

Q&A Session between Hort NZ, INZ MFAT and MSD – 10 July 2020

Hort NZ - Industry Questions

Repatriation:

1. What are the chances of a Pacific Bubble to enable RSE workers freedom of movement?
There is currently no word from Government on when a Pacific bubble could be established.
2. If there is no Pacific Bubble, then what are the chances that employers can establish quarantine procedures in their facilities?
Would require NZ Government to change current quarantine procedures, no answer at this stage.
3. How much dialogue is occurring with the Kingdom of Tonga on repatriation?
Significant dialogue has been happening with Tongan Officials. Tonga have stated they will start repatriation from NZ in the first week of August. The number of passengers per flight would be around 80. NZ is encouraging them to increase this number. Bilateral discussions are on-going with Govts.
4. What are the impediments to Tongan repatriation?
Two main impediments.
 - Quarantine capacity in Tonga
 - Health staff to manage the various facilities in Tonga

There is a real lack of resources in Tonga. NZ has been supporting their COVID-19 response plan which includes sourcing PPE and logistics of health/quarantine stations.

5. Can there be more communication about the Tongan situation, it is very unsettling for the workers?
Tongan Liaisons and Officials have made visits to some employers to explain situation. Australia and NZ have established a working group to sort logistical issues.

Relationship managers from both Toso Vaka O Manū and Pacific Migration have been engaging with employers and workers face to face to increase communication flow around the Tongan situation. The messaging is very cautious as we don't want to raise expectations too high if Tonga does not end up being able to repatriate by August but we see the need to give workers some hope and "light at the end of the tunnel".

Immigration:

6. As repatriation is still so uncertain, what is the likelihood of workers that would be scheduled to return in spring being able to stay until the end of next harvest (i.e. May 2021) if they wanted to or are forced to?

Something INZ is still considering is:

- The number of extra months a worker has had to stay in NZ because of border closures will not count against them in regards to the "work 7 months in any 11 month period (or 9 in 11 for some countries)" and how does this apply to workers who have rolled over into the new season if they could have gone home.

It is possible if workers are able to retain full time employment and remain on a RSE Limited visa right through to next season. However, if there becomes a time period where they cannot be

sustained on an ATR and on a RSE Limited visa and end up moving to a Limited purpose visa to take advantage of the new flexibility then part of that condition is they will go home when a flight becomes available.

INZ will need to discuss further and come back to you

7. Can we get definitive numbers of RSE Workers – we know that just over 4,000 want repatriation now, but how many RSE workers does this leave here for spring and being employed for spring work?

Workers currently in NZ by nationality -

4/7/20

| | |
|-----------------|------|
| Fiji | 320 |
| Kiribati | 290 |
| Nauru | 5 |
| PNG | 77 |
| Samoa | 2189 |
| Solomon Islands | 632 |
| Tonga | 1716 |
| Tuvalu | 115 |
| Vanuatu | 3004 |

| | |
|-------------|------|
| India | 34 |
| Indonesia | 216 |
| Malaysia | 89 |
| Philippines | 67 |
| Thailand | 421 |
| TOTAL | 9175 |

8. Can we get an information sharing portal to place RSE workers?
[Hort NZ to set up a placement service for RSE workers. Assistance could be provided by regional RMs in Pacific Migration team](#)
9. If a group of RSE workers have an ATR till 10/8/2020. There is ongoing full time employment for them till May 2021. They want to stay and work. What is the process?
[Follow the same process established during COVID. You would need to submit a new ATR and if VOCs are required then VOCs as well.](#)
10. If the Pacific Bubble opens is it possible for RSE workers to return home for Christmas and then return without affecting the cap number?
[Workers have returned home for family emergencies in the past and this return is taken into consideration so it does not affect cap numbers. INZ would be willing to consider something like a Christmas break and then come back to work. You would have to consider any implications around quarantine of course.](#)
11. Can early decisions be made to ensure there is some certainty and so that planning can be done – [this is a question for the Minister at next week's webinar](#)

MSD

12. What support is being offered by MSD and the industry to redeploy NZers?

MSD has set up Rapid Response Teams to work directly with businesses and employees affected by Covid19 to let them know about the services and support MSD can help with. If you would like to know more please get in contact with us.

MSD has a range of tools it can use to help businesses employ staff. Attached is a summary of some of our services.

MSD is keen to work with any employer who is interested in re-deployment of New Zealanders. Attached is a list of key contact people.

Additional Immigration Questions:

1. Is there a fee to get the new visa for my workers?

There is no fee for the visa under the special direction

2. I have an extended ATR but cannot offer the 30hr average anymore. What do I do? Can I transfer my workers onto the new visa but have them still work for me?

Point of clarification:

If there is a valid ATR then workers should be given the 30 hours and normal rules apply until it runs out (you are required to pay workers for 30 hours, whether work exists or not). This new limited visa with flexibility is not an opportunity to go back on previously existing commitments. There will also be an employment agreement entered in to at the time which would need reviewing and consultation with the Labour Inspectorate as to what the law requires.

Immigration understands some ATRs were extended during COVID and an expiring date of 25 Sept entered to match the new visa extensions under the epidemic notice. Employers likely did not anticipate workers would still be here in July. Immigration is considering what approach it can take and would consider situations on a case-by-case basis.

INZ will need to discuss further and come back to you

3. If I can get odd week long work for my workers with other employers do I need to consult with MSD for every different job?

The employer should outline the plan up front. MSD will need to agree to the plan. One visa is granted. If other work emerges during the duration of the visa, the employer will need to go to MSD to get approval (but there is no need to apply for another visa).

In respect to the Labour Inspectorate - they would need to check the employment agreement, it should not change every time the worker moves as the employment relationship stays with the RSE employer. If pastoral care arrangements/deductions change then the LI would need to review the agreement.

The only check on the third party is that they are not on the stand down list (not a full LI assessment).

4. Please clarify what RSE workers holding a Limited Visa can apply for while still in NZ. They can apply for a further limited visa if necessary to complete the same purpose. So an RSE Limited Visa Holder can apply for another RSE visa (if there is an ATR approved that would enable them to work).

For those workers who move to the new limited visa under the flexibility arrangement they cannot then apply for a RSE Limited Visa later on because it is a different “express purpose”.

They will be able to apply for a further limited visa for the same express purpose (ie. to earn an income while waiting for a flight to return home). It would be a breach of their visa to not leave NZ if there is a flight for them to go home and there is an employer commitment under the new limited visa to repatriate the worker as soon as the border allows.

5. Can you please confirm RSE workers will be able to apply for a new limited work visa under a new ATR without leaving the country?

Initial thoughts from INZ are yes:

If they stay on RSE Limited Visas all the way through, as they can apply for visas onshore for the same ‘express purpose’. This is the approach INZ have been taking to re-deploy workers over winter. But this will not be possible for those on new limited visas, who are waiting to return home, and if their visa is extended past October it will not be for a full season.

Also conditions - As long as not in breach of conditions, and subject to meeting instructions in terms of duration.

BUT INZ will need to discuss further and come back to you with a definitive answer

6. Are all RSE visas being extended to 30 October?

No. INZ be in touch with employers who have workers with visas expiring soon.

Policy is looking at what to consider for those visas expiring after 25 September and what happens after 30 October for those that get extended under this new flexibility policy.

INZ will need to discuss further and come back to you

7. If my workers’ RSE visa finishes on the same day as the ATR it means our workers either have a current valid visa plus ATR, or they have neither. When would they apply for the new limited visa?

If their visas are expiring soon INZ will be contacting them to let them know what they need to do to get the visas extended.

INZ is aware of this issue and will be providing further advice

8. Are RSE workers eligible for health insurance under the visa issued under the special direction?

Each new limited visa granted is subject to conditions that the limited visa holder holds “acceptable medical insurance”

INZ is currently working with Orbit to see if there are any possible issues that the new limited visa under this flexibility policy will have on seasonal worker health insurance

9. I have a new ATR issued during COVID for workers that were due home in April. The ATR is till the 25 September to match the visa extension date. We will not have work for our Tongan workers past July. Can we cancel the ATR at that stage and apply for the new limited visa?

INZ is aware of this issue and understands many employers will no doubt be in this same position. INZ will be providing further advice

Additional question

10. Could RSE employers be provided some written communication around obligations in regards to “holiday pay” or holiday break. The limited visa appears to state the workers need to reside in labour inspected accommodation only, in the region set out on their visa. How do we then give workers who have been here over a year the opportunity to have a weekend away, within that framework?

Also, clarification around the fixed term contracts, verses roll overs that would require four weeks holiday as per NZ employment law.

This question has been passed to the Labour Inspectorate who will provide some written advice on this.