

**IMMIGRATION  
ADVISERS AUTHORITY**



**When your clients are prospective  
employers or employees:  
Aspects of best practice**

**02 November 2021 11-12pm (NZST)**

# Webinar overview

- **Licensed Immigration Advisers Competency Standards 2016**
- **Legislative requirements**
- **‘Non-compliant Employers and Migrant Exploitation’:  
Presentation by Employment New Zealand**
- **Aspects of best practice: Licensed Immigration Advisers Code of  
Conduct 2014**
  - **Written agreements**
  - **Engagement with your client(s)**
  - **Requirement of due care**
  - **Confidentiality and conflict of interest**

*(Including discussions and scenario-based questions)*
- **Resources**
- **Q & A**

# Licensed Immigration Advisers Competency Standards 2016

- **Competency Standard 2:**  
Knowledge of New Zealand's immigration advisers licensing scheme
- **Competency Standard 3:**  
Knowledge of New Zealand immigration law and immigration and operational instructions

# Licensed Immigration Advisers Competency Standards 2016 (cont.)

- **Competency Standard 4:**  
Preparing, lodging and administering immigration applications [...]
- **Competency Standard 6:**  
Conducting business professionally, ethically and responsibly

# Legislative requirements

## Code of Conduct 2014, Clause 3:

A licensed immigration adviser **must**:

- a. if operating in New Zealand, act in accordance with New Zealand law
- b. if operating offshore, act in accordance with the law of the jurisdiction they are operating in, and
- c. whether in New Zealand or offshore, act in accordance with New Zealand immigration legislation, including the Immigration Act 2009, the Immigration Advisers Licensing Act 2007 and any applicable regulations

**EMPLOYMENT  
NEW ZEALAND**

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# **Non-compliant Employers & Migrant Exploitation**

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**Presentation for IAA  
02 November 2021**

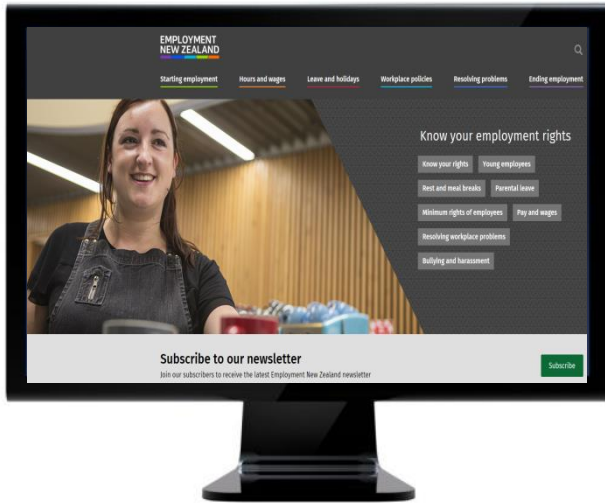


# Overview

- Employment New Zealand
- Non-compliant employers restricted from recruiting migrant workers
- Key minimum employment rights
- Common breaches
- New measures tackling migrant exploitation including a new visa to support migrants



# About Employment New Zealand



**Employment  
Mediation  
Services**





# Non-compliant employers restricted from recruiting migrant workers

- **Employers who receive an employment-standards sanction will face a set stand-down period from the ability to support a visa application.**  
<https://www.employment.govt.nz/assets/Uploads/employers-visa-stand-down-report.pdf>
- More details: [Employers who have breached minimum employment standards » Employment New Zealand](#)
- **The restrictions apply to all who support visa applications, including employers who are:**
  - supporting work visa applications and Approvals in Principle;
  - seeking Accredited Employer status or supporting residence class visa applications based on employment; and
  - employers who are part of the Recognised Seasonal Employer scheme.

# Key minimum employee rights

- Minimum Wage
- Public Holidays
- Annual Holidays
- Sick leave
- Bereavement leave
- Domestic violence leave
- Rest and meal breaks
- Unions
- Dismissal and redundancy



# Common breaches

- Lack of employment agreements
- Non-compliant record keeping
  - Wages and time record
  - Holiday and leave record
- Migrant exploitation
  - Wages below minimum
  - Unlawful deduction
  - Charge premium



# New measures tackling migrant exploitation

- \$50 million in funding over 4 years
- New measures have come into force on 1 July 2021
- A new visa to support migrants for up to 6 months
- A new dedicated 0800 number and web form to make it easier to report.



## How to make a complaint

Anyone who sees or suspects a breach of minimum employment rights can report it.

You will need to complete our online reporting form.

[Reporting form – Migrant exploitation](#)

Or call us on **0800 200 088**. Our call centre is open Monday to Friday, 8.00am to 5.30pm excluding public holidays.

# Contact us

- Visit our website

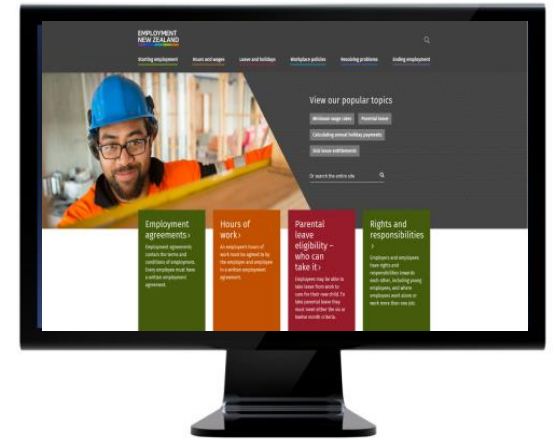
[www.employment.govt.nz](http://www.employment.govt.nz)

- Follow us on Facebook and LinkedIn

- Call our employment information line

**0800 20 90 20 (Toll free)**

\*Interpreters available for over 180 languages



# Aspects of best practice: Licensed Immigration Advisers Code of Conduct 2014

## Further relevant provisions to consider

- **Clause 1: General**
- **Clause 2: Client care**
- **Clause 4: Confidentiality**
- **Clauses 5-7: Conflict of interest**
- **Clauses 18-19: Written agreements**

# Scenario 1: Who is your client?

**Client A is using his employer (B) as a sponsor. You meet with B to assist B to fill in the sponsorship form and you provide immigration advice to B. Do you need to have a written agreement with B?**

- A. No, because it was A who engaged my services
- B. Yes, because B is also my client
- C. No, because a Licensed Adviser may not have more than one client with respect to a single immigration matter
- D. Yes, because I will not be able to claim payment from B otherwise

# Scenario 1: Who is your client? (cont.)

- The correct answer is **B**
- In the context of the Code of Conduct, the recipient of your immigration advice is your client, regardless of whether they pay a fee. In any given scenario you may therefore have more than one client and you must comply with your Code of Conduct responsibilities with respect to each one.



# Written agreements

## Clause 18

A licensed immigration adviser must ensure that:

- a. when they and the client decide to proceed, they provide the client with a written agreement

[...]

- c. all parties to a written agreement sign it, or confirm in writing that they accept it
- d. any changes to a written agreement are recorded and accepted in writing by all parties

# Written agreements (cont.)

- With **all** clients
- One single agreement or separate ones?
- Tripartite agreements

*Gilray v Singh* [2019] NZIACDT 53

- Content **must** meet the requirements of **Clause 19**
- Signatures

*HES v Parekh* [2019] NZIACDT 36

# Scenario 2: Engagement with your clients

**M intends to hire 3 migrant workers who do not speak English well. M instructs you himself with respect to all 3 visa applications. You prepare agreements for each worker and M forwards the signed agreements to you. You lodge the visa applications.**

*Choose the correct statement:*

- A. You need to ensure that you engage with the prospective employees before you lodge their applications.
- B. You do not need to engage with the prospective employees at all, as you have received everything you need from M and the prospective employees have received a tailored written agreement.
- C. You cannot engage with the prospective employees, because they do not speak English and M is better placed to convey your advice to them.

## Scenario 2: Engagement with your clients (cont.)

- The correct answer is **A**.
- Clause 2 of the Code provides that a licensed immigration adviser must:
  - 2(a) maintain a relationship of confidence and trust with the client;  
[...]
  - 2(c) facilitate the provision of interpreters and translators as appropriate;  
[...]
  - 2(e) obtain and carry out the informed lawful instructions of the client.
- Failure to obtain the clients' informed instructions is a breach of Clause 2(e) of the Code. The adviser should ensure that they are obtaining and acting on the correct, *informed* instructions of their clients, that they are keeping their clients updated (as per clause 26(b)), and that they are taking charge of the relationship with each client from beginning to end.
- Therefore, there should be direct engagement with all clients. If necessary, the services of an interpreter should be used.

# Engagement with your client (cont.)

- **Clause 2 (e):** A licensed immigration adviser must obtain and carry out the informed lawful instructions of the client
- Take charge of the relationship from beginning to end

*INZ v Niland [2019] NZIACDT 5*

*INZ v Cleland [2019] NZIACDT 25*

# Requirement of due care

- **Clause 1:**

A licensed immigration adviser must be honest, professional, diligent and respectful and conduct themselves with due care and in a timely manner

*INZ v Rodrigues [2019] NZIACDT 51*

# Confidentiality and Conflict of interest

- **Clause 4(a)(i)** [...] preserve the confidentiality of the client except ... with the client's written consent
- **Clauses 5-7: Conflict of interest**
  - Do not continue to act for a client if your objectivity is compromised
  - *ZG v Parker [2020] NZIACDT 46*
- Managing conflicts of interest between clients

## Scenario 3: Conflicts of interest

**L provides immigration advice to Company 1 and their workers. An employee (E) obtains a visa. 8 months later, E advises L she has accepted a job offer from Company 2. L agrees to act for Company 2 and E. L does not inform Company 1 of E's intended resignation.**

*Which statement is correct?*

- A. There is a conflict of interest between L's duty of confidentiality to E and L's duty of disclosure to Company 1.
- B. There is a conflict of interest in L acting for Company 1 and Company 2.
- C. L must explain her Code of Conduct duties to E and seek E's agreement to disclose E's intention to resign to Company 1.
- D. If E does not agree to a disclosure, L cannot act for either E or Company 1 (in relation to E).
- E. If L cannot get the informed consent of Company 1 to act for Company 2 without disclosing confidential information, L must decline to act for Company 2.
- F. All of the above.



## Scenario 3: Conflicts of interest (cont.)

- The correct answer is **F**:  
All statements are correct. In fact, statements A to E are a break-down of the main problems that could potentially arise out of such a scenario.
- As stated, there is a conflict of interest between L's duty of confidentiality to E and L's duty of disclosure to Company 1. This is because L appears to be contracted to Company 1 on an ongoing basis. If L's agreement with Company 1 has not ended, it would potentially include keeping Company 1 informed of developments affecting E's immigration status.
- L would also owe competing duties of loyalty to Company 1 and the prospective second employer (Company 2).

**NOTE : If L's contractual obligations to Company 1 in relation to E has ended, the issue will be one of recognising E's right to confidentiality, which should not be a problem as L would not be under any ongoing duty of disclosure to Company 1 in relation to E. On this basis, L would be free to act for E's second employer (Company 2) in relation to E's second application.**

# Resources

## IAA resources

- Competency Standards 2016
- Code of Conduct 2014
- Code of Conduct Toolkit
- Ethics Toolkit
- Ethics Webinar (May 2019)

## INZ queries:

- [www.immigration.govt.nz](http://www.immigration.govt.nz)

## ENZ queries:

- [www.employment.govt.nz](http://www.employment.govt.nz)

# Feedback? Further questions?

- *How can we do better?*
- *Have we done a good job?*
- *Whatever the feedback, compliments or complaints, we want to hear from you.*



Email us at [info@iaa.govt.nz](mailto:info@iaa.govt.nz)  
with “**Feedback-Webinar**” in the subject line.