

GUIDELINE FOR EMPLOYERS OF NON-SOUTH AFRICAN STAFF – FEDHASA 22 JULY 2026

The past few months have been deeply unsettling for many foreign nationals in South Africa, particularly those from elsewhere on the African continent, as well as for their employers, families, and communities. Anti-migrant demonstrations have created fear and uncertainty, affecting even those who are lawfully present and properly documented.

The issues underlying these developments are complex. Genuine frustrations over service delivery, economic opportunities, and access to resources exist. However, these concerns are often misdirected at vulnerable foreign nationals. At the same time, South Africa's asylum and immigration systems have long faced significant challenges and abuse, contributing to public concern and policy pressures.

Sustainable solutions will require a careful balance between humanitarian considerations and responsiveness to broader social and economic realities.

While solutions are scarce, there are steps employers can take to regain control and minimise risk.

WHAT ARE MY OBLIGATIONS?

- ❑ Employers have to make a good faith effort to assure themselves that no undocumented foreigner is employed by them & to ascertain the status or citizenship of those whom they employ.
- ❑ Employers have a duty to ensure that their staff have the appropriate and authentic papers allowing them to be in the country and to perform their contractual duties.
- ❑ Employers are obliged to keep records of their staff's visas or permits, to ensure that they are valid and that their conditions are adhered to.

WHAT ARE MY RISKS?

Immigration enforcement has intensified in recent months and is expected to remain a priority. Employers who fail to comply with immigration legislation may face serious consequences.

- ❑ Contraventions can lead to hefty fines and even imprisonment for the employer.
- ❑ Employees may be arrested on the spot and without warning, and deported.
- ❑ Once found without correct documents and deported, and specifically if found in possession of forged or fraudulently obtained documents, employees may be banned from the country and unable to return.

STEPS TO TAKE

1. Collate – and keep up to date – accurate records of all staff confirming their right to be in the country and to work.
2. Verify that documents are a) authentic, b) valid, and c) authorise the holder to perform their duties for their employer.
3. Rectify any inconsistencies: If need be and advised accordingly, take necessary action.
4. Plan ahead by following steps 1 and 2 during the recruitment process.

VERIFY AUTHENTICITY

- ❑ Fraudulent and fraudulently obtained immigration documents remain common.
- ❑ It is difficult for employers to identify documents as irregular, putting them at risk.
- ❑ Have validity and content checked by experts to ensure that the activities performed for you by the employee are permitted by the document, and when it expires and needs renewal.

CONFIRM VALIDITY AND SCOPE

Type of document	Activity permitted	Validity
South African identity document	All activities	No expiry
Asylum seeker permit	All activities	Varies; 3-12 months
Refugee permit	All activities	Varies: 2-4 years
Zimbabwe Exemption (ZEP) Permit or Lesotho Special Project (LSP)	All activities	Deemed to be valid until 28 May 2027 although expired in 2021
Other visa	Activities named on the visa	Depending on visa
VFS receipt (waiver, visa or appeal)	Case dependent	Until application outcome is received or 30 June 2027

VISA/PERMIT SCOPE AND CONDITIONS

- There are many different visa and permit categories which all have different conditions in terms of the activities they permit.
- The visa or permit itself does not always reflect the holder's complete legal position. Ministerial directives may temporarily extend rights or modify conditions. Cases must be assessed individually for their merit.
- Examples:
 - Pending waiver, visa application or appeal
 - Intention to apply for asylum
- NB: An employee's lack of the required status and documentation does not exempt employers from following correct procedures under labour laws.

VISA AND PERMIT OPTIONS

- ❑ Visas available for senior positions:
 - Critical Skills Visa (Qualifications and skills listed on the critical skills list, etc)
 - General Work Visa (Tertiary education, minimum 5 years experience, salary of over R 650 000 p/a, etc)
 - Intra-Company Transfer Visa (Seconded by head office, branch or affiliated office abroad)
 - Waivers of certain requirements may be available in well-motivated cases.
 - Corporate Visa (Larger companies with well-motivated need for foreign expertise and skills that is not locally available; 60% local staff)

It is difficult to secure work visas for South Africa for unskilled positions. But there are exceptions.

- ❑ Spouses and (at times) parents of South African citizens or permanent residents.
- ❑ Students in tertiary education can work part-time (20 hours per week).
- ❑ ZEP (Zimbabwe Exemption Permit) and LSP (Lesotho Special Project) permits (deemed to be extended until 28 May 2027)

NO OR EXPIRED STATUS?

- ❑ Expired asylum seeker or refugee permit: try to obtain renewal.
- ❑ Expired visa: Legalisation locally (poor chances and lengthy) or leave country.
- ❑ Points that may count in favour of the employee when seeking legalisation:
 - ❑ Married or in 2-year life partnership with SA citizen or permanent resident
 - ❑ Minor child that is a SA citizen.
- ❑ Persons leaving the country without status may be banned from returning for up to five years.
- ❑ Invalid / forged documents: option to lay charges with SAPS for fraud. If a person is found with a fraudulent visa or permit, they may be declared prohibited, ordered to leave the country or deported, and unable to secure a visa again.

AVAILABLE SUPPORT

- Audit of staff documents providing a full overview and assessment.
- Formal and informal verifications of documents, visas and permits.
- Advice on action required in case that documents are not in order.
- Support with new applications for:
 - Spouses or life partners or SA citizens or permanent residents
 - Parents of SA citizens
 - Study visas that allow for part-time work (study fees and medical aid required)
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