



COVID-19 Pandemic FAQ for Visa-Holders

My employer has been badly affected by the pandemic and as a result, I have been fired. What happens now?

Condition 8607 says that you cannot be unemployed for more than 60 consecutive days. **This has not changed.** As such, you will need to find a new sponsor to take over the sponsorship of your current visa.

If you hold a subclass 457 visa, this will have Condition 8107 imposed on it (rather than Condition 8607) and the same principle applies.

We understand that this may be difficult to do as a lot of employers are not hiring at present, however if you breach this condition you may find yourselves facing visa cancellation. If you are worried about this, please [contact us](#). If you need employment law advice, we can refer you to an employment lawyer.

My employer has placed me on leave without pay. How does that affect my TSS visa?

TSS visa holders can be placed on leave without pay ('LWOP'). Under policy, the Department of Home Affairs ('DHA') does not consider you to be in breach of condition 8607 *solely* on the basis of this unpaid leave, as you may be considered to continue to be employed by your sponsor even if you are not working or receiving a salary.

In all cases, LWOP needs to be mutually agreed by you and your sponsor and must be documented i.e. a formal application for LWOP is made, which is formally approved.

Under policy, the period of LWOP 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.

This is because extended LWOP would not be consistent with the requirement that you are nominated for a full-time role and are paid an ongoing salary at market salary rates in line with your sponsor's obligations towards you.

We have had no clarification from the DHA in relation to whether they would consider the government's recent shutdown of certain businesses to fall within the 'exceptional circumstances' noted above. We therefore strongly advise that any LWOP is for a short period, during which time you can make decisions about your next steps, including whether or not you change employers, apply for a different visa or depart Australia.

Where extended LWOP occurs, your visa may be subject to cancellation if the DHA is satisfied that you have ceased to have a genuine intention to perform that occupation. Contact us if you are in this position.

My employer has fired me or put me on unpaid leave and I have no income. Can I work for someone else until I find a new sponsor or until I can leave Australia?

Condition 8607 says that if you are the primary visa holder, you can only work in the business of your sponsor or an associated entity. If you are nominated in certain occupations (such as medical practitioners or chief executives/managing directors), you may be exempt from this. Despite the difficulties that may result from loss of income, if you breach this condition you may find yourself facing visa cancellation. Contact us if you are in this position.

I am an international student. Can I work more than 40 hours a fortnight?

The DHA has been very clear in their expectation that visa-holders **must** adhere to the conditions on their visas, regardless of the current pandemic. This includes the work limitation imposed on your visa. As such, you cannot work for more than 40 hours a fortnight whilst your course is in session unless you are employed in one of the specific industries that the DHA has announced is exempt from this:

- supermarkets (where you are already employed in an existing role, where that work assists to ensure the supply of groceries to and in supermarkets or related online distribution facilities)
- aged care providers

If you are employed in a supermarket, your employer will **need to seek permission** from the DHA to be included in this temporary measure. If you want to check if your employer is an approved employer, this can be found [here](#).

If you are employed at an aged care provider registered with the Department of Health, your employer will receive a letter from the Department of Health that explains this. Contact your employer for information.

I am an international student. How will this affect my ability to complete my course?

If you are overseas and now can't get back to Australia to continue your studies, you may need to speak to your education provider about deferring your studies. Education providers, the Department of Education and the Tertiary Education Quality and Standards Agency ('TEQSA') are aware of the impact of the pandemic on international students and have implemented processes to assist you.

If your student visa expires whilst you are offshore waiting to return to Australia, you will need to apply for and be granted a new Student visa in order to complete your studies.

If you are in Australia, the DHA expects you to adhere to all the conditions on your visa, including those that relate to maintaining satisfactory attendance and satisfactory performance in your course. Contact your education provider to discuss the alternative arrangements in place.

I am a working holiday visa holder. Am I still only allowed to work for one employer for up to 6 months?

As before, the DHA has been very clear in their expectation that visa-holders are to adhere to the conditions on their visas, regardless of the current pandemic. This includes the 6 month work limitation imposed on your working holiday visa.

There are limited circumstances in which you can be given an extension of the employment period. Whilst the government has announced that backpackers working to help bushfire-affected communities can seek an extension of their employment period, we **have not** yet had any guidance from the DHA on whether a similar policy will be introduced for backpackers working for employers who are affected by COVID-19. As such, you **cannot** work with the same employer for more than 6 months unless or until the government announces otherwise, or you have been granted an extension of employment period by the DHA.

My visa expires in 2 weeks. Can I continue to stay in Australia because of COVID-19?

It is very important to understand that you **must** maintain your lawful status in Australia, regardless of the COVID-19 pandemic. **This requirement has not changed.** If you don't maintain your lawful status you may be detained and subsequently removed from Australia, and this may cause problems in future Australian visa applications.

If you have an imminent visa expiry you are expected to apply for a new visa before your current visa expires. **Please contact us ASAP to discuss any options you may have.**

My visa expires in two weeks and I am trying to book a ticket to fly home, but can't get on a commercial flight. What can I do?

As above, it is very important to understand that you **must** maintain your lawful status in Australia, regardless of the COVID-19 pandemic. The impact of the virus on the availability of commercial flights **does not change this.** We know that this may seem unfair, but if you don't maintain your lawful status you may be detained and subsequently removed from Australia, and this may cause problems in future Australian visa applications.

If you are in this position, you will be expected to apply for a new visa before your current visa expires. **Please contact us ASAP to discuss any options you may have.**

My current visa expires soon and has Condition 8503/8534/8535 imposed on it. What can I do to extend my stay in Australia?

You will need to apply for a waiver of Condition 8503 as soon as possible and **before** your current visa expires. We understand that the DHA is taking a flexible approach to visa holders in terms of these waivers. **Please [contact us](#) ASAP if you are in this position.**

I currently hold a TSS visa/457 visa/working holiday visa and I work in a critical sector, but my visa is about to expire. What can I do?

Holders of temporary work visas currently employed in critical sectors (e.g. healthcare, disability and aged care, childcare and agriculture) during the COVID-19 pandemic and who have no other visa options but are unable to depart Australia due to COVID-19 travel restrictions may be eligible for the subclass 408 Temporary Activity – COVID-19 stream visa. Please **[contact us](#)** to discuss your eligibility for this visa.

I hold a TSS visa and couldn't get back to Australia before the ban came into effect because my flight was cancelled. What can I do to get back?

Unfortunately, now that the travel restrictions are in place, there are only limited circumstances in which a temporary visa holder may return to Australia. This is the case regardless of the reason for your inability to return. We know that this is particularly unfair to people who had booked flights that were subsequently cancelled. Contact us to discuss any options if you are in this position.

I am on a Bridging Visa B and couldn't get back to Australia before the ban came into effect. What can I do to get back?

There is no provision to apply for or be granted or "extend" a Bridging Visa B if you are outside Australia. If you are offshore and your Bridging Visa B ceases, you will be expected to apply for and be granted another visa (e.g. a short stay visitor visa) to return to Australia once the ban has been lifted. Once back onshore, you may be able to apply for a Bridging Visa A. Contact us to discuss any options if you are in this position.

I am on a Subclass 309 visa and want to return to Australia. Does the ban affect me? What can I do to get back?

Whilst the subclass 309 visa is a temporary visa, you are **not** affected by the travel restrictions and **do not** need to request an exemption. You will have to self-isolate on your return.

I am on a Visitor visa and want to return to Australia. Does the ban affect me?

As a visitor visa is a temporary visa, you **are** affected by the ban.

You can only travel to Australia if you are an immediate family member of an Australian citizen or permanent resident. This is restricted to partners, dependent children and legal guardians only.

If you do fall within this exemption, you will need to request that the DHA approves you for travel to Australia and you will need to provide evidence to substantiate your claim. You can do this [here](#). Do **not** travel to Australia until the DHA has said that you can. You will have to self-isolate on your entry to Australia.

I have heard of the JobKeeper payment. Is my employer able to access this in respect of my job?

To be eligible for the JobKeeper Payment, you must be an Australian citizen, the holder of a permanent visa, or a Special Category (Subclass 444) Visa Holder at 1 March 2020. If none of these apply to you (e.g. if you are the holder of a TSS visa, student visa or bridging visa amongst others) then you are unfortunately not an eligible employee and your employer cannot claim the JobKeeper payment in respect of your job.

More information is available [here](#).

Please note, we are **not** accountants nor do we provide advice in respect of social security entitlements. If you require advice in either of these areas, we can refer you to professionals who can assist you.

What financial support is available to me as a temporary visa-holder in this pandemic?

The government has announced that eligible temporary residents can apply to access up to \$10,000 of their superannuation before 1 July 2020. To apply for early release of your superannuation, you must satisfy one or more of the following requirements:

- You hold a student visa which you have held for 12 months or more and you are unable to meet immediate living expenses
- You are a temporary skilled work visa holder, your working hours have reduced to zero and you remain engaged with your employer
- You are a temporary resident visa holder (excluding student or skilled worker visas) and you cannot meet immediate living expenses

For more information on this scheme, please click [here](#).

Please note that we are **not** financial planners, nor are we accountants. If you are considering accessing your superannuation, please seek financial advice on the implications of such a decision.

The Australian Red Cross is also working to support temporary visa holders who have no way to support themselves and are in urgent need. These funds are specifically for those who:

- are in Australia on a temporary visa
- are in urgent financial hardship
- cannot access Centrelink, Medicare or similar services

- have no income, savings or other financial support (including from family overseas).

More information on this service is available [here](#).

The above is a general overview of some of the information available as at 15/04/2020. It is not intended to constitute legal advice nor should it be used as such. If you require advice on your specific position, please contact us to arrange an initial consultation.

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