



MIGRATION CONSULTANTS AUSTRALIA PTY LTD

Below are some recent advices that we have received from sources in the industry regarding subclass 482 holders:

1) Leave without pay

- Leave without pay is generally permitted and will not breach visa conditions 8607 in the case of 482 visa holders or 8107 in the case of 457 visa holders but in normal circumstances should not exceed 3 months.
- Employees on 482 visas who wish to change occupation (as opposed to employer), are required to have a new nomination approved and a new visa granted before they start work in a new occupation.
- DOHA have advised that due to current circumstances leave without pay will be extended beyond 3 months as long as the TSS visa holder remains "employed". If an employee is terminated, they are no longer employed!

2) Reduction in hours worked

- If there has been a slowdown in the business, it is possible to employ 482 visa holders on a reduced number of hours and this will not be a breach of sponsorship obligations.
- Temporary Skill Shortage visa holders who have been stood down, but not terminated will maintain their visa validity and businesses will have the opportunity to extend their visas prior to expiry as per normal arrangements.
- Terms and conditions of employment must be consistently maintained (e.g. if the business is making a 482 visa holder work reduced hours, the equivalent arrangements would need to apply to all other employees.
- As mentioned above, existing sponsorship obligations continue to apply where a sponsored employee is terminated. That is that the sponsored employee will have 60 days to seek another business sponsor but if unsuccessful, the applicant will have to depart Australia within that time. This does not apply to employees that have been stood down on a temporary basis.
- If a visa holder becomes unlawful or is in breach of their visa conditions, this will be considered as adverse information and may negatively impact on future visa applications to Australia.

3) Early access to Superannuation contributions

- The ATO is responsible for managing early access to superannuation.
- 482 /457 visa holders who have been stood down will be able to access up to \$10,000 of their superannuation contributions this financial year.
- Existing arrangements will continue to apply in the case of 482/457 visa holders that have been terminated and are departing Australia.

4) Sponsorship Obligations

- The current sponsorship framework seeks to ensure that the working conditions of sponsored visa holders meet Australian standards; and standardises the obligations and requirements all sponsors must meet.
- The worker protection laws also provide greater protection to ensure that foreign workers are not exploited.
- Sponsorship obligations now apply to sponsors by operation of law.

The following is a reminder of some of the main obligations on Sponsors:

- Cooperate with inspectors.
- Ensure equivalent terms and conditions of employment apply to all employees i.e. Australian and temporary visa holders.
- Keep records (this is now even more important where the terms and conditions of sponsored employees are changed e.g. reduced hours).
- Not participate in discriminatory recruitment practices.
- Provide information to DOHA when certain events occur within 28 days of the event occurring.
- Ensure that the skilled worker works or participates in the nominated occupation, program or activity.
 - Not recover certain costs from a skilled worker or their family.
 - Pay travel costs to enable sponsored people to leave Australia.
 - Pay costs incurred by the Commonwealth to locate and remove unlawful non- citizens.

Note that this information provided is the current situation but is subject to change at any time and always needs to be checked before making any decisions.