

Can I employ an overseas worker who already has a 457 visa?

Competitive labour market conditions means that overseas workers in Australia may choose to change their employment situation once arriving in Australia. Just as Australian employees may change their employment status, so too may overseas nationals holding a valid 457 visa. Under immigration laws, existing 457 visa holders may change employers, apply for promotion and even change roles once they commence work in Australia.

A number of Ai Group member companies have recently sought advice on the correct procedure for lawfully employing an existing 457 visa holder. Ai Group's Skilled Migration Advisor explains that employers wanting to employ existing 457 visa holders in Australia need to undertake a 2 step process with the Department of Immigration and Citizenship:

1. The new employer must become an 'approved standard business sponsor' which requires lodging a 457 visa sponsorship application with the Department. If successful, sponsorship status will be granted to the employer for 3 years. (Employers who are already approved 457 sponsors are not required to complete this step)

2. The new employer must lodge a 'nomination application' with the Department. The nomination application must identify the:
 - a. position to be filled
 - b. skills and experience required for the position
 - c. market salary rate, and the salary rate to be paid to the prospective overseas employee
 - d. name of the prospective overseas employee

Once these two steps are approved by the Department the visa holder can begin work (subject to any contractual arrangements with any previous employer). Under new laws introduced in 2009, 457 visa holders are not required to apply for a new visa if their current 457 visa is still valid.

This process applies to any employees who are changing employers or substantially changing roles, due to promotion or change of career.