

LIN 22/038

Migration (Specified persons and periods of time for regulation 5.19) Instrument (LIN 22/038) 2022

I, Alex Hawke, Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, make this instrument under the following provisions of the *Migration Regulations 1994* (the Regulations):

(a) subparagraph 5.19(5)(a)(iii);

(b) subregulation 5.19(6);

(c) paragraph 5.19(8)(b).

Dated 17 March 2022

The Hon Alex Hawke MP
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

1 Name

 This instrument is the Migration (Specified persons and periods of time for regulation 5.19) Instrument (LIN 22/038) *2022*.

2 Commencement

 This instrument commences on 18 March 2022.

3 Definitions

 In this instrument:

***application*** means an application under subregulation 5.19(1) of the Regulations for approval of the nomination of a position in Australia.

***concession period*** means the concession period mentioned in subregulation 1.15N(1) of the Regulations.

***COVID-19*** means the pandemic declared by the World Health Organization on 11 March 2020, caused by the coronavirus COVID‑19.

***COVID-19 reduced work period***: see subsection 6(2).

***COVID-19 unpaid leave period***: see subsection 7(2).

***identified person*** has the meaning given by the paragraph 5.19(5)(c) of the Regulations.

***specified person***: see subsection 4(1).

***specified 457 visa holder***: see subsection 4(2).

***subclass 457 visa*** means a Subclass 457 (Temporary Work (Skilled)) visa as in force under Schedule 2 to the Regulations before 18 March 2018.

4 Specified persons

 (1) For subparagraph 5.19(5)(a)(iii) of the Regulations, a person (a ***specified person***) mentioned in subsection (2) or (3) is specified.

 (2) A person (a ***specified 457 visa holder***) who, on 18 April 2017:

(a) held a subclass 457 visa; or

(b) was an applicant for a subclass 457 visa that was subsequently granted.

 (3) Commencing on 1 July 2022—a person who:

(a) has been in Australia for at least 12 months between 1 February 2020 and 14 December 2021; and

(b) at the time of application, is employed by a person actively and lawfully operating a business in Australia.

5 Periods of time—relevant specified 457 visa holders without a COVID-19 reduced work period or COVID-19 unpaid leave period

 (1) For subregulation 5.19(6) of the Regulations, the following periods of time are specified if the identified person in an application is a specified 457 visa holder:

(a) for paragraphs 5.19(5)(e), (f) and (g) of the Regulations—a period of 3 years is determined, instead of a period of 4 years mentioned in those provisions; and

(b) for paragraph 5.19(5)(e) of the Regulations—a total period of at least 2 years is determined, instead of a total period of at least 3 years mentioned in those provisions; and

(c) for subparagraph 5.19(5)(f)(i) and paragraph 5.19(5)(g) of the Regulations—a total period of at least 2 years (not including any periods of unpaid leave) is determined, instead of a total period of at least 3 years (not including any periods of unpaid leave) mentioned in those provisions.

 (2) Subsection (1) is subject to sections 6 and 7.

6 Different periods of time for paragraph 5.19(5)(f) of the Regulations—COVID‑19

 (1) For subregulation 5.19(6) of the Regulations, the following periods of time are specified for subparagraph 5.19(5)(f)(i) of the Regulations if the identified person in an application has a COVID-19 reduced work period and:

(a) the person is a specified 457 visa holder—a total period of at least 2 years less the COVID-19 reduced work period (not including any other period of unpaid leave); or

(b) is any other person—a total period of at least 3 years less the COVID-19 reduced work period (not including any other period of unpaid leave)

 is determined instead of a total period of at least 3 years (not including any period of unpaid leave) mentioned in the subparagraph.

*Note* The reference to a COVID-19 reduced work period in this section includes a reference to multiple COVID-19 reduced work periods—see paragraph 23(b), *Acts Interpretation Act 1901*.

 (2) A ***COVID-19 reduced work period*** is a period, in relation to an identified person in an application, that is:

(a) during the concession period;

(b) if the person is:

 (i) a specified 457 visa holder—in the 3 years immediately before the application:

 (ii) any other person—in the 4 years immediately before the application;

(c) a period during which the person was employed in a position in respect of which any visa mentioned in paragraph 5.19(5)(e) of the Regulations was granted; and

(d) a period during which the person:

 (i) was not employed as mentioned in paragraph (c) on a full time basis, but would have been employed on a full time basis were it not for COVID-19; or

 (ii) was on unpaid leave from the employment because of COVID‑19.

7 Different periods of time for paragraph 5.19(5)(g) of the Regulations—COVID‑19

 (1) For subregulation 5.19(6) of the Regulations, the following periods of time are specified for paragraph 5.19(5)(g) of the Regulations if the identified person in an application has a COVID-19 unpaid leave period and:

(a) the person is a specified 457 visa holder—a total period of at least 2 years less the COVID-19 unpaid leave period (not including any other period of unpaid leave); or

(b) is any other person—a total period of at least 3 years less the COVID-19 unpaid leave period (not including any other period of unpaid leave)

 is determined instead of a total period of at least 3 years (not including any period of unpaid leave) mentioned in the paragraph.

*Note* The reference to a COVID-19 unpaid leave period in this section includes a reference to multiple COVID-19 unpaid leave periods—see paragraph 23(b), *Acts Interpretation Act 1901*.

 (2) A ***COVID-19 unpaid leave period*** is a period, in relation to an identified person in an application, that is

(a) during the concession period;

(b) if the person is:

 (i) a specified 457 visa holder—in the 3 years immediately before the application:

 (ii) any other person—in the 4 years immediately before the application;

(c) during which the person:

 (i) was employed in the occupation for which any visa mentioned in paragraph 5.19(5)(e) of the Regulations for the application was granted; and

 (ii) was on unpaid leave from the employment because of COVID‑19.

8 Exemption

 (1) For paragraph 5.19(8)(b) of the Regulations:

(a) a specified person; and

(b) commencing on 1 July 2022—a person mentioned in subsection (2)

 is exempt from the operation of paragraph 5.19(5)(c) of the Regulations.

 (2) A person who, after 18 April 2017:

(a) applied for a subclass 457 visa that was subsequently granted;

(b) has been in Australia for a period of at least 12 months between 1 February 2020 and 14 December 2021; and

(c) at the time of application, is employed by a person who is actively and lawfully operating a business in Australia.