



New Minimum Salary Level (MSL) requirements for 457 visa holders*

On the 1 July 2009, the Minimum Salary Level (**MSL**) for all subclass 457 visa holders will increase by 4.1%. Employers who are found not to be paying the appropriate MSL properly will be in breach of their sponsorship obligations which can result in severe penalties. The penalties include cancellation of sponsorship approval, warning notices, suspension from accessing the 457 visa program or financial penalties.

The MSL that is payable is exclusive of superannuation, any allowances, bonuses or salary packaged items and/or deductions except for Pay As You Go (**PAYG**) tax withholding and amounts that are 100% tax deductible for the sponsored worker or otherwise exempt from Fringe Benefits Tax (**FBT**).

Please refer to the tables below for more specific details of the applicable MSL that is payable:

1. Non-Information and Communication Technology (ICT) employees

Visa Grant Date	Nomination Approval Date / MSL Instrument date of effect	MSL until 30 June 2009	MSL from 1 July 2009 onwards
On or after 1 July 2009	On or after 1 July 2009		\$45,220
<i>Either</i> On or after 1 July 2006 and before 1 July 2009	<i>Or</i> Between 3 May 2006 and 30 June 2009	\$43,440	\$45,220
Before 1 July 2006	Between 9 April 2005 and 2 May 2006	\$40,590	\$42,255
Before 1 July 2006	Between 11 February 2004 and 8 April 2005	\$39,150	\$40,755

2. Information and Communication Technology (ICT) employees

Visa Grant Date	Nomination Approval Date / MSL Instrument date of effect	MSL until 30 June 2009	MSL from 1 July 2009 onwards
On or after 1 July 2009	On or after 1 July 2009		\$61,920
<i>Either</i> On or after 1 July 2006 and before 1 July 2009	<i>Or</i> Between 3 May 2006 and 30 June 2009	\$59,480	\$61,920
Before 1 July 2006	Between 9 April 2005 and 2 May 2006	\$52,700	\$54,861
Before 1 July 2006	Between 11 February 2004 and 8 April 2005	\$48,390	\$50,374

3. Certified Regional Employment arrangements (for regional employers)

Please note that regional employers receive certain concessions in terms of the occupations which they can nominate and the salary they must pay to their regional 457 visa holders. The employee is required to work and live in regional Australia.

Type of regional employee	Visa Grant Date	MSL prior to 1 July 2009	MSL from 1 July 2009
ICT	On or after 1 July 2009		\$55,725
	Between 1 July 2006 and 30 June 2009	\$53,530	\$55,725
	Before 1 July 2006	Industrial Award	Industrial Award
Non-ICT	On or after 1 July 2009		\$40,703
	Between 1 July 2006 and 30 June 2009	\$39,100	\$40,703
	Before 1 July 2006	Industrial Award	Industrial Award

MSL payments

In all cases the MSL **must** be paid on a 38 hour week. For every hour that an employee works in excess of 38 hours, the employee must be paid at least the equivalent hourly rate for every additional hour. The equivalent MSL for hours worked in excess of 38 hours must also be paid weekly, fortnightly or monthly depending on the employees usual pay cycle. Employers cannot average out the MSL on an annual basis.

The following formulas are used for calculating the MSL:

1. Where the nominee works an average of 38 hours per week or less in a given period:

$$\text{MSL} = \frac{\text{Applicable Base Salary} \times \text{no. of weeks worked in the given period}}{52.1775}$$

2. Where the nominee works an average of *more than* 38 hours per week in a given period:

$$\text{MSL} = \frac{\text{Applicable Base Salary} \times \text{no. of hours worked in the given period}}{1982.745}$$

What does this all mean?

Employers who use the subclass 457 visa program must ensure that they are paying the relevant MSL in accordance with the amounts shown in the tables above.

Nevett Ford can provide further detailed advice regarding the MSL requirements, including advice about systems to help avoid possible breaches of the MSL requirements.

The Department of Immigration & Citizenship has also flagged that the MSL is likely to be replaced by a new requirement to pay employees based on the 'market-rate'. This change is expected to come into effect around September – October this year. We will provide further information about how 'market rate' is defined as soon as more information becomes available.

Please feel free to contact David Stratton, Ryan Curtis-Griffiths or Helen Zheng, Lawyers in our Migration Law Work Group, if you require any further information in relation to this issue, or if you require legal advice regarding any other migration law advice.

*Minimum Salary Levels and Occupations for the Temporary Business Long Stay Visa Notice 2009 (IMMI 09/032)

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