



Essential Skills work visas and temporary migrants

# Guidance for New Zealand hospitality sector employers

November 2020



New Zealand's immigration system is designed to ensure New Zealanders are first in line for jobs, while making sure that employers have access to migrant workers where no New Zealanders are available. In recent times, the criteria used to assess Essential Skills work visa applications have changed, and more changes are coming to New Zealand's immigration settings. You need to understand how these changes will affect you when you think about recruiting temporary migrant staff.

# What you need to know (



- Migrants and employers must meet the conditions set out in existing visas: These include the region, the role, and the minimum 30-hour per week requirement for full-time work.
- Replacement of skills levels with a median wage threshold: The combination of ANZSCO and salary to assess skill level has been replaced with a simple income-based threshold tied to the national median wage calculated by Statistics New Zealand.
- 3. Occupation oversupply and undersupply lists: The Ministry of Social Development will no longer issue a Skills Match Report for occupations on its oversupply list. These include a number of lower-level hospitality sector jobs. Other than in exceptional cases, Immigration New Zealand is unlikely to issue Essential Skills work visas for occupations on the oversupply list.
- 4. Changes to the duration of Essential Skills work visas: Workers who earn at or above the median wage can be granted a visa for up to 3 years. Workers who earn below the median wage can be granted a visa of up to 6 months.

- Maximum stay: The maximum time an Essential Skills Work Visa holder who is earning less than the median income can stay in New Zealand on multiple visas is three years (36 months).
- 6. Suspension of offshore applications: With limited exceptions for critical workers<sup>1</sup>, the ability to submit offshore applications for temporary work visas has been suspended until 8 February 2021.
- 7. Return of some normally resident temporary work visa holders from overseas:

  Temporary work visa holders who are currently outside of New Zealand but who have maintained a job or business in New Zealand and have lived here for some time prior to departing may be eligible to return to New Zealand under the new border exception category.<sup>2</sup>

# Essential Skills work visas and temporary migrants: guidance for New Zealand hospitality sector employers

This booklet is intended to help you and your employees understand, plan for, and comply with New Zealand's changing immigration environment..

The COVID-19 pandemic has damaged the economies of nations worldwide. In New Zealand, the hospitality sector has been particularly affected.

For the immediately foreseeable future, international tourism will be severely limited, and with many hospitality businesses operating on tight margins, unemployment is predicted to rise

Many staff within New Zealand's hospitality industry hold temporary work visas. Of these, the visa type currently likely to be of most interest to employers is the employer assisted Essential Skills work visa.

In July 2020, many Essential Skills work visa holders were granted a six-month extension<sup>3</sup>. This was a short-term measure recognising the difficulty of international travel. Nonetheless, even allowing for the extension, large numbers of current Essential Skills work visas will expire in the first six months of 2021.

As a visa nears expiration, the visa holder has two choices: apply for a new visa or arrange to leave New Zealand.

continued overleaf

This booklet was accurate at date of publication. However, the immigration environment is changing. To check information and stay up-to-date, visit: www.immigration.govt.nz

# Immigration NZ Contact Centre

The Contact Centre takes calls from 6:00am Monday to midnight on Saturday.

Toll-free\*: 0508 558 855 Auckland: 09 914 4100 Wellington: 04 910 9915

\*NZ landlines only

- 3. Anyone who was in New Zealand on 10 July and held an Employer-assisted temporary work visa due to expire before 31 December 2020 may have had that visa extended for 6 months. This includes:
- > some visas due to expire after 9 July
- > visas previously extended to 25 September under the Epidemic Management Notice.

The main employer-assisted temporary work visas are:

- > Essential Skills
- > Work to Residence.

If one of your employees is in this situation, they may approach you to support a new visa application.

As an employer, you need to understand how the visa system works and to understand the new criteria that apply when applications are assessed.

In recent times, New Zealand has introduced new requirements for Essential Skills work visas.

Some of these changes were made before the arrival of the COVID-19 pandemic and some were made afterwards.

These new changes may mean that the criteria that applied to Essential Skills work visa applications supported by an employer in the past have also changed.

One of the key changes, introduced in July 2020, is a wage threshold set at the New Zealand median income. This is currently \$25.50 per hour. Those earning this amount or above are eligible for Essential Skills work visas of up to 3 years in duration, while those earning less than this amount can only be granted a 6-month duration work visa.

The maximum time an Essential Skills Work Visa holder who is

earning less than the median income can stay in New Zealand on multiple visas is three years (36 months).

When assessing Essential Skills applications, Immigration New Zealand considers the current economic environment and labour market.

Employers may be asked to provide further evidence to show that, at the time the application is assessed, they have been unable to find suitably qualified, experienced or trainable New Zealanders to fill the role.

An employer may also be asked for financial information about their business to confirm that the offer of employment made to an a migrant worker is sustainable.

A number of measures to protect the local labour market have been introduced. One of these is a stronger labour market test for lower paid jobs.

In the past, employers were required to provide a Skills Match Report if a job was at skill level 4 or 5 according to the Australian and New Zealand Standard Classification of Occupations (ANZSCO).

Employers are now required to provide a Skills Match Report if the role that is being recruited

for pays below the median wage (\$25.50 per hour).

In addition, the Ministry of Social Development now publishes an 'oversupply' list of occupations for which they will not issue a Skills Match Report.

The oversupply list acknowledges the importance of making jobs available to out-of-work New Zealanders who have the appropriate experience. The oversupply list is not region specific.

In the hospitality sector, the oversupply of New Zealand job seekers on Job Seeker Support in all regions includes café workers, cooks, commercial housekeepers, domestic housekeepers, fast food cooks, kitchenhands, and waiters.

Collectively, these changes to New Zealand's immigration settings are likely to mean that fewer Essential Skills work visas will be granted in the foreseeable future.

During 2021, Immigration New Zealand will be introducing a new employer-led visa application process.

This is a major policy change with implications for all employers intending to support work visa applications.

# Planned changes to the visa application process

To make hiring a migrant worker more straightforward for employers, over the course of 2021 the Government is introducing a new employer-led visa application framework. This includes:

- an employer check, where employers will be accredited to enable them to hire a migrant;
- a job check, where the job is checked to ensure that no New Zealander is able to fill the job being recruited for, subject to skill, industry sector and regional differentiation; and
- a worker check, where checks will be made to ensure the migrant worker is of good character and health.

Under the new application process, a single employer-assisted temporary work visa called the Temporary Work Visa will replace the six current work visa categories:

- > Essential Skills
- Approval in Principle
- Work to Residence Talent (Accredited Employer)
- Work to Residence Long Term Skills Shortage List Occupations
- > Silver Fern Job Search
- Silver Fern Practical Experience

Employers will have two types of accreditation, depending on how many foreign workers they employ over a 12-month period. Labour hire companies and franchisees will have specific accreditation requirements.



To find out more, download *Changes to employer-assisted temporary work visas – What does this mean for employers* from the Immigration

New Zealand web site: www.immigration.govt.nz.

#### Normally Resident Temporary Work Visa holders who are overseas

Since early October 2020, some temporary work visa holders who were overseas when the borders closed have been able to return. To be considered for the new border exception and to demonstrate a strong and ongoing connection to New Zealand with realistic prospects of remaining here long-term, among other requirements, visa holders must:

- > still hold their job in New Zealand or an essential skills visa that is not subject to the stand-down period and are at or above the median income
- have departed New Zealand on or after 1 December 2019

- have lived in New Zealand for at least two years, or, if living in New Zealand for at least one year, have one of the following:
  - their dependent children with them in New Zealand (for at least six months)
  - parents or adult siblings who are ordinarily resident in New Zealand
  - submitted an application for residence by 31 July 2020
  - have held a visa at the time of departing that does not expire before the end of 2020, or, if expiring before that date, have applied for a further visa by 10 August 2020.

For full criteria, visit: www.immigration.govt.nz/about-us/covid-19/border-closures-and-exceptions/critical-purpose-reasons-you-can-travel-to-new-zealand

# Supporting an Essential Skills work visa

Before a temporary migrant can be considered for an Essential Skills work visa, you must establish that there are no suitable New Zealanders available for the job. This includes advertising the vacancy and assessing applicants. If you are unable to recruit a New Zealander and decide to support an Essential Skills work visa application, one of the following scenarios will apply.

The job pays at or above the median income (currently \$25.50 per hour) If the visa applicant will be paid at or above the median income, they may be eligible to be considered for an Essential Skills work visa.

Visa duration: up to 3 years

- The job pays below the median income and the occupation is on the undersupply list If the visa applicant will be paid below the median income and their occupation is on the undersupply list, they may be eligible to be considered for an Essential Skills work visa. Visa duration: up to 6 months, with a multi-visa maximum of a 3-year stay in New Zealand.
- The job pays below the median income and my occupation is not on the undersupply or oversupply list If the visa applicant will be paid below the median income and the occupation is not listed on the undersupply or oversupply list, they may be eligible to be considered for an Essential Skills

work visa, however the process you must follow to establish that there are no suitable New Zealanders available is more thorough (refer to flow diagram on opposite page) .

Visa duration: up to 6 months, with a multi-visa maximum of a 3-year stay in New Zealand.

The job pays below the median income and the occupation is on the oversupply list If the visa applicant will be paid below the median income and is on the oversupply list, either nationally or in the region where the job is located, the Essential Skills work visa application is unlikely to be successful.

# Oversupply and undersupply lists

The Ministry of Social Development (MSD) has created lists of occupations and regions where there is a clear over or undersupply of New Zealanders on Job Seeker Support.

If an employer is trying to fill an occupation that is on the undersupply list, they will not need to get a Skills Match Report, even if the job is paid below the New Zealand median wage.

There is an oversupply of New Zealand job seekers on a Job Seeker Support benefit in all regions for some occupations in the following sectors:

- retail and hospitality
- construction
- administration and call centre workers
- > manufacturing and warehousing
- > transport.

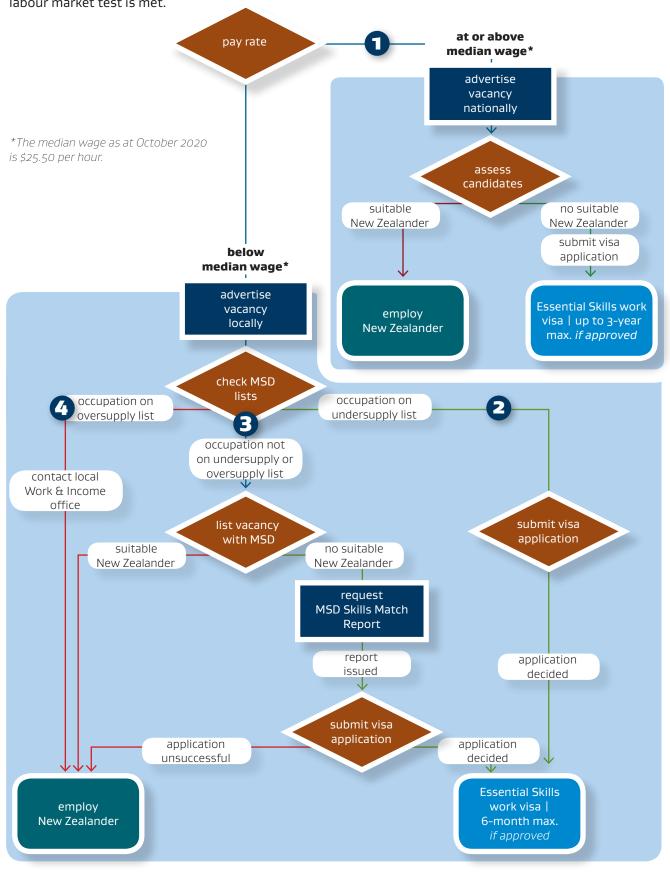
In the hospitality sector, the oversupply of New Zealand job seekers in all regions includes café workers, cooks, commercial housekeepers, domestic housekeepers, fast food cooks, kitchenhands, and waiters.

If your role is not oversupplied or undersupplied in your region, you will need a Skills Match Report to hire a migrant.

To check if a role is on the oversupply list or the undersupply list in your region, visit: workandincome.govt.nz/about-work-and-income/news/2020/skills-match-report-changes. html

## The Essential Skills work visa application process

This flow chart is a high-level simplification of the work visa application process. Before a work visa can be approved, immigration officers must be satisfied that all requirements for the granting of the visa are met. This includes a labour market test, establishing that no New Zealand citizens or residents are available to do the work offered. An immigration officer may consider a number of factors when determining whether the labour market test is met.



# Submitting a complete and correct application

If you decide to support an Essential Skills work visa application, it is important that you provide all the information we need. Immigration New Zealand often receives incomplete Essential Skills work visa applications. This slows down processing. You can help us to help you by getting things right.

#### 1. A Skills Match Report

If the role pays less than the median income level, you must request a Skills Match Report from the Ministry of Social Development.

For more information:

www.workandincome.govt.nz/employers/ help-with-recruitment/hiring-someonefrom-overseas.html

#### 2. Job advertisements

Evidence of the advertising you have placed establishes that you have genuinely attempted to recruit a New Zealander. If the pay rate is below the median wage, you must advertise locally or more widely for at least one week. If the pay rate is at or above the median wage, you must advertise nationally for at least two weeks.

The use of large recruitment websites such as Seek and TradeMe is acceptable. Advertising on your own website or Facebook page is generally not enough.

If possible, provide the Seek or TradeMe dashboard showing the number of candidates who responded.

A visa application should be submitted within 3 months of the date the role was advertised.

#### 3. Information about candidates

Information about the people who have applied for the role will help establish whether or not there are suitable New Zealanders available to do the job. You should show how many people applied for the job, along with each person's:

- > immigration status
- qualifications
- work experience

the reasons they were found unsuitable.

#### 4. Complete and correct employment agreements

Your prospective worker must provide a completed and signed employment agreement. Agreements often miss:

- > the correct legal name of the business
- > the name and address of the worker
- > the hours of work
- the rate of pay (hourly or annual salary)
- > whether the role is fixed term or permanent. (If the role is fixed term, you must provide a genuine business reason why this is so.)

For more information: www.employment. govt.nz/starting-employment/ employment-agreements/things-anagreement-must-contain/

#### 5. Confirmation that the role guarantees a minimum of 30 hours of work per week

To qualify for an Essential Skills work visa, your migrant worker must be working at least 30 hours a week. This must be specified in the employment agreement. If the hours of work fluctuate - due to weather, for example – the employee must still be paid for at least 30 hours a week.

#### 6. Complete job descriptions

Information often missed from job descriptions that must be included, includes:

- ) job title
- ) location of employment
- > tasks and responsibilities
- required skills, qualifications and experience.

# Using VisaView to check if someone can work for you

You may have found the perfect candidate for your vacancy, but every migrant needs a visa that allows them to work in New Zealand. With VisaView, you can satisfy yourself that your prospective employee is able to live in New Zealand and work for you.

Before a migrant can begin working for you, you must check that the conditions of their visa allow them to work. It's important to note though that potential or new migrants do not need a visa to apply for jobs, as in many cases a job offer is required to support their visa application.

You can check whether a migrant can work for you using VisaView. VisaView allows registered employers to verify that prospective and current employees hold a valid visa, the conditions of the visa, and the date of expiry. Enquiries are saved in the employer's VisaView account and these records can be used as evidence of compliance with the Immigration Act 2009.

To access VisaView, you need a RealMe account. If you have created a RealMe account for another purpose, you can use that for VisaView.

The conditions of the migrant's visa will also be noted on the visa label in their passport, or in a letter from Immigration New Zealand. You should ask to see those documents, as well as photo identification, and keep a copy of them for your records.

To learn more about VisaView, visit: www.immigration.govt.nz./visaview

VisaView also allows registered employers to confirm New Zealand passport information provided by a New Zealand citizen candidate. To do this, you will need to complete and return the Disclosure Agreement to the Department of Internal Affairs: www.immigration.govt.nz/documents/online-systems/dia\_registeredemployeragreement.pdf



It is an offence under the Immigration Act 2009 to allow, or continue to allow, someone to work for you who is not entitled to do so.



# A work entitlement checklist



# Is the person you are checking a New Zealand citizen?



Checking a New Zealand citizen's work entitlement	Checking a non-New Zealand citizen's work entitlement
Sight a New Zealand passport, <b>or</b>	Check work entitlement at
Confirm New Zealand passport information at www.immigration.govt.nz/visaview and sight the passport or other photo	Sight a passport with a valid New Zealand visa with conditions that allow the person to work for you, <b>or</b>
identification, <b>or</b> Sight a New Zealand birth certificate and	Sight a valid electronic visa (printout) <b>and</b> verify through Visa View <b>or</b>
photo identification, <b>or</b>	Sight an Australian passport, <b>or</b>
Sight a New Zealand citizenship certificate and photo identification	Sight a passport with an Australian permanent residence visa or a current
Retain copies	returning residence visa.
*A new Zealand driver licence is not sufficient evidence on its own to confirm citizenship.	Retain copies
A New Zealand birth certificate can be ordered online at <a href="https://www.bdmonline.dia.govt.nz">www.bdmonline.dia.govt.nz</a> by anyone who has a RealMe ID.	A tax code declaration IR330 form is not a reasonable excuse for employing someone who is not entitled to work for you.
This checklist is designed to help	Did VisaView confirm that this person is entitled to work for you?
you meet your obligations under the Act. For a more comprehensive work entitlement guide, visit: www.immigration.govt.nz./visaview	No. You may not be able to employ this person. New Zealand citizens will need to provide evidence of their citizenship.  Non-New Zealand citizens should contact the Immigration Contact Centre on 0508  558 855 to apply for a visa to work in New Zealand.
	<b>Yes.</b> You can employ this person until the date specified and in accordance with any conditions stated.
	Call the Immigration Contact Centre employer-designated contact number: 0508 967 569

# Operating in the new environment

The Government recognises that COVID-19 presents a unique set of challenges for New Zealand jobseekers, employers and temporary work visa holders. Regional impacts vary, but there are more people looking for work as a consequence of the impact of COVID-19 on businesses. Minimising unemployment and promoting re-employment is central to the Government's response to COVID-19.

The Government's overall aim is to reduce reliance on low-skilled migrant labour and incentivise more integrated planning across the employment, immigration and education systems.

New Zealand's immigration system is designed to ensure that New Zealanders are first in line for jobs,

while making sure that access to migrant workers is available where there is a genuine skill need that cannot be met.

It is possible that some temporary migrants who had hoped to make New Zealand their long-term home will need to make a plan to depart New Zealand if they can no longer remain here lawfully. Understandably, this may be distressing for both migrants and their employers.

It is the responsibility of the temporary migrant to ensure they remain lawful while they are in New Zealand. Information about visa types is available on the Immigration New Zealand website or an immigration professional can help.

# Compliance with employment standards

All employers are required to comply with employment standards.

Employers who do not comply with the standards or who have breached employment law can be stopped from recruiting migrant workers. Employers that have received a penalty (or similar) for a breach will be viewed as non-compliant with New Zealand employment law and will face a set standdown period that prevents them from supporting a visa application. The period commences when an infringement notice or penalty is issued.

For information about employee rights, visit: www.employment.govt.nz/starting-employment/rights-and-responsibilities/minimum-rights-of-employees/

For information about what happens if an employer breaches employment standards, visit:

www.employment.govt.nz/resolvingproblems/steps-to-resolve/labourinspectorate/employers-who-havebreached-minimum-employmentstandards/#standdown

# Redundancy

If you can no longer offer employment that meets the terms of your employee's visa, you may need to offer redundancy.

Remember that employment legislation has not changed. Employers must continue to comply with their legal obligations.

An employer must follow a fair process whenever they want to make an employee redundant. Employers cannot make someone redundant without going through a workplace change process first.

The employer needs a genuine business reason to restructure and will need to state this reason clearly to the employees or union as they go through the proper process.

For more information about offering redundancy, including employer obligations for the period of

notice you must provide and final payments, including redundancy compensation, visit: www.employment.govt.nz/endingemployment/redundancy/

For information about workplace change, including fair process, visit: www.employment.govt.nz/workplacepolicies/workplace-change/

For information about terminating employment agreements during COVID-19 response and recovery, visit:

www.employment.govt.nz/leave-andholidays/other-types-of-leave/coronavirusworkplace/terminate-employmentagreement-covid-19/

# Migrant exploitation

In the current economic environment, temporary migrants whose visa status is tied to their employment are at greater risk of exploitation.

Immigration New Zealand and Employment New Zealand's Labour Inspectorate take the issue of migrant exploitation extremely seriously.

Exploitation for work is a serious crime. Employers who exploit migrants can be imprisoned for up to 7 years and fined up to NZD \$100,000. Additionally, they will be placed on a list of non-compliant employers and unable to support visa applications for a period of time.

The Immigration Act 2009 sets out criminal offences relating to immigration.

Some types of exploitation include when an employee:

> has to pay part or all of their wages back to the employer

- does a "deal" and is charged a premium (money for getting a job)
- is paid too little money for their work or none at all
- is made to work an excessive number of hours. with no break or have no time-off from work
- ) is not paid for holidays or annual leave.

If you are aware of instances of migrant exploitation, contact Employment New Zealand, free phone 0800 20 90 20.

Note: If the migrant is in immediate physical danger, call 111 and ask for Police.

For more information, visit: www.employment.govt.nz/resolvingproblems/types-of-problems/migrantexploitation

# Migrant welfare

# **Emergency assistance**

Temporary visa holders who are suffering serious financial hardship while waiting to leave New Zealand can seek assistance from the Visitor Care Manaaki Manuhiri programme run by the New Zealand Red Cross on behalf of the Department of Internal Affairs. The programme can help eligible visa holders with meeting basic needs, such as food and accommodation, and, in special circumstances, repatriation.

Visitor Care Manaaki Manuhiri is currently running until the end of November 2020.

Visit: foreignnationals.services.govt.nz

# **Departing New Zealand**

If a migrant is unemployed or in difficulty and wants to return to their country of origin, they should talk to their Consulate or Embassy. The Consulate or Embassy should be able to provide advice about assistance and the availability of flights. Contact details are available on the Ministry of Foreign Affairs and Trade website.

Visit: www.mfat.govt.nz/en/embassies/

Migrants may also register with a local travel agency to be contacted when the appropriate international flights become available.

## Self-isolation

If a migrant is required to self-isolate and they are experiencing difficulty in doing so, they should contact their Embassy or Consulate for assistance. Contact details are available on the Ministry of Foreign Affairs and Trade website.

Visit: www.mfat.govt.nz/en/embassies/

As part of the response to the COVID-19 pandemic, the Temporary Accommodation Service is working with other government agencies to assist in providing temporary accommodation to those required to self-isolate who are unable to do so in their own homes.

**Visit:** www.temporaryaccommodation.mbie. govt.nz

# Access to Kiwisaver

Anyone who moves to Australia, can transfer their KiwiSaver funds to an Australian superannuation scheme. You do not have to transfer your KiwiSaver account to Australia though.

After you've been living overseas (not Australia) for 1 year, you can take most of the savings from your KiwiSaver account.

You can withdraw:

- your contributions
- your employer's contribution
- > the \$1,000 kickstart (if you got it)
- fee subsidies (if you got these)
- ) interest you have earned.

You cannot take out the government contributions.

Contact your KiwiSaver provider if you decide to transfer your KiwiSaver funds. They can guide you through the process.

# Migrant support

# Government agencies

#### Immigration Contact Centre

You can call the Immigration Contact Centre from 6:00am Monday to midnight on Saturday (NZT).

Anyone who has already applied for a visa, should ensure they have their client number, application number and passport number with them when they call.

You can request urgent assistance from the Immigration Contact Centre.

Toll-free\*: 0508 558 855 Auckland: 09 914 4100 Wellington: 04 910 9915

\*From NZ landlines only

#### Office of Ethnic Communities

The Office of Ethnic Communities is government's principal advisor on ethnic diversity in New Zealand. It provides information, advice and services to, and for, ethnic communities in New Zealand and administers funds to support community development and social cohesion. The office maintains a directory of ethnic community organisations and support services.

Visit: www.ethniccommunities.govt.nz

#### Human Rights Commission

The Human Rights Commission provides human rights education and resources, reports on human rights matters, and resolves disputes relating to discrimination.

Visit: www.hrc.co.nz

# Interpreters and multilingual information services

#### Government helplines

When calling a government helpline, ask for help in the preferred language. Interpreters are available for over 180 different languages.

- > Call the helpline
- > Ask for an interpreter and tell them the language
- Wait to be connected to a professional interpreter who will help you talk to the agency.

#### **InfoNOW**

InfoNOW is a free service providing information to migrants settling in New Zealand in their preferred language.

Phone or email InfoNOW, or use the online chat service.

Tel: 0800 4636 669

Email: info@infonow.nz Web: www.infonow.nz

#### Healthline

For general help related to COVID-19, call the government helpline on 0800 779 997.

If you think you have any COVID-19 symptoms call Healthline 0800 358 5453. If you need an interpreter, press 1 after you dial the number and you will be connected to a Healthline worker, say your language and wait on the line until you are connected with someone who speaks your language.

# Immigration advice

Anyone who needs personalised immigration advice must use a Licensed Immigration Adviser or a person exempt from licensing.

## Community Law Centres o Aotearoa

Community Law Centres o Aotearoa operates more than 20 law centres around New Zealand offering free legal help.

A lawyer is permitted to give immigration advice without a licence providing they hold a current practising certificate from the New Zealand Law Society.

Visit: communitylaw.org.nz

#### Citizens Advice Bureau

Citizens Advice Bureau (CAB) is an independent community organisation providing free confidential information, advice, support and advocacy. The Citizens Advice Bureau (CAB) has a walk-in migrant information service, Migrant Connect in locations throughout the country. These centres can give advice on immigration and citizenship. Call

**0800 FOR CAB** (0800 367 222) for more information or visit the website

Visit: cab.org.nz

#### Licensed Immigration Advisers

The New Zealand Immigration Advisers Authority can put you in touch with a licensed adviser in your area. The advisers provide a commercial service.

Visit: www.iaa.govt.nz

#### **Unions**

#### Union Network of Migrants

Union Network of Migrants is a network of migrant workers within FIRST Union. FIRST Unemig is migrant-led, non-profit and non-sectarian. Unemig aims to protect the rights and welfare of migrant workers in New Zealand.

**Visit: unemig.org.nz** 

#### E tū

E tū represents 10,000 members in Public and Commercial Services. This includes workers in the hospitality and tourism sectors.

Visit: etu.nz

#### Unite

Unite covers workers in a number of workplaces, including restaurants and hotels.

Visit: unite.org.nz

