

Hiring Working Holidaymakers



Employer Checklist

IMPORTANT NOTE

This checklist is intended only to be used as an informal guidance tool for agricultural producers seeking to hire backpackers/working holidaymakers who hold either a subclass 417 or subclass 462 visa. It is not intended to be referred to as generalised advice for employment practices, nor is it to be solely relied upon as an instructional document. It is purely supplementary.

As an employer of overseas workers, you are required to be independently aware of and obey all Australian immigration and workplace laws. It is your responsibility to identify and regularly check your legal responsibilities.

Additional information on hiring working holidaymakers and your obligations as an employer can be found [here](#)¹ and at the links below.

TASK	Check
<p>Have you determined whether the worker is to be an employee or a contractor?</p> <p>It's important that this distinction is understood by both parties, as it will have a significant impact on the worker's legal rights and entitlements. You can find out more at these links:</p> <p>ATO – Difference between Employees and Contractors²</p> <p>FairWork – Independent Contractors and Employees³</p> <p>Business.gov.au – Employee or Contractor?⁴</p>	
COMMENTS	

¹ <https://www.ato.gov.au/Business/Your-workers/In-detail/Employers-of-working-holiday-makers/>

² <https://www.ato.gov.au/Business/Employee-or-contractor/Difference-between-employees-and-contractors/>

³ <https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/rights-and-obligations/independent-contractors-and-employees>

⁴ <https://www.business.gov.au/People/Contractors/Employee-or-contractor>

<p>Have you registered as an employer of Working Holidaymakers?</p> <p>It is a requirement of employing Working Holidaymakers that you first register (before making the first payment to them) as an employer with the ATO. Penalties apply for a failure to register.</p> <p>You can apply to be a registered employer for working holidaymakers by following the link here⁵.</p>	
<p>COMMENTS</p>	
<p>Is the worker legally entitled to work in Australia?</p> <p>It is vitally important to ensure that prospective employees are entitled to work in Australia. As an employer, you are personally obligated to check whether an applicant possesses the right to work in Australia at the time they commence employment through to when their employment ends. Employers who fail to do so may open themselves to harsh penalties under the <i>Migration Act 1958</i>. A failure to conduct such checks, however innocent, is not a defence.</p> <p>The Department of Home Affairs offers an online service called VEVO which allows registered organisations with internet access to confirm a person’s work rights. You can access it here⁶.</p>	
<p>COMMENTS</p>	
<p>Is the visa held by the worker valid for the whole duration of the time for which they will be working for you?</p> <p>This is an additional but related consideration to the point above on work entitlements – you must ensure that the worker’s visa will remain valid up until the conclusion of their employment.</p>	

⁵ <https://www.ato.gov.au/Business/Registration/Work-out-which-registrations-you-need/Taxation-registrations/Employer-registration-for-working-holiday-makers/>

⁶ <https://online.immi.gov.au/evo/thirdParty>

<p>COMMENTS</p>	
<p>If you are using labour hire, have you made appropriate enquiries relating to the work rights and conditions of their workers?</p> <p>It's highly advisable that you take reasonable steps to ensure that workers hired under contract from a labour hire provider are being provided with adequate conditions and have access to all their legal entitlements (which are the same as the minimum entitlements for any Australian worker). If you discover any evidence of a worker/s being mistreated or denied their legal entitlements, contact the FWO and notify police if you suspect a criminal element.</p> <p>Labour hire licensing schemes have been introduced in several Australian jurisdictions to regulate the labour hire sector. Details of each scheme, as they are finalised, are available on the relevant Government websites:</p> <p>Queensland⁷</p> <p>South Australia⁸</p> <p>Victoria⁹</p>	
<p>COMMENTS</p>	
<p>Do you have strategies in place to investigate and confront issues of possible mistreatment or exploitation of the worker by another party?</p> <p>While ideally you won't need to use them, it is a good idea to have in place a pre-formed strategy for dealing with situations in which workers you are using are being mistreated or exploited by another party.</p>	
<p>COMMENTS</p>	

⁷ <https://www.labourhire.qld.gov.au/>

⁸ <https://www.sa.gov.au/topics/business-and-trade/licensing/labour-hire/labour-hire-licence>

⁹ <https://labourhireauthority.vic.gov.au/>

<p>Are you aware of your obligation to withhold tax at a rate of 15% of every dollar earned by the worker up to \$37,000?</p> <p>Since 2016, backpackers and working holidaymakers have been taxed at a rate of 15%. An employer is therefore required to withhold 15% of such an employee’s pay for tax purposes. More information on withholding tax for working holidaymakers can be accessed here¹⁰.</p> <p>IMPORTANT: The ATO has advised that until the appeal process referred to below has concluded, the 15% tax rate continues to apply to all working holidaymakers.</p> <p>The ‘Backpacker Tax’ is currently being challenged in the Federal Court, where the ATO is currently undertaking to appeal the Court’s initial decision that the Tax is unlawful for workers from certain countries. More information on these proceedings can be accessed via the link above.</p>	
<p>COMMENTS</p>	
<p>Are you aware of your obligation to pay the worker super where eligible?</p> <p>Backpackers’ entitlements also include the right to superannuation. An amount equivalent to 9.5% of gross pay should therefore be paid into a complying superannuation fund if an employed backpacker earns over \$450 per month. If the employee does not have a fund, super should be paid into an employer-nominated or default fund and the employee should be notified.</p> <p>Super can be released to backpackers following their departure from Australia on application for a Departing Australia Superannuation Payment (DASP). More information about DASP arrangements may be found here¹¹.</p> <p>The form for nominating an employee super fund can be found here¹².</p>	

¹⁰ <https://www.ato.gov.au/Individuals/International-tax-for-individuals/Coming-to-Australia/Working-holiday-makers/>

¹¹ <https://www.ato.gov.au/individuals/super/in-detail/temporary-residents-and-super/super-information-for-temporary-residents-departing-australia/>

¹² [https://www.ato.gov.au/forms/Superannuation-\(super\)-standard-choice-form/](https://www.ato.gov.au/forms/Superannuation-(super)-standard-choice-form/)

<p>COMMENTS</p>	
<p>Are you aware of, and prepared to engage with any potential issues that may arise from a lack of knowledge or understanding on the worker’s part in relation to their employment, including payment, taxation, rights and entitlements?</p> <p>It’s important to remember that working holidaymakers are likely to be unfamiliar with, and lacking information about Australian employment law and their fundamental rights and obligations and employees.</p> <p>It may be worth compiling some of the resources and information provided through this checklist and from other reliable sources into a kind of ‘welcome pack’ for newly employed working holidaymakers, so that they can be more efficiently brought up to speed if they have any questions of you as an employer or if an issue should arise.</p>	
<p>COMMENTS</p>	
<p>Are you aware of, and prepared to engage with any potential issues that may arise from cultural, religious or linguistic differences?</p> <p>Remember that working holidaymakers often come from a wide range of different international backgrounds, with varying degrees of familiarity with the English language, Australian customs and cultural norms. More often than not, this will set the stage for a friendly and enriching exchange of stories, experiences and ideas, but can also lead to problems and misunderstandings.</p> <p>It can be useful and enjoyable to familiarise yourself with the cultural backgrounds of newly employed working holidaymakers, and have a process in place to facilitate respectful and constructive dialogue about differences in these areas.</p>	
<p>COMMENTS</p>	