



482 TSS and 457 Visa Holders affected by Coronavirus Situation – COVID-19

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Coronavirus and Temporary Work Visa - FAQ

Temporary Skilled visa holders

Temporary skilled visa holders, on either a 2 year or 4 year were provided the visa to fill a skills shortage – a shortage that may still be present when the crisis has passed.

Consequently, those visa holders who have been stood down, but not laid off, will maintain their visa validity and businesses will have the opportunity to extend their visa as per normal arrangements. Businesses will also be able to reduce the hours of the visa holder without the person being in breach of their visa condition.

These visa holders will also be able to access up to \$10,000 of their superannuation this financial year.

Those visa holders who have been laid off due to coronavirus should leave the country in line with existing visa conditions if they are unable to secure a new sponsor. However, should a 4-year visa holder be re-employed after the coronavirus pandemic, their time already spent in Australia will count towards their permanent residency skilled work experience requirements.

According to the recent announcement 457 and 482 visa holders will be able to reduce the working hours without breaching their visa conditions.

Several businesses across Australia have been forced to close their doors or restrict their services as of 12pm, Monday 23 March 2020 due to the COVID-19 virus. We are aware that such changes will affect individuals that hold working visas namely subclass 457 and 482.

Further, we have summaries a few frequently asked questions and immigration policies that are relevant to holders of 457 or 482 visas (primary applicant).

Temporary Skill Shortage visa holders who have been stood down, but not laid off, will maintain their visa validity and businesses will have the opportunity to extend their visa as per normal arrangements.

Businesses will also be able to reduce the hours of the visa holder without the person being in breach of their visa conditions or the businesses being in breach of their employer obligations.

I have lost my job due to the COVID-19 pandemic, what are my options?

Those who are laid off (that is, they are unemployed) should find another employer within 60 days or make arrangements to depart Australia, where this is possible.

I can't find another employer what I should do?

Those visa holders who have been laid off due to coronavirus and who cannot find another employer to sponsor them, should make arrangements to depart Australia.

What can I do if I cannot return to my home country?

If you cannot return to your home country, you need to maintain a visa and engage with the health system when necessary.

Reduction in work

Q. Can I reduce my hours or move to part-time work?

Subclass 457 and 482 visas aim to fill the lack of genuine skill shortages in the Australian Labour force where adequately skilled Australians cannot be procured. Requirements of such visas include a condition that such specified work should be undertaken on a full-time basis.

If, under unforeseen circumstances your work hours were reduced to a part time capacity, the loss in your earnings (or terms and conditions of employment) may amount to a failure on your sponsor's behalf to meet their obligations under regulation 2.79 as:

- Less terms and conditions (sponsors of 457 visa holders)
- Earning lower than the nominated salary (for sponsors of 482 visa holders)

Regulation 2.79 offers exceptions where periods of part-time work occur in conjunction with:

- A gradual return to work following maternity leave
- Sick leave or a work-based injury
- Significant personal reasons.

Including meeting the four policy criteria listed below:

- the pro-rata hourly rate of your approved salary (as per the nomination) does not decrease

- the role and duties performed remain consistent with your nominated occupation
- you are not employed under a Labour Agreement
- a written agreement is in place between you and your sponsor. Your sponsor **must** maintain a copy of the agreement and document the reason for the change.

NOTE: the current policy as it stands does not specify 'significant personal reasons' and if it can be extended to included businesses affected by government enforced restrictions. We will update this once the Department of Immigration provides clarification.

Q. Can my employer reduce my wages?

For an employer to reduce wages, a new nomination would need to be lodged, on the condition that the reduced wages are still at the market rate and exceeds the TSMIT (Temporary Skilled Migration Income Threshold), which presently stands at AU\$53,900. For such a nomination to be of effect you (the employee) would be required to agree to revised wages by signing a new contract of employment. Further, the new application would also incur addition fees under the Skilling Australians Fund levy payment on behalf of the sponsor.

Q. Can I go on Leave Without Pay (LWOP)?

The National Employment Standards (NES) include individuals that are holders of subclass 482 or 457 visas (i.e. Sick leave without pay, study leave, carer leave, maternity/paternity leave, holidays without pay). Engaging in Leave Without Pay would not constitute a breach of visa and working conditions as you (the employee) would be regarded as employed (not working or not receiving pay).

However, under the current immigration policy Leave Without Pay should not exceed 3 months unless:

- your sponsor is obliged to provide the leave under Australian workplace laws (e.g. in connection with maternity leave); or
- exceptional circumstances apply.

** The 8107 condition allows up to 12 months' leave on a 457 visa.*

Expectations for Leave Without Pay include:

- All parties (you and your sponsor) agree that Leave Without Pay will be taken; and
- A formal application for LWOP has been approved by the sponsor (including electronic applications)

In cases of extended LWOP, a 457 or 482 visa may qualify for cancellation under the Migration Regulations, on the basis that the Department is satisfied that you (the employee) has ceased to possess genuine intention to carry out the nominated occupation.

We will update our website as soon as any COVID-19 addressed policy surrounding any 'exceptional circumstances' is released by the Department of Immigration.

Overseas workers/Travel

Q. Can I do other work within the business?

Conditions 8107 and 8607 of visas 457 and 482, holders are confined to working only in their nominated occupation. Additionally, sponsors of such visas are under obligation to verify that the 457/482 visa holder undertakes work in the occupation of nomination.

If a holder of a visa was to be found working in a different occupation, such an individual may have their respective visa cancelled and the sponsor may also be affected by sanctions, diminishing their ability to sponsor workers in the future.

To change occupations, a holder of a 457 visa would require an approved nomination in the revised/new occupation before officially commencing the role. A 482-visa holder on the other hand is required to have an approved nomination and visa in the revised/new occupation.

In accordance with the policy, work conditions will not be subject to a breach if change of duties are temporary and do not exceed 60 consecutive days. Nevertheless, if duties are revised for more than 60 days, or if they are subject to regular change, a new nomination (for 457 visa) or a new nomination and visa (for 482) must be lodged.

Q. Can I work somewhere else and go back to my original sponsor?

Conditions 8107 (457 visa) and 8607 (482 visa) restrict holders of such visas and are bound to working for the sponsored employer. To gain employment somewhere else, an employer would need to sponsor the employee and have it approved before commencing work. A further application would be needed to be relodged to return working for the original sponsor.

Termination

Q. Can my sponsor terminate my employment? Can I leave Australia and travel home?

During the current crisis it is expected that Standard Business Sponsors are required to comply with sponsorship obligations and Fair work duties.

If employment were to be cancelled/terminated, an individual would have 60 to leave Australia, or find a new sponsor, or lodge a different type of visa application to remain in Australia. We recommend speaking to an Immigration Consultant to explore options if you are faced with termination/cancellation of employment.

If employment is terminated and you wish to leave Australia, the sponsor is under obligation to cover reasonable travel costs for you and any family members dependant on your visa.

Reasonable and necessary are as follows:

- travel from your usual place of residence in Australia to your departure point from Australia (i.e. from home to the airport)
- travel from Australia to the country for which you hold a passport *and* intend to travel to
- economy class air travel or reasonable equivalent

'Reasonable travel costs' does not include costs associated with relocation of your personal effects (beyond any included airline baggage allowance), excess luggage, rental property expenses (for example, the cost of breaking a lease), personal choices (such as particular stopovers on international flights or preferred hotels), or the cost of obtaining a travel document (for example, passport).

Relevant sponsors are to satisfy their obligations within 30 days after a formal request to do so is done in writing with full names of all travellers, passport information and other details as necessary.

Disclaimer: This information is current at time of publication and may change anytime. It is meant as general information and should not be relied upon as legal advice

If you need immigration advise or assistance, please ring us on 02 9286 8700 or email us on ppmail@ppilaw.com.au; to book an appointment with our Lawyers or Migration Agents. We can also consult over the telephone, and Skype for those interstate or overseas and for those living in or near Sydney and who are concerned about leaving home at the moment.

Source: [Department of Home Affairs – Covid-19](#)