

Immigration Act 2009

Special direction – Grant of limited visas to onshore RSE workers to manage effects and deal with consequences of measures taken to contain or mitigate the outbreak of COVID-19 or its effects

Pursuant to section 61A(2)(b) of the Immigration Act 2009 (the Act) of my own volition, by special direction, I grant a limited visa to a class of onshore temporary entry class visa holder, as classified in this direction.

The class of persons granted a limited visa are those persons who:

- 1) are in New Zealand and hold either a:
 - i. Recognised Seasonal Employer (RSE) limited visa granted under the Recognised Seasonal Employer instructions or the COVID-19 Support Restricted Temporary Entry instructions (including one that has had a variation of conditions) for the express purposes of undertaking seasonal employment in the horticulture and viticulture industries for a specified RSE;
 - ii. limited visa granted by special direction under section 61A of the Immigration Act 2009 for the express purpose of undertaking work and earning an income until flights are available to depart New Zealand; or
 - iii. limited visa granted by special direction under section 61 of the Immigration Act 2009 for the express purpose of undertaking work while they await repatriation.
- 2) have an employment agreement with a Recognised Seasonal Employer and is guaranteed at least 30 hours of work per week at \$22.10 per hour
- 3) are named by the RSE employer in an undertaking that has been provided by the RSE employer to Immigration New Zealand (the relevant business unit of the Ministry of Business, Innovation, and Employment) (INZ), in the form set out in the Schedule to this special direction and with any documentation required to be provided by the undertaking

I am satisfied that the making of this special direction is reasonably necessary to manage the effects, or deal with the consequences of, the outbreak of COVID-19 or measures taken to contain or mitigate the outbreak of COVID-19 or its effects. The class of persons to whom this special direction applies are in New Zealand holding limited visas granted under the RSE immigration instructions or under sections 61 or 61A of the Immigration Act for the express purpose of undertaking horticulture or viticulture work for a specified Recognised Seasonal Employer including undertaking work while they await repatriation (limiting their ability to lawfully remain in New Zealand once the express purpose of the limited visa has been achieved). The COVID-19 outbreak in New Zealand and the Pacific continues to constrain the repatriation of RSE workers to their home countries (a measure to mitigate the risk of spread of COVID-19). This special direction will enable workers to remain lawful and work while awaiting a flight.

I am satisfied that the new visa does not materially disadvantage the class of persons involved.

Pursuant to sections 49 and 52, and in accordance with sections 84 and 85 of the Act, each limited visa granted in accordance with this special direction is for the following express purpose, currency and conditions:

- a. the express purpose of the limited visa is for the holder being able to undertake work in the horticulture and viticulture industries and earn an income until flights are available to them to depart New Zealand
- b. the start date of the limited visa is the date the undertaking is given to INZ
- c. the limited visa expires on 31 October 2022
- d. is subject to the conditions that the visa holder:
 - i. remains in the employment of the RSE employer who made the undertaking to INZ (refer paragraph 3 of this Special Direction)
 - ii. holds "acceptable medical insurance" defined as medical insurance that meets the same criteria as under the immigration instructions at WH1.25 of the *Immigration New Zealand Operational Manual*.

The limited visa holder is also subject to the condition that the holder comply with:

- i. any order made under section 11 of the COVID-19 Public Health Response Act 2020;
- ii. any order made under section 70 of the Health Act 1956 and listed in schedule 2 of the COVID-19 Public Health Response Act 2020; and
- iii. any instruction from a Medical Officer of Health which relates to a notifiable or quarantinable disease.

For the avoidance of doubt, limited visas granted to the class of persons identified above are not subject to:

- i. a requirement that the holder works in a specific location
- ii. other than any restrictions arising from the conditions above, any restrictions on the nature of work (other than any restrictions under any New Zealand enactment)

This special direction expires on 30 October 2022 unless revoked earlier.

Dated this 27th day of June 2022



Hon MICHAEL WOOD, Minister of Immigration

Explanatory note: The effect of this special direction is to grant limited visas to the class of persons described in this direction. These are persons in New Zealand on limited visas for the purpose of working under the RSE Scheme, who face difficulty departing New Zealand in accordance with the conditions of their limited visas or statutory obligation to do so, and are unable to apply for a visa of another type or class and are likely to be unable to apply for a further limited visa due to limited seasonal work in the horticulture and viticulture industries in the low season, which would mean that they would be unable to work and earn an adequate income to support themselves while they are unable to depart.

Schedule

Undertaking in regards to the employment, work and care of specified persons

The commitments in this undertaking are given to Immigration New Zealand (INZ) (a business unit of the Ministry of Business, Innovation and Employment, the responsible department for the administration of the Immigration Act 2009) by

(being the employer of the persons named in this undertaking, and a Recognised Seasonal Employer (RSE) under the Recognised Seasonal Employer immigration instructions, as published in the *Immigration New Zealand Operational Manual*) (the employer).

This undertaking is given on the date that it is provided to INZ.

The information provided in this document is for the purpose of an undertaking given to INZ, committing the employer to certain requirements in respect of named employees.

The employer, in giving this undertaking, warrants that they have the full knowledge and informed consent of each person named. Each named person will, on the giving of this undertaking and verification by INZ that they otherwise are a person within a class of persons granted a visa by special direction of the Minister of Immigration under section 61A of the Immigration Act 2009, be granted a limited visa on the terms set out by the Minister.

Information provided by the employer will be managed within the requirements of the Privacy Act 2020 (where personal information), the Official Information Act 1982 and the Public Records Act 2005. This undertaking (and verification of meeting the commitments within) will be relevant to the employer's future status as an RSE.

Details of the person/persons/entity giving the undertaking

Person(s) giving the undertaking on behalf of the employer: _____

Nominated person (point of contact for INZ communications): _____

Phone number and email address for INZ communication: _____

Commitments given

The employer acknowledges and agrees that they will abide by the following terms:

1. They will work cooperatively with any and all relevant parties and authorities (as determined by INZ in its sole discretion) to coordinate the repatriation of each named person that is granted a limited visa following the giving of this undertaking, at the earliest practicable opportunity.
2. For the duration of any limited visa granted by special direction of the Minister of Immigration to a person named in this undertaking, they will guarantee that they will, for the duration of the visa:
 - i. take all reasonable steps to provide full time work, including finding opportunities with other RSE employers if necessary
 - ii. pay the worker at least 30 hours per week at \$22.10 per hour
 - iii. arrange for the workers medical insurance to be extended

- iv. provide the worker with suitable pastoral care and accommodation (as set out at WH1.10.1(f)) of the Immigration New Zealand Operational Manual
3. They will honour commitments (modified as necessary) as required of a RSE in respect of an RSE limited visa holder under the under the Recognised Seasonal Employer immigration instructions at WH1.5.5(c), in a manner appropriate to the circumstances, excluding:
 - v. the requirement under WH1.5.5(c)(iv) that employment agreements (as set out in WH1.20 instructions) comply with minimum remuneration and be for 'seasonal work' (planting, maintaining, harvesting, or packing crops) in the horticulture and viticulture industries, which do not apply,
 - vi. the requirement under WH15.5.5(c)(ix) to have direct responsibility for the daily work output and supervision, which does not apply if workers are contacted to a third party RSE employer, and
 - vii. the requirement under WH1.10.35, where the worker is deployed to the Bay of Plenty region and no other accommodation is available
 4. That if they have entered, or if they enter into any contract for service with a third party RSE employer under which the employer will deploy a person named below to fulfil any such contract(s):
 - viii. the third party holds RSE status
 - ix. the third party RSE employer is not on the stand down list of non-compliant employers maintained by the Labour Inspectorate
 - x. the employer making the undertaking remains responsible for ensuring the provision of suitable pastoral care and accommodation
 - xi. the employer making the undertaking notifies INZ when workers are deployed to another RSE employer using the form provided for this purpose

Acknowledgements

The employer acknowledges that:

- they commit to meeting the obligations of this undertaking as it relates to the named persons in order to facilitate and establish that they are members of a class of persons granted limited visas by special direction under section 61A of the Immigration Act 2009 by the Minister of Immigration. If any of the named persons are not, in fact, in the class of persons the employer is not bound to fulfil this undertaking in respect of that individual.
- they may be required to provide information (including documents) to INZ to demonstrate that they have met the commitments above and/or have otherwise complied with their obligations in this undertaking.
- failure to meet the commitments given, or to provide information (including documents) to demonstrate they have met their commitments, may negatively impact future applications by the employer's obtain or renew RSE accreditation or be approved an Agreement to Recruit under the RSE Scheme.
- that they enter this undertaking with the full knowledge and informed consent of each person named.

Named persons

Include the following identifying details of each named person in a spreadsheet attached to this undertaking:

- Full name with family name in CAPITALS
- Date of birth
- INZ Client Number

The undersigned declares that they have the full authority of the employer to make this undertaking

SIGNED for and on behalf of the employer, _____,

[name] _____,

[role] _____,

[DATE] _____