



16 April 2020

Immigration New Zealand Operational Manual: Amendment Circular No. 2020-16

To: All Manual Holders

AMENDMENTS TO THE IMMIGRATION NEW ZEALAND OPERATIONAL MANUAL

Introduction

This circular outlines changes to the Immigration New Zealand Operational Manual. A copy of the changes is attached.

All immigration officers dealing with immigration applications should read the amendments and operate in accordance with the amended instructions on and after their effective dates.

Note

The amendments described in this circular will be published in the Immigration New Zealand Operational Manual in due course.

Information about these changes is available on our website www.immigration.govt.nz.

Summary of contents

This amendment circular details changes to Immigration New Zealand's Operational Manual, and contains the following:

- The description of changes section contains a summary of the changes to immigration instructions.
- Appendix 1 contains amended *Temporary Entry instructions* effective on and after 16 April 2020

Additions to immigration instructions are highlighted for ease of reference.

Description of changes

Implementing the New Zealand Government response to the novel coronavirus (COVID-19) outbreak

E3.26 Varying the conditions of temporary entry class visas

Changes have been made to immigration instructions effective on and after 16 April 2020, to support employers to deliver essential goods and services as part of New Zealand's response to the COVID-19 pandemic. These changes introduce a process whereby employers in essential businesses can contact Immigration New Zealand to request a variation of visa conditions for their staff. These immigration instructions provide employers greater flexibility to deploy existing staff on temporary visas linked to their employment or who are student visa holders.

Under these immigration instructions employers providing essential services may request a time-limited variation of existing visa conditions that allows:

- Any staff who are student visa holders to work full time for that employer
- Any staff who are employer-specific work visa holders to work for that same employer in any occupation
- Any staff who are work visa holders to work for a different employer in the same region in the same occupation as they are currently employed.

Employers must be providing essential services (as they are defined on the www.covid19.govt.nz website) and be operating during the COVID-19 Alert level 4 to have the visas of staff varied under these instructions.

An electronic form will be made available on the Immigration New Zealand website to allow employers in essential businesses to notify Immigration New Zealand of any staff they believe are eligible to have their visas varied under these instructions.

The duration of the variation of conditions is limited to six weeks after New Zealand first moves to Level 2 of the COVID-19 Alert System. This means that the ability of employers to move migrant workers between roles, or employ them for more than would normally be allowed will end when recruitment of New Zealanders becomes possible under fewer restrictions on recruitment and movement of New Zealanders.

Appendix 1 contains amended immigration instructions effective on and after 16 April 2020. Additions to the instructions have been highlighted for ease of reference.

Appendix 1 - Amendments to Temporary Entry instructions effective on and after 16 April 2020

E3.26 Varying the conditions of temporary entry class visas

See also *Immigration Act 2009 s 52*

- a. Holders of temporary entry class visas should apply for a variation of the conditions of their visa if:
 - i. they wish to work and do not have a visa that allows work in New Zealand; or
 - ii. they hold a work or visitor visa and wish to undertake a programme of study in New Zealand for longer than 3 months (unless U2.5 applies); or
 - iii. they hold a work visa limited by conditions and wish to change employers, and/or occupation and/or the place of employment; or
 - iv. despite the ban on travel to New Zealand by temporary entry class visa holders in response to COVID-19, they have a critical purpose to carry-out in New Zealand (E3.27).
- b. Immigration officers may grant a variation of conditions for cases (a) (i)– (iii) above) provided that the applicant completes an Application for Variation of Conditions and produces:
 - i. the appropriate fee;
 - ii. a valid passport (or a certified copy) or travel document (or a certified copy);
 - iii. documents which support the requested variation, such as:
 - iv. an offer of employment (see W2.10.10); or
 - v. an offer of place at a suitable education provider (see U3.5), and evidence of tuition fee payment or exemption (see U3.10); and
 - vi. any other documents or information requested by the immigration officer.
- c. A variation of conditions will only be granted where the varied conditions still meet the objectives of the instructions which the visa was granted under.
- d. A variation of conditions to work for a specific employer will only be granted where the employer meets requirements at W2.10.5, W2.10.6 and W2.10.15.
- e. Despite (a) to (d) above, an immigration officer may grant a variation of conditions to temporary entry class visa holders without an application being submitted for the purpose of supporting New Zealand's response to COVID-19, in accordance with E3.26.15 below.

E3.26.1 Varying the conditions of work visas

E3.26.1.1 Varying Essential Skills work visa conditions

- a. Essential Skills work visa holders seeking to change occupation or place of employment will not be granted a variation of conditions and must instead apply for a new work visa, unless:
 - i. their new occupation is listed on an Essential Skills in Demand list; and
 - ii. they meet the requirements of the list.
 - iii. Essential Skills work visa holders seeking to change employment to a skill-band lower than that of their current employment (WK3.5.1), will not be granted a variation of conditions, and must instead apply for a new work visa.

E3.26.1.5 Varying Specific Purpose or Event visa conditions

- a. Holders of a work visa granted under WS2 as players or professional sports coaches may apply for a variation of conditions of their work visa to undertake additional employment. A variation of conditions may be granted if:
 - i. the terms of the existing employment have been met, and will continue to be met; and either
 - ii. the secondary employment is offered by the sports club or a company involved in the sport and the position is offered solely to this particular player or coach; or
 - iii. the secondary employment is offered by an employer other than the sports club or a company involved in the sport and an immigration officer is satisfied that there are no New Zealand citizens or residence class visa holders available to be employed in the position (see WK3.10).

E3.26.1.10 Varying Talent (Accredited Employers) work visa conditions

- a. Holders of a work visa granted under WR1 (Talent Accredited Employers) Work Instructions) may apply for a variation of conditions of their work visa to change employers. A variation of conditions may be granted:
 - i. to undertake employment for another accredited employer; or
 - ii. to undertake employment for another employer who is not an accredited employer if their employment is no longer available due to reasons beyond the visa holder's control. When assessing such applications for a variation of conditions, immigration officers will consider all the circumstances of the applicant and the reasons for which the former accredited employer did not continue employment or the former employer's accreditation was not renewed or rescinded.
- b. In order to be granted a variation of conditions under (a) above:
 - i. the base salary offered must be no less than the base salary that was required at the time the initial work visa application was made; and
 - ii. the offer of employment must meet the requirements of WR1.10; and
 - iii. employers must meet the requirements under W2.10.5, W2.10.6, W2.10.10 and W2.10.15.

Notes:

- Where a person fails to continue employment in the circumstances described in (a) and (b) above, they will not be eligible for residence under the Residence Instructions for holders of work visas granted under the Talent (Accredited Employers) Work Instructions.
- For the avoidance of doubt, the base salary in (b) above excludes employment-related allowances (for example overtime, tool or uniform allowances). The base salary is calculated on the basis of 40 hours work per week.

E3.26.5 Varying the conditions of visitor visas

- Holders of visitor visas granted under V3.100 Guardians accompanying students to New Zealand may only be granted a variation of conditions for part time work or part time study between the hours 9:30am and 2:30pm Monday to Friday (inclusive) (see V3.100.35).
- Holders of visitor visas may be granted a variation of conditions for a duration of six weeks to undertake seasonal work (planting, maintaining, harvesting and packing crops) in any region where the Ministry of Social Development has identified a shortage of seasonal labour and for any employer in the horticulture or viticulture industries, provided the applicant has not been granted a variation of conditions for this purpose since their most recent entry to New Zealand.

E3.26.10 Varying the conditions of student visas

Holders of student visas may be granted a variation of conditions to allow them to work in line with the requirements at U13.

E3.26.15 Varying the conditions of student and work visas to support essential businesses during the COVID-19 response period

- The purpose of these instructions is to support employers to deliver essential goods and services as part of New Zealand's response to the COVID-19 pandemic.
- An immigration officer may grant a variation of conditions to a student or work visa subject to receiving a request from an employer which includes a declaration confirming that:
 - The employer was operating during Alert Level 4; and
 - The employer meets the criteria for a business providing an essential service as published on the www.Covid-19.govt.nz website; and
 - The worker has agreed to be redeployed and that minimum employment standards will be adhered to (including where applicable a new written employment agreement).
- If granted, any variation of conditions will apply only while New Zealand is at Alert Level 3 or 4 on the COVID-19 Alert System and for a period of six weeks after a shift to Level 2 or below.
- An immigration officer must notify the visa holder of the new conditions in writing.
- An immigration officer may refuse a request to grant a variation to conditions (without providing a reason), where:
 - there are significant concerns about the individual visa holder (for example any relevant health or character concerns); or
 - there is evidence or significant concerns that the employer does not meet the general requirements of W2.10.5; or
 - there is sufficient reason to doubt that the declarations made by the employer as required by (b) above are true.

E3.26.15.1 Varying work visa conditions

- People holding work visas that specify their occupation, employer and region of employment may be granted a variation to either their employer or their occupation under these instructions (but not both).
- The occupation may be varied to state that the visa holder can work in 'any occupation' for the employer specified on their visa.
- The employer on a visa may be varied if the new employer meets the requirements set out in E3.26.15 above, and there is no change required to the occupation of the visa holder.

Note: Due to public health considerations, variation requests to change regions of employment may not be considered under these instructions

E3.26.15.5 Varying student visa conditions

- People holding student visas that specify they may only work up to 20 hours during term time can be granted a variation to allow them to work full-time, provided the request is made by an employer who meets the requirements of E3.26.15 above.
- The student visa holder must have been employed by the employer specified in (a) above on 16 April 2020.
- The conditions of the student visa may be varied to state that the holder can work full-time for the specified essential business employer.