

*This document is issued for general guidance only. It does not constitute professional advice. The issues with which it deals are complex and the document necessarily deals only with general principles. No reader should rely on this document for the purpose of making a decision as to action but should seek the appropriate advice from Brismark on the particular circumstances of that reader. Brismark accepts no responsibility for the consequences should any person act in reliance on this document without obtaining the appropriate advice Brismark.*

## Young and Migrant Workers – Smashing the Wage Myth

There have been a number of cases in the media over the past six months highlighting the exploitation of Young Workers and Migrant Workers on Student or Work Visas.

In a majority of these cases it has amounted to underpayment of wages, based on the ‘belief’ of the employer that ‘it was okay’. However, according to the Fair Work Ombudsman and Australia’s workplace laws – **it is NEVER OK!!** – and they have shown a number of businesses their displeasure via Federal Circuit Court orders to pay fines.

For example, a retail business was found to be incorrectly paying four Korean workers for a period of two years, amounting to \$17,827 in underpayments. This resulted in the business being fined \$146,000 over the exploitation of these workers and ordered to make back payment of wages owing.

So, what are some of the ‘MYTHS’ that could get you a day in court? Let’s identify some of the most common and BUST them:

- MYTH 1:** I can pay low, flat rates of pay for all hours worked and I can also pay cash if the worker agrees.
- FACT:** NO – minimum lawful pay rates for all employees are mandatory, regardless of their visa status, and in many cases penalty rates must be paid for overtime, weekends and public holidays. Paying cash is an evasion of both tax and employment laws, which could see you facing some serious penalties on both fronts.
- MYTH 2:** Employees don’t need to be paid for time to open/close store, clean store or attending meetings or training outside of their paid work hours.
- FACT:** YES they do - If a meeting or training is compulsory, then it is work and paid. Employees must be paid for ALL hours they dedicate to work and this includes time to open/close and clean. If they are required to start work at 7.30am to prepare for the store opening at 8.00am – then they MUST be paid from 7.30am.
- MYTH 3:** I can make deductions from employee’s wages to cover any losses arising from cash register discrepancies, breakages and customers who don’t pay.
- FACT:** NO you can’t - Unauthorised deductions are Unlawful – deductions can only be made in very limited circumstances.
- MYTH 4:** Unpaid trials, work experience or internships are OK for an inexperienced worker looking to get a foot in the door.

**FACT:** A trial, work experience or internship can only be lawfully unpaid when it is a direct requirement of a course at an authorised educational or training institution. Otherwise, they must be paid the correct wage for the hours worked during the trial.

**MYTH 5:** Paying employees with goods such as food or drink is OK.

**FACT:** NO it's not. Payment-in-kind is unlawful. Employees must be paid wages for all work performed. If you wish to provide additional benefits such as food or drink this should be in addition to the wages not instead of the wages.

### Are you Hiring Visa Holders?

If you are hiring staff that are Visa Holders – have you completed the appropriate checks regarding their right to work in Australia and any work limitations?

If you are found to have allowed a non-citizen to work in breach of the non-citizen's visa conditions – you could be in breach of the Migration Act, which could result in civil and criminal penalties. Under Australian immigration law, businesses are obliged to only employ staff who are authorised to work in Australia, and to employ those workers in conditions as permitted by their visas ie total hours of work restrictions.

Employers need to take 'reasonable steps' to verify that a person is authorised to work in Australia. Failing to do so is a breach of these laws.

### How can your business ensure compliance?

1. Maintain personal records for all new and existing employees, including:
  - a. Australian citizenship (Australian Birth Certificate or Australian Passport), Permanent Residency or New Zealand Citizenship (NZ Passport).

*Note: You are still required to complete a verification check of any NZ Citizens, which is explained below.*

- b. A copy of any temporary visa holder's work rights and conditions ie student visa with total hours of work restrictions.
2. Conduct regular checks of work rights for each employee who is a temporary visa holder.

*Note: A good rule of thumb is to review these records every three months for the duration of their employment.*

3. Monitor the tasks & duties performed by 'sponsored' temporary visa holders to ensure they are consistent with the occupation for which the visa holder was granted their visa.
4. Ensure that procedures and training provided to relevant persons to maintain compliance with immigration laws are documents.
5. Keep documentation related to the verification of individual workers.

### Completing Visa Verification Checks

Part of the process of accessing the information required in step 1 and 2 above, may require you to complete a check on the visa status and eligibility to work in Australia. This can be done via the Department of Immigration and Border Patrol's Visa Entitlement Verification Online System (VEVO). Brismark currently has a business VEVO account and checks all applicants and candidates prior to referring them to businesses.

### Consequences of non-compliance

Fair Work Inspectors have the power to check that employers are complying with the relevant legislation. The onus is on the employer to be able to either produce records or demonstrate that steps to verify a person's work rights were taken.

Employers that fail to comply with immigration laws can incur significant penalties, ranging from \$15,300 and up to \$76,500, for each employee found to be working illegally in Australia. In addition, where an employer is 'knowingly or recklessly' in breach of the law, the executive officers of the business can be fined or sentenced to a period of up to two years imprisonment.

If you need the assistance of Brismark to complete a VEVO check or any questions regarding compliance with immigration laws, **contact Brismark Business Services on 3915 4213 or [esm@brismark.com.au](mailto:esm@brismark.com.au)**, we are here to assist you in complying with the legislation.

*Note: The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

*Source: HC Online, by Chloe Taylor, 8 December 2015*