

## **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 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 3 June 2014.

A person who has such skills and/or qualifications can apply for a critical skills visa. In this instance, the applicant does not have to have a specific offer of employment at the time of the application.

A South African authority or organisation needs to confirm the applicant's skills and qualifications in writing. This type of visa is valid for a maximum period of 5 years, but permanent residence can be applied for immediately upon obtaining this visa. It is a big advantage to be in possession of a permanent employment contract when applying for employment.

### **Refugee status and Asylum**

A refugee 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, 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.