



GMS Flash Alert

Immigration Edition

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Australia - COVID-19: Considerations for Managing a Migrant Workforce in Trying Times

While the Australian government has not put forward any specific legislation or rules that would address the COVID-19-related challenges faced by temporary migrant workers, the existing migration legislation contains a number of provisions that employers can avail of to offer some continuity of employment for impacted temporary migrants.

WHY THIS MATTERS

This week we have already seen major Australian businesses announcing large-scale stand downs which may lead to redundancies. Temporary migrants comprise approximately 11 percent of Australia's workforce.

In times of economic downturn, history shows us that temporary migrant workers will be among some of the first to be displaced, as businesses struggle to remain viable.

Temporary migrants and their employers may look for potential relief as the migrants face possibly being laid off or experiencing a reduction in their working hours during the COVID-19 crisis. For example, under certain conditions, subclass 457 and 482 visa holders can access leave without pay (LWOP).

Being aware of the benefits to be found in existing legislation and how to claim such benefits may go some way to helping alleviate a stressful situation.

Context

While all migrant workers in Australia have the same rights afforded to Australian citizens under the *Fair Work Act 2009* (Cth), temporary migrant workers do not enjoy the same privileges as Australian citizens or permanent residents in so far as they currently have no access to social security benefits, nor do many have the same family support networks

available to many Australians.

The circumstances are likely to be made more difficult in light of the current health pandemic. This week we have already seen major Australian businesses announcing large-scale stand downs which may lead to redundancies. For those employers and impacted temporary visa holders, who may become displaced as a result, there are a number of pertinent considerations.

Specifically for the employer, once redundancies are effected, it will be required to report those redundancy arrangements to the Department of Home Affairs before they look to sponsor overseas workers in the near future.

For impacted visa holders, international travel is now difficult meaning that those temporary visa holders who did wish to depart may struggle to access flights and get themselves to their home countries. Further, even if they do depart Australia, there may be no prospects of immediate employment awaiting them in their home country.

For those temporary sponsored visa holders who choose to remain in Australia, the current Australian immigration regime does not permit them to work for a new employer, unless the new employer agrees to sponsor them and follow the immigration process for sponsorship. They will also be living against 'the clock' of visa expiration or visa cancellation, prescribed under the *Migration Act 1958*, without any access to social security.

Worth Looking for Benefits in Existing Migration Legislation

In times of business and economic uncertainty, the migration legislation contains a number of provisions that employers can use to offer some continuity of employment for impacted temporary visa holders:

1. **Leave entitlements** – migrant workers in Australia may access their leave entitlements. Migration policy also contemplates that subclass 457 and 482 visa holders can access leave without pay (LWOP), although limitations apply.
2. **The use of LWOP**, while undesirable for migrants who will lose income over that period, does mean that employment will not cease, and in the event of short-term economic turnaround, it means the temporary migrant worker can return to work without needing to navigate further immigration processes.
3. For non-employer-sponsored temporary migrants, including international students, the migration legislation does not prohibit a reduction in hours, meaning that **part-time work arrangements may be available**. (The situation for sponsored 457 and 482 visa holders is more complex).
4. **Movement of employees between business structures** – for large organisations with multiple entities, it may be possible to move temporary migrant workers between business entities without the visa holder being in breach of his or her visa conditions.
5. Temporary changes in role or duties – there is scope within migration policy for temporary sponsored workers to have their **role or duties adjusted over the short-term**, which may assist some businesses to employ their existing workers more flexibly without it amounting to a breach of visa conditions.

KPMG NOTE

Where employment continuity is not possible, affected individuals and their employers should consult with their qualified immigration counsel or the KPMG Immigration team in Australia. Advice may be sought about employer and sponsor obligations under the migration legislation and the implications for migrant workers.

The KPMG International member firm in Australia will continue to engage collaboratively with the Australian government to identify solutions to assist business and migrant workers in Australia.

Contact us

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