

DEPARTMENT OF LABOUR

NO. R. 1433

28 DECEMBER 2018

EMPLOYMENT SERVICES ACT NO 4 2014

**DRAFT REGULATIONS ON THE EMPLOYMENT OF
FOREIGN NATIONALS**

I, Mildred Oliphant, Minister of Labour, under sections 8 and 9 of the Employment Services Act No. 4 of 2014, and after consultation with the Employment Services Board, hereby publish for public comment the regulations in the Schedule.

Interested parties are invited to submit written comments on the proposed regulations within 30 days after publication notice by:-

- (a) Posting comments to: The Deputy Director General: PES
Mr S Morotoba
Department of Labour
Private Bag X117
Pretoria
0001
- (b) Faxing comments to: The Deputy Director General: PES
Mr S Morotoba
Department of Labour
Private Bag X17
Pretoria
- (c) Deliver comments to: Room 311
Third Floor
Laboria House Building
215 Francis Baard Street
Pretoria
- (d) E-mail to: foreignemployeeregulations@labour.gov.za

M. OLIPHANT
MINISTER OF LABOUR
05/12/2018

SCHEDULE

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4. Skills transfer plan

1. DEFINITIONS

(a) In these Regulations, any word or expression to which a meaning has been assigned in the Act will have the meaning so assigned and, unless the context otherwise indicates-

“Applicant” means an employer applying for a work visa or corporate visa,

“corporate applicant” means a juristic person established under the laws of the Republic which applies for a corporate visa referred to in section 21 of the Immigration Act, 2002 (Act No. 13 of 2002) as amended;

"corporate visa" means a visa contemplated in section 21 of the Immigration Act, 2002 (Act No. 13 of 2002) as amended;

“designated employer” means as defined in section 1 of the Employment Equity Act, 1998 (Act No 55 of 1998);

“diligent search” means a thorough search for the available skill within the Republic of South Africa;

"Department" means the Department of Labour;

“ employer” means the person contractually bound by the applicable employment contract as an employer or, in the case of a juristic person, its chief executive officer or the person to whom such officer has delegated the final responsibility in respect of personnel matters;

“ESSA” means Employment Services of South Africa;

“Employment Equity Act” means the Employment Equity Act, 1998 (Act No 55 of 1998) as amended;

"work visa" means a visa contemplated in section 19(2) of the Immigration Act, 2002 (Act No 13 of 2002) as amended;

“SAQA” means the South African Qualifications Authority established in terms of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008);

"seasonal worker" means a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year;

"submit" means an electronic online submission to the Department;

"**guidelines**" means a guideline on the operation procedures available on the Department of Labour's website;

"**work visa**" means general work and corporate visa

2. Work visa.

(1) An applicant for a **work visa** as contemplated in subsection 8(2)(a) of this Act shall submit:-

(a) Proof of publication of the advertisement in the national print media or website which shall-

- (i) reflect the full particulars of the relevant print media or website and the date of publication;
- (ii) clearly define the work opportunity offered and the duties;
- (iii) measure at least 60 millimetres by 60 millimetres if published in print media;
- (iv) state the closing date for the application; and
- (v) (Not be older than four months at the time of the visa application, which period shall be calculated from the closing date of the advertisement and shall not have been removed from print media or website for less than thirty days.

(b) In satisfying themselves that there are no other person in the Republic with suitable skills to fill a vacancy, the employer may make use of Public Employment Services or Private Employment Agencies;

(c) The Department shall refer the matched work seeker details to the Applicant within 10 working days of the date of receipt of the opportunity;

(d) The applicant shall submit a report of the referred work seeker within 10 working days of the date of receipt of the referral;

(e) The report in sub reg (3) shall consist of:

(f) Selection and Interview notes of the applicant indicating the rationale for unsuitability of recruited local citizens and reasons for non-selection of citizens;

(g) Curriculum vitae of the shortlisted candidates and preferred candidate;

(h) The contract of employment stipulating the conditions of employment and bearing the signature and stamp of the applicant;

(i) Proof of qualifications evaluated by SAQA;

(j) A copy of the applicant's previously issued work visa if applicable;

- (k) Proof that at least 60% of the total staff complements employed in the operations of the business are South African citizens or permanent residents employed permanently in various positions;
- (l) A Workplace Skills Plan if the applicant;
- (m) Skills Transfer plan excluding unskilled or seasonal farm workers;
- (n) Ensure that the salary offered in the contract of employment is market related;
- (o) Positions in government departments, public entities, constitutional institutions and state owned entities shall be accompanied by a letter of recommendation from the Heads of such government departments the public entity and state owned entity, constitutional institutions;
- (p) In the case of a professional skill the applicant shall produce proof of registration with the affiliated professional Body.
- (q) The applicant shall comply with all labour legislation.

3. Corporate visa

- (1) An applicant for a **corporate visa** as contemplated in subsection 8(2)(a) of this Act shall submit:-
 - (a) Proof of publication of the advertisement in the national print media or website which shall-
 - (i) reflect the full particulars of the relevant print media or website and the date of publication;
 - (ii) clearly define the work opportunity offered and the duties;
 - (iii) measure at least 60 millimetres by 60 millimetres if published in print media;
 - (iv) state the closing date for the application; and
 - (v) (Not be older than four months at the time of the visa application, which period shall be calculated from the closing date of the advertisement and shall not have been removed from print media or website for less than thirty days.
 - (b) In satisfying themselves that there are no other person in the Republic with suitable skills to fill a vacancy, the employer may make use of Public Employment Services or Private Employment Agencies;
 - (c) The Department shall refer the matched work seeker details to the Applicant within 10 working days of the date of receipt of the opportunity;
 - (d) The applicant shall submit a report of the referred work seeker within 10 working days of the date of receipt of the referral;
 - (e) The report in sub reg (3) shall consist of:
 - (f) Selection and Interview notes of the applicant indicating the rationale for unsuitability of recruited local citizens and reasons for non-selection of citizens;

- (g) Curriculum vitae of the shortlisted candidates and preferred candidate;
- (h) The contract of employment stipulating the conditions of employment and bearing the signature and stamp of the applicant;
- (i) Proof of qualifications evaluated by SAQA;
- (j) A copy of the applicant's previously issued work visa if applicable;
- (k) Proof that at least 60% of the total staff complements employed in the operations of the business are South African citizens or permanent residents employed permanently in various positions;
- (l) A Workplace Skills Plan if the applicant;
- (m) Skills Transfer plan excluding unskilled or seasonal farm workers;
- (n) Ensure that the salary offered in the contract of employment is market related;
- (o) Positions in government departments, public entities, constitutional institutions and state owned entities shall be accompanied by a letter of recommendation from the Heads of such government departments the public entity and state owned entity, constitutional institutions;
- (p) In the case of a professional skill the applicant shall produce proof of registration with the affiliated professional Body.
- (q) The applicant shall comply with all labour legislation.

4. Skills transfer plan.

- (1) As contemplated in sub-section 8(2)(c) of this Act, the applicant for a work visa or corporate visa shall satisfy the Director-General that a skills transfer plan is in place to ensure that skills required for the work opportunity in which the foreign national is employed, is transferred to the South African citizens.
- (2) Contracts of employment between the applicant and the foreign national shall provide for the transfer of skills;
- (3) The transfer of skills shall be done for the following work categories:
 - (a) Junior Management
 - (b) Middle Management
 - (c) Senior Management
 - (d) Top Management
- (4) The applicant shall submit a skills transfer report to the Department annually.
- (5) The skills transfer shall be monitored and a skill transfer report shall be published annually.