

Who may be legally employed to work?

Employees must:

- be South African citizens or permanent residents of an appropriate age who have a bar-coded ID; or
- have a valid work visa or permit.

Types of South African work visas

General work visa

In order to apply for a work visa, the employing company has to provide substantial proof that the position cannot be filled by a South African citizen. The employer will have to provide proof of having extensively advertised the position in local media, as well as proof of the foreign applicant's qualification and experience.

The employer also has to get certification from the Department of Employment and Labour, stating that the salary and benefits that are to be paid to the foreigner, are similar to those that would be paid to a South African – this is to prevent exploitation of foreign workers.

Applicants must sign a permanent contract of employment, not longer than 5 years, and include this in their application pack to the Department of Home Affairs. If granted, the visa is only valid for the specific employer that obtained the visa for the applicant. The visa is also valid for a specified period of time. After 5 years of holding such a visa, the foreigner may apply for permanent residence.

Critical skills work visa (highly skilled migrants)

There are some skills and qualifications that are regarded as critical and are identified by the Government – this list is held on the Department of Home Affairs critical skills list that was issued on 2 August 2022 (this list is reviewed from time to time).

A person who has such skills and/or qualifications can apply for a critical skills visa. In this instance, the applicant must also have a fixed term employment offer, not exceeding 5 years.

A South African government department or professional council, recognised by SAQA, needs to confirm the applicant's skills and qualifications in writing. This type of visa is valid for a maximum period of 5 years. At least 5 years post qualification work experience is required to qualify for this work visa.

Refugee status and Asylum

A refugee seekers section 22 permit is valid for a period of 6 months and may be renewed for a further period of 6 months. Holders of these permits may work, study and live in South Africa for the duration of their permit period. During this period, the refugee must apply for asylum, and if granted, can then live, work and study in South Africa for a period of 2 years – this is renewable after a review process.

It can be a complex matter to obtain these visas/permits, and the services of an immigration consultant or immigration lawyer may assist in this regard.

Employers who do not comply with work visa requirements, and who illegally employ foreign workers, are subject to prosecution and possible stiff penalties if found guilty.

Note, even when an employee is illegally employed, the employee is entitled to the protection afforded by South African employment legislation.

Restrictions on child work

The following children may not work:

- If they are under 15 years of age; or
- If they are under the minimum school-leaving age in terms of any law.

The only exception to this is children who undertake work in the performing arts or advertising industry.

Children between the ages of 15-18 may work under restricted circumstances that are not detrimental to the individual's well-being, health, and development.

A person may not require or permit a child to perform any work or provide any services that are inappropriate for a person of that child's age or that places at risk that child's well-being, educational, physical, or mental health, or spiritual, moral, or social development.