



19 May 2021

**IMMIGRATION NEW ZEALAND INSTRUCTIONS: Amendment Circular No. 2021-15**

**To: All Manual Holders**

**AMENDMENTS TO THE IMMIGRATION NEW ZEALAND OPERATIONAL MANUAL**

**Introduction**

This circular outlines changes to immigration instructions. A copy of the amended instructions is attached.

All immigration officers dealing with immigration applications should read the amendments and operate in accordance with the amended instructions from the effective date.

**Note**

The amendments described in this circular will be published in the Immigration New Zealand Operational Manual in due course.

Information about these changes is available on our website [www.immigration.govt.nz](http://www.immigration.govt.nz).

## **Description of changes**

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***W2.2 Definitions***

***WK3.5 Acceptable employment***

***SM6.20 Calculating remuneration***

Changes have been made to immigration instructions to remove certain hours worked overnight from the remuneration calculation for Essential Skills and Skilled Migrant Category visa applications.

**Appendix 1: Amendments to Temporary Entry instructions effective on and after 24 May 2021**

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## W2.2 Definitions

See also *Immigration Act 2009, s 4*

### W2.2.1 Definition of 'work'

- a. Work means any activity undertaken for gain or reward, but does not include:
  - i. visits by persons undertaking business activities detailed in V3.5(b);
  - ii. official business in the service of any government, or of any inter-governmental or international organisation that is entitled to any privileges and immunities under the Diplomatic Privileges and Immunities Act 1968 (see H2);
  - iii. study or training under a scholarship or other award recognised by the Minister;
  - iv. visits by guests of government (guest of government status is granted by the Visits and Ceremonial Office, Department of Internal Affairs);
  - v. visits by persons who meet the special requirements under V3.55, V3.85, V3.130, V3.140 or V3.150;
  - vi. volunteer work for the Department of Conservation;
  - vii. from 20 August 2020 to 31 July 2021 (inclusive), any tasks associated with the supply of goods to, from, or within a supermarket that is operating in a region under COVID-19 Alert Level 3 or 4 undertaken by a student or work visa holder, or interim visa holder (who held a student or work visa immediately prior to the interim visa), who was an employee of that supermarket on the day immediately prior to the region entering Alert Level 3 or 4.
  - viii. hours of work undertaken in accordance with WK3.5.10 or SM6.20.10
- b. For the purposes of W2.2.1 (vii), a 'supermarket' is a retailer selling food and groceries affiliated with one of the following:
  - i. Woolworths New Zealand Limited
  - ii. Foodstuffs North Island Limited
  - iii. Foodstuffs South Island Limited
- c. 'Gain or reward' includes any payment or benefit that can be valued in terms of money, such as board and lodging, goods (e.g. food or clothing) and services (e.g. transport).

**Note:** This definition does not require work as an 'employer'. It also covers an 'employee'.

### W2.2.5 Definition of 'New Zealand' for work purposes

- a. A person is considered to be undertaking work in New Zealand if at any time they are working:
  - i. on or in relation to any craft, artificial island, installation, or structure anywhere within the territorial sea of New Zealand; or
  - ii. on or in relation to any artificial island, installation, or structure anywhere within the exclusive economic zone of New Zealand or on or above the continental shelf of New Zealand; or
  - iii. on board any craft that is registered in New Zealand and is engaged in activities anywhere:
    - o within the New Zealand exclusive economic zone; or
    - o on or above the New Zealand continental shelf.
- b. A person is considered to be undertaking work in New Zealand whether or not a New Zealand or overseas resident is providing the payment or benefit for the activity.

### W2.2.10 Definition of 'full-time employment'

Unless otherwise specified, full-time employment is considered to be at least 30 hours of work per week for the purpose of all work instructions.

### W2.2.15 Definition of 'New Zealand market rate'

- a. For the purposes of work instructions (with the exception of WH1 Recognised Seasonal Employer instructions), the New Zealand market rate is the rate of pay which would be required to recruit a New Zealand citizen or residence class visa holder to do equivalent work.
- b. When assessing the New Zealand market rate, factors immigration officers may consider, include, but are not limited to:
  - i. the typical rate of pay a New Zealand citizen or residence class visa holder receives for equivalent work;
  - ii. rates of pay provided by collective agreements for the relevant industry;
  - iii. the region of employment;
  - iv. the period of employment;
  - v. the other terms and conditions of employment (such as the hours of work);
  - vi. the level of training and experience required for the position.

### WK3.5 Acceptable employment

- a. To grant an Essential Skills work visa, an immigration officer must be satisfied that:
  - i. the offer of employment meets the requirements set out at [W2.10.10](#); and
  - ii. the employment offered is genuine, sustainable and full-time for the duration of the employment period specified in the employment agreement; and
  - iii. payment is by wages, or salary; and
  - iv. the rate of pay is not less than the market rate for New Zealand workers in that occupation (regardless of whether the occupation is on one of the Essential Skills in Demand Lists).
- b. An immigration officer will assess the employment offered to determine the remuneration level of that employment (WK3.5.1).
- c. Applications for visas under Essential Skills instructions for self-employment must be declined.
- d. Applications for visas under Essential Skills instructions related to planting, maintaining, harvesting or packing crops in the horticulture or viticulture industries must be declined.

**Note:** Applications for work visas to plant, maintain, harvest or pack crops in the horticulture or viticulture industries must be made under the Recognised Seasonal Employer (RSE) Instructions (see WH1) or the Supplementary Seasonal Employment Instructions (see [WH3](#)).

#### WK3.5.1 Determining the remuneration level of employment

- a. An immigration officer will assess the employment offered to determine whether the remuneration offered, as calculated under WK3.5.5, will be either 'paid at or above the median wage' or 'paid below the median wage'.
- b. Employment will be assessed as being 'at or above the median wage' if the remuneration offered is at or above \$25.50 per hour.
- c. Employment will be assessed as being 'below the median wage' if the remuneration offered and paid is below \$25.50 per hour.

**Note:** The remuneration requirements set out in WK3.5.1 will be updated in November each year based on New Zealand income data.

#### WK3.5.5 Calculating remuneration

- a. Remuneration will be calculated on the basis of payment per hour.
- b. Remuneration will be calculated according to the hours of work stated in the employment agreement.
- c. If the employment agreement specifies payment by salary, the payment per hour will be calculated by dividing the annual salary by 52 weeks, followed by the number of hours that will be worked each week.
- d. If the employment agreement specifies payment other than by hour (including payment by salary), and the hours of work are variable, an immigration officer may request evidence of the range of hours to be worked in order to calculate the remuneration.
- e. Hours of work per week will be considered variable where the employment agreement contains a provision allowing the employer to request or require the employee to work additional hours from time to time.
- f. Where evidence of the range of hours is provided in terms of (d) above or where the employment agreement specifies a range of hours, the maximum hours will be used to calculate the remuneration.
- g. Each hour of work must be paid at or above \$25.50, for employment to be assessed as paid at or above the median wage (see WK3.5.1.b), **except for hours described at WK3.5.10 below.**
- h. For the purposes of WK3.5.5, remuneration includes:
  - i. the agreed value of any reasonable deduction from the applicant's salary or wages for goods or services; and
  - ii. in the case of accommodation provided in connection to the employment:
    - o the agreed value of any reasonable deduction from the applicant's salary or wages for that accommodation; or
    - o if accommodation is provided by the employer, and there is no deduction from the applicant's salary or wages for that accommodation, the market rental value of the accommodation provided; or
    - o if an accommodation allowance is provided, the amount of that allowance.

**Note:** In relation to WK3.5.5(h)(ii) above, the meaning of accommodation, and the value of accommodation that is included in the definition of 'remuneration', reflects the definition of accommodation and the value of accommodation that forms part of a person's income under section CE 1 of the Income Tax Act 2007.

- i. For the purposes of WK3.5.5, remuneration excludes other employment-related allowances (for example tool, or uniform allowances), and bonuses which are dependent on performance.

#### **WK3.5.10 Overnight hours**

- a. Where an applicant is required to work overnight, but allowed to sleep during this time, any hours spent sleeping may be excluded from WK3.5.5(g) provided that:
  - i. for any hours an applicant is sleeping, they are paid at or above the minimum wage; and
  - ii. for any hours an applicant is required to perform their duties, they are paid at least their normal rate; and
  - iii. the applicant works a minimum of 30 hours per week at their normal rate required by WK3.5.1; and
  - iv. the applicant works in the Aged, Residential Care or Disability Care industry.
- b. Despite E7.10(a), these instructions may be applied to any work visa application under Essential Skills work instructions that has not been decided and was submitted before the effective date.

**Appendix 2: Amendments to Residence Instructions effective on and after 24 May 2021**

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## SM6.20 Calculating remuneration

- a. Remuneration will be calculated on the basis of payment per hour.
- b. For the purpose of determining whether remuneration meets the requirements of [SM6.10.5\(a\)\(i\) and \(ii\)](#) or [SM6.10.15 \(a\)](#) and [SM6.60](#), evidence must be provided of hours of work in the employment agreement.
- c. If the employment agreement specifies payment by salary, the payment per hour will be calculated by dividing the annual salary by 52 weeks, followed by the number of hours that will be worked each week.
- d. If the employment agreement specifies payment other than by hour (including payment by salary) and the hours of work are variable, an immigration officer may request evidence of the range of hours to be worked to determine whether the variance in the hours worked would result in the per hour rate of pay being below the applicable remuneration threshold.
- e. Hours of work per week will be considered variable if the employment agreement contains a provision allowing the employer to request or require the employee to work additional hours from time to time.
- f. Where evidence of the range of hours is provided in terms of (d) above, or where the employment agreement specifies a range of hours, the maximum hours will be used to calculate whether the relevant remuneration threshold is met.
- g. Each hour of work must be paid at or above the applicable per hour remuneration threshold, **except for hours described at SM6.20.10 below.**
- h. For the purposes of [SM6.10.5\(a\)\(i\) and \(ii\)](#) and [SM6.10.15\(a\)](#) and [SM6.60\(a\)](#) 'remuneration' includes:
  - i. the agreed value of any reasonable deduction from the applicant's salary or wages for goods or services; and
  - ii. in the case of accommodation provided in connection with the employment:
  - iii. the agreed value of any reasonable deduction from the applicant's salary or wages for that accommodation; or
  - iv. if accommodation is provided by the employer, and there is no deduction from the applicant's salary or wages for that accommodation, the market rental value of the accommodation provided; or
  - v. if an accommodation allowance is provided, the amount of that allowance.
- i. 'Remuneration' excludes any other employment-related allowances (for example tool or uniform allowances) and bonuses which are dependent on performance.

**Note:** In relation to SM6.20 (h) (ii) above, the meaning of accommodation, and the value of accommodation that is included in the definition of 'remuneration', reflects the definition of accommodation and the value of accommodation that forms part of a person's income under section CE 1 of the Income Tax Act 2007.

- j. The remuneration requirements set out in [SM6.10.5\(a\)\(i\) and \(ii\)](#) and [SM6.10.15\(a\)](#) and [SM6.60\(a\)](#) will be updated in November each year based on New Zealand income data.

### SM6.20.5 Payment on a per activity basis

- a. Despite SM6.20 (g) above, an applicant with employment in a position that is not an ANZSCO skill level 1, 2 or 3 occupation whose employment agreement specifies an hourly rate of pay that is below the remuneration threshold set out at [SM6.10.15 \(a\)](#) may be assessed as meeting that remuneration threshold if they are additionally paid on a per activity basis and if:
  - i. they provide evidence, taking into account their payment on a per activity basis, that they were paid at or above \$38.25 per hour, on average, for prior work undertaken in the same occupation in New Zealand for at least two years; and
  - ii. that work on average amounts to at least 30 hours per week in each of those two years.
- b. For the purposes of this provision 'payment on a per activity basis' excludes:
  - i. payment based on the time taken to complete a task or the number of hours worked
  - ii. payment on commission (a commission is where an employee is paid based on sales they have made or other targets they have met)
  - iii. payment on an incentive or productivity basis (where remuneration is reliant on the variable rate of production of a good or the variable rate of sale of a service)
  - iv. payment based on a piece rate (piece rate is a commission where the employee is paid for the number of pieces they worked on, for example, being paid for the number of bins of fruit picked, or the number of garments sewn).



### SM6.20.10 Overnight hours

- a. Where an applicant is required to work overnight, but allowed to sleep during this time, any hours spent sleeping, may be excluded from SM6.20(g) provided that:
  - i. for any hours an applicant is sleeping, they are paid at or above the minimum wage; and
  - ii. for any hours an applicant is required to perform their duties, they are paid at least their normal rate; and
  - iii. the applicant works a minimum of 30 hours per week at their normal rate required by SM6.10.5 or SM6.10.15; and
  - iv. the applicant works in the Aged, Residential Care or Disability Care industry.