

FOREIGN NATIONALS ON YOUR TEAM: EMPLOYER FAQ

Compiled by Big Ambitions and FEDHASA with thanks to Julia Willand (IMCOSA) and Brett Susan (Integrated Labour Solutions) for their expert input.

This document is intended as general guidance only and does not constitute legal advice. Immigration and labour law is complex, and almost every situation requires individual assessment. Please contact FEDHASA if you need to be directed to appropriate professional support.

SECTION 1: EMPLOYER OBLIGATIONS

What are my legal obligations as an employer of foreign nationals?

The Immigration Act requires employers to take reasonable steps at all times to ensure that no undocumented foreign national is employed by them. In practice, this means:

- Keeping accurate, up-to-date records of every foreign national employee's immigration status and their right to be in South Africa.
- Holding copies of the relevant documents on file, including passports, visa pages, asylum papers, refugee papers, or South African ID documents where applicable.
- Ensuring that documents are valid, renewals are initiated timeously, and there are no gaps in authorisation.
- Ensuring that the documents held actually authorise the employee to perform the work they are doing for you. Not all statuses carry the same scope of activity.

Note that these are ongoing obligations, not once-off checks.

What are the risks if I don't comply?

Immigration enforcement has intensified significantly in recent months and is expected to remain a priority. The consequences of non-compliance are serious:

- Employers can face substantial fines. Current legislation provides for fines of between R10,000 and R20,000, but draft legislation proposes fines of up to R100,000 or 10% of annual turnover – whichever is higher.
- Repeated offences can result in imprisonment of up to three years.
- Employees found without the correct documents can be arrested on the spot, without warning, and deported – meaning a member of your team can be gone overnight.
- Employees found with expired documents may be banned from returning to South Africa for up to five years. Those found with forged or fraudulently obtained documents may be permanently prohibited from returning.

What practical steps should I be taking right now?

There are four steps we recommend:

1. **Collate:** Gather all documents your foreign national employees can provide that confirm their right to be in South Africa and to perform their duties.

2. **Verify:** Confirm that documents are authentic, valid, and that they authorise the specific activities the employee performs for you.
3. **Rectify:** Address any gaps or inconsistencies, taking appropriate action and seeking expert advice where needed.
4. **Plan ahead:** Build these checks into your recruitment process so that you are verifying documents before a new team member joins, not after.

A simple, well-maintained tracking system (whether a spreadsheet or a dedicated tool) can make the difference between a preventable problem and a crisis. Set calendar reminders at six months and three months before each employee's permit expiry date, and engage proactively with the employee well before the deadline arrives.

Should I have copies of foreign national employees' passports on file, in addition to their visa or permit documents?

Yes. You should hold copies of both the passport's main identification page and the relevant visa or permit page. For asylum seeker or refugee permit holders, you should hold copies of the relevant asylum or refugee documentation. All of this should be kept together in the employee's file and kept current.

SECTION 2: DOCUMENTS AND VERIFICATION

How do I verify that a document is authentic?

Fraudulent and fraudulently obtained immigration documents are far more common than many employers realise. A document can look entirely legitimate on the surface and still not exist on the Home Affairs system. The obligation to verify authenticity rests with the employer.

There are several routes available:

- The Department of Home Affairs has its own verification mechanisms, though these are not always reliable or easily accessible.
- Third-party verification providers can cross-check documents against the Home Affairs database. This is the most reliable route and is recommended for any document you have reason to question.
- Expert immigration consultants can also perform face-value assessments based on experience, which is faster and less costly, and can identify irregularities with reasonable certainty.

If something looks unusual, such as incorrect wording, a missing employer name on a work visa, or unfamiliar formatting, have the documents verified by an expert before relying on it.

Are digital copies of documents acceptable, or do I need physical copies on file?

For the purposes of expert verification, digital copies are sufficient. However, we recommend maintaining both digital and physical copies in your records where possible, and ensuring that digital files are securely stored and easily accessible in the event of an inspection.

What should I do if I discover that a document is fraudulent?

If verification reveals that a document is fraudulent or has been fraudulently obtained, the employee may not continue in employment. However, it is important to note that employees are not always

aware that their documents are fraudulent. In some cases, they are victims of corrupt officials or scams.

Regardless of the circumstances, the correct process is to follow a formal incapacity procedure under labour law. Do not dismiss the employee on the spot. See Section 7 of this document for guidance on the correct process.

An employee refuses to give consent for their documents to be verified. What can I do?

Requesting consent for document verification is a reasonable and lawful instruction – one that you are legally obliged to fulfil under the Immigration Act. An employee who refuses to comply with a reasonable and lawful instruction may be subject to progressive disciplinary action for insubordination, up to and including dismissal.

We recommend using a formal written consent form as part of your standard process for all foreign national employees. A template consent form is available to download as part of this toolkit.

SECTION 3: ZEP AND LSP PERMITS

What is a ZEP or LSP permit, and is it still valid?

The Zimbabwe Exemption Permit (ZEP) and the Lesotho Special Project (LSP) permit are special exemptions issued by the Minister of Home Affairs to Zimbabwean and Basotho nationals, respectively. They allow holders to live and work in South Africa and are not restricted to a specific employer or activity.

On paper, these permits expired in 2021. However, following court cases and a ministerial directive, ZEP and LSP permits are deemed to be valid until 28 May 2027. This means that an employee presenting a passport with a ZEP or LSP stamp dated 2021 may still be legally authorised to work for you, provided the permit is genuine.

You do not need any additional documentation beyond the passport main page and the page showing the ZEP or LSP stamp, together with the relevant ministerial directives or court judgments confirming the extension. In the event of a Home Affairs inspection, a valid ZEP or LSP stamp in a passport is sufficient.

What documents should a ZEP holder be able to show?

A ZEP holder should be able to produce a ZEP sticker in their passport.

What happens after 28 May 2027?

The ZEP and LSP extensions are unlikely to be extended further. Employers and employees should be making plans now for what happens after May 2027. ZEP and LSP holders may qualify for a general work visa or a waiver of certain visa requirements, but these applications take time and the chances of success vary significantly depending on individual circumstances. Applications should be initiated as soon as possible. Each case requires individual assessment by an immigration expert.

A ZEP employee has no special or scarce skill. Can they still work?

Yes, until 28 May 2027. A ZEP holder with valid and authentic documents is authorised to work regardless of their skill level. Beyond that date, employees in unskilled positions will require a successful waiver to qualify for a general work visa, and the options available will depend heavily on individual circumstances. Expert advice should be sought now, not later.

SECTION 4: WAIVERS AND VFS RECEIPTS

What is a waiver application, and what does it authorise?

A waiver is an application to be exempted from one or more of the standard requirements for a particular visa category. It is typically a preliminary step before a full visa application. For example, applying to have a qualification or experience requirement waived before applying for a general work visa.

A ministerial exemption currently allows applicants with a pending waiver application, in some cases, to remain in South Africa until the outcome is received until 30 June 2027. However, a pending waiver application does NOT automatically authorise the holder to work. Whether work is permitted depends on what immigration status the employee held at the time the waiver application was submitted. This must be assessed individually.

We have a VFS receipt from 2023. Is it still valid in 2026?

It is possible for waiver and visa applications to remain pending for several years without an outcome being received. As long as no outcome has been received, the receipt retains value as evidence of a pending application.

However, a VFS receipt on its own is not necessarily sufficient to authorise employment. To assess what rights flow from a particular receipt, you will need to know what immigration status the employee held at the time the application was submitted, which means having a copy of the relevant visa or status stamp in the passport from that date. The receipt and the prior status together tell the full picture. All VFS receipts should be reviewed by an immigration expert.

What should an employee submit in addition to a VFS receipt?

A receipt alone is rarely sufficient. The employee should also provide a copy of the passport page showing their immigration status at the time the application was submitted. Together, these documents allow an expert to assess what rights the employee currently holds. If there is any uncertainty, seek professional advice before making any employment decisions.

SECTION 5: SPECIFIC VISA AND PERMIT CATEGORIES

What documents and statuses allow a foreign national to work in South Africa?

The table below provides a general overview. Note that validity periods can vary, and ministerial directives may modify the rights attached to any particular status. All documents should be verified as authentic before being relied upon.

Document	Work permitted?	Validity
South African ID document	Yes — all activities	No expiry
Asylum seeker permit (Section 22)	Yes — all activities	Varies; 3–12 months
Refugee permit	Yes — all activities	Varies; 2–4 years
ZEP or LSP permit	Yes — all activities	Deemed valid until 28 May 2027
General Work Visa	Yes — conditions apply	As per visa

Document	Work permitted?	Validity
Spousal / life partner visa	Yes — conditions apply	As per visa
Study visa	Part-time only (max 20 hours per week)	As per visa
VFS receipt (waiver, visa or appeal)	Case dependent	Until outcome received, or 30 June 2027 (not all cases)

Are all asylum seeker permits acceptable for employment, regardless of the holder's nationality?

Yes. A valid and authentic asylum seeker permit (Section 22) confers the right to work in South Africa irrespective of the holder's nationality. The key requirement is that the permit is verified as genuine and currently valid.

Note that asylum seeker permits vary in their validity period (typically between 3 – 12 months), and must be renewed. Home Affairs has become stricter in recent times about issuing and renewing asylum seeker permits, particularly for applicants from countries that are not currently considered unsafe. If an employee's asylum seeker permit is due for renewal or has recently expired, this should be addressed urgently.

What is a General Work Visa, and what should it show?

A General Work Visa is issued to foreign nationals who meet specific requirements, including relevant tertiary qualifications, a minimum of five years' experience, and a salary above a set threshold. It is employer-specific, meaning it is tied to a particular employer and position.

As a general rule, a valid General Work Visa should:

- Reflect the document as a visa, not a permit.
- Include the employer's details or some form of employer linkage on the endorsement.

There are exceptions (different consulates and embassies apply different practices), but if a document presented to you as a General Work Visa does not mention an employer, or uses unusual wording such as "TO TAKE UP EMPLOYMENT AND STUDY IN THE REPUBLIC OF SOUTH AFRICA", treat this as a red flag and have the document verified by an expert before relying on it.

General Work Visas are difficult to obtain for unskilled or semi-skilled positions. The visa system is designed to protect the local labour market for positions that South Africans can fill. There are exceptions, but they are limited.

Can a foreign student work in the hospitality industry on a paid basis as part of their work-integrated learning?

This depends on the individual student's visa conditions and circumstances. Study visas generally permit part-time work of up to 20 hours per week, but the specific conditions vary. Visa options may be available for students in a work-integrated learning context, but each case requires individual assessment. Contact FEDHASA for guidance on where to direct these queries.

A letter from Home Affairs confirms that a staff member has a booking at the refugee office, with a DHA reference number and a date. Can the employee continue working on the basis of this letter alone?

Not necessarily. A letter confirming a future appointment at a refugee reception office, on its own, is not necessarily sufficient authorisation to work. The employee should ideally be able to produce a valid work visa, a Section 22 asylum seeker permit, a refugee permit, or another lawful immigration status document. If none of these are available, seek professional advice on the employee's position before making any employment decisions.

SECTION 6: EXPIRED, IRREGULAR, OR FRAUDULENT DOCUMENTS

An employee's documents have expired. What do I do?

The correct response depends on what type of document has expired and what options are available:

- **Expired asylum seeker or refugee permit:** An application for renewal should be made as a matter of urgency. If a renewal application has been submitted, seek expert advice on whether the employee may continue working while the application is pending
- **Expired visa:** In-country legalisation is possible but rarely granted and must be very well motivated. In most cases, the employee will need to leave South Africa, apply for a new visa from their home country, and re-enter. Note that leaving South Africa without valid status may result in a ban of up to five years on returning
- **ZEP or LSP permit showing a 2021 expiry date:** This does not necessarily mean the permit is expired – see Section 3 of this document

In all cases, do not simply continue employment without taking action. The moment you are aware that an employee's documents are not in order, you have an obligation to address it.

An employee has returned from leave with new documentation. How do I verify it?

Never accept new documentation at face value. Any visa or permit presented to you should be verified for authenticity, particularly if the employee has recently been abroad to regularise their status, as this is a context in which fraudulent documents sometimes emerge. Contact an immigration expert to have the documents checked before updating your records and confirming the employee's continued authorisation to work.

SECTION 7: LABOUR LAW AND TERMINATION

Does labour law still apply to a foreign national whose permit has expired?

Yes, unequivocally. The expiry of a work permit does not extinguish an employee's rights under South African labour law. This was confirmed in a Labour Court decision involving Discovery Health, in which the court found that an employee's right to fair labour practice does not expire with their permit. Regardless of an employee's immigration status, you are required to follow a fair process before terminating employment.

What is the correct process when an employee can no longer legally work due to permit issues?

When it becomes clear that an employee does not have the legal capacity to continue employment, the following process applies:

1. **Engage immediately:** Meet with the employee to explain the situation and present what you have established, including your documentation trail.
2. **Suspend with pay:** Pending the formal hearing, suspend the employee on full pay.

3. **Issue a formal notice:** Notify the employee of an incapacity hearing, in a language and format they can understand. This is not a disciplinary hearing. The issue is incapacity to perform the employment contract, not misconduct.
4. **Hold the hearing:** Give the employee the opportunity to present their version of events, accompanied by a representative from among their fellow employees if they wish. Take minutes and, where possible, a recording.
5. **Apply your mind:** Consider what the employee presents. If they provide new information or documentation, verify it with an expert before making a final decision.
6. **Issue an outcome:** If the incapacity is confirmed and cannot be resolved, the employment may be terminated (all statutory monies due to the employee should be paid within 7 days of termination of employment). If the employee has provided compelling reasons why employment should continue, factor these into your decision.

A ZEP employee has simply stopped coming to work amid the current climate. They have not resigned and we have not dismissed them. How do we handle this?

This situation is treated as abscondment. The employee should be formally notified of a hearing on the charge of absence from work or abscondment. If the employee does not attend the hearing, which may well be the case, the hearing may proceed in their absence, and the employee may be dismissed accordingly. As with all termination processes, minutes should be kept and the correct procedure followed throughout.

Note that in this scenario, you would not ordinarily be obliged to pay a severance package, as the employee has effectively abandoned their employment.

SECTION 8: UNAUTHORISED INSPECTIONS AND CIVIC GROUP DEMANDS

We have received calls from people claiming to represent civic associations, demanding to inspect our employees' files. How should we respond?

Do not engage with these individuals. The only people legally authorised to inspect personal employee information, including passport and permit documentation, are official Department of Home Affairs inspectors, who are required to identify themselves as such.

If representatives of civic associations or similar groups making demands relating to your staff approach your premises, you are not obliged to cooperate with them. Ensure your security arrangements are appropriate, and refer the matter to the relevant authorities if necessary. Your obligation is to Home Affairs officials, and to Home Affairs officials alone.

STILL HAVE QUESTIONS?

Immigration and labour law is complex, and the right answer almost always depends on the specific details of your situation. If you have a query that this document hasn't addressed, our expert speakers are happy to assist.

For **immigration queries**, contact Julia Willand at IMCOSA:

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For **labour law queries**, contact Brett Susan at Integrated Labour Solutions:

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