Managing Covid-19 and Overseas Workers

Hospitality and Tourism Industry Migration Fact Sheet

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Hospitality Immigration Specialists

Visas

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Covid-19 and Overseas Workers
Hospitality and Tourism Industries

What restrictions has the government introduced?

The Prime Minister announced a shutdown of places of public gatherings from 12:00 pm (midday) on Monday 23 March 2020.

This includes hotels, bars, nightclubs, casinos, restaurants and cafes.
The following exceptions apply:

• Bottle shops – retail bottle shops and the off-licence operations of licensed premises;
• Accommodation – the accommodation section of hotels, motels and resorts;
• Restaurants/Cafes – takeaway and home delivery;

A copy of the Prime Minister's statement can be accessed
here: https://www.pm.gov.au/media/update-coronavirus-measures-220320

What are your obligations to workers from overseas if you are standing down staff?

We understand that you may be required to stand down some staff. We recommend that you take advice from your Industry Association such as the AHA and TAA or Restaurant & Caterers in determining the legal requirements to take this action from a Fair Work perspective. Terminating sponsored workers should be a last resort as it is difficult to know how long the restrictions will be in place. These staff may be crucial to your operations when the restrictions end as they will have a loyalty to you and an incentive for their future stay in Australia.

For all staff, regardless of visa status, you are required to abide by Australian employment law when reducing hours or terminating employees. Some key points to note are:

1.   For foreign national employees that hold **Australian permanent residency**, you **do not** have sponsor obligations.

2.   For temporary visa holders, you **do not** have sponsor obligations. These visas include:

• subclass 400, Temporary Work (Shor Stay Specialist) visa
• subclass 417/462, Working Holiday/Work and Holiday visa (s).
• subclass 485, Temporary Graduate visa
• subclass 489, Skilled Regional (provisional) visa
• subclass 500, Student visa
• subclass 820 or 309, Partner visas

3.   If you have sponsored overseas workers under the temporary working visa programs, you **do** have sponsor obligations. These include;

• subclass 457, Temporary Skill Shortage visa
• subclass 482, Temporary Work (Skilled) visa
• subclass 407, Training visa

Visa types and conditions can be checked via the Department's Visa Entitlement Online System (VEVO) by the visa holder or through your Organisations VEVO account.

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Is providing leave without pay an option to retain sponsorship?

It is important to note that the Department has not updated policy or expressed any guidelines at the time of publication. There are numerous requests to the Department for clarification from the Migration Institute of Australia, but no response has been received.

Providing leave without pay is a good option to ensure the employee remains sponsored by your organisation.

It is recommended that leave without pay does not exceed three months unless you as the sponsor are obliged to provide the leave under Australian workplace laws.

For leave without pay, the expectations are:

• the leave without pay agreement is mutually agreed by both the sponsor and employee
• a formal leave without pay application is formally approved by the employer.

The Department will consider a period of greater than three months under exceptional circumstance. Given the current situation, it is believed that for now, this could be until the government enforced lockdown is over.

Whilst it is normally recommended that if you agree to leave without pay for an employee, that Sponsor Notifications are aware the arrangement is in place, in the current environment the Department would be well aware that the industry has largely stood down the majority of its workforce, and that will include sponsored workers.

What happens to sponsorship applications that are already lodged?

Applications that have already been lodged will be processed as normal. However, we would expect a delay in processing times due to remote working and the challenges faced by the Department to manage its workforce.

If the application is approved during the shutdown period, applicants are not required to commence work within 60 days of the visa being approved. After this period, it is recommended that leave without pay be agreed with the sponsored employee.

Can employees access any benefits during this time?

This has not been clearly determined at this stage. There are some residents who may be eligible for Special Benefits on certain temporary visas. The eligible visas may change in the coming weeks and months. Visit https://www.servicesaustralia.gov.au/individuals/services/centrelink/special-benefit for more information about Special Benefits.

Employees may also be permitted to access their Superannuation under the guidelines introduced by the Government in the last few days. It is our understanding the Government are setting up an online application for this and more details will be released shortly.

Any employees that have applied for permanent residency may be able to access Medicare depending on the application being made, and temporary visa holders with reciprocal medical agreements will also retain these.
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What if I need to terminate my sponsored employee?

If this is your only option, you must do so in accordance with Australian employment law and notify the department within 28 days.

Sponsored workers can request you pay repatriation costs to their country of residence but must make this request in writing. Clearly, current travel bans may make repatriation difficult at this time. Under your sponsor obligations, you must action this request within 30 days of receipt and retain all correspondence.

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