

NOTICE – FROM THE PACIFIC MIGRATION TEAM AT INZ

The Recognised Seasonal Employer Scheme (RSE) visas have been extended by six months

The Government has extended Recognised Seasonal Employer scheme (RSE) visas by six months to allow visa holders to stay and work in New Zealand if they are unable to return home. While it will keep workers lawful in New Zealand, in order to continue working, they will still need to have a valid offer of employment and as such, RSE employers will still be required to submit ATR and VOC/visa applications to extend the work rights of these workers.

The extension to visas has taken effect from **18 August 2020** and applies to all RSE workers who are holding a RSE Limited Visa and this visa is expiring between 18 August and 31 December 2020. Please note the 6 month extension is from the date of the current expiration date on an individual's visa. This means you will still have workers with staggered expiration dates if that is what you currently have.

Example – A worker with a RSE Limited Visa expiring 1 October will now expire 1 April 2021. A worker with a RSE Limited Visa expiring 10 September will now have it expire 10 March 2021.

You as the employer will need to keep track of when your employee's visa expires.

As many of you have told us, there are limited work opportunities available for the next three months. While this extension will keep workers lawful, it does not guarantee they will have work. Those workers who do not have work are currently being supported by you as their employers and by the hardship funding that is available. The funding is currently due to end on 30 September.

The New Zealand border remains closed and as such, it is unlikely any RSE workers offshore will be able to travel to New Zealand this year.

Further information is available on the Immigration New Zealand website:

<https://www.immigration.govt.nz/about-us/media-centre/news-notifications/recognised-seasonal-employer-rse-visas-extended>

We have put a series of Questions and Answers below to clarify what options you have as employers of RSE workers under the current Immigration settings.

Questions and Answers

1. Can RSE workers choose to leave or stay?

Yes RSE workers can choose to stay in New Zealand if there is work for them and they want to keep working. However, it must be their preference to stay and if repatriation flights are available workers must be given the option to go home.

2. Do RSE workers need to return home between seasons?

The requirement to return to their home country between seasons has been lifted in light of COVID travel restrictions. RSE workers who wish to continue to work in New Zealand after these additional six months have expired can apply to stay longer if they have work.

3. The Government recently changed requirements around hours and restrictions on the jobs RSE workers can do through the issuing of a special direction visa. Does the six month extension apply to these visas? When does this change end?

No, this extension will not apply to these Limited Visas. RSE workers benefiting from the more flexible special direction visa no longer hold an RSE Limited Visa so will not be automatically extended. Those on special flexible visas hold visas that expire 30 October, and they can apply for another of this visa type if they haven't been able to depart New Zealand by this time. Note you have until the 9 October to apply for the first time for a Limited Visa under special direction, subsequent visas of the same type can be done after this date.

4. When will RSE workers outside of New Zealand be able to travel to New Zealand for work?

RSE scheme workers who are currently outside of New Zealand will not be able to travel to New Zealand until border restrictions are lifted; this is unlikely to change this year.

5. My worker now has an extended RSE Limited Visa and I have no work for them. I have found them work with another RSE employer with an approved ATR. What do I do?

- a. Apply for a VOC on behalf of the worker so they can transfer to the new employer.

6. My employee is holding a Limited Visa under the special direction but I have completely run out of work. They would like to work for another industry now, what do I do?

- a. Get agreement from the worker that they are willing to be contracted out by you.
- b. If the worker will be shifting accommodation with the new job you must check with the regional Labour Inspectorate that the new site meets Immigration's standards.
- c. Consult with MSD.
- d. Upon confirmation from the LI and MSD, you can proceed to contract the worker to another industry. You will keep the employment relationship and be responsible for pastoral care.

7. My employee is currently working under the special direction Limited Visa but would like to come back to RSE Hort/Vit once the work picks back up. What do I do?

- a. The limited visa enables work in horticulture and viticulture. They can start while their visa is valid with the relevant MSD/LI approval; or
- b. If the limited visa is expiring, you would need to apply for a new limited visa using the same process you went through to get the first limited visa by special direction.

Note – Immigration Policy are working on a mechanism to bring workers back into the RSE scheme through a visa pathway if they still have not been able to be repatriated during the time they have been on the special direction Limited Visa. No decisions have been made.

8. My employee is holding a RSE Limited Visa that has been extended by 6 months but no longer wants to work full time or work at all. What are my options?

- a. Apply for a special direction Limited Visa for the worker to work less hours and in other roles.
- b. Leave them on the extended RSE Limited visa so they remain lawful in New Zealand but do not attach them to an ATR and prioritise them for repatriation.
- c. Inform INZ.

9. My RSE worker is out of work but another employer (or original Employer) can offer part time work for a couple of months, what are my options?

- a. Apply for a special direction Limited Visa for the worker to work for original employer on less hours.
- b. Once an ATR is approved, this may satisfy the requirements for MSD approval under the limited visa. Under current setting the worker will still be on the Limited Visa, not a RSE Limited Visa.

Note – Immigration Policy are working on a mechanism to bring workers back into the RSE scheme through a visa pathway if they are willing to work full time under an approved ATR. No decision has been made yet.

10. Who is paying for RSE workers to move to different employers?

MBIE's expectation is that employers will cover the costs of transporting RSE workers to other employers for a period of work.

11. My worker is willing to continue working but would like a holiday break as they have been here close to a year

- a. The worker needs to let the employer know where they would like to holiday in NZ and for how long.
- b. Provides contact details of where they will be staying on holiday and provide a way to be contactable during their break.
- c. Seek approval from the employer for the holiday as the employer is ultimately responsible for the pastoral care and is liable for up to \$3000 fine if the worker absconds and becomes unlawful.
- d. No requirement to change anything on the visa.
- e. Understand that they are not allowed to do any work for anyone else while on holiday.
- f. Make it clear to the employee that it will be their holiday pay that is used over this break and they will not be paid for work and the 30hr average requirement will not be counted during this time.

12. I have no work for my RSE workers for the next 6 to 8 weeks but come November, my work will start to pick up again, what are my options?

- a. Apply for a special direction visa so RSE workers can work in other roles or for less hours if you can find them this work. This could include contracting workers to another RSE employer (but you would remain the employer and responsible for pastoral care); or
- b. Agree to transfer your workers under a joint ATR to another RSE employer with an approved ATR until your work increases; and
- c. Apply for VOC on behalf of workers who are transferring; or
- d. Access DIAs hardship fund for workers out of work or not having 30 hours work.

Note this currently runs until end of September but is not dependant on how much savings RSE workers may have in their accounts.

13. I am a spring crop grower and require workers from September to January for Asparagus and Berries, what are my options?

- a. Apply for an ATR, and pay \$260 for this.
- b. Recruit RSE workers from other employers in Industry.
- c. Primary employer applies for VOC for workers who move to the new employer.

14. I have RSE workers that have started working for me but repatriation occurs and some have gone home, what are my options to replace them?

- a. Contact the RSE Unit to let them know numbers of workers you have lost and workers you have found to replace them.
- b. Replacement workers will require a VOC or new Visa to come work for you.

15. I have limited work at the moment but it will pick up in the next few months but even when it does it will not cover all the RSE workers I have, what are my options?

- a. Apply for DIA hardship fund for those out of work or those not having 30 hours work each week; and/or
Note this currently runs until end of September but is not dependant on how much savings RSE workers may have in their accounts.
- b. Apply for special direction Limited Visas for those you can offer 15 hours of work to or have found work in another industry.; or
- c. Work with Industry to find work for those workers willing to transfer and keep working under a joint ATR.; or
- d. Consider what a 'holiday break' could look like for workers before work picks up again.

16. I have work and an approved ATR but the workers visa will expire before this

- a. Note: RSE visas have been extended by 6 months – check if that is still the case.
- b. Apply for a new RSE Limited Visa on behalf of the worker to extend the visa to date of ATR expiration and pay \$260.

17. I have workers coming up to a 1 year anniversary in NZ now, what do I do with my workers?

- a. Your options as an employer are dependent on the terms and conditions in the employment agreements you have with your employees. If you are in doubt please talk to your regional Labour Inspector.

NOTE – Information from the Labour Inspectorate

Section 66 of the Employment Relations Act defines the requirements of a fixed term agreement. These can occur where the ER & EE agree that the employment will end for the following reasons;

A – at the close of a specified date or period

B – on the occurrence of a specified event

C – at the conclusion of a specified event.

The following reasons are NOT genuine reasons for the purposes of entering into a fixed term agreement:

- (a) to exclude or limit the rights of the employee under the Employment Relations Act 2000:
- (b) to establish the suitability of the employee for permanent employment:
- (c) to exclude or limit the rights of an employee under the [Holidays Act 2003](#).

If you as an employer are intending to continue employing the worker beyond 12 months the fixed term agreement can continue without any issue as long as the ATR and visa are still valid and provided the holiday pay arrangements are not being included in the employees regular earnings. If an employer is including holiday pay (8%) with the workers' wages then

the fixed term agreement must be for less than 12 months. Employees do not become 'permanent employees' after 12 months with the company if they continue to remain on fixed term contracts.

If in doubt please seek clarification from your regional Labour Inspector.

The Employees rights after 12 months:

The employees become entitled to their four weeks of annual holidays in accordance with section 16 of the Holidays Act and the employer cannot terminate their employment for the purposes of denying them access to statutory entitlements.

18. How many weeks' leave are workers entitled to after 12 months work?

4 weeks if the worker has had 12 months continuous employment.

Again employers need to talk to their regional Labour Inspector to avoid any unintended issues arising.

19. What about workers who have been here a year but haven't worked continuously for the whole year?

If workers have remained employed under an active agreement for the full 12 months then they are also entitled to 4 weeks annual holidays. If they have been employed on a series of fixed term agreements of less than 12 months and the holiday pay is included in their weekly earnings then there is no entitlement.

20. If workers are entitled to four weeks off can this be managed appropriately by employers in which the 4 weeks does not have to be accessed in one go but instead taken in smaller chunks over months.

Yes, the entitlements are no different than any other employee.

21. Can some of your holiday time be cashed out, but you also can take a break?

Employees may request up to 1 week of their annual holidays cashed out. The employer cannot require the employee to do this and if found to be actively encouraging it, the employer would be found to be in breach of section 28D of the Holidays Act and would be required to re-instate the entitlements.

Employees can only cash out annual holidays. This means they must have been employed for more than 12 months before making a request to cash out any annual holidays.

If the employee wants to take some paid annual holidays and also cash out up to one week of their entitlements they can request this, provided no more than 1 week is cashed out. Example Employee applies to use two weeks of annual holidays and wants to cash out one week in addition.

Employer pays the employee for two weeks annual holidays and the employee does not work for that period. Employer pays out one additional week of annual holidays as cashed out. Employee receives three weeks annual holiday payments and does not work for two.

22. As an employer we accrue the holiday entitlements and normally pay out a lump sum to the worker when they leave. What happens when the worker is staying past 12 months with us?

The correct process if the employment ends before the 12 months anniversary is the employee receiving a lump sum payment when they leave/go home. In the current situation where the employee is now reaching their 12 month anniversary, that accrued amount converts to 4 weeks of annual holidays.

If in doubt please seek clarification from your regional Labour Inspector.