



<p>IMMIGRATION NEW ZEALAND</p> <p>INTERNAL ADMINISTRATION CIRCULAR NO: 21-01</p>
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To:	All Immigration New Zealand Managers	10 February 2021
	All Immigration New Zealand Staff	
	All Labour Inspectorate Staff	
	All Labour Contact Centre Staff	

Exploited Migrants

Office for enquiries: Operations Support, Border and Visa Operations Branch, Immigration New Zealand

This IAC replaces IAC 16/05 dated 11 November 2016, following the government announcement in late July 2020 of a set of legislative, policy and operational changes to reduce temporary migrant worker exploitation in New Zealand. This IAC removes a determination that a migrant has been “willingly complicit” in exploitation as a good reason for not granting a visa.

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 people unlawfully in New Zealand who have made claims of being exploited while working in New Zealand.

Background

2. Migrant workers have the same employment rights as all other workers in New Zealand, however the Ministry of Business, Innovation and Employment (the Ministry) recognises that migrant workers can be a particularly vulnerable section of the workforce. Addressing the exploitation of migrants is a priority for agencies within the Ministry, including Immigration New Zealand (INZ) and the Labour Inspectorate (LI). 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 because they do not hold a visa that allows them to work.
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.

Training

6. 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 and Other Employer Offences in Learn@MBIE.
7. The following staff must complete the Exploitation and Other Employer Offences training module in Learn@MBIE:
 - Immigration Officers who will be authorised to make decisions on exploited migrant cases
 - all Senior Immigration Officers making decisions under s61 of the Immigration Act 2009
 - all onshore Technical Advisors and Immigration Managers
 - all Compliance Officers and Investigators
 - all Immigration Contact Centre staff
 - all INZ Risk and Verification Managers
 - all INZ Verification Managers and Verification Officers
 - all Labour Inspectors and Managers
 - all Labour Standards Administrators
 - MBIE Service Centre staff.
8. Because exploitation is often closely tied with people trafficking, Ministry employees in the above roles must also complete the training module on People Trafficking in Learn@MBIE. 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.

What is exploitation?

9. Workplace exploitation is defined in [section 351](#) of the Immigration Act 2009.
10. Signs a person may be in an exploitative situation might include (but is not limited to) 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

- deductions from wages e.g. to pay off debt, or a job “premium”
 - threats of violence, jail or deportation.
11. See the training module on Learn@MBIE for further information on indicators of exploitation.
12. An employer commits an offence if they exploit any unlawful or temporary worker. This may include:
- temporary work visa holders (regardless of whether the employer is named on the visa label)
 - student visa holders with work rights who are working for more than 20 hours per week
 - student visa holders with no work rights
 - visitor visa holders
 - people whose visa to remain in New Zealand has expired and who remain unlawfully.

Channels for reporting exploitation

13. The number of the Employment New Zealand helpline (0800 20 90 20) has been publicised in pamphlets for migrant workers and their supporters, and on the website at <https://www.immigration.govt.nz/about-us/policy-and-law/integrity-of-the-immigration-system/migrant-exploitation>
14. There is a range of other avenues by which the Ministry may receive information/tip offs about exploitation. These include:
- NGOs
 - other enforcement agencies or fora (e.g. Police, Serious Fraud Office (SFO), Inland Revenue Department (IRD), NZ Customs, Combined Law Agency Group (CLAG)
 - 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 or the Minister of Immigration
 - complaints mailbox via the INZ website
 - family members
 - media
 - members of the public
 - Crimestoppers.
15. There are various people within the Ministry who are likely to receive an allegation or identify exploitation:
- **INZ staff (e.g. evaluators, Compliance Officers, Investigators, ICC staff, and Immigration officers):** the matter should be referred to the Verification and

Compliance Branch for assessment via the National Prioritisation Process. Referrals must be sent electronically to the following email address INZ.ComplianceInvestigations@mbie.govt.nz.

- **Labour Inspectorate staff:** the matter should be referred to a Manager or a Senior Labour Inspector.
16. 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 (only if trained in evidence handling).
17. In any case where a person may be in immediate physical danger, they should be advised to call 111, or having obtained as much information as possible (including all contact details and the location for Police to go to) you can call 111 on their behalf.

Roles and Responsibilities

18. The relevant roles and responsibilities with regard to preventing migrant exploitation are set out in [Appendix One](#).
- MBIE Service Centre
 - Manager Labour Standards Early Resolution Team
 - Labour Inspectorate Regional Managers
 - Labour Inspectors
 - INZ Evaluator or Investigator
 - Compliance Officer
 - Immigration Officer
 - Verification Officer

Continuum between trafficking and exploitation

19. 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.

Principles based approach

20. 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.
21. In addition the [Victims' Rights](#) Act refers to principles of **courtesy, compassion, dignity and privacy**.
 22. There are also principles in relation to collaboration between the LI and INZ that are applicable to work in this area, in particular:
 23. **Recognition of Shared Interest:** INZ and the LI 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.
 24. **Focus on Behaviour of Employers:** INZ and the LI will focus their joint and individual enforcement activities on the behaviour of employers rather than migrant workers.
 25. **Prevention:** INZ and the LI 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

26. **Claim accepted by INZ Verification and Compliance - Investigations Tasking and Co-ordination Board:** A person who is lawfully in New Zealand and who makes a claim of exploitation may apply for a further visa at any time before the current visa expires (E3,35 Further Temporary Visa). An application for a visa must be made in the manner prescribed for the class or type of visa sought (see E4.50.1). The visa may be of the same type as the visa they currently hold, unless the original visa specified that the migrant must work for the employer that exploited them. In this case, the migrant can be issued with an 'open' employer section on the label. A variation of conditions may also be considered. It is recommended the duration of the initial work visa be for six months, noting that a longer visa can be granted on a case-by-case basis. This ensures consistency with wider INZ practices.
27. A person who is unlawfully in New Zealand whose claim of exploitation has been accepted for investigation may be able to submit a request for a visa under section 61 of the Immigration Act 2009. The length of any new visa granted will be assessed on a case-by-case basis and in consultation with the Investigator. It may be that the term of any visa issued will be for a much shorter period to avoid incentivising people who have exhausted their ability to remain in New Zealand from making spurious claims of exploitation.

28. In both cases and depending on a person's circumstances further visas may be applied for in order to allow an investigation to continue.
29. **Claim assessed by INZ as credible:** People whose claims of migrant exploitation have been accepted as genuine and credible by an INZ Investigator, regardless of whether there is enough evidence to proceed with a prosecution may, on application, be granted a visa as outlined in para 26 above.
30. In all cases, if there is good reason not to grant a further visa, the application should be declined. Good reasons not to grant the visa may include (but are not limited to) situations where:
 - there are character concerns;
 - a complainant has provided false and/or misleading information to the Ministry
 - Does not have an acceptable standard of health
31. Any further application for a visa will be assessed under standard immigration instructions. If the claim is found to be fraudulent then compliance action will be considered.
32. All visa applications based on claims of exploitation (that have been assessed and accepted by INZ Verification and Compliance branch) will be assessed and decided by Immigration Officers who have undertaken the Exploitation and Other Employer Offences training module.
33. The diagram at Appendix A provides a high level overview of the process when a claim of exploitation is received by the Ministry.

Amendment to immigration instructions

34. The Instructions that apply to applications for further temporary visas, are within *E3.35 Further temporary visas. Where an applicant has made a claim of workplace exploitation against him or herself, as defined in section 351 of the Immigration Act 2009 (see D7.45), or has had such a claim accepted as genuine by Immigration New Zealand, then in determining whether he or she is eligible for a further visa, Immigration Officers may disregard:*
 - *any previous periods when the applicant had been working in breach of the conditions of his or her current or previous visa/s, and/or*
 - *any previous periods of unlawfulness in the applicant's immigration history during which he or she was employed and he or she has provided evidence of workplace exploitation in respect of that employer.*
35. The provisions will apply where an individual has made a credible claim that they have been exploited.
36. In these cases, when assessing the applicant's bona fides, an Immigration Officer may disregard any previous periods when the applicant was working in breach of their current or previous visa; and/or any previous periods of unlawfulness in the applicant's immigration history during which he or she was employed,.

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

37. If the victim does not meet immigration instructions for a visa, but is required to support a prosecution then they may, on application, be granted a limited visa to remain in New Zealand. Immigration Officers will liaise with an INZ Investigator to determine whether the person should be entitled to work rights and the length of the visa.
38. Further information is included in IAC 15-Restricted-02 Management of Witnesses Required for Fraud Prosecutions.

Supporting migrants who make claims of exploitation

39. 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.
40. Where a person is allowed to remain in New Zealand and is entitled to work, Ministry staff should take any available steps to ensure that the person does 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, or consideration of visa that has an 'open' criterion for employer.
41. The Ministry is unable to provide direct financial support, except in the limited circumstances described in IAC 15-Restricted-02 Management of Witnesses Required for Fraud Prosecutions. However, in some cases, a non-governmental organisation may be able to provide support, such as employment advice.

Sensitive issues

42. Sensitive cases are to be managed in accordance with existing processes within INZ. If a claim of exploitation is found to be genuine then a No Surprises Fact Sheet should be completed and referred to the appropriate operational support mailbox.

Further information

43. Further information on the approach to supporting exploited migrants is available on the immigration website at <https://www.immigration.govt.nz/about-us/policy-and-law/integrity-of-the-immigration-system/migrant-exploitation>.
44. Information about minimum employment rights is available at <https://www.employment.govt.nz/starting-employment/rights-and-responsibilities/minimum-rights-of-employees/>
45. Information for INZ staff regarding referrals to the Verification and Compliance branch is available from the National Manager Allocation & Support.
46. Information about trafficking and the processes to be followed is available in the People Trafficking module in Learn@MBIE.

47. An overview of how the Ministry is working to combat migrant exploitation is available in the [Connect to Protect, Tuitui te tangata, whakahaumarutia Strategy](#), which forms part of the wider Compliance and Investigations Strategy. The Employment Services/Immigration New Zealand Joint Compliance and Enforcement Strategy sets out the principles under which the two agencies will work together to prevent and address migrant exploitation.

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

MBIE Service Centre

48. The MBIE Service Centre (MSC) will receive calls from migrants or their advocates relating to workplace exploitation through the Employment New Zealand helpline. 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 *Tika* and allocated to the Manager Labour Standards Early Resolution Team who will allocate it to the appropriate LI Regional Manager or INZ depending on the circumstances of the case.
49. The MSC will ask the person's immigration status, and advise the person that:
- (a) The case will be referred to the LI. If the LI identifies that there is potentially criminal offending, then the case will be referred to / discussed with INZ immediately, before any further LI action is taken, for assessment of the employer and the case.
 - (b) 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 process described above 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 Regional Manager

50. The Labour Inspectorate Regional Manager will review the case based on the information available from the MSC. The Labour Inspectorate Regional Manager can contact the Immigration Contact Centre to ascertain the client's immigration status.
- (a) If the case does not meet the definition of exploitation pursuant to s351 of the Immigration Act 2009, it will be referred to a Labour Inspector, via their Regional Manager, in accordance with standard processes.
 - (b) If the case meets the definition of exploitation on the information to hand, it will be referred to INZ Compliance and Investigations for further assessment.
 - (c) 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 and discussed with INZ before any action is taken. This is to avoid prejudice to any future action INZ may take.

Labour Inspectors

51. For cases that do **not** meet the definition of exploitation, a Labour Inspector or Labour Standards Administrator will proceed with any investigation and enforcement of other 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 will liaise with the Labour Inspector before taking any adverse action against the migrant.

52. Labour Inspectors will also assist in the investigation of exploitation cases lead by INZ.

If Labour Inspectors identify a potential exploitation case

53. 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 or a Senior Labour Inspector in the first instance.

Immigration New Zealand Verification and Compliance

54. The potential cases of exploitation should be referred to the Investigations Tasking and Co-ordination Board responsible for undertaking assessments (Evaluators), using email address INZ.ComplianceInvestigations@mbie.govt.nz and the referral template. The case will undergo an initial assessment by an Evaluator.
55. If a case potentially relates to exploitation, it will be assessed by an Evaluator, and if it meets relevant criteria it will go to the Investigations Tasking and Co-ordination Board to determine if it should be accepted for investigations. It will be prioritised against other exploitation matters awaiting allocation. The Evaluator or 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 Evaluator or Investigator. The Evaluator or Investigator must be contacted if any INZ officer has contact with the person claiming exploitation, e.g. when considering a visa application, or if identified as being liable for deportation by a Compliance Officer.
56. The Evaluator or Investigator will determine on a case by case basis whether the information warrants an Information Warning being placed on the employer's AMS record.

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

57. If an Evaluator or Compliance Officer identifies a person as liable for deportation, and the person indicates that they have employment matters being investigated by the LI, 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 LI 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), 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, security or public safety issues, these should be discussed with the LI 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

58. 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 assessed and 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 claim, and any outcome.

Immigration Officers with specialist responsibilities for deciding cases relating to victims of exploitation

59. Immigration Officers who are selected to decide applications from exploited migrants must complete the Exploitation and Other Employer Offences training module in Learn@MBIE and any other training offered by INZ and MBIE with regard to combatting exploitation and people trafficking. A register of Immigration Officers who are authorised to make these decisions will be maintained by INZ Porirua office. It will be updated regularly and any changes will be provided to Verification & Compliance.
60. Where a person's claim of workplace exploitation has been accepted, then an AMS Exploitation Warning will be placed against this client (see Appendix Two). 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. An Immigration Officer, taking all information into account, will make a visa decision in accordance with the applicable immigration instruction, as an exception to instructions or their absolute discretion under Section 61 of the Immigration Act.
61. **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.

Where a person does not meet immigration instructions

62. Immigration Officers will have discretion with respect to decision-making; however a decline decision should first be escalated to an Investigator to ensure that this will not impact on any assessment or investigation of the employer.
63. 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 or INZ is completed.
64. 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.

65. 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).

Temporary visa applications

66. 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, when assessing the applicant's bona fides.
67. 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.
68. In some cases, a fee waiver may be appropriate, in accordance with Internal Administration Circular No 15-03 Fee Waiver Guidelines.

Residence visas

69. 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 to be balanced against issues discussed in paragraph 30 above, when considering character. All usual category specific requirements, including health and character, must be met.

Section 61

70. 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 as outlined above can be taken into account.

Appendix Two

Example text for Exploitation Information Warnings in AMS

<p>If INZ identifies a case where an employment matter is under investigation by the LI, and client advises INZ about this</p>	<p><i>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].</i> <i>IAC 15/05 applies.</i></p>
<p>Potential case of exploitation under assessment / investigation</p>	<p><i>Claim of exploitation being assessed: no compliance action to be taken or further visa applications to be decided without contacting [Labour Inspector / evaluator / Compliance Officer and /or Investigator]. Refer AMS notes for further information. IAC 15/05 applies</i></p>
<p>Confirmed case of exploitation</p>	<p><i>Client has provided credible information showing they have been the victim of exploitation under section 351 of the Immigration Act 2009. IAC 15/05 and instructions E3.35 apply when considering further visa applications. Contact [evaluator / Investigator] for further information.</i></p>

APPENDIX THREE - INZ Processes - Allegations of Exploitation

