

# EMPLOYMENT LAW ALERT

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INCORPORATING  
**KIETI LAW LLP, KENYA**

## IN THIS ISSUE

### The implementation of the long awaited updated Critical Skills List

In terms of section 19(4) of the Immigration Act 13 of 2002 (the Act), a Critical Skills Visa may be issued by the Director-General to an individual who is in possession of "*such skills or qualifications determined to be critical for the Republic from time to time*", subject to meeting certain requirements. The issuing of a Critical Skills Visa is however dependent on whether the individual's skills are listed on the Critical Skills List that is published by the Minister of Home Affairs (the Minister) from time to time.

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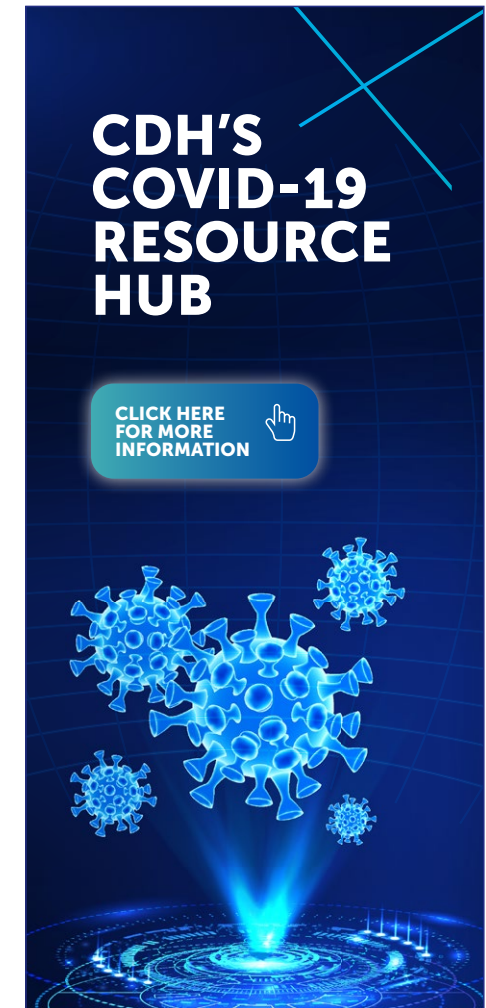
## The implementation of the long awaited updated Critical Skills List

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On 2 February 2022, the Minister, Dr Aaron Motsoaledi, published the updated Critical Skills List (2022 List), outlining the current skills shortages in South Africa, after concluding consultations with various stakeholders in business, academia, and government. The 2022 List replaces the initial Critical Skills List that was published by the Minister on 3 June 2014 (2014 List) in its entirety.

Unlike the 2014 List, the 2022 List provides a clear indication of the actual NQF Level that is required by an applicant in order to qualify for a Critical Skills Visa. Below are just some examples of South Africa's current skills shortages:

- Director (Enterprise /Organisation) Chief Executive Office, Managing Director- NQF 9;
- Quality Systems Manager - Master's Degree: NQF 9;
- Air Conditioning and Refrigeration Mechanic - NQF Level 3;
- Corporate General Manager (medium enterprises or larger) - Master of Business Administration: NQF 8;
- Metal Machinist - NQF Level 3;
- Data Scientist Master's Degree - NQF 9;
- Programme or Project Manager - Master's Degree: NQF 9;
- Air Traffic Controller - NQF Level 4;
- Millwright - NQF Level 4;
- Industrial Engineering Technologist - NQF Level 6;
- Civil Engineering Technologist - NQF Level 6;
- Multimedia Designer - NQF Level 7;
- Internal Auditor - NQF Level 7;
- Corporate General Manager - NQF Level 8;
- Programme or Program Manager - NQF Level 8;
- Physicist - NQF Level 9;
- Chemist - NQF Level 9; and
- University Senior Lecturer - NQF Level 10.



## The implementation of the long awaited updated Critical Skills List

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In addition to the publication of the 2022 List, on the same day, a Ministerial Immigration Directive (the Directive) was published by the Minister. The Directive deals with *inter alia* the transitional arrangements in relation to the 2014 List and the 2022 List.

In terms of the Directive, any Critical Skills Visa that was previously issued in terms of the 2014 List shall remain in force and effect for a determined period in accordance with the terms and conditions under which the visa was issued to the applicant. A visa issued in terms of the 2014 List may however only be renewed in terms of the 2022 List if the applicant meets the prescribed requirements of the 2022 List:

- applications already submitted to the Department of Home Affairs prior to 31 January 2022 shall be processed in terms of the 2014 List including any appeals arising out of such applications; and

- no new applications in terms of the 2014 List shall be accepted with effect from 1 February 2022, except in relation to applicants who already secured an appointment at the Visa Facilitation Centre or South African High Commission prior to 1 February 2022.

Unlike the 2014 List, the Directive also specifically states that the Department of Home Affairs will no longer issue a 12-month visa to applicants who have not secured or received an offer of employment. In other words, all Critical Skills Visa applications that are made in terms of the 2022 List must be supported by an actual offer/contract of employment. In addition, applicants who choose to reference their post-qualification experience are required to submit additional proof of vetted work experience, which must be verified by reputable institutions such as MIE or Sterling.

The Directive also contains some good news for 2014 Critical Skills Visa holders. They may now apply for permanent residence from the date upon which they qualify to apply.

While the publication of the 2022 List is welcomed, it is important for employees (currently in possession of a Critical Skills Visa in terms of the 2014 List) as well as their employers to review the 2022 List in order to confirm whether the employee's skills are contained on the 2022 List. This is crucial in order to determine whether the employee's current Critical Skills Visa can be renewed. Employers are also encouraged to consider the 2022 List as they may find that they are now able to fill any skills shortages they may have with foreign nationals, subject to meeting the requirements, as the 2022 List now contains several skills that were not previously provided for.

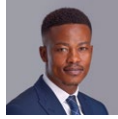
**MICHAEL YEATES, TARYN YORK AND  
MAPASEKA NKETU**

## OUR TEAM

For more information about our Employment Law practice and services in South Africa and Kenya, please contact:



**Aadil Patel**  
Practice Head  
Director  
T +27 (0)11 562 1107  
E aadil.patel@cdhlegal.com



**Bongani Masuku**  
Director  
T +27 (0)11 562 1498  
E bongani.masuku@cdhlegal.com



**Njeri Wagacha**  
Partner | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E njeri.wagacha@cdhlegal.com



**Anli Bezuidenhout**  
Director  
T +27 (0)21 481 6351  
E anli.bezuidenhout@cdhlegal.com



**Phetheni Nkuna**  
Director  
T +27 (0)11 562 1478  
E phetheni.nkuna@cdhlegal.com



**Michael Yeates**  
Director  
T +27 (0)11 562 1184  
E michael.yeates@cdhlegal.com



**Jose Jorge**  
Director  
T +27 (0)21 481 6319  
E jose.jorge@cdhlegal.com



**Desmond Odhiambo**  
Partner | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E desmond.odhiambo@cdhlegal.com



**Mohsina Chenia**  
Executive Consultant  
T +27 (0)11 562 1299  
E mohsina.chenia@cdhlegal.com



**Fiona Leppan**  
Director  
T +27 (0)11 562 1152  
E fiona.leppan@cdhlegal.com



**Hugo Pienaar**  
Director  
T +27 (0)11 562 1350  
E hugo.pienaar@cdhlegal.com



**Faan Coetzee**  
Executive Consultant  
T +27 (0)11 562 1600  
E faan.coetzee@cdhlegal.com



**Gillian Lumb**  
Director  
T +27 (0)21 481 6315  
E gillian.lumb@cdhlegal.com



**Thabang Rapuleng**  
Director  
T +27 (0)11 562 1759  
E thabang.rapuleng@cdhlegal.com



**Jean Ewang**  
Consultant  
M +27 (0)73 909 1940  
E jean.ewang@cdhlegal.com



**Imraan Mahomed**  
Director  
T +27 (0)11 562 1459  
E imraan.mahomed@cdhlegal.com



**Hedda Schensema**  
Director  
T +27 (0)11 562 1487  
E hedda.schensema@cdhlegal.com



## OUR TEAM

For more information about our Employment Law practice and services in South Africa and Kenya, please contact:



**Amy King**  
Professional Support Lawyer  
T +27 (0)11 562 1744  
E amy.king@cdhlegal.com



**Abigail Butcher**  
Associate  
T +27 (0)11 562 1506  
E abigail.butcher@cdhlegal.com



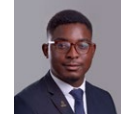
**Peter Mutema**  
Associate | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E peter.mutema@cdhlegal.com



**Riola Kok**  
Professional Support Lawyer  
T +27 (0)11 562 1748  
E riola.kok@cdhlegal.com



**Asma Cachalia**  
Associate  
T +27 (0)11 562 1333  
E asma.cachalia@cdhlegal.com



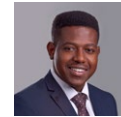
**Mayson Petla**  
Associate  
T +27 (0)11 562 1114  
E mayson.petla@cdhlegal.com



**Tamsanqa Mila**  
Senior Associate  
T +27 (0)11 562 1108  
E tamsanqa.mila@cdhlegal.com



**Rizichi Kashero-Ondego**  
Associate | Kenya  
T +254 731 086 649  
T +254 204 409 918  
T +254 710 560 114  
E rizichi.kashero-ondego@cdhlegal.com



**Kgodisho Phashe**  
Associate  
T +27 (0)11 562 1086  
E kgodisho.phashe@cdhlegal.com



**Dylan Bouchier**  
Associate  
T +27 (0)11 562 1045  
E dylan.bouchier@cdhlegal.com



**Jordyne Löser**  
Associate  
T +27 (0)11 562 1479  
E jordyne.loser@cdhlegal.com



**Taryn York**  
Associate  
T +27 (0)21 481 6314  
E taryn.york@cdhlegal.com



**Christine Mugenyu**  
Associate | Kenya  
T +254 731 086 649  
T +254 204 409 918  
T +254 710 560 114  
E christine.mugenyu@cdhlegal.com

### BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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### JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196.  
Private Bag X40, Benmore, 2010, South Africa.  
Dx 154 Randburg and Dx 42 Johannesburg.  
T +27 (0)11 562 1000 F +27 (0)11 562 1111  
E jhb@cdhlegal.com

### CAPE TOWN

11 Buitengracht Street, Cape Town, 8001.  
PO Box 695, Cape Town, 8000, South Africa.  
Dx 5 Cape Town.  
T +27 (0)21 481 6300 F +27 (0)21 481 6388  
E ctn@cdhlegal.com

### NAIROBI

Merchant Square, 3<sup>rd</sup> floor, Block D,  
Riverside Drive, Nairobi, Kenya.  
P.O. Box 22602-00505, Nairobi, Kenya.  
T +254 731 086 649 | +254 204 409 918 |  
+254 710 560 114  
E cdhkenya@cdhlegal.com

### STELLENBOSCH

14 Louw Street, Stellenbosch Central,  
Stellenbosch, 7600.  
T +27 (0)21 481 6400  
E cdh Stellenbosch@cdhlegal.com