

Labour Agreement Visa – 482 SID

Horticulture Industry Labour Agreement

FACT SHEET

The Horticulture Industry Labour Agreement stream of the subclass 482 (SID) visa provides employers with a pathway for sponsoring skilled overseas workers to live and work in Australia, where other pathways are not available. This visa is valid for up to four years. To qualify for this visa, you and your employer must *generally* satisfy the following requirements:

NOTE: Specific criteria will vary based on the terms of your employer's labour agreement. Please contact us for further details.

Your employer's **business** must:

- be party to a **labour agreement** with the Australian government
NOTE: There are five different types of labour agreements. Please contact us for further details.
- be **actively and lawfully operating** in Australia
- **satisfy any requirements set out by the labour agreement** e.g. demonstrating a genuine need for skilled employees and an inability to source suitable Australian employees
- have **no adverse information known** that is relevant to its suitability as an approved sponsor
NOTE: Adverse information includes (but is not limited to) contraventions of the law; being the subject of an investigation, audit, disciplinary/administrative action or legal proceeding relating to immigration, industrial relations or health/safety; insolvency; and having provided false/misleading information or documents to the Department of Home Affairs (the DOHA).

Your **position** must (*unless an exemption or labour agreement concession applies*):

- be a **genuine, full-time position** that is included in the labour agreement
NOTE: Occupations **may** be subject to additional requirements based on the terms of the labour agreement e.g. work experience, location, type of business operated by the sponsor, nature of position.
- have a salary that is at least **90% of \$73,150 per year** (excluding any non-monetary benefits) **AND** is at least the **local, annual market salary rate (AMSR)** for the occupation.
NOTE: The **AMSR** is the salary that an Australian earns (or would earn) for performing equivalent work on a full-time basis for a year in the same workplace at the same location.
- have been subjected to '**Labour Market Testing**' (LMT) i.e. your employer must **provide evidence** that it has attempted to recruit a suitably skilled and qualified Australian to work in the nominated position by **advertising the position** for a period of at least **4 consecutive weeks** during the last 4 months
NOTE: LMT evidence must meet strict criteria regarding the location, type, and content of the ad. Alternative LMT criteria apply in certain circumstances. Please contact us for further details.
- be subject to **employment conditions** that are no worse than those that apply (or would apply) to Australians performing equivalent work in the same location

As the **visa applicant**, you must (*unless an exemption or labour agreement concession applies*):

- genuinely intend to work in the nominated position
- have **skills (qualifications and/or work experience)** that match those required for the nominated position. You MAY also be required to undergo a formal skills assessment
NOTE: If a skills assessment is required, you must apply for this BEFORE you lodge your visa application. We will notify you if you require a skills assessment for your occupation.
- have the equivalent of at least **one year of full-time work experience** (or the part-time equivalent) in your nominated occupation, or in a related field, during the **last five years**
- meet any mandatory licensing, registration, or professional membership requirements
- have the level of **English proficiency** required by the labour agreement
- have made adequate arrangements for health insurance during your stay in Australia, and meet the relevant health and character criteria

APPLICATION PROCESS

Stage 1: Labour Agreement Request

If your employer is not already party to a labour agreement, it must lodge a labour agreement request with the DOHA. The criteria and process for this will vary based on the type of labour agreement that is required. **Please contact us for further details.**

A labour agreement is generally valid for five years. During this time, your employer can nominate overseas workers for subclass 482 visas (and/or other work visas, if applicable) in accordance with the terms of its agreement.

SPONSORSHIP OBLIGATIONS

Employers who nominate workers for subclass 482 visas **MUST** comply with certain obligations imposed by the DOHA. These obligations are designed to protect overseas workers from exploitation, and to ensure that the visa program is used correctly.

In particular, a sponsor **must not attempt to recover any of the costs associated with requesting a labour agreement or nominating an overseas worker** (including migration agent costs and Skilling Australians Fund levies), or any costs directly associated with **recruiting overseas workers** for nominated positions.

Approved sponsors must also maintain certain records relating to their labour agreement and SID nominations. This includes records substantiating the sponsor's annual turnover, as well as records confirming how, and by whom, each Skilling Australians Fund levy was paid. Such records must be provided to the DOHA upon request.

Please contact our office for further information, including a full list of sponsorship obligations.

Stage 2: Nomination Application

The nomination application is lodged with the DOHA on behalf of your employer, after the labour agreement comes into effect (and during its validity period).

Skilling Australians Fund Levy

Sponsors must pay the Skilling Australians Fund (SAF) levy for EACH subclass 482 nomination lodged with the DOHA. The amount payable varies based on the sponsor's annual turnover and the visa applicant's proposed period of stay in Australia:

- For sponsors with an **annual turnover of LESS THAN AU\$10 million**, the SAF levy is **AU\$1,200 for each year** of the nominated visa applicant's proposed period of stay i.e. AU\$1,200 for a 1-year visa; AU\$2,400 for a 2-year visa and so forth.
- For sponsors with an **annual turnover of AT LEAST AU\$10 million**, the SAF levy is **AU\$1,800 for each year** of the nominated visa applicant's proposed period of stay i.e. AU\$1,800 for a 1-year visa; AU\$3,600 for a 2-year visa and so forth.

The SAF levy must be paid upfront, at the time that the nomination is lodged.

Please contact our office for further information regarding the SAF levy.

Stage 3: Visa Application

Your visa application is lodged with the DOHA either at the same time as the nomination application, or before the nomination expires (usually within 12 months of approval).

You can generally be in or outside Australia when applying for this visa. However, you may be ineligible to apply in Australia if you do not hold the required type of visa, or if you have previously been refused a visa (or had your visa cancelled). Please contact us for further details.

Once the DOHA has approved the nomination and visa applications, you will be granted your visa, which will be valid for up to four years (the exact term depends upon the terms of the labour agreement, and your sponsor's requirements).

PLEASE NOTE: We estimate that it may take several weeks to prepare and lodge the applications, with the time taken largely dependent on how promptly you and your sponsor provide us with the necessary information and documents.

The time that it takes the DOHA to process the applications depends upon its processing time service standards, and may also vary due to other factors, including the complexity of your case, perceived risks and processing priorities. Please contact us for current information regarding likely processing timeframes for this type of application.

This Fact Sheet contains **general information only**. We strongly recommend that you seek specific guidance from us that is relevant to your circumstances before taking any further action.

Do you have additional questions regarding the subclass Labour Agreement visa? Please feel free to contact us by email at admin@dojolegal.com.au, or by phone on **++61 02 9138 0688** to arrange a paid consultation.