



IMMIGRATION PLANNING CONSULTANTS

Coronavirus Update for Employers of Australian Visa Holders, TSS Sponsors

This sheet sets out FAQ our business clients have been asking to manage their foreign workforce in the wake of COVID-19 quarantine measures.

Questions covered:

- ❖ *Exemptions to travel restrictions*
- ❖ *Longer work hours for student visa holders*
- ❖ *Unpaid leave for sponsored workers*

In Brief

Department of Home Affairs policy is changing daily, and employers should beware that it is not necessarily keeping pace with government announcements.

Answers to FAQ:

1. MY WORKER IS OVERSEAS, CAN THEY RETURN TO AUSTRALIA?

As of 9 pm 20 March 2020, only the following persons will be allowed to enter Australia, and will be required to self-isolate for 14 days on arrival:

- Australian citizens
- Permanent visa holders
- New Zealand citizens ordinarily resident in Australia
- Pacific islanders transiting home
- Immediate family members of an Australian citizen or permanent resident

Sponsored workers who hold 457 visas and 482 visas are barred from entering Australia at this time.

2. WHEN CAN MY WORKER RETURN TO AUSTRALIA DUE TO SPECIAL OR COMPASSIONATE REASONS

Discretion exists to approve workers to return to Australia despite the travel ban, for instance if they have special skills - such as medical skills that may assist during this outbreak - or there are compelling and compassionate reasons for allowing them to return to Australia. Applications are lodged here: <https://immi.homeaffairs.gov.au/help-support/departmental-forms/online-forms/covid19-enquiry-form>

3. CAN I PUT SPONSORED WORKERS ON LEAVE WITHOUT PAY IF THEY HAVE TO SELF-ISOLATE?

Unpaid leave is generally a breach of sponsor's obligations, unless the sponsor is obliged to provide the leave under Australian workplace laws. The Governor General has declared a "human biosecurity emergency" and self-isolation is a legal requirement in some instances, meaning employers would be able to provide LWOP as a direct result of COVID-19 prevention measures with limited risk of penalty. We strongly advise all paid leave entitlements (including special leave where applicable) are exhausted prior to placing a sponsored employee on LWOP. Clear records of the application for leave, the reason for it and dates need to be maintained.

4. OUR BUSINESS HAS CLOSED INDEFINITELY, AS A RESULT OF COVID-19, CAN I PUT SPONSORED WORKERS ON LWOP?

Indefinite LWOP as a result of a lack of work or required business/office closures is currently not acceptable and would be viewed as a breach of your sponsorship obligations. This is because the visa was granted on the basis that there was a full time position vacant, and sponsored workers are unable to work elsewhere, nor access social security. Given this situation is unprecedented, we would recommend contacting us for specific advice. The Department of Home Affairs is considering its position, given the large numbers of sponsored workers expected to need to take LWOP before reinstatement, but have not yet issued any updated advice.

Do not forget to notify the Department within 28 days if sponsored workers cease to be employed.

5. I NEED TO SPONSOR A WORKER, CAN THEIR VISA STILL BE GRANTED?

Yes, however you should expect processing delays as a result of the outbreak. Businesses will also need to plan for belated start-dates, due to travel bans, and mandatory self-isolation periods on arrival in Australia.

6. DO I STILL NEED TO ADVERTISE AND PAY THE SKILLING AUSTRALIANS FUND LEVY?

The usual labour market testing and SAF levy requirements apply as at 27 March 2020. There have been submissions made to the Department of Home Affairs to relax these requirements, to assist those temporary visa holders who cannot exit Australia at this time due to COVID-19, but no changes to the status quo have occurred yet as a result.

7. CAN STUDENT VISA HOLDERS WORK MORE THAN 20 HOURS PER WEEK DURING THIS OUTBREAK?

There has been no change to the law: all students must be limited to working 20 hours per week while their course is 'in session'. Some students have been authorised to study online due to COVID-19 prevention measures, and their courses are 'in session'.

8. CAN STUDENTS WORK LONGER HOURS IN SUPERMARKETS, AGED CARE AND NURSING?

The government has recently announced that some employers will not be penalised for employing student visa holders for more than 20 hours per week. Namely, supermarkets, aged care providers and employers of student nurses.

Aged Care Providers who are allowed to employ students for more hours have been notified directly and should read their letters carefully.

Employers of students who were enrolled in a Nursing course in March 2020, can engage that individual for more than 20 hrs weekly. We recommend that employers obtain a Confirmation of Enrolment to confirm the student was indeed enrolled in nursing. A registered nurse who was not enrolled to study nursing is not currently included in these measures, and their hours should be restricted if their course is in session.

Supermarkets must first register and be given approval before allowing any student visa holders to work more than 20 hours per week: <https://svcr.homeaffairs.gov.au/>

9. MY EMPLOYEE HAS A WORKING HOLIDAY VISA BUT IS REACHING THE END OF THEIR 6 MONTHS, CAN THIS BE EXTENDED BECAUSE OF COVID-19?

There is no official policy granting working Holiday Makers permission to work more than 6 months due to COVID-19. However, Working Holiday Makers can request an extension of this limit using a Form 1445 in the usual manner. As this outbreak is unprecedented, it is possible the Department will see the need for workers in Healthcare and other vital industries as an exceptional circumstance akin to a Natural Disaster. Please note labour shortages or well qualified candidates alone are not sufficient for an extension to be granted.

10. MY EMPLOYEE'S VISA IS EXPIRING, WILL THEY BE GRANTED A VISA TO STAY IN AUSTRALIA SO THEY DO NOT HAVE TO TRAVEL TO THEIR HOME COUNTRY?

There are no special visas or exemptions to allow temporary visa holders to remain in Australia at the expiry of their visa due to the outbreak of COVID-19. Where an employees' visa is expiring shortly they will either need to apply for another visa or leave Australia to avoid becoming unlawful. You should not permit employees to work beyond their visa expiry date.

Further Information:

This update was prepared on the 27 March 2020 and was accurate at that time, but changes are frequently occurring which may impact the accuracy of the information contained.

If you require advice specific to your situation contact us at office@jtimmigration.com.au or 03 8060 2457

Julie Heller
Principle Consultant
JTH Immigration Planning Consultants