

## Foreword

**We are working hard to build a modern economy fit for the 21<sup>st</sup> Century, one that prioritises our wellbeing, is inclusive and sustainable. Our aim is to create an economy that contributes to lifting everyone’s wellbeing and treats people fairly as they contribute to it.**



Most of us have good working conditions, in workplaces where our rights are respected and upheld. Unfortunately however, this is not the reality for everyone working in New Zealand.

Temporary migrant workers, including international students, are particularly vulnerable to exploitation in the workplace. Some of the exploitation we see includes people not being paid their full wages or working without breaks, and even being prevented from seeking alternative employment when they try to leave.

Exploitation of any kind, against any worker, is simply unacceptable in New Zealand. We need to be a country that supports people to do well, treats each other fairly and upholds the law. Businesses also need to be confident that they can compete on a level playing field, and are not undercut by employers that get ahead through illegal and exploitative practices.

That’s why the Government has committed to taking serious action on temporary migrant exploitation, including of international students.

Our recent reforms to Employer-Assisted Temporary work visas announced in September 2019, has contributed to improving protections for migrant workers by requiring employers to be accredited in order to support a migrant’s application. There is a focus on preventing non-compliant employers from employing migrants in the first instance.

While this work was underway, the Ministry of Business, Innovation and Employment (MBIE) has undertaken a review into temporary migrant worker exploitation in New Zealand. The review is a multi-year project. This first stage has included consultation with migrant, union and business representatives; and independent research to better understand the nature, drivers and consequences of exploitation from both migrant and employer perspectives.

We now want to know what you think of this work and provide a summary of the findings of the Review to date here, along with an initial set of proposals and options designed to reduce the exploitation of temporary migrant workers in New Zealand. These proposals and options aim to:

- **Prevent** the occurrence of workplace (and other) conditions that might enable temporary migrant worker exploitation.
- **Protect** temporary migrant workers in New Zealand and enable them to leave exploitative employment.
- **Enforce** immigration and employment law to deter employer non-compliance through a fit-for-purpose offence and penalty regime.

This consultation seeks your views on how the proposals could be put in place, and whether some options should be looked into further.

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I am also open to hearing other ideas that would reduce exploitation, for example those that will enable us to continue to support international education as an export industry and to ensure employers look first to New Zealanders to fill job vacancies.

In the 21<sup>st</sup> century, there is no place for worker exploitation of any kind. The proposals and options in this consultation are ambitious, and necessarily so. The issue of migrant exploitation is unacceptable and has been let to continue for far too long.

To tackle exploitation effectively, we must hear the voices of victims, migrant communities and other community representatives, unions, international education providers, employers, businesses, and everyday New Zealanders. I look forward to hearing your views.

Consultation closes on Wednesday 27 November 2019. Make sure that you have your say and thank you for taking the time to contribute to this vital work.

**Hon Iain Lees-Galloway**

Minister for Workplace Relations and Safety

Minister of Immigration

## Background information

### Who is a temporary migrant worker?

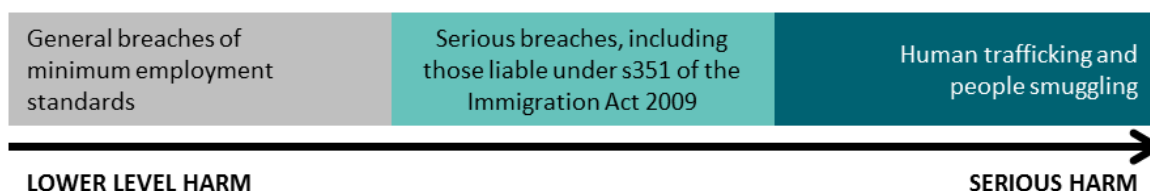
Temporary migrant workers are migrants who are working in New Zealand on a temporary basis. Temporary migrant workers may hold:

- temporary work visas
- student visas that allow them to work (i.e. international students who have work rights), or
- Working Holiday Scheme visas.

### What is temporary migrant worker exploitation?

There are a many views of what ‘temporary migrant worker exploitation’ means. Generally exploitation is understood to mean the breach of minimum employment standards. Breaches of minimum employment standards vary, as shown in the picture below.

Figure 1: Spectrum of minimum employment standard breaches



Human trafficking and people smuggling are very serious forms of exploitation. There are offences for these activities in the *Crimes Act 1961* and the Government is working to prevent and to address these crimes. For this reason, human trafficking and people smuggling are not within the scope of this consultation.

#### What are ‘minimum employment standards’?

Minimum employment standards are the standard requirements for workers in employment law, such as the *Holidays Act 2003*, the *Minimum Wage Act 1983* and the *Wages Protection Act 1983*. They include the minimum wage and minimum annual leave entitlements.

Minimum employment standards prevent employers from underpaying wages, or not paying wages; unlawfully deducting wages; and charging premiums to work.

#### What are serious breaches under Section 351 of the *Immigration Act*?

Section 351 of the *Immigration Act 2009* defines exploitation of a temporary worker as serious breaches of the *Holidays Act 2003*, the *Minimum Wage Act 1983*, and the *Wages Protection Act 1983*.

A serious breach also happens where an employer seeks to coerce and control a migrant. Coercion and control includes taking or retaining possession or control of a person’s passport. It can also include preventing or hindering a person from:

- having access to a telephone, or
- leaving premises, including leaving them unaccompanied.

## **Why are temporary migrant workers particularly vulnerable to exploitation?**

Temporary migrant workers, including international students, are particularly vulnerable to exploitation, as they may:

- be less aware of their employment rights than New Zealanders
- be from countries that have lower minimum employment standards
- be from countries that do not enforce minimum employment standards
- have limited English, and
- be unaware of how to report exploitation or leave exploitative employers.

Temporary migrant workers often work in industries or sectors where employers have had higher rates of non-compliance with minimum employment standards. Some of these sectors include retail, hospitality and horticulture.

It is hard to say how many temporary migrant workers are being exploited. A main reason for this is that temporary migrant workers fear losing their job or being deported if they report exploitation – and so they do not report.

Immigration New Zealand (INZ) received around 320 complaints of migrant exploitation between 2011 and 2018. However, the number of temporary migrant workers, including international students, exploited in New Zealand is greater than the number of reports made to government agencies. Agencies are receiving increasingly complex cases of exploitation to investigate and address.

## **What drives temporary migrant worker exploitation?**

An employer's willingness to exploit a temporary migrant worker (including an international student) can be driven by their desire to make a financial gain. An employer might be able to keep their labour costs low if they exploit their migrant workers.

In some cases, organised networks of individuals or businesses (both in New Zealand and offshore) are involved in organising temporary migrant exploitation. These networks might look for migrants that want to move to New Zealand and use that to coerce those migrants into accepting exploitation, or trick them into exploitation.

Migrant exploitation can also happen because there is a power imbalance between a temporary migrant worker and their employer. Their employer might threaten them (e.g. to have the migrant deported). A temporary migrant worker might be prepared to accept exploitative practices in order to remain in New Zealand.

A temporary migrant worker might not know what exploitation is in New Zealand. This might be because employment standards in their home country might be lower, or might not be enforced to the same degree. They may not be fluent in English and may not understand the information given to them about employment standards in New Zealand, or know how to report exploitation.

Migrant workers might not trust agencies that investigate exploitation in New Zealand. They may be worried about what will happen if they make a report. They might worry about their visa status, finding another job to support themselves, or if they might have to stop studying.

A migrant worker that has been caught up in a criminal network organising migrant exploitation might owe that organisation money. Or they may owe money to a recruitment or education agent, or their employer, and be worried about how this will be paid. They might be threatened, or their families in New Zealand and overseas might be.

## Case study: the impact of exploitation

This case study is based on a real example. Further case studies are attached in **Annex D**.

A company operated two stores in isolated towns in New Zealand. Three employees came to New Zealand on student visas to study business management, and were employed as shop assistants in the stores.

In an attempt to ensure the success of their future visa applications to stay in New Zealand, the student's job titles were exaggerated. They were recorded as being Store Managers.

The employees were required to work up to seven days a week. They were made to work public holidays without receiving annual leave or days off. Their employer required them to work for free around their home and for their family, and did work like cleaning, gardening, cooking and driving. In return, the employer provided free accommodation and food from the stores where the employees worked.

Because of conditions under which the employees were required to work, including excessive hours, they all ended up being paid less than minimum wage, which is illegal.

The employees were not provided with their entitlements to holidays and holiday pay, also illegal. In addition, adequate time and wages records were not kept.

Investigations into the employees' working conditions also found evidence that their employment agreements were created after they started their work and signed copies of those agreements were not kept. This was another breach of employment law.

The employees' case was taken to Court. The Court found that the employer had breached the law by:

- failing to provide the employees with employment agreements
- creating the employment agreements at a later date, after the employees started work
- failing to keep accurate wage, time, holiday and leave records, and
- failing to pay minimum wages, holiday pay, public holiday pay and alternative pay.

The company had to pay damages of over \$100,000. The Court also considered a shareholder and director of the company, and another majority shareholder, to be persons involved in the breaches of minimum employment standards, under section 142W of the *Employment Relations Act 2000*. Both of those people were fined amounts between \$10,000 and \$20,000.

The company and its directors had previously received information from the Labour Inspectorate of their obligations to provide minimum wages, holidays and holiday pay following a complaint by a former employee.

This case also highlights that although the migrants were in New Zealand on student visas, they could not study, or be expected to study, when they were working six and sometimes seven days per week.

## Glossary and acronyms

Note that there are also definitions of terms given on these agencies' websites:

- Employment Services: <https://www.employment.govt.nz/about/glossary-of-terms/>
- Immigration New Zealand: <https://www.immigration.govt.nz/about-us/site-information/glossary>

Acronym	In full
the Inspectorate/LI	MBIE's Labour Inspectorate
INZ	Immigration New Zealand
MBIE	Ministry of Business, Innovation and Employment
the Review	Temporary Migrant Worker Exploitation Review

Word(s)	What it means
<b>Accredited employer</b>	An employer approved by Immigration New Zealand to employ workers under the Talent (Accredited Employers) Work Immigration Instructions.
<b>accredited labour hire company</b>	An accredited labour hire company is one that has Immigration New Zealand's approval to employ people from overseas to supply labour to third-parties. Labour hire companies providing labour to the construction sector in Christchurch must be accredited for work visas to be approved.
<b>annual leave entitlement</b>	Employees are entitled to annual holidays, public holidays, sick leave, bereavement leave, parental leave and other types of leave as long as they meet certain conditions. The minimum entitlement for annual leave is four weeks of paid annual holidays after each 12 months of continuous employment for their employer.
<b>Approval in Principle (also known as AiP)</b>	By obtaining Approval in Principle, employers can hire as many migrant workers as needed without repeating the labour market test for each worker.
<b>asset recovery</b>	The ability under the <i>Criminal Proceeds (Recovery) Act 2009</i> for the New Zealand Police to take action for the restraint and forfeiture of assets that were acquired or derived from the proceeds of crime. Only the civil standard of proof is required to authorise asset recovery (i.e. on the balance of probabilities), as opposed to the criminal threshold of 'beyond reasonable doubt'.
<b>banning order</b>	An order that prohibits a person from entering into employment agreements as an employer, or being an officer of an employer (e.g. a director or a general partner), or being involved in the hiring of employees. These are usually ordered by the Employment Court at the request of a Labour Inspector or Immigration Officer. A breach of a banning order is a criminal offence subject to a penalty of a fine of up to \$200,000 or up to 3 months imprisonment, or both.
<b>body corporate</b>	A body corporate is the legal entity (such as an association or company) which exists separately from its members.

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<b>Word(s)</b>	<b>What it means</b>
<b>breach</b>	Where someone has not met the standards set in law.
<b>bridging-type visa</b>	A visa intended to be of transitional nature (as opposed to New Zealand residence or a visa that provides a solid pathway to residence).
<b>Budget</b>	The Budget is the annual process in which Government makes most of its spending decisions.
<b>coercion</b>	The use of force or intimidation to obtain compliance. Section 351 of the <i>Immigration Act 2009</i> identifies coercive behaviours, such as an employer preventing their employees from leaving their employment, leaving New Zealand, finding out or seeking their entitlements under New Zealand law, or telling someone about the circumstances of their employment.
<b>collusion</b>	Knowingly and secretly helping someone to break the law, whether this help is given directly (for example, by paying for a job) or indirectly (for example, by agreeing to not report exploitation).
<b>compliant/ compliance</b>	Compliance is the attitude or act of meeting the requirements set out in law. A compliant employer meets standards of employment required in New Zealand workplaces, or obligations for employers who employ migrant workers.
<b>conditions (of a visa)</b>	Basic conditions include: the visa expiry, the number of times someone can enter New Zealand, and by what date they need to enter. Other conditions depend on the nature of the visa (that is, work, visit, or study) but could relate to the ability to work, the specific employer or job that may be undertaken, the location of a specific job, or any ability to study while in the country. Visa conditions are explained in an e-visa, on the label in a passport, or in the approval letter sent by INZ.
<b>corporate governance system</b>	This system provides the legal framework for the operation of businesses, not-for-profit entities and civil society organisations. The system's objective is to promote accountable, transparent, and high-performing businesses and similar entities by setting rules and incentives for how businesses and similar entities must be structured, governed and dissolved.
<b>deduction</b>	Amounts taken out of a worker's pay by an employer. Deductions can only be made if they are required by law (e.g. Pay As You Earn PAYE tax), or are reasonable and agreed to in writing by the employee. Sometimes deductions can be made where there have been overpayments.
<b>demand side</b>	An economics term referring to the demand by employers and businesses for employees. It includes the key people that might represent the employers' and businesses' interests, including business representative organisations, industry representative organisations, recruitment agents, and immigration advisers.
<b>deportation</b>	The removal, by New Zealand agencies, of a non-New Zealand citizen from New Zealand.

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<b>Word(s)</b>	<b>What it means</b>
<b>deterrence</b>	The result of discouraging someone from taking a specific behaviour or action. For the proposals in this paper, deterrence is about making sure our settings discourage poor behaviour by employers.
<b>education agent/ agencies</b>	These agents and agencies provide advice, counsel, and placement assistance to prospective students. They are paid for their services by the educational institutions they represent, the students they assist, or both. They may operate from New Zealand (onshore), or from the student's home country (offshore).
<b>education provider</b>	The organisation that a student is enrolled to study at. It has to be approved by the Tertiary Education Commission to run their courses and could be a university, Private Training Establishment (PTE), or Institute of Technology or Polytechnics (ITP), or English Language school.
<b>employer-assisted visa</b>	This is a work visa where the migrant is required to work for a specific employer.
<b>employment agreement</b>	'Employment agreement' has a broad meaning. It includes all documents and other agreements that form the contractual agreement between the employee and employer. Includes all documents and agreements forming part of the contractual agreement between the employee and employer.
<b>employment rights</b>	This term means certain entitlements such as being paid at least the minimum wage; being provided annual leave and holiday pay; and being paid wages that have not had illegal deductions.
<b>employment standards</b>	The set of minimum standards that employers must comply with under various employment laws. These standards set out certain rights for employees and obligations that employers must meet.
<b>enforceable undertakings</b>	An agreement in writing between a labour inspector and an employer that the employer will, by a specified date, rectify the breach of any provision of employment legislation, pay money owed to an employee, or take any other action that the labour inspector determines is appropriate. A failure to meet the terms of the agreement can result in a penalty, and any money owing can be enforced through civil debt proceedings.
<b>enforcement</b>	This has a broad meaning, but here it means investigations where it is suspected a breach of the law or policy has occurred; and also means the resulting action taken, such as penalising the person or business who committed the breach.



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Word(s)	What it means
<b>entitlement</b>	<p>The ability to do something legally, such as the ability to legally work in New Zealand, according to the conditions set out on the person’s visa. Sometimes an entitlement is referred to as a ‘right’.</p> <p>A core subset of employment standards are called ‘<b>minimum entitlement provisions</b>’, and include:</p> <ul style="list-style-type: none"> <li>• minimum entitlements under the <i>Minimum Wage Act 1983</i></li> <li>• provisions of the <i>Wages Protection Act 1983</i></li> <li>• minimum entitlements and payments under the <i>Holidays Act 2003</i></li> </ul>
<b>exploitative</b>	The attitude or action of exploiting a worker.
<b>franchising</b>	A business arrangement where a person (the franchisee) trades and operates a business using the systems, conditions and intellectual property of another person (the franchisor). Note this has been used as a working definition only in our proposals.
<b>holding company</b>	Generally this means a body corporate with control over another company. See section 5 of the <i>Companies Act 1993</i> for more detail.
<b>human trafficking</b>	The act of recruiting, transporting, transferring, harbouring and receiving a person through the use of force, coercion, deception or other means for various illegal purposes (also known as “people trafficking”). Further detail is set out in section 98D of the Crimes Act 1961.
<b>immigration obligations</b>	These are obligations on either employers or on migrants. For employers, these could include obligations such as checking whether a migrant is entitled to work for them before hiring the migrant. For a migrant, these could include meeting the conditions of their visa.
<b>immigration status</b>	A person’s ability to remain in New Zealand lawfully. For example, whether they hold a valid visa or not. The same concept is also sometimes referred to as ‘visa status’.
<b>improvement notice</b>	A Labour Inspector can issue an improvement notice requiring an employer to take steps to correct a breach of employment standards. The Employment Relations Authority enforces the notices.
<b>‘in good faith’</b>	A legal term that broadly means “acting fairly and honestly”.
<b>infraction</b>	A breach of requirements in law or policy; wrongful behaviour.
<b>infringement notice</b>	A legal document that requires the person to pay a fee for committed an infringement offence. For example, Labour Inspectors can issue an infringement notice for a \$1,000 fee where an employer has failed to keep required wage, time and holiday records or they have failed to retain a copy of individual employment agreements.
<b>infringement offence</b>	A type of criminal offence that is not serious enough to result in a criminal conviction. Infringement offences are intended to deter behaviours that are of relatively low seriousness but could lead to worse behaviour if not deterred.

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<b>Word(s)</b>	<b>What it means</b>
<b>infringement system (or regime)</b>	The system that determines when infringement offences have occurred, produces infringement notices, and collects fines.
<b>international student</b>	Students from overseas who are not New Zealand residents or citizens and chose to undertake all or part of their tertiary education in New Zealand. International students must hold a visa with study rights, in order to legally study here.
<b>labour hire</b>	A company that enters into contracts with third-parties to supply labour, and employs people to provide that labour.
<b>Labour Inspector</b>	Warranted officers who have powers under the Employment Relations Act to make sure that workplaces meet at least the minimum standards and requirements of employment law. They work for the Labour Inspectorate, which is part of Employment Services, a branch of MBIE.
<b>legal personality</b>	The capacity to have legal rights and duties.
<b>liability</b>	The state of being legally responsible for an action or obligation.
<b>licensing system</b>	A system in which an authority issues official documents giving license holders permission to own, do, or use something.
<b>licensed immigration adviser</b>	Licensed immigration advisers (LIAs) are licensed by the Immigration Advisers Authority (IAA) to provide specialist immigration advice to the public.
<b>limited liability company</b>	A corporate structure where the company's shareholders are only liable for the money owing on their shares, and personal guarantees they have given to lenders or creditors, such as banks or suppliers.
<b>liquidate</b>	The act of closing down a company, so that its assets can be sold to pay debts.
<b>minimum wage</b>	This is the least amount someone working in New Zealand can be paid by law. Minimum wage rates are reviewed every year and are available on the Employment New Zealand website.
<b>minimum employment standards</b>	Minimum employment standards are set in the Employment Relations Act 2000; Equal Pay Act 1972; Holidays Act 2003; Minimum Wage Act 1983; Parental Leave and Employment Protection Act 1987; Volunteers Employment Protection Act 1973; Wages Protection Act 1983; and Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016.
<b>modern slavery</b>	An overarching term that covers situations that a person cannot leave due to threats, violence, deception, coercion and/or abuse of power. Modern slavery can include forced labour, debt bondage, forced marriage, other slavery and slavery-like practices (such as servitude or serfdom), and human trafficking.
<b>non-compliance</b>	An action that is in breach of standards or obligations set in law.

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Word(s)	What it means
<b>officer (in employment law)</b>	Section 142W(2) of the <i>Employment Relations Act 2009</i> defines an officer of an entity to include: <ul style="list-style-type: none"> <li>a) a person occupying the position of a director of a company if the entity is a company</li> <li>b) a partner if the entity is a partnership</li> <li>c) a general partner if the entity is a limited partnership</li> <li>d) a person occupying a position comparable with that of a director of a company</li> <li>e) any other person occupying a position in the entity if the person is in a position to exercise significant influence over the management or administration of the entity.</li> </ul>
<b>online tool</b>	A way of doing something on the internet, such as an online portal for reporting exploitation; or a website that provides information on employment rights.
<b>open work rights/open work visa</b>	This visa or right allows a migrant worker to work for any employer, in any role.
<b>pastoral care</b>	The responsibility to ensure someone is safe and properly cared for. Under the Education (Pastoral Care of International Students) Code of Practice 2016, education providers are responsible to ensure the pastoral care of international students. The Code can be accessed on the NZQA website.
<b>'penalty toolkit'</b>	The various legislative and policy tools MBIE might use to penalise employers who do not meet the set standards. Tools might include infringement notices, prosecution, improvement notices or enforceable undertakings.
<b>penalty/penalties</b>	Punishment for non-compliance.
<b>people smuggling</b>	A migrant voluntarily paying a smuggler to facilitate illegal entry into another country, and the smuggler obtaining, directly or indirectly, a financial or other material benefit for obtaining their entry.
<b>phoenix activity</b>	Situations where a company is liquidated to avoid liability (including, for example, wages and taxes are owed to workers) or to avoid penalties, and then the same person creates a new company. In this document, 'phoenix activity' is used in the colloquial sense, and is not the same as the technical meaning provided in the <i>Companies Act 1993</i> .
<b>premium</b>	An amount paid to an employer to increase the chance of or guarantee a job.
<b>'preserve the integrity'</b>	This means to keep the condition or system of something pure and sound, and to not harm or undermine it.
<b>prosecution</b>	Another term for legal proceedings. An example of prosecution would be charging an employer with an offence against the Immigration Act.

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<b>Word(s)</b>	<b>What it means</b>
<b>recruitment agent</b>	Recruitment agents provide employment placement assistance to migrant workers. They may operate from New Zealand, or from another country (offshore).
<b>referral</b>	The passing of an exploitation report from one part of the system to another.
<b>regulations</b>	Subordinate legislation made under delegated authority of an Act. Regulations usually deal with matters of detail or implementation, technical matters, or those likely to require frequent updating.
<b>regulatory system</b>	A system designed to regulate the practices and activities of certain businesses or institutions.
<b>reporting line</b>	The place where reports of exploitation are made to and the process for doing this.
<b>sanctions</b>	Another term for penalties or consequences of non-compliance.
<b>shareholder</b>	An owner of shares in a company.
<b>significant control or influence</b>	Where a person has a significant degree of influence or control over the employer's affairs, including their operational and financial affairs. We are seeking feedback on how this term is used in our proposals.
<b>standard</b>	A term that is often used to mean a 'right'.
<b>stand-down list</b>	A list of employers who have been found to have breached employment standards by the Employment Relations Authority, Employment Court or Labour Inspectorate action. Employers whose names are on the list are not allowed to support a visa application for a specific period of time (the 'stand-down period'). The stand-down list policy is set out in immigration instructions.
<b>student visa</b>	A visa for a migrant whose primary purpose is to study in New Zealand. Many student visas provide some ability to work.
<b>subcontractor</b>	A person or business that contracts to provide a service that is necessary for the performance of another contract.
<b>subsidiary/ subsidiaries</b>	A company controlled by a holding or parent company.
<b>supply chain</b>	A network of businesses involved in creating and supplying a product or service.
<b>supply side</b>	An economic term for the supply of workers to employers who need to fill jobs. The supply side also includes key people that might represent those workers' interests, including unions, migrant community leaders, community organisations, advocates, and lawyers and immigration advisers.
<b>temporary migrant worker</b>	A migrant who holds a temporary work visa and is in employment.
<b>temporary work visa</b>	A work visa that provides temporary employment for a migrant. The duration and conditions of the visa depends on the type of visa.

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<b>Word(s)</b>	<b>What it means</b>
<b>triage</b>	A term that means to decide how to deal with a report or complaint of exploitation (including how urgently it needs to be followed up), and who will deal with it (that is, which agency will follow up).
<b>warning letter</b>	A letter given to employers warning them that, if their practices do not change, enforcement action will be taken.
<b>work rights</b>	The entitlement or right to be able to work in New Zealand, as set out on the person's visa.
<b>worker (in employment law)</b>	Any person working for an employer in New Zealand.
<b>workforce</b>	All the people in New Zealand who are engaged in work.
<b>Working Holiday Scheme</b>	Bilateral arrangements allowing young people to live and work in other countries. New Zealand has 45 such arrangements allowing migrants between 18 and 35 years old (depending on their country) to live and work in New Zealand on open work visas for up to 23 months (the period depends on their country).