Q&A EMPLOYMENT AND IMMIGRATION LAW WEBINAR – 26 MAY 2020

Q. I work in travel for the Film and Television industry in New Zealand. Are you able to tell me a little bit about the immigration laws around that at the moment? I assume they can get exceptions to be allowed to enter New Zealand but they will still need the mandatory 14-day isolation upon arrival?

A. Correct, they can get the exemption but are still required to complete the mandatory 14-day self-isolation. Government is asking employers to meet the isolation costs.

Q. ***Has Immigration NZ provided any advice or input as to how Work Visa Holders may be treated salary wise as a result of Covid-19? Eg after consultation, staff members not on a Work Visa, may agree to a lower salary as a result of Covid-19 to retain roles.***

A. The Government hasn't made any concessions in terms of lowering the work visa conditions to allow for this scenario for someone working less than 30 hours a week. It appears that Immigration NZ and the Minister are not inclined to not make any concessions and that if you don't meet conditions of your visa, you should leave.

Q. Should you tell your staff now by email, that you are considering making their roles redundant in August?

A. Email wouldn't be our advice. If you have taken steps and looked at other alternatives to redundancy or restructure now would be the time to start your proposal process. When you first communicate potential redundancy to your employees, it needs to be communicated carefully so to not seem as you have already made the decision. The decision can only be made once you have consulted with them. You could however email stating that you are considering a change to the structure and would like to meet with them. Then, in the meeting give them details of that proposal.

Q. Does the redundancy process differ for full-time employees that have been with the company for less than 12 months?

A. No, the process is the same for everyone.

Q. If a business is going to close down after the first round of wage subsidy ends as work is still zero and the owner cannot afford to sustain the other business costs (not wages due to a possible subsidy extension), is that classed as a redundancy for staff and therefore the same procedures must be adhered to?

A. Yes, still the same process. However, you may be able to go through the process quicker as the business is closing down.

Q. I have an employee on a work visa that is only allowed to work from Auckland. She is stuck in France as she left NZ just before Covid-19. We are paying her the wage subsidy as she works at distance, is this allowed?

A. Yes. If she is working then she should be paid for the hours that she is working, unless you have agreed to a lower amount of pay. She is still working and allowed to work for the New Zealand entity then she is entitled to the wage subsidy.

Q. Is there a difference between permanent residents and residents when it comes to accessing the government benefit?

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A. Please seek advice as this goes into Welfare Law. It is understood that in the first two years of residency you have limited options of unemployment benefits one can claim. Under the skilled migrant category, you sign a declaration stating that you won't seek government support for the first two years. You can obtain permanent residency after being in the country for two years. However not everyone applies after the two years (some forget), so it will depend how long they have been in the country.

Q. If an employee is only on the Full Time or Part Time Employee Wage Subsidy (after mutual agreement), should Annual Leave be accrued and if so, on what basis? And how should this be communicated to the staff?

A. Annual leave is accrued on the current pay. If the employee is receiving the subsidy only then leave is accrued on this basis and should be communicated in writing. You should already have written consent of moving them to the subsidy. We would advise you to refer to that communication "further to communication to on x date, because you are only being paid the subsidy your annual leave is being accrued based on the subsidy and not your normal salary".

Q. If we want to keep our skilled migrant workers employed in the business and support a renewal of their visa, is it still necessary to advertise the position? If this staff member cannot gain a new visa, we would not consider hiring a kiwi replacement.

A. Yes. Work visa renewals will be closely scrutinised in the future. Immigration NZ will require quite clear evidence that you have tried to find a New Zealander and that no New Zealanders are available or readily trainable for the job. Depending on the job and skill level you may need to list the position with Work and Income NZ. We suggest a good lead in time for the application and advertise because if you do find a New Zealander it may not be possible.

Q. If an employee used to work 40hrs a week but has now reduced to 32hrs shall that person inform immigration of that change?

A. It would depend on what was provided to Immigration New Zealand with their initial application. If they are on an hourly rate, often in an employment agreement it would state that as an employer you guarantee at least 30 hours a week, in which case you wouldn't need to inform Immigration NZ. However, if the employment agreement states that they are guaranteed 40 hours a week or the salary is based on a 40-hour week and now you are reducing their salary because you are reducing the hours, then you may need to inform Immigration NZ.

Q. If you have staff on work to residence who have to earn over $55,000, what happens if you can only pay them the wage subsidy due to a revenue reduction of over 50% under Level 3 and Level 2?

A. This would mean they are no longer meeting the terms of their work visa and neither are you as their employer, therefore potentially viewed as breeching the immigration requirements. Effectively they become liable for deportation if Immigration NZ are made aware.

Q. Can I reduce the hours to migrants, below what their visa states?

A. No, without them being in breach of their visa and as an employer you could be viewed as an accessory or encouraging to breach their visa ($50,000 fine).