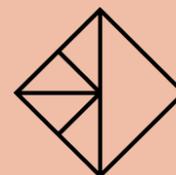


# Covid-19 and migrant worker employees – FAQs for employers



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## **Q: We have an employee on an interim visa, are we able to claim the Government wage subsidy for them?**

You can claim the wage subsidy for employees who are legally employed by you. This means that for holders of valid work visas you can claim the wage subsidy. However, the position may be different in relation to employees currently on an interim visa.

In some instances, interim visas will only provide the holder with visitor visa conditions, meaning they are not entitled to work. It will therefore be very important to understand the type of interim visa conditions your employee has. In general terms, if the visa now being applied for is for a different visa category, different job role or different location than the previous visa held, then visitor visa conditions will apply. If your employee holds an interim visa with visitor conditions, our advice is that you should not claim the wage subsidy for them.

## **Q: We have had to change our migrant worker employee's terms and conditions of employment by a combination of a reduction in salary or wage/reduction in working hours – what does this mean?**

Any changes to employment terms and conditions must be made via consultation with staff and in accordance with employment law.

There are special policy exemptions that have been introduced in relation to migrant workers who are healthcare workers and supermarket workers, to allow greater flexibility to employers to employ them outside of the strict conditions of their visas.

However, for all other employers, the answer to this question will depend on whether your migrant worker employees have “open” or “closed” work visas.

Open work visas allow the employee to work in any job role, for any employer and in any location. Common examples of open work visas are partnership-based work visas and post study open work visas. For your employees on open work visas, as there are no specific conditions on the



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visa, subject to employment law requirements, changes to the job role can be made without having any impact on their visa status and without any requirement to notify INZ.

Closed work visas are where the conditions of the visa state that the holder is entitled to work in a particular job role, for a particular employer and (generally) in a particular location. The most common closed work visas are the Essential Skills work visa and the Work to Residence (Talent-Accredited Employers) work visa. In both cases, the policy requires the position of employment to be full-time (defined as a minimum of 30 hours per week). There are also minimum remuneration thresholds that apply.

Although there will be many different scenarios here and may be some exceptions for very highly paid employees, it is likely that for the majority of migrant worker employees holding these types of visas, if hours/remuneration are reduced, they will no longer meet the policy criteria for the Talent or Essential Skills work visas.

From a technical position, this means that your migrant worker employees are likely to be working in breach of their visa conditions and that you are employing them in a position for which they do not have lawful permission to work. There are potentially serious consequences for breach of visa conditions for both migrant workers and their employers. Migrant workers can potentially be liable for deportation and employers can potentially be considered to be employing migrants illegally and therefore be non-compliant with immigration law.

The most current advice from INZ (released on 8 April 2020) indicates that INZ is aware of this situation and is currently looking at options for providing flexibility to employers/migrant workers to enable them to vary their conditions of employment. However, this matter is not top priority at the moment for INZ, so we are still waiting for clarity from them. We expect that INZ may make an announcement on this issue at some point in the next week or two.

In the meantime, technically both employer and migrant worker are likely to be in breach of immigration law. However, given the global scale and exceptional circumstances that the pandemic has created, our expectation is that INZ's policy approach should (hopefully) be sympathetic to employers and migrant workers who have needed to invoke extreme measures in order to preserve job security during the lockdown.

We are hopeful that concessions will be made to provide a limited grace period in which technical breaches that are directly related to COVID-19 matters will be accepted. We would expect there to be limited parameters in which an employer or employee can rely on these concessions, with a view to them being restored to the terms and conditions on which the visa



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was initially granted fairly quickly after the lockdown ends. It will be important for employers to keep watch for the policy details being announced and then undertake a careful analysis of what that means for you and your employees.

**Q: We have redeployed some of our migrant worker staff by changing their job duties and responsibilities and/or by moving them to another company within our group and/or to another location – what does this mean?**

As above, holders of closed work visas whose terms and conditions of employment are changing should make an application to INZ to vary the visa conditions accordingly. The employee should not commence the “new” role until INZ have approved the variation of conditions and issued an amended visa.

There is currently no facility to allow an employer or employee to lodge an application to vary their visa conditions as these applications can only be made by post and INZ’s processing branches are currently all closed, but we expect some movement on this soon.

Similar to changes to levels of pay and hours worked, if these changes have already taken place, technically your employee is likely to be in breach of his/her visa conditions and you are likely to be employing them illegally. However, please refer to our comments above in relation to anticipated announcements from INZ to provide some leniency here.

Our expectation is that redeployments within the same employing entity may be tolerated, but this flexibility is less likely to be applied to redeployments in the following situations:

To a role that would be classified as a lower skill level on the ANZSCO framework (and could potentially be offered to a Kiwi that is out of work)

To another geographic location (again, there may be Kiwis in that location that are available to perform the role)

To another employer entity (albeit in the same group of companies or to a connected company).

**Q: We have employees on student visas. How will changes we make to their employment terms and conditions impact them?**

Holders of student visas are able to work for up to 20 hours per week during term time and full time during vacation periods. For these purposes,



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student visa holders are considered to hold “open” work visas, so if you need to reduce their hours or pay, provided that is done in accordance with employment law, there should not be any repercussions from an immigration perspective.

We note here that there are specific exemptions to allow students to work more than 20 hours per week if they are employed in healthcare or supermarkets.

**Q: Unfortunately, we have had to make some of our migrant workers redundant. What does this mean for them and us?**

Migrant workers who have lost their jobs will need to depart New Zealand if they are not able to find suitable alternative employment and secure a further work visa to remain here lawfully. In the current circumstances with the lockdown and limited departing flights from New Zealand, they may not be able to leave for some time, but they should keep INZ updated in relation to the changes in their personal circumstances. Once lockdown is over and flights resume, INZ will expect these workers to depart New Zealand as soon as it is reasonably practical to do so.

There is not an obligation on an employer to notify INZ when a migrant worker’s employment is terminated. However, we recommend that all employers, but particularly accredited employers, do this as a matter of best practice.

**Q: Some of our migrant worker employees have got the automatic visa extension. How does that work?**

Certain visa holders, including holders of work visas and interim visas that were due to expire between 2 April 2020 and 9 July 2020, have been issued with an automatic visa extension, valid until 25 September 2020. INZ has issued 85,000 such extensions. These visa extension notices should have been received by your employees already and you should request a copy and maintain it on your employee’s HR records as evidence of their right to remain working.

If you wish to retain migrant worker employees beyond their new expiry date of 25 September, we recommend encouraging them to make their next visa application well in advance of that date as there will be huge numbers of migrant workers all with the same expiry date in late September, meaning there are likely to be significant processing delays at that time.



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**Q: Our employee made a visa application well before the lockdown and still hasn't heard anything from INZ. Is there anything we can do to speed up the process?**

At the current time, INZ is operating only on skeleton staff and their focus at this time is on processing applications for urgent cases that are directly related to the COVID-19 response (e.g. for healthcare workers and/or very exceptional humanitarian cases). All INZ processing centres are closed and the majority of their staff are not able to work remotely during the lockdown. This means that there is effectively zero processing of residence or temporary visa applications being done during the lockdown, other than for exceptional cases. The intention of the automatic visa extension notice is to alleviate concerns around this issue, by granting an extension to temporary visa holders with upcoming visa expiries.

If you consider that your employee's visa application requires urgent treatment and there are genuine and compelling reasons to support this, then we can potentially assist to make a request.

**Further updates**

The advice above is current at the time of writing and in some instances, represents our predictions of what we expect to see from INZ in policy developments. However, the COVID-19 situation is constantly evolving and so is INZ's advice. Keep an eye out for future alerts and updates as more information becomes available.

*Disclaimer*

*Please note that the answers provided above are intended as general guidance only. For specific advice and guidance please get in contact with our expert immigration team.*

