

LT in Focus

What foreign nationals in Kazakhstan need to know during the state of emergency

What has happened?

In Decree No. 285 from 16 March 2020, the President introduced a state of emergency in Kazakhstan from 08:00 on 16 March 2020 initially until 07:00 on 15 April 2020 and then prolonged until 1 May 2020 to secure the safety of the state and protect the public.

Entry into Kazakhstan for foreign nationals has been restricted during the state of emergency. Exceptions have been made for some categories of individuals, such as foreign nationals permanently residing in Kazakhstan (those holding residence cards), and those with family in Kazakhstan (spouse, parents or children).

Heightened quarantine restrictions have also been introduced in a number of cities in Kazakhstan, causing

a number of businesses, organisations and state authorities to close down for the duration of quarantine, which may be established and extended for specific cities until after the end of the state of emergency. Intensified quarantine restrictions are in place in Almaty, Nur-Sultan and Shymkent until 30 April 2020, and we do not rule out that they may be extended.

The state authorities currently do not accept documents or issue invitations for work or business visas, permits to hire foreign nationals or issue work permits for all categories of foreign nationals, which raises a number of issues for employers and the business community as a whole on how to hire foreign nationals in Kazakhstan.

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We understand that the state migration authorities will be able to resume accepting applications for new or extended work permits, intra-corporate transfers; new or extended working or business visas for foreign nationals, once the state of emergency ends after 30 April 2020.

Nevertheless, the presidential commission overseeing the state of emergency has taken the decision to extend visas and work permits for foreign nationals in Kazakhstan until 20 April 2020, and extend the stay of foreign nationals from a number of countries visiting Kazakhstan visa free for 30 days. We understand that work permits and visas will be extended in proportion to any state of emergency extension. However, we have no official confirmation of this for now.



What to do if...?

We would like to share some practical advice that we feel may be useful due to the difficulties that companies employing foreign nationals have faced or may face because of the state of emergency.

A foreign national with a Kazakhstan work visa/work permit was outside of Kazakhstan when the above restrictions came into force.

In this case, individuals will not be able to enter Kazakhstan until 30 April 2020 (or later) or until the President reverses entry restrictions. They should be able to remain in that other country until Kazakhstan lifts its entry restrictions, provided they have valid grounds to remain in that country, or return to their own country or country of permanent residence, as long as those countries do not have entry restrictions in place.

No statutory conditions exist suspending working visas or work permits when foreign nationals may not enter Kazakhstan, which is why we believe they will expire on the original date. According to the rules, visas are extended in connection with a force-majeure situation. However, we believe that this applies to foreign nationals already in Kazakhstan.

Please make sure that an individual overseas on a business trip retains his/her place of work and receives a salary and per diems for all days spent on the business trip and travelling. The above employer obligation may be withdrawn if the employee returns to his/her own country/country of residence. If so, the employer may agree with the employee to end a business trip and continue work under remote working rules or rules governing a change in the place of work.

If anyone in this situation receives a work permit on the basis of a service agreement, then according to point 31 of the Rules and conditions for issuing and/or extending permits to employers to hire foreign nationals, and making intra-corporate transfers, if the foreign national is not an employee, compensation and working conditions are determined in accordance with agreements and contracts between the parties.

A foreign national is in Kazakhstan on the grounds of a work permit or working visa that is due to expire shortly.

As noted above, foreign nationals in Kazakhstan whose visas are due to expire will have them extended by the migration service so they can remain in Kazakhstan until the state of emergency ends. Due to the current force-majeure, foreign nationals will not face administrative liability for failing to leave Kazakhstan in time.

We also understand that work permits and visas will also be extended due to the state of emergency being extended.

According to the Labour Code, an employment agreement is valid for the same period as the work permit to which it is linked. Thus, if a work permit is extended because a foreign national is unable to leave the country, the corresponding employment agreement may be extended, which gives rise to employee and employer obligations, such as cash obligations for the employer.

A foreign national with an employment agreement has the same rights and obligations as a local employee. So, if an employer takes any decision affecting working conditions (schedule/salary etc.), such as introducing part-time work, working condition changes during downtime or vacation, that decision will also be valid for foreign nationals.

Changes to working conditions for foreign nationals who did not receive work permits based on an employment agreement should also be governed by agreements and contracts between the parties.

A foreign national is in Kazakhstan on the grounds of a business visa and is unable to leave Kazakhstan to his/her own country or country of residence.

The ban on leaving Kazakhstan does not extend to foreign nationals. However, due to the closure of most airports and flight cancellations, the majority of foreign nationals are unable to leave the country. We understand that foreign nationals in these circumstances may also apply for a visa extension or a "B20" visa, which is available for anyone suffering the consequences of a force-majeure, a delayed or cancelled flight or other form of transport, meaning they are unable to leave Kazakhstan by a visa or work permit expiry date.

Remember that the place services are provided or work is carried out in Kazakhstan by persons hired by a non-resident for those purposes may be recognised as a permanent establishment and trigger tax consequences, if they are performed for 183 calendar days in any consecutive 12-month period within the framework of a single project or related projects. This is a complex issue and requires additional analysis.



What to do if...?

A foreign national did not require a visa to travel to Kazakhstan, but the visa-free period of stay is about to end. However, the foreign national is unable to leave the country for his/her own country or country of residence.

According to the Ministry of Internal Affairs, to prevent foreign nationals from inadvertently breaching migration law, those whose countries Kazakhstan has agreements for visa-free entry into Kazakhstan in place will be given a 30-day visa extension.

We also understand that this process will be extended in proportion to any future extensions to the state of emergency.

** Please note that from April 17, the previously existing 30-day visa-free regime for citizens of certain countries was suspended until November 1, 2020.*

A foreign national with a Kazakhstan residence permit was overseas at the moment the above restrictions were announced.

According to explanations from the National Security Committee Border Service, some categories of individuals are exempt from the Kazakhstan entry ban, such as foreign nationals holding Kazakhstan residency, and may enter the country.

All persons returning from overseas will be placed under enforced two-week quarantine, which includes two days of isolation in a quarantine facility to test for COVID-19, followed by "home quarantine" for 12 days if testing is negative.

Please remember that the situation around the spread of COVID-19 is changing very quickly, as are the measures taken by the government to reduce its spread. Thus, the facts and recommendations given above may only be valid at the moment this information bulletin was released. Deloitte TCF employment migration experts are monitoring the development of events and the practical application of restrictions in accordance with the situation carefully, and will inform you of any changes.



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