

Note: This document is subject to change. Ensure you continue to check the MAKO folder for the most up to date version.

Additional Guidance for Determining Whether an Employee is a Critical Worker

Before referring to this guidance please ensure you have read and understand the immigration instructions at H5 (see also amendment circular).



The below guidance is intended to give you additional guidance only **do not copy any of this information into any correspondence with a client.**

Critical Workers can be divided into two separate groups- those employees who are required to come to New Zealand for less than 6 months and those required to come for 6 months or longer.

It is important to understand how long the employee is intending to be in New Zealand as this will guide which set of instructions you apply:

6 MONTHS OR LESS

This group must have:

- Unique experience and technical or specialist skills that are not readily obtainable in New Zealand OR
- Are undertaking a time-critical role which is:
 - for the delivery of an approved major infrastructure project OR
 - for the delivery of an government approved event OR
 - for the delivery of an major government-approved programme OR
 - is in support of an approved government-to-government agreement OR
 - has significant wider benefit to the national or regional economy.

MORE THAN 6 MONTHS

This group must meet the above requirements AND

- Earn at least \$106, 080 per annum OR
- Have a role that is essential for the completion or continuation of a science programme under a government funded or partially government-funded contract, including research and development exchanges and partnerships, and has the support of MBIE Science, Innovation and International Branch to travel to New Zealand to carry out their work OR
- Be undertaking a role that is essential for the delivery or execution of:
 - A government-approved event OR

- A major government-approved programme OR
- An approved major infrastructure project.

Factors that may be taken into account when determining whether a person is an 'other critical worker' include:

- Why that person is needed to ensure the delivery, continuity or execution of the work or service, and the effect on the work or service if the person was unable to come; and
- Why it is not possible to re-deploy workers already in New Zealand (this could include time constraints or the specific nature of the work or service to be done); and
- The situation of the staff (if any) currently performing the role(s), and whether they can remain or not in the roles; and
- The length of the visa required and the reason for that length of visa.

What is unique experience and technical/specialist skills?

Unique or specialist skills include, but are not limited to, whether these skills or experience:

- Have been gained in a specialist training institution or by working in a highly specialist firm.
- Can be demonstrated through global experience.
- Are inherent to a person.

What should I consider when making this assessment?

Factors to consider include, but are not limited to, whether:

- There are no workers in the country who could perform the role OR
- There is a very limited pool of available workers who could perform the role and they are not available to the employer.
- Applications for seasonal workers will generally not be approved under these instructions. The only exceptions will be if the nature of the work is highly skilled or uniquely specialised.
- Examples of workers meeting this standard may include: some highly specialist veterinarians, vendor-appointed engineers required to install major equipment, or an actor in a key film role.

How do we know these are not obtainable in New Zealand?

- Refer to the information provided by the employer and outline this in the assessment template.
- There are three checks that should be completed (listed in 'processing tips' below) when assessing these EOIs. Consider how credible the information given is compared to the information found by doing these checks.

What is a 'time-critical' role?

- "Time critical" includes if the person does not come to New Zealand, the project, work or event will cease or be severely compromised, or significant costs will be incurred.
- Does this person need to be here before the New Zealand borders open?
- There is no specific timeframe set on this, however the employee needs to be essential to the starting, continuation or completion of the role.

What is an approved major infrastructure project?

- There is a specific list, outlined in instructions H5.30.10.

What is a government approved event/programme or government to government agreement?

- There is a specific list, outlined in instructions H5.30.15.

How do we determine if the role has a significant wider benefit to the national or regional economy?

- Consider the impact of this person not coming to New Zealand to fulfil their role- will the project be stalled or unable to be completed entirely?
- Mention if the employer has listed a dollar value for the project and the employee's contribution to it.
- What is the outcome of the employee completing this role?

Processing Tips

- As a starting point, the following checks should be done when assessing the EOI:
 - Look up the Client Contacts Report (CCR) for the employer.
 - Check [Companies Office](#) to confirm the company's existence/history.
 - Do a general Google search on the company/refer to their website.
- The NZBN should be listed on the INZ1263 form, the company's AMS client record or can be found on the Companies Office website.
- If the employer has information warnings or concerns are noted, this should be reflected in the assessment template in the 'any other notes' section.
- An employment agreement does not need to be sighted at EOI stage, however will be requested when an ITA is issued.
- Remember that a high wage (i.e. above the median salary) doesn't necessarily reflect the need for that employee to travel to New Zealand.
- If no/minimal information is provided in the INZ1263 form, you do not need to request this, however highlight it in the assessment template.

Filling out the Template

Summary of the work the business undertakes.

This can include:

- Industry/sector the business operates in.
- Scope of the business (employee size, number of sites in NZ/offshore).
- How many people are currently doing the role currently?
- Product/service they provide.
- Any specific projects the business is involved in currently e.g. creation of a COVID-19 vaccine.

Frequently Asked Questions- EOIs

#	Question	Respondent	Answer
1.	Do AMS notes need to be entered for all of the employees included in the EOI?	Henderson Office	<u>No.</u> At EOI stage, a client ID and AMS notes only needs to be created for the employer.
2.	The employer has mentioned that their employee wishes to bring their dependents, however has not provided their details.	Henderson Office	We require the employee(s) (and their dependents) name at EOI stage. To do this- contact the employer directly.
3.	One employee appears to meet Critical Worker requirements but not the other. What do I do?	Henderson Office	If one employee appears to meet Critical Worker instructions but not another, this will need to be clear in the assessment template.

4.	I don't know much about the sector the employer operates in. Can I contact a lead agency for advice?	Henderson Office	Yes, this an option, however contact your Immigration Manager in the first instance.
5.	The employee has requested an exception for their New Zealand citizen/resident employee. Do I proceed with the assessment?	Henderson Office	<p>Citizens and residents who have been in NZ as residents can be refused outright as citizens can't be granted a visa, and 'activated' residents don't need to be approved as critical workers.</p> <p>Use the template found here to communicate this.</p> <p>Offshore residents who have not had their residence visas activated still require a critical purpose to travel to New Zealand so may still apply through this process.</p>
6.	The employee appears to meet other Critical Purpose instructions (e.g. Critical Health Worker, Ordinarily Resident Australian), can I issue an ITA straight away on this basis?	Henderson Office	<p>Consult a TA in the first instance.</p> <p>We can ITA on the other grounds, however we must be relatively certain that they meet the requirements of the other category.</p>
7.	The employer has stated they won't pay for the quarantine requirements for their employee.	Henderson	Ensure this information is captured in the assessment template under 'any other notes'.

8.	I have located an employee in AMS and note that they have serious a bona fide/character/health issue but potentially meets a critical purpose.	Henderson Office	No. The assessment you complete and subsequent National Manager decision is subject to all relevant temporary entry visa requirements being met at the time of assessment. You don't need to outline this in the referral assessment.
9.	The employee earns above the median salary but this is based on a 60 hour work week. Does this meet requirements?	Henderson Office	Yes- there is no hourly rate for this salary requirement.

Visa Conditions and Validity

- Under these instructions, an applicant can be granted a Critical Purpose Visitor visa for up to 6 months OR a maximum of 12 months provided a CXR isn't required.
- A Critical Purpose Variation of Conditions can be granted for a duration in line with their substantive visa.
- Generally, Critical Purpose Visitor visas should be granted as single entry visas. If you think a multiple entry visa should be granted, consult a Technical Advisor.
- Variation of Condition visas should be granted as multiple entry- if the visa is activated do not put a first entry date on it.

Validity

- If the applicant is a dependent of a Critical Worker, the visa they are granted should not be valid for longer than their partner's visa in New Zealand.
- There are some visa types that will lose their original visa conditions if a Critical Purpose Variation of Conditions is raised on top of their original visa. This is because their 'expiry date stay' date cannot be altered in AMS. In these cases, a Critical Purpose Visitor visa will need to be raised and the applicant informed that their original visa conditions (multiple entry) will not apply to the new visa.

- For those who meet the 'under 6 month' requirement but are staying for a much shorter period, e.g. 6 weeks, still issue a 6 month visa. This is due to the current issues with flight availability.

Conditions

- Any applicant approved under the Critical Worker category, their employer and occupation **must** be recorded on the visa label.