt from the Act and can provide immigration advice and assistance post 4 May 2009 without being licensed. These individuals include:

- Lawyers;
- People who provide advice in an informal or family context only, as long as the advice is not provided systematically or for a fee;
- Public service staff who provide immigration advice within the scope of their employment; and
- Community law centre and citizen advice bureau staff.

As employers are not exempt, those who wish to continue to give immigration advice and assistance to their employees will have two options.

First, the employer nominates an existing employee to apply for and obtain an Immigration Advisers license. Once obtained, the license will need to be renewed each year and evidence of ongoing training and professional development will be required.

Second, the employer outsources any immigration advice either to a person who is licensed or to one of the exempt persons listed above.

Further information on the Act and its requirements can be found at www.iaa.govt.nz