



The impacts of COVID-19 on employers of sponsored workers

With the effects of COVID-19 causing significant disruptions to Australian businesses, employers are looking at every option from scaling down operations, to stand downs and even redundancy. As an employer of visa holders, you will also need to consider the impacts of COVID-19 on your sponsored workers.

These are unprecedented times, and while there may still be many unanswered questions, we want to provide you with the information we have right now.

A. If you have a visa application in progress

The Department of Home affairs (**Department**) is continuing to process visa applications.

At this stage, the Department is prioritising its resources to assist onshore visa holders whose visa may be expiring. This may result in delayed processing times where a visa applicant is onshore and not at risk of their visa expiring, e.g. they hold a suitable bridging visa, or if they are offshore and unable to enter Australia in the near future even if the visa is granted.

If you have lodged an application to sponsor an overseas worker but your business is facing indefinite closure or a significant downturn in work, such that you may no longer require the overseas worker, then it would be appropriate for you to notify the Department regarding your business' change in circumstances.

We can assist you in determining whether you are required to notify the Department regarding a change in business operations.

B. If you cannot continue employing a sponsored worker

The Australian Government is currently being lobbied to provide assistance towards alleviating the pressures on employers and their sponsored workers. There are also discussions underway with the Department to relax certain sponsor obligations and visa conditions.

We have not yet received further updates, but the Department has indicated that they are working through the options to provide clear messages to sponsors and visa holders affected by this crisis.

If you cannot continue employing a sponsored worker, then your options are currently as follows:

1. Leave Without Pay

A sponsored worker may take Leave Without Pay (**LWOP**) without risking their visa*, but the impact is that TSS and 457 Visa holders are prevented from working for any employer who is not their sponsor.

If you decide to enter into a LWOP arrangement, then this must be mutually agreed to in writing with the sponsored worker and you should retain these records as evidence of this.

The Department does not need to approve LWOP arrangements.

** The limit to the amount of LWOP that can be taken is usually up to three months however, special consideration may apply where there are exceptional circumstances – and we expect that the Department will take a concessional view in circumstances relating to the COVID-19 climate.*

2. Reduced Hours

You cannot change a sponsored worker to a “casual” employment status.

Whether a sponsored worker may work reduced hours will depend on whether they hold a TSS or 457 Visa. In that regard, we note as follows:

- a. A TSS Visa holder *may not* work reduced hours, as their annual earnings must not be less than their approved salary as indicated during the visa application process.
- b. A 457 Visa holder *may* work reduced hours, provided that:
 - i. The terms and conditions of their employment are not less favourable than an Australian (citizen or permanent resident) employee performing equivalent work at the same location.
 - ii. At the same rate of pay (with reference to their approved salary) for the reduced hours, they are still earning at least the amount of the Temporary Skilled Migration Income Threshold of \$53,900 per annum.
 - iii. If the sponsored worker’s approved position is imposed with a caveat requiring a minimum amount of annual earnings, then they must still earn at least that amount.

If you are considering this option, please seek advice to ensure that you are in compliance with your sponsor obligations.

3. Termination of Employment

If it is not financially viable to continue employing a sponsored worker and you are required to terminate their employment, then you must notify the Department within 28 calendar days.

The sponsored worker will then have a certain amount of time to leave Australia, find a new employer and lodge the necessary application to transfer their visa across, or lodge another type of visa application to extend their stay in Australia.

The timeframe within which the sponsored worker must take action will depend on whether they hold a TSS or 457 Visa, as outlined below:

- a. TSS Visa holders will have 60 days to take action.
- b. For 457 Visa holders, the time limit will depend on when their visa was granted:
 - i. If their visa was granted on or after 19 November 2016, then the time limit is 60 days.
 - ii. If their visa was granted before 19 November 2016, then the time limit is 90 days.

C. What to consider for your business

As a standing offer, all QHA Members may access free chats (up to 15 minutes) over the phone with our migration team regarding any visa queries.

Please keep in mind that the options discussed above are from an immigration law perspective. If you require assistance with understanding your obligations from an employment law perspective, then please consider [Mullins](#)' recent publications as follows:

1. **Employment Update: COVID-19**
<https://www.mullinslawyers.com.au/directory/employment-update-covid-19->
2. **Employment Update: COVID-19 and the Hospitality Award**
<https://www.mullinslawyers.com.au/directory/employment-update-covid-19-and-the-hospitality-award>

Contact us

We are available and committed to assisting your business to navigate these unprecedented times, and we encourage you to contact us to discuss your position and the options that are available.

Whilst many things remain uncertain, we are all in this together and we are still here to help you.

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