



**IMMIGRATION NEW ZEALAND  
INTERNAL ADMINISTRATION CIRCULAR NO: 13/05**

To:	All Immigration New Zealand Managers	Date: 13 June 2013
	All Immigration New Zealand Staff	
	All Labour Inspectorate Staff	
	All Labour Contact Centre Staff	

**Exploited Migrants**

Please read this information and ensure all staff members who may be affected are aware of what is required of them.

**Purpose**

1. The purpose of this Internal Administration Circular (IAC) is to provide guidance to all staff on the principles and procedures to be followed in relation to temporary visa holders or unlawful persons who have been exploited while working when they are not entitled to.

**Background**

2. The Ministry of Business, Innovation and Employment (the Ministry) recognises that migrant workers can be a particularly vulnerable section of the workforce. Migrant workers have the same employment rights as all other workers in New Zealand. Addressing the exploitation of migrants is a priority for agencies within the Ministry, including Immigration New Zealand (INZ) and the Labour Inspectorate. This means that enforcement activity is focussed on employers, rather than a person who is working in breach of their immigration status or visa conditions.
3. Migrants may be reluctant to come forward to report exploitative practices by employers. This is particularly the case where they are working when they are not entitled to.
4. The exploitation of migrants who are working unlawfully is covered by [section 351](#) of the Immigration Act 2009 and carries significant penalties. Any person convicted of an offence against this section is

liable to imprisonment for a term not exceeding seven years, a fine not exceeding \$100,000, or both.

5. The Ministry has developed an approach to assure migrants that they will not be disadvantaged by coming forward to relevant agencies with any genuine claims of workplace exploitation.
6. New immigration instructions have been developed in line with the Ministry's approach. Applications from migrants who have made genuine claims of exploitation will be decided only by those immigration officers who have undertaken the online module on Exploitation in the Learning Management System (LMS).
7. The following staff must complete the Exploitation training module in LMS:
  - immigration officers who will be authorised to make decisions on exploited migrant cases
  - all onshore technical advisors and immigration managers
  - all compliance and fraud officers
  - all Immigration Contact Centre staff
  - all labour inspectors and managers
  - Labour Contact Centre staff.
8. Because exploitation is often closely tied with people trafficking it is recommended that the above people also complete the training module on People Trafficking in LMS. This module will help front-line officers understand the difference between people trafficking and people smuggling, be aware of the indicators, and follow the process for referral of such cases. Follow up half-day workshops will be delivered to key staff.

#### **What is exploitation?**

9. Workplace exploitation is defined in [section 351](#) of the Immigration Act 2009. Exploitation by an employer might include one or more of the following:
  - withholding an employee's passport, travel documents or money
  - forcing an employee to work long hours, with no time off and no over-time payments
  - underpayment (or non-payment) of wages, or requiring an employee to pay their own wages
  - deductions from wages eg to pay off debt, or a job "premium"
  - threats of violence, jail or deportation.
10. See the training module "Exploitation" for further information on indicators of exploitation.

11. An employer commits an offence if they exploit a person who they know is not entitled to work for them (ie working unlawfully). This may include:

- temporary work visa holders who have a named employer / sector on their visa conditions and are working in breach of those conditions
- student visa holders with work rights who are working for more than 20 hours per week
- student visa holders with no work rights
- visitors
- people in New Zealand unlawfully.

### **Continuum between trafficking and exploitation**

12. People who have been victims of people trafficking may find themselves in a situation of labour exploitation. If an exploitation claim indicates elements of people trafficking then existing processes for victims of trafficking will apply. See the [temporary](#) and [residence](#) instructions for people certified as victims of trafficking by the New Zealand Police.

### **Principles based approach**

13. All staff should be aware of the following principles when dealing with allegations of exploitation:

**Fairness:** A person making a genuine and credible allegation of exploitation will not be disadvantaged by reporting their situation. A person making an allegation will be able to access advice about their options before choosing to go on record with their allegations.

**Anonymity:** A person may provide information and seek advice from the Contact Centre without divulging their identity before deciding to proceed with an allegation of exploitation.

**Consistency:** Victims can be assured that decisions on immigration matters will be approached consistently, although each decision must be tailored to the circumstances.

14. In addition the Victims' Rights Act refers to principles of **courtesy, compassion, dignity and privacy**.

15. There are also principles in relation to collaboration between the Labour Inspectorate and INZ that are applicable to work in this area, in particular:

**Recognition of Shared Interest:** INZ and the Labour Inspectorate are two parts of a single organisation and recognise that they share an ongoing interest in ensuring that:

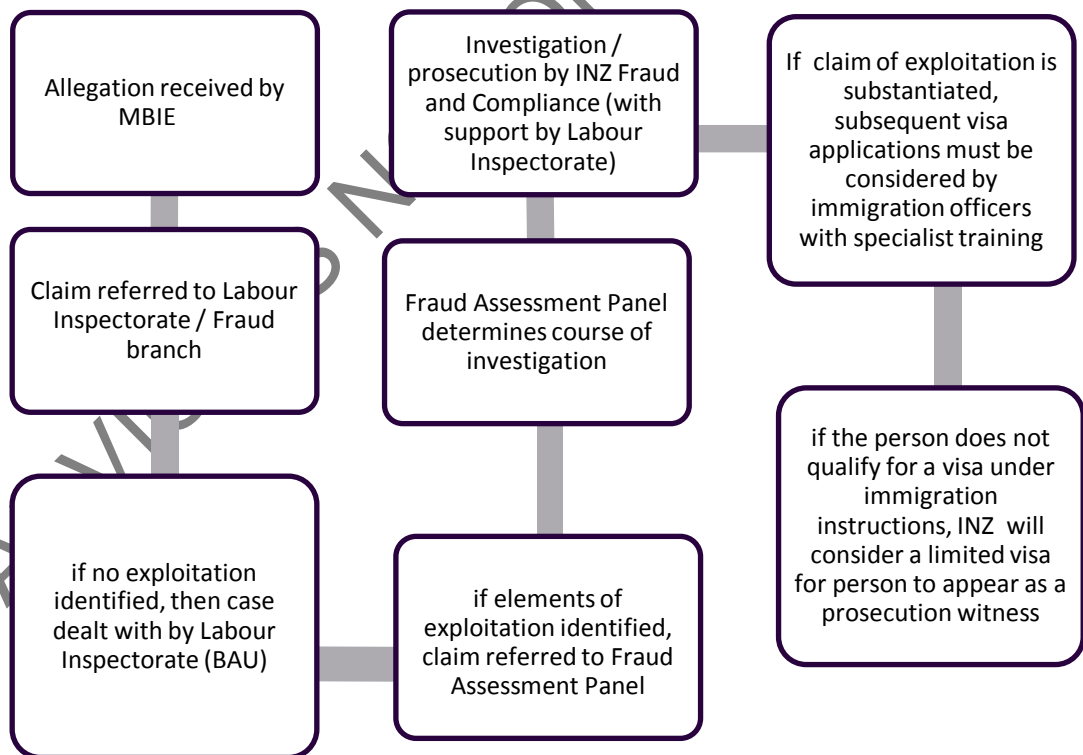
- Employers who do not meet their minimum employment obligations do not become employers of migrants;
- Employers of migrants meet all of their employment obligations;
- Employers do not take advantage of the vulnerability of migrant workers; and
- Employers who do not meet their obligations or who take advantage of the vulnerability of migrant workers face appropriate legal sanction.

**Focus on Behaviour of Employers:** INZ and the Labour Inspectorate will focus their enforcement activities on the behaviour of employers rather than migrant workers.

**Prevention:** INZ and the Labour Inspectorate will recognise, in their planning and prioritisation of activities, that their shared interests will be best advanced by preventing problems arising rather than remedying problems that have already arisen.

### Overview of process

16. This diagram shows a high level overview of the process when a claim of exploitation is received by the Ministry.



### Channels for reporting exploitation

17. The number of the Labour Contact Centre (0800 20 90 20) has been publicised in pamphlets for migrant workers and their supporters, and on the website at [www.immigration.govt.nz/exploitation](http://www.immigration.govt.nz/exploitation).
18. There is a range of other avenues by which the Ministry may receive information/tip offs. These include:
- NGOs
  - other enforcement agencies (eg Police, SFO, IRD, NZ Customs)
  - Immigration Advisers/Lawyers
  - Immigration Advisers Authority
  - Members of Parliament / electorate offices
  - community and/or business groups
  - anonymous informants (via e-mail/calls to the Immigration contact centre and letters)
  - by letter or email to INZ, Fraud branch, or the Minister of Immigration
  - complaints mailbox via the INZ website
  - family members
  - media
  - members of the public
  - Crimestoppers.
19. There are various people within the Ministry who are likely to receive an allegation or identify exploitation:
- *INZ staff (eg Compliance officers, fraud investigators, ICC staff, and staff at public counters):* the matter should be referred to Fraud Branch using the Fraud Referral Template or existing ICC processes.
  - *Labour Inspectorate staff:* the matter should be referred to your manager.
20. At all times staff should be aware of best practice with respect to gathering and handling evidence, including:
- making notes to accurately record observations as soon as practicable
  - recording the date and time
  - photographing evidence if applicable
  - taking possession of physical evidence (if appropriate).
21. In any case where a person may be in immediate physical danger, they should be advised to call 111, or you can call 111 on their behalf.

### **Roles and Responsibilities**

22. Click on the relevant role to learn more about roles and responsibilities or see [Appendix One](#).

- [Labour Contact Centre](#)
- [Labour Inspectorate Manager \(Northern\)](#)
- [Labour Inspectors](#)
- [Fraud Assessment Panel](#)
- [Fraud Investigator](#)
- [Compliance Officer](#)
- [Immigration Officer](#)

### **Amendment to immigration instructions**

23. A new provision will apply to applications for further temporary visas, within *E3.35 Further temporary visas*. The new provision will apply to applicants who have cooperated with INZ and/or the Labour Inspectorate by providing genuine evidence of workplace exploitation. In these cases, an immigration officer may disregard any previous periods when the applicant was working in breach of his or her current or previous visa; and/or any previous periods of unlawfulness in the applicant's immigration history during which he or she was employed and has provided evidence of workplace exploitation in respect of that employer, when assessing the applicant's bona fides.

### **Allowing a person to remain on a limited visa to appear as a witness in a prosecution**

24. If the victim does not qualify under normal immigration instructions for a visa, then the Fraud Assessment Panel (FAP) or a fraud investigator could request they be granted a limited visa to remain in New Zealand. The FAP or fraud investigator will indicate whether the person should be entitled to work rights and the length of the visa.
25. Further information for fraud investigators is included in IAC 02-09 *Management of Witnesses (restricted)* which should be read in accordance with the principles and spirit of the Ministry's approach to dealing with victims of exploitation. The matters in that IAC include:
- factors to be considered when recommending a limited visa
  - duration of initial and subsequent limited visas
  - process for applying for limited visas and managing records, including communications with the witness
  - management of witnesses, including with respect to maintaining contact with the witness, ensuring the witness's safety, efforts to support the witness to secure employment, and funding travel and accommodation for attendance at summary and preliminary hearings, and advising the witness of their obligations to leave New Zealand at the end of the proceedings.

### **Supporting migrants who make claims of exploitation**

26. It is important to be aware of the impact making a claim may have for a victim of exploitation. For some there will be no impact, others might lose their employment or be subject to further coercion or pressure in their work place.
27. Where a person is allowed to remain in New Zealand and is entitled to work, Ministry staff should take any available steps to ensure they do not return to unlawful or exploitative employment. Such steps might include allowing a visa applicant sufficient time to find alternative employment that meets the requirements of the category that they are applying under.
28. The Ministry is unable to provide direct financial support, except in the limited circumstances described in IAC 02-09 *Management of Witnesses (restricted)*. However, in some cases, a non-governmental organisation may be able to provide support, such as employment advice.

#### **Sensitive issues**

29. Sensitive issues within INZ are to be managed in accordance with existing processes.

#### **Further information**

30. Further information on the approach to supporting exploited migrants is available on the immigration website at [www.immigration.govt.nz/exploitation](http://www.immigration.govt.nz/exploitation).
31. Information about minimum employment rights is available at [www.dol.govt.nz/er/minimumrights](http://www.dol.govt.nz/er/minimumrights).
32. Information about trafficking and the processes to be followed is available in the People Trafficking module in the LMS.

Jan Clark  
Manager  
Operations Support

#### **Disclaimer**

Every care has been taken to ensure the information in this circular is accurate and current as at the date of this circular. The information on this circular is to assist you; however applications will be assessed by Immigration New Zealand according to the published Government immigration and Government residence instructions as set out in the Operational Manual. This circular is not a substitute for that policy.

## Appendix One

### Roles and Responsibilities

#### Labour Contact Centre

33. The Labour Contact Centre (LCC) will receive calls from migrants or their advocates relating to workplace exploitation. Callers will be able to select a specific option to talk to someone about migrant exploitation. Unless the matter can be resolved immediately, the complaint will be lodged in the Labour Inspectorate's system *Insite* and allocated to the Labour Inspectorate Manager, (Northern).
34. The LCC will ask the person's immigration status, and advise the person that:
- The case will be referred to the Labour Inspectorate. If the Labour Inspectorate identifies that there is potentially exploitation, then the case will be referred to INZ for investigation of the employer.
  - Any matters relating to immigration status must be determined by INZ, but:
    - If the person's visa is about to expire, they need to make an application through the normal process to ensure they can remain lawfully in New Zealand.
    - If they have found alternative employment, they should contact INZ about whether or not they need to apply for a variation of conditions of their visa.

#### Labour Inspectorate Manager (Northern)

35. The Labour Inspectorate Manager (Northern) will review the case based on the information available from the Labour Contact Centre. The Labour Inspectorate Manager can contact the Immigration Contact Centre to ascertain the client's immigration status.
- If the case does not meet the definition of exploitation, it will be referred to a Labour Inspector in accordance with standard processes.
  - If the case meets the definition of exploitation, it will be referred to the Fraud Branch. Any marginal cases will be treated as potential cases of exploitation. This is because a case that displays any indicators of exploitation may lead to the discovery of systematic issues of exploitation in a workplace.
  - If more information is required before the case can be diagnosed to make the referral decision, the case will be allocated to a labour inspector.

#### Labour Inspectors



36. For cases that do **not** meet the definition of exploitation, a labour inspector will proceed with an investigation and enforcement of any employment matters using standard processes. If an INZ compliance officer is actively working on the case, and is made aware of the employment processes that are taking place, he or she should liaise with the Labour Inspectorate before taking any adverse action against the migrant.
37. Labour inspectors will also assist in the investigation of exploitation cases lead by INZ.

*If labour inspectors identify a potential exploitation case*

38. Where a case is reported directly to a labour inspector, or identified during an employer visit, the inspector should refer the case to their manager in the first instance.

### **Fraud Assessment Panel**

39. The **Labour Inspectorate Manager, (Northern)** will refer any potential cases of exploitation to the Fraud Branch technical advisor using the Fraud Referral Template. The case will be referred to the Fraud Assessment Panel (the Panel). The Panel review referrals of all new cases of suspected immigration fraud and exploitation. The Panel includes managers from Fraud and Compliance, Legal Services, Visa Services, and the Labour Inspectorate.
40. When reviewing referrals, the Panel will agree to a strategy/plan for operational response, and allocate to appropriate investigators/inspectors. The Panel will also provide information relevant to management of the victim's immigration status (in AMS notes).

### **Fraud Investigators**

41. If a case potentially relates to exploitation, it will be allocated to a fraud investigator for investigation. The fraud investigator will add an **Exploitation Warning** to the client's AMS record (see example text in Appendix Two). The warning will include the contact details for the Fraud Investigator. The investigator must be contacted if any INZ officer has contact with the person claiming exploitation, eg when considering a visa application, or if identified as being liable for deportation by a compliance officer.
42. The fraud investigator will determine on a case by case basis whether the information warrants an Information Warning being placed on the employer's AMS record to prevent further downstream exploitation during the course of the investigation.

### **Compliance officers**

*If Compliance Operations receive a report of exploitation*

43. If Compliance Operations Branch receives a report about exploitation, it should be referred to the Panel through Fraud Branch in the first instance. Use the Fraud Referral Template.
44. Sufficient information to complete the referral should be gathered, while ensuring that the case is available for the next Panel meeting.

*If an exploitation claim is referred to the Panel*

45. Compliance officers may be involved in any investigation against the employer.
46. With respect to a person who may be liable for deportation, and has made an allegation of exploitation, compliance officers should not take any adverse action without consultation with the Panel or the fraud investigator/labour inspector who is leading the case.
47. In cases where it is revealed that a person has exercised bad faith in making a claim of exploitation, the Panel may advise Compliance Operations that deportation liability can be investigated.

*If no claim of exploitation has been made, but a person under investigation for deportation liability has employment matters under consideration*

48. If a compliance officer identifies a person as liable for deportation (for example because they are working in breach of their visa conditions or are in New Zealand unlawfully), and the person indicates that they have employment matters being investigated through the Labour Inspectorate, then the officer may consider allowing the person to remain until those issues are resolved, if this is required. Matters to take into account are:

- Advice from the Labour Inspectorate about whether the person needs to remain in New Zealand to have their situation resolved. This is not always the case. For example, while some people may need to appear in person before the Employment Relations Authority, the Authority may determine other cases on the papers. Labour inspectors and compliance officers should liaise to determine how long a person should be allowed to remain in New Zealand for these purposes.
- If there are significant character matters that affect the integrity of the immigration system, these should be discussed with the Labour Inspectorate and agreement sought as to the appropriate timing for compliance action.

*If a person who is made liable for deportation makes a claim of exploitation*

49. If a person who has been served a deportation liability notice subsequently makes a claim of exploitation, this is not in itself grounds for cancelling the deportation liability notice. The compliance officer should ensure the claim is referred through to Fraud Branch

and the Panel. If the claim is substantiated, then the person's immigration status, including potential cancellation of the deportation liability notice, may be considered. In the meantime, the client should be advised to exercise any available appeal rights. If an appeal to the Immigration and Protection Tribunal (IPT) is made, the IPT should be advised about the outstanding investigation, and the outcome of that investigation when it is completed.

### **Immigration officers with specialist responsibilities for deciding cases relating to victims of exploitation**

50. Immigration officers who are selected to decide applications from exploited migrants must complete the Exploitation training module in LMS. Visa Services Operational Support maintains a register of officers who are authorised to make these decisions.
51. Where a person's claim of workplace exploitation has been accepted by the Panel, then an AMS Exploitation Warning will be placed against this client. If a person with an Exploitation Warning applies for a new visa or makes a section 61 request, then the application/request must be allocated to one of these authorised officers for decision. Decisions should be made after due consultation with the fraud investigator leading the investigation to ensure all circumstances are taken into account.
52. **Note:** even if an Exploitation Warning has expired, or there is information in the warning that the exploitation case did not proceed for some reason, it is appropriate for these cases to be assessed by the authorised officers because there will still be some sensitivity to them.

#### *Temporary visa applications*

53. If the application is for a temporary visa, the immigration instruction at E3.35 applies. Under this instruction, where an allegation of exploitation has been substantiated (as reported in the AMS Exploitation Warning and notes), an immigration officer may disregard any previous periods when the applicant was working in breach of his or her current or previous visa; and/or any previous periods of unlawfulness in the applicant's immigration history during which he or she was employed and has provided evidence of workplace exploitation in respect of that employer, when assessing the applicant's bona fides.
54. All other category specific requirements, including that the person be of good character and an acceptable standard of health, must be met unless a health or character waiver, or an exception to instructions, is appropriate in all the circumstances.
55. In some cases, a fee waiver may be appropriate, in accordance with Internal Administration Circular No 10/06.

*Residence visas*

56. If the application is for a residence visa, the spirit of the Ministry's approach and the cooperation of the victim in coming forward may be considered a positive factor when considering character. All usual category specific requirements, including health and character, must be met.

*Section 61*

57. If the person is in New Zealand unlawfully and a request is made under section 61, then absolute discretion will apply to any such decision, but the principles and spirit behind the Ministry's approach to combatting exploitation can be taken into account.

*Where a person does not meet immigration instructions*

58. Visa officers will have discretion with respect to decision-making, however a decline decision should first be escalated to the Fraud Investigator for consideration as to how this will impact on the resolution of the investigation against the employer.
59. In some cases, the investigator may recommend the person's immigration status be maintained (for example on a limited visa) to enable the person to remain in New Zealand to act as a prosecution witness while an investigation by either the Labour Inspectorate, Fraud Branch or Compliance Operations is completed. See above at para 24-25.
60. Where the claim relates to an employment matter, but not at the level of exploitation, the immigration instruction E3.35 does not apply. However INZ may allow the person to remain in New Zealand for an appropriate period of time for that matter to be resolved. INZ will work closely with labour inspectors to determine how long a person may be allowed to remain in New Zealand for this purpose before requiring the person to leave. Options for the person to maintain their status during this time, and/or depart voluntarily on the resolution of the employment matter will be discussed with the client.
61. In any case where it is found that a person has made a claim of exploitation that is not genuine or provided information that is false, he or she may potentially be prosecuted under [section 342\(1\)\(b\)](#) of the Immigration Act 2009, and/or may be made liable for deportation (under section 154 or 157 of the Act as appropriate).

## Appendix Two

### Example text for Exploitation Information Warnings in AMS

If INZ identifies a case where an employment matter is under investigation by the Labour Inspectorate, and client advises INZ about this	Employment matters being resolved by Labour Inspectorate. Employment matters expected to be resolved by xx/xx/xx: no compliance action to be taken or further visa applications to be decided without contacting [labour inspector] and [compliance officer].
Potential case of exploitation under investigation	Claim of exploitation being investigated: no compliance action to be taken or further visa applications to be decided without contacting [labour inspector / compliance officer and /or fraud investigator]. Refer AMS notes for further information.
Confirmed case of exploitation	Client has provided credible information showing they have been the victim of exploitation under section 351 of the Immigration Act 2009. E3.35 applies when considering further visa applications. Contact [fraud investigator] for further information.

THIS ADVICE IS NO LONGER CURRENT