

VISA PAK ISSUE 384 — 14 DECEMBER 2018

ASSISTING WORK VISA HOLDERS TO LAWFULLY WORK OUT THEIR CONTRACTUAL PERIOD OF NOTICE OF TERMINATION

It is not uncommon for work visa holders to apply for a new work visa, or a variation of conditions (VOC) because they wish to change their employer. In such cases the work visa holder will almost certainly be under a contractual obligation in their employment agreement to give their existing employer notice of their intention to terminate their employment. Notice is commonly two weeks, four weeks, or a month but can be any agreed period. While the Immigration Act 2009 at Section 350(7) re Offences by employers allows an employer to continue to employ a work visa holder who is required to work out their period of notice, but whose visa conditions now only allow employment by a different employer, without committing an offence; a work visa holder who did so would be in breach of their visa conditions and potentially liable for deportation.

Immigration officers approving applications for work visas or VOCs involving a change of employer should take the following steps to assist work visa holders to lawfully work out their period of notice:

1. Specifying a future date from which the varied visa conditions or new work visa will take effect (refer previous advice to staff entitled - *Variations of conditions and the notice period of existing employment and Future Dated Visas*); or
2. Wording the employer-related conditions to allow work for new employer X while allowing work for old employer Y during any termination notice period required under an employment agreement.

We appreciate that the conditions in option 2 will probably need to be conveyed by letter. Operational Policy is looking into the revision of existing relevant template letters to include the above, but this will require time to achieve. As an interim measure, some suggested wording can be found below:

Note on conditions of visa

The conditions of your work visa state that you may only work for [new employer]. However, if required, you may continue to work for [previous employer] for the duration of your termination notice period required under your previous employment agreement.