

EMPLOYMENT LAW

IMMIGRATION ALERT

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In a nutshell: Everything employers and foreign nationals need to know about the new visa application process

The Department of Employment and Labour (DEL) recently published an annexure in relation to international or cross-border labour migration (Annexure). CDH's immigration specialist unpacks the application procedure, that employers need to be mindful of, in today's alert.



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In a nutshell: Everything employers and foreign nationals need to know about the new visa application process

The Department of Employment and Labour (DEL) recently published an annexure in relation to international or cross-border labour migration (Annexure) which deals with the new visa application procedure that must be followed in relation to the following work visas:

- A general work visa (GWV)
- A corporate visa
- The renewal of an existing visa (to a GWV)
- The change of conditions or status of an existing visa (to a GWV)
- A permanent residence permit for foreigners who receive an offer of employment while in possession of a valid work visa

Before the publication of the above Annexure, all new visa applications were submitted directly to Visa Facilitation Services Global (VFS). Notwithstanding this, the new visa application process now requires a preliminary process to be followed before visa applications are submitted to VFS.

In terms of the preliminary process, the following steps must be taken by the client employer (and not the foreign national) before a visa application is submitted to VFS:

- The client employer must register the employment opportunity with the DEL by completing a registration form.
- After completing the employment opportunity form, the DEL will try to provide the client employer with suitable candidates for placement. The client employer is required to inform the DEL whether any of its referred candidates have been employed.
- The visa application form must be completed and delivered to the relevant DEL provincial office, together with the respective supporting documents. When submitting the visa application, the client employer must also provide the DEL with its contact details and business address for purposes of future compliance audits.
- After the visa application is submitted to the DEL, a "visa finalisation notification" will be emailed to the client employer

after a recommendation certificate has been submitted by the DEL to the Department of Home Affairs (DHA). In terms of the Annexure, the DEL's recommendation is not appealable, and an appeal can only be directed to the DHA.

VISA FINALISATION NOTIFICATION

It is only after the client employer receives the "visa finalisation notification" from the DEL that it can submit the original work visa application to the DHA through VFS.

Foreign nationals that are applying for a work visa from a mission abroad must first obtain a copy of the DEL's "visa finalisation notification" before they submit their visa application as this document must be produced at the foreign mission.

The above application process deviates slightly from the previous process with specific reference to applications for a GWV. While the previous process also required an employer to register a vacancy with the DEL, an employer also had to

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interview all prospective candidates that were referred to them by the DEL. Previous visa applications were also not required to be submitted to the DEL for vetting.

In addition to the publication of the Annexure, the DEL also published new application forms that must be used when client employers apply for any of the above visas.

The Annexure also sets out the following additional guidance in relation to submitting applications for work visas:

- applications for critical skills visas must be submitted to the DHA;
- applications for work visas in relation to a religious group (i.e., pastors), sports (i.e., professional players) and arts and culture (i.e., artists) must be submitted to the DHA as the DEL has no jurisdiction over these sectors; and

- applicants for work visas from government or public schools must first obtain a letter from the Provincial Head of Basic Education prior to submitting to the visa application to the DEL.

The Annexure further refers to a turnaround time for the DEL to process a work visa application of 30 working days. Notwithstanding this intended turnaround time of 30 working days, given the current backlog that is currently being experienced by the DHA in processing visa and waiver applications, it remains to be seen whether the DEL will be able to process work visa applications within this period.

The Annexure has accordingly now clarified a lot of uncertainty that arose in the past in relation to the DEL's involvement in the visa application process, which involvement now forms a critical part of the visa application process.

Considering the new visa application process, employers must ensure that they comply with the above requirements, prior to submitting visa applications to the VFS, in order to avoid any administrative delays in the processing of visa applications.

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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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