

## Immigration **matters**

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### **COVID-19 – Impacts on your sponsored workforce – what must you consider?**

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Approved business sponsors that employ overseas workers on temporary work visas including subclass 457 and subclass 482 visas are required to comply with sponsorship obligations and the Government has indicated that no exemptions to sponsorship obligations will be made available at this time.

This may change after further lobbying by the Migration Institute of Australia (MIA) however the information being provided below is based on current requirements.

Below are some of the issues which sponsoring businesses need to consider when making decisions that may impact on their overseas workers. Note that some sponsorship obligations may differ slightly depending on whether an employee holds a 457 or 482 visa.

#### **Temporary Stand Downs of the Workforce**

Employers who are approved sponsors are required to provide information to immigration when certain events occur, including when a sponsored 457 or 482 visa holder ceases work. Any temporary stand down would effectively result in a sponsored employee ceasing work and therefore needs to be treated the same as any other employment cessation event, although there may be some scope to offer a period of Leave Without Pay (LWOP), subject to the conditions outlined below.

The sponsor is required to notify immigration within 28 days of an employee ceasing work.

If a sponsored employee is made redundant due to a change in business conditions, they may seek new employment while in Australia however would not be permitted to commence working for the new employer until that employer has had a sponsorship and nomination application approved.

#### **Leave without pay (LWOP)**

Three months leave without pay may be permitted without any breach of sponsorship obligations or visa conditions occurring subject to the following expectations;

- *the arrangement is mutually agreed upon by the sponsor and sponsored person.*
- *there is a formal application for leave without pay that has been approved in writing by the employer (including leave applications that are processed and approved electronically).*

While LWOP is possible, there would be concerns where this would result in the annual salary of an employee falling below the Temporary Skilled Migration Income Threshold (TSMIT) of \$53,900 base.

A period of LWOP in all cases would also result in an employee's income falling below the level recorded in the nomination approval and sponsors must notify the Department of Home Affairs in cases where this has



been agreed to, and include evidence of the application and approval as outlined above. This reflects a best practice approach and would avoid any monitoring requests being issued where the Department were concerned about potential underpayment of salaries.

Traditionally, LWOP would generally not be acceptable other than for maternity/paternity leave, sick leave, a work-based injury, or significant personal reasons however it has been accepted on a case by case basis to allow for extended annual holidays and other personal matters. LWOP for sponsored employees should generally not exceed three months, unless the sponsor is obliged to provide the leave under Australian Workplace Laws. This includes providing access to LWOP for extended parental leave of up to 12 under National Employment Standards.

### **Reduced hours and part time work**

The Subclass 482 (and Subclass 457) visa is granted on the basis of a sponsored employee filling a full-time role in Australia, and reduced hours and part-time work are not permitted. The Government has indicated that currently it will not be providing any exemptions to this full-time work requirement however we will provide an update should the Government agree to provide any flexibility to this to accommodate anticipated changes to the economic climate in the next few months.

### **Reduced pay**

A sponsored person's approved terms and conditions of employment, including remuneration, should not diminish after the nomination has been approved, or the sponsor may be in breach of the sponsor obligations.

*Where officers identify that the sponsored person's earnings are less than what was outlined in the nomination application, they need to consider whether the sponsored person's terms and conditions of employment are 'less favourable' than what was approved at the time of the nomination being approved.*

As the sponsored employee's salary has been approved after an assessment against the prevailing market rate in Australia, there is no scope to reduce this unless a new nomination with new market rate salary evidence is submitted and approved. Any new market rate salary evidence would need to be able to satisfactorily confirm a drop in the applicable market rate for the occupation.

### **Post-redundancy for subclass 457 and 482 visa holders**

In the event that a visa holder is made redundant due to changes in economic and business circumstances, a visa holder will have either a 60 or 90 day period to do one of the following:

- find another sponsor and have a new nomination application submitted; or
- apply for another visa; or
- depart Australia.

The time frame available to a sponsored employee will be determined by the subclass of visa they hold and the date this was granted.

In the current climate if a visa holder cannot depart Australia within the required time frame for reasons beyond their control, including an inability to secure outbound flights and they cannot find another sponsor, they are able to apply for a visitor visa prior to expiry of the relevant 60 or 90 day period.



The grant of a visitor visa would allow them to remain in Australia lawfully but would not provide them with any work permission.

### Obligation to pay travel costs

Sponsors have an obligation to pay the outbound flight costs for primary and secondary sponsored persons to leave Australia within 10 days of receiving a written request from the sponsored employee. To satisfy this obligation, the sponsor is required to cover the costs of economy class airfares to the employee's country of passport, and also cover the costs of any domestic connecting flights required for the employee.

Sponsors should not make cash payments but either should arrange to book the flights directly or provide reimbursement to the employee if evidence is provided of a booking already being made. There is no obligation to cover costs associated with excess baggage charges or shipping fees – sponsors may consider doing this on a discretionary basis.

### Need assistance?

If you would like to discuss the above in further detail or have any foreign or local employees impacted by these restrictions, whether offshore or in Australia and need assistance strategizing the best way forward, please reach out to:



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