

Guidance Note

Workers' compensation exposures when employing foreign nationals

Background

During 2006, an engineering company located in the southern metropolitan area sponsored a total of 12 foreign nationals from China under the 457 temporary long-term business visa program. The immigration process was facilitated by a migration agent. Under the terms of the sponsorship arrangement, the company has a wide range of obligations to these workers, the government and the health care system, which include workers' compensation, private health cover and an understanding that all public health care costs will be covered by the company. The cover for health care costs extends to any family members who have migrated to Australia with the worker under the extended sponsorship of the company.

Situation

In late October 2006, one of the company's foreign workers suffered a work-related injury when he cut himself on the upper thigh with a grinder on his third day on the job. He attended a local medical clinic for assessment. The cut was relatively minor, requiring three or four stitches. The worker lodged a workers' compensation claim.

The worker was to remain home over the ensuing weekend and report to work for full duties on Monday morning. Over the course of the weekend, however, the cut appeared to become infected and he was admitted to hospital. The infection became progressively worse and gangrenous. The worker required skin grafts at the site of the original cut. He remained in hospital until early December, at which time he was discharged with the intention of receiving home care assistance. He remained at home for three or four days but then required re-admission to hospital. The worker continued to receive intensive treatment for his injury, requiring a total of 13 operations involving 6 or 7 skin grafts.

The hospital had a very difficult time identifying the reason for the severity of the infection and the difficulty in treating it. Over time, they discovered that the worker had an underlying blood disorder considered to be very rare, with only a few cases identified in Australia each year.

Throughout this period, the company's workers' compensation insurer continued to fund all treatments and the company was required to pay weekly compensation to the worker. The results of numerous medical reviews and investigations were unclear and no-one was sure how to define where the work-related injury ceased to be a contributing factor to the ongoing problems that were the result of the underlying condition this worker suffered from.

Treatment costs exhausted the medical entitlement of approximately \$42,000 under workers' compensation. Although the worker had legal aid representation, an application for further reasonable medical expenses was not made to WorkCover.

In March 2007, in consultation with the Department of Immigration and Multicultural Affairs, the company terminated the worker's contract. As the worker was not working in the position for which he had been sponsored, this was considered a breach of visa condition 8107. Under the 457 visa requirements, a worker who is no longer employed has 28 days to find another sponsor, or leave the country. In the end, against medical advice but of his own free will, the worker chose to leave the



country and return to his home in China. The workers' compensation claim remains open and the worker is still in receipt of weekly compensation.

Recommendation

Under 457 visa sponsorship arrangements, the only check that the Department of Immigration and Multicultural Affairs requires for prospective migrants to meet mandatory health requirements is a chest x-ray.¹ The immigration agent had basic pre-employment medical screening procedures in place, but they failed to pick up the underlying condition that has resulted in a very expensive workers' compensation claim for this employer.

Although this situation is an extreme example of what can go wrong, it demonstrates the importance of conducting diligent pre-employment medical screening to mitigate the exposure to an expensive workers' compensation claim, whether employing foreign nationals or local workers. This company's situation is compounded by the fact that they remain liable for all health care costs associated with this worker's injury/ illness, although some costs may end being covered by the private health cover they have in place for their foreign workers. Nonetheless, after this experience, the company's General Manager says, "We would rather pay above top dollar to get a local worker. We have no problems with the individual foreign workers who we have employed, but there is too much at stake from a business perspective to go through this recruitment exercise again".

According to Michael Chester of Aurenda, injury risk management specialists, companies that are considering recruiting foreign nationals to fill the current skills shortage need to be aware of the potential risk exposures from a workers' compensation perspective, with considerations including:

- ▶ Diligent pre-employment medical screening prior to an offer of employment being made;
- ▶ Workers' compensation insurance cover in place;
- ▶ Comprehensive private medical cover for foreign workers;
- ▶ Thorough inductions and competency assessments to ensure correct safety procedures and injury reporting processes are understood;
- ▶ Requirement for translation at every stage for both verbal and written communication and instruction to negate the possibility of an injury in the first place.

About Aurenda

Aurenda is a specialist, independent provider of worker injury risk management services based in North Fremantle. Their background includes teams of professionals with risk management, paramedical, workers' compensation and safety experience.

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¹ <http://www.immi.gov.au/allforms/pdf/1163i.pdf>