

Labor & Employment Compliance Guide for International Investors (2025)

CEC
Kaitian Luo



国际投资者跨境劳动合规指南 Labor & Employment Compliance Guide for International Investors (2025)

跨境劳动合规 CEC 全球法律网络，罗凯天博士领衔
CEC Global Legal Network (CECGLN), led by Dr. Luo Kaitian (Kai)

南非
South Africa

2025 年 10 月
October 2025

介绍语 Introduction



随着全球化深入发展，企业在多国拓展业务时，跨境劳动合规已成为最复杂严峻的挑战之一。为帮助企业系统应对这一难题，我们携手全球数十个主要司法管辖区的顶尖劳动法律师，共同编撰了这本指南。

With the deepening of globalization, cross-border employment compliance has become one of the most complex and pressing challenges for enterprises expanding their businesses across multiple jurisdictions. To help companies systematically address this challenge, we collaborated with leading labor law experts from dozens of major jurisdictions worldwide to compile this guide.

本指南聚焦企业跨境经营中高度关注的劳动用工合规问题，全面涵盖招聘、入职、在职管理、变更与离职等全环节的核心规则与最新实践，并对工会与集体谈判、供应链与人权、ESG中的劳工议题等新兴挑战进行前瞻分析。

This guide focuses on labor & employment compliance issues of high concern in cross-border business operations. It comprehensively covers the core rules and latest practices across the entire employment lifecycle - recruitment, onboarding, HR management, employment changes, and termination - and provides forward-looking analysis on emerging challenges such as trade unions and collective bargaining, supply chains and human rights, and labor issues within ESG, etc.

2023年，我提出“跨境劳动合规”专业理念，并建立了国内该领域首个知识分享平台——微信公众号“跨境劳动合规 CEC”。借助本指南的编撰，CEC已建立起覆盖全球约80个司法管辖区的国际法律合作网络，致力于促进专业交流与合作，助力中国及国际企业在达成商业目标的同时，成为备受尊重的负责任实体。

In 2023, I introduced the professional concept of “cross-border employment compliance” and established the first domestic knowledge-sharing platform in this field - the WeChat public account Cross-Border Employment Compliance Journal (CEC/CECJ). Through the compilation of this guide, CEC has built an international legal collaboration network covering **approximately 80 jurisdictions**, dedicated to promoting professional exchange and cooperation, and helping Chinese and international enterprises achieve their commercial objectives while becoming respected and responsible entities.

本指南旨在提供原则性介绍与参考，**内容更新至2025年9月**。它并非正式法律意见，不得用于营利目的，仅用于内部参考。请注意，相关内容由对应司法管辖区的作者本人负责。除特别标注外，原文均为英文，经译者翻译为中文；中英文如有不一致的，请以英文为准。我们就内容可能存在的错误或遗漏不承担任何责任。如需就具体事项寻求专业意见，欢迎联系我们或作者（注明“CEC”将利于优惠对待）。

This guide is intended to provide a general introduction and reference, **with content updated by September 2025**. It does not constitute formal legal advice and may not be used for profit-making purposes. It is for internal reference only. Please note that the authors of the relevant jurisdictions are solely responsible for the relevant content. Unless otherwise noted, the original

text is in English and translated into Chinese by the translator; if there is any inconsistency between the Chinese and English versions, the English version shall prevail. We accept no liability for any errors or omissions in the content. For specific matters, please feel free to contact us or the authors for professional advice (marking “CEC” for preferential treatment).

本指南中英文内容均为独家授权，仅供读者个人学习参考。未经书面许可，请勿转载、传播或用于任何商业目的。

The bilingual content of this guide is exclusively authorized and is provided solely for readers’ personal study and reference. Without prior written permission, it must not be reproduced, distributed, or used for any commercial purpose.

如有垂询，敬请联络。

For inquiries, please do not hesitate to contact us.

阅读愉快！

We wish you an enjoyable reading experience!

罗凯天博士

Dr. Luo Kaitian (Kai)

《跨境劳动合规》主编
安理律师事务所合伙人、劳动法与 ESG 专业中心主任
Editor-in-Chief, Cross-border Employment Compliance Journal
Partner, Head of Employment Law & ESG Practices, Anli Partners

+ 86 138 1004 2797 (Mobile/WeChat)

kaitian.luo@outlook.com (personal)

luokaitian@anlilaw.com (business)

WeChat accounts:



Dr. Luo Kaitian



CEC



Anli Partners

作者简介 Author's Biography



阿迪勒·帕特尔是 Cliffe Dekker Hofmeyr 律师事务所董事兼雇佣法部全国业务负责人。他持有金山大学的 B Proc、LLB、LLM 学位及公司法高级文凭，并于 2012 年完成 DLA Piper 哈佛领导力项目。阿迪勒曾为多个领域的大型企业提供代理与法律咨询服务，包括政府及国有实体、汽车行业、银行与金融行业、矿业行业等。Aadil 还在雇佣法领域发表大量著作，并曾被任命为南非劳动法院代理法官。

Aadil Patel is a Director and the National Practice Head of the Employment Law Department at Cliffe Dekker Hofmeyr. He holds a B Proc LLB, LLM and H Dip (Company Law), from the University of the Witwatersrand, and completed

the DLA Piper Harvard Leadership Programme in 2012. Aadil has represented and advised significant companies in various sectors including government and state-owned entities, the motor vehicle industry, the banking and finance sector, and the mining sector, among others. Aadil has also published widely on employment law and was appointed as an acting judge in the Labour Court of South Africa.



纳迪姆·马哈茂德博士是 Cliffe Dekker Hofmeyr 律师事务所雇佣法部董事。在此之前，纳迪姆曾在一家商事律师事务所雇佣法部任职，并独立提供雇佣法领域咨询服务。他曾担任宪法法院克里斯·贾夫塔大法官的司法助理，并在开普敦大学及约翰内斯堡大学担任过研究职务。

Dr Nadeem Mahomed is a Director at Cliffe Dekker Hofmeyr in the Employment Law Department. Prior to that, Nadeem worked in the employment law department at a corporate law firm and consulted independently in the area of employment law. He served as a legal clerk to Justice Chris Jafta at the Constitutional Court and has occupied research positions at the University

of Cape Town and the University of Johannesburg.

本篇译者：周昊（安理律师事务所实习律师）
Translator: Zhou Hao (Associate, Anli Partners)

目录

I. 劳动法体系概述	9
Overview of the Labour Law System	9
1. 法律体系	9
Legal System	9
2. 资源与机构	9
Resources and Agencies	9
II. 就业资格与分类	11
Employment Qualifications and Classification	11
1. 就业年龄	11
Employment Age	11
2. 就业资格	12
Qualifications for Employment	12
3. 劳动关系的分类	13
Classification of Employment	13
4. 外籍雇员	13
Foreign Workers	13
III. 招聘与雇佣合同	15
Recruitment and Employment Contracts	15
1. 背景审查	15
Background Examination	15
2. 雇佣合同类型	16
Contract Types	16
3. 试用期	17
Probationary Period	17
IV. 工作标准	18
Working Standards	18
1. 薪酬	18
Remuneration	18
2. 法定福利与社会保障	19
Statutory Benefits and Social Security	19
3. 工作时间	21
Working Hours	21
4. 休息与休假	22

Rest and Leave	22
V. 职业健康与特别保护	23
Occupational Health and Special Protection	23
1. 职业健康与安全	23
Occupational Health and Security	24
2. 特别保护	25
Special Protection	25
VI. 个人信息与隐私	25
Personal Information and Privacy	25
1. 一般规定	25
General Rules	25
VII. 反歧视与反骚扰	27
Anti-Discrimination and Anti-Harassment	27
1. 一般规定	27
General Rules	27
2. 受保护特征	29
Protective Characters	29
VIII. 内部政策	31
Internal Policies	31
1. 适用性	31
Applicability	31
2. 有效性	31
Validity	31
3. 吹哨人制度	32
Whistleblowing	32
IX. 企业交易事项	33
Transactions	33
1. 劳动关系	33
Employment Relationship	33
2. 补偿与待遇	34
Compensation	34
X. 劳动关系的终止	34
Termination of Employment	34
1. 解雇事由	34

Termination Grounds.....	34
2. 解雇程序.....	35
Termination Procedure.....	35
3. 离职补偿与赔偿.....	36
Severance and Compensation.....	36
4. 不当解雇.....	36
Wrongful Termination.....	36
5. 大规模解雇与裁员.....	37
Mass Termination and Layoffs.....	37
XI. 保密义务、竞业限制与非招揽条款.....	38
Confidentiality, Non-Compete and Non-Solicitation	38
1. 保密义务.....	38
Confidentiality.....	38
2. 竞业限制与非招揽条款.....	38
Non-Compete and Non-Solicitation.....	38
XII. 员工代表与工会	39
Work Representation and Trade Unions	39
1. 员工代表制度.....	39
Work Representation.....	39
XIII. 争议解决.....	39
Dispute Resolution.....	39
1. 程序与执行.....	39
Procedure & Enforcement.....	39
2. 权利放弃与执行.....	40
Waiver & Enforcement.....	40
XIV. 其他事项.....	40
Others	41
1. 文化与宗教考量.....	41
Cultural and Religious Considerations.....	41

I. 劳动法体系概述 Overview of the Labour Law System

1. 法律体系 Legal System

南非实行宪政民主制度，宪法为最高法律，且拥有完备的成文法体系，对社会、经济及政治生活各领域的行为与合规进行规范。然而，鉴于南非的历史背景，其法律体系是罗马—荷兰民法、英国普通法与习惯法的混合体。罗马—荷兰法构成合同法、侵权法等私法领域的基础，英国普通法则对公法与程序法（包括刑法和公司法）产生影响。习惯法源于本土传统，在家庭法、继承法等相关事项中具有适用效力。所有法律均须与宪法保持一致。

South Africa has a constitutional democracy where the Constitution is the supreme law and has a robust infrastructure of statutes regulating conduct and compliance in various areas of social, economic and political life. However, given South Africa's historical legacy, the legal system is a hybrid of Roman-Dutch civil law, English common law, and customary law. Roman-Dutch law underpins private law areas like contracts and delict, while English common law influences public and procedural law, including criminal and company law. Customary law, rooted in indigenous traditions, has application in matters like family and succession law, where relevant. All laws must be consistent with the Constitution.

2. 资源与机构 Resources and Agencies

南非的就业与劳动法律以一系列先进成文法为基础，旨在确保公平的劳动实践、保护劳动者权利并促进平等的职场关系。主要法律如下：

South Africa's employment and labour laws are anchored in a set of progressive statutes designed to ensure fair labour practices, protect worker rights, and foster equitable workplace relations. The key laws are as follows:

1995年《劳动关系法》（第66号）：该法为规范雇主、雇员与工会之间的关系确立了法律框架。其立法目的与核心功能包括促进经济发展与社会公正；规制产业行动与工会活动；推动集体谈判；保护雇员权利；建立争议解决机制；并对影响职场的特定程序进行规范。

Labour Relations Act 66 of 1995 (LRA): This act establishes the legal framework for managing relationships between employers, employees, and trade unions. The purpose of the LRA and its key functions are to promote economic development and social justice; regulate industrial action and trade unions; facilitate collective bargaining; protect employee rights; establish dispute resolution mechanisms; and regulate the process for certain types of processes affecting the workplace.

1997年《基本雇佣条件法》（第75号）：该法旨在设定并维持雇佣条件的最低标准，涵盖薪酬、工作时间、加班费、休假权利及其他基本条款。该法对规范公平劳动实践、保护弱势劳动者以及授权就业与劳工部执行合规监管具有重要作用。

Basic Conditions of Employment Act 75 of 1997 (BCEA): The BCEA is aimed at setting and maintaining minimum standards for employment conditions. It covers essential aspects such as remuneration, working hours, overtime pay, leave entitlements, and other basic terms. The BCEA is essential in regulating fair labour practices, protecting vulnerable workers, and empowering the Department of Employment and Labour to enforce compliance.

2018年《全国最低工资法》（第9号）：该法通过设定最低工资以保护低收入劳动者，进而推动经济发展与社会公正。除规定最低小时工资外，还针对农业、家政及公共工程雇员制定了专门工资条款，并为按地区分级的特定行业设定最低工资。该法对缓解贫困与收入不平等、保障低收入劳动者基本生计具有重要意义。

National Minimum Wage Act 9 of 2018 (NMWA): The NMWA aims to advance economic development and social justice by setting a minimum wage to protect low-income workers. In addition to mandating a minimum hourly wage, it makes certain wage provisions for farm, domestic, and public works employees. It also sets minimum wages for specific sectors that are graded based on region. The NMWA is significant in curbing poverty and income inequality, empowering low-wage earners, and supporting their basic livelihoods.

1998年《就业公平法》（第55号）：该法通过禁止基于受保护特征的不公平歧视，促进职场平等与公平待遇，受保护特征包括：种族、性别、性、怀孕、婚姻状况、家庭责任、民族或社会出身、肤色、性取向、年龄、残疾、宗教、艾滋病毒感染状况、良知、信仰、政治见解、文化、语言、出身或其他任意理由。该法同时作为实施平权行动的机制，以纠正因历史原因在就业与职场中形成的不利处境。平权行动措施适用于指定雇主与指定群体。

Employment Equity Act 55 of 1998 (EEA): The EEA promotes workplace equality and fair treatment, by prohibiting unfair discrimination on the basis of protected characteristics, which are, race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth or on any other arbitrary ground. It also serves as a mechanism to enforce affirmative action to redress disadvantages in employment and the workplace due to historical reasons. The affirmative action measures are applicable to designated employers and designated groups.

1993年《职业健康与安全法》（第85号）：该法为提供合理健康与安全的职场环境确立立法框架，同时为雇员及机械使用者设定广泛法律义务，并对雇主与雇员的普通法权利作出重大调整。该法包含对雇主与雇员设定健康与安全一般义务的条款，而依据

该法颁布的相关条例则规定了更为详尽具体的义务，包括环境、一般安全、电气机械、驱动机械、电气装置、建筑、石棉、危险化学品及噪声等方面。

Occupational Health and Safety Act 85 of 1993 (OHSA): The OHSA provides a legislative framework for the provision of reasonably healthy and safe conditions in the workplace. It also places extensive legal duties on employees and users of machinery and makes major inroads on employers' and employees' common law rights. The OHSA contains provisions that impose general obligations on employers and employees with regard to health and safety. Far more detailed and specific obligations can be found in the regulations published in terms of the OHSA. These include environmental, general safety, electrical machinery, driven machinery, electrical installation, construction, asbestos, hazardous chemicals substances and noise.

南非劳动法律的执法工作由就业与劳工部主导，该部门通过检查、审计与政策监督确保法律合规。调解、调停与仲裁委员会以及行业谈判委员会通过调停与仲裁提供便捷的争议解决途径。对于调解、调停与仲裁委员会无管辖权或需对其裁决进行审查的事项，由劳动法院作为裁判机构，劳动上诉法院负责审理上诉案件。宪法法院为最终及最高裁判法院。

Enforcement of labour laws in South Africa is led by the Department of Employment and Labour, which ensures compliance through inspections, audits, and policy oversight. The Commission for Conciliation, Mediation and Arbitration (CCMA) and sector based Bargaining Councils provide accessible dispute resolution through conciliation and arbitration. For matters where the CCMA does not have jurisdiction or to review decisions of the CCMA, the Labour Court is the adjudication forum and the Labour Appeal Court for taking matters on appeal. The Constitutional Court is the final and highest Court of adjudication and hearing.

II. 就业资格与分类 Employment Qualifications and Classification

1. 就业年龄 Employment Age

根据《基本雇佣条件法》（BCEA），南非劳动法规定最低工作年龄为 15 岁，并依据国际标准对 18 岁以下人员从事危险工作予以限制。根据 1994 年《公共服务法》第 16 (1) 条，公共部门的正常退休年龄为 65 岁。而私营部门则无法定固定退休年龄，退休年龄通常由劳动合同条款、公司内部政策或公积金 / 养老金计划规则确定，一般在 60 至 65 岁之间。经雇主与雇员双方同意，雇员可在约定退休年龄之后继续工作。

South African employment law sets the minimum working age at 15, as per the Basic Conditions of Employment Act (BCEA), with restrictions on hazardous work for those under 18 in line with international standards. In the public sector, the normal retirement age is 65 in terms of section 16 (1) of the Public Service Act, 1994. In the private sector, on the other hand, there is no fixed statutory retirement age. Instead, the retirement age is typically determined by

the terms of the employment contract, internal company policies, or the rules of a provident /pension fund scheme, usually falling between 60 and 65. Employees may continue working beyond the stated retirement age if both the employer and employee agree.

2. 就业资格 Qualifications for Employment

外国企业若要在南非本地招聘雇员，必须先在该国设立合法实体，换言之需在南非公司及知识产权委员会（CIPC）完成注册。这通常包括注册一家本地实体如私人有限公司（Pty Ltd）、任命本地董事、开立南非银行账户，并在南非税务局（SARS）完成登记。

Foreign businesses seeking to hire locally in South Africa cannot do so without establishing a legal presence in the country, in other word registering with the CIPC. This typically involves registering a local entity such as a Pty Ltd, appointing local directors, opening a South African bank account, and registering with the South African Revenue Service (SARS).

此外，外国企业也可委托记录雇主（EOR）服务机构，由其作为法定雇主代为用工。记录雇主负责履行所有法定义务，包括税款扣除、社保登记及合同合规事宜，而外国企业仍保留对雇员工作职责与绩效的实际管理权。

Alternatively, foreign companies may engage an Employer of Record (EOR), which acts as the legal employer on their behalf. The EOR handles all statutory obligations, including tax deductions, social security registrations, and contract compliance, while the foreign company retains operational control over the employee's duties and performance.

企业要合法雇用外籍人士，必须确保该人员持有与岗位匹配的有效工作签证，如普通工作签证、关键技能签证或公司内部调动签证。雇主还须对相关资质进行核验（通常通过南非学历认证局 SAQA），确保雇员具备合法居留身份，并针对特定岗位制定技能转移计划。未遵守上述要求的，最高可处以 10 万兰特罚款，同时可能造成企业声誉受损，甚至被禁止未来聘用外籍雇员。企业要合法雇用外籍人士，必须确保该人员持有与岗位匹配的有效工作签证，如普通工作签证、关键技能签证或公司内部调动签证。雇主还必须尽到合理审慎义务，确保未雇用任何非法外籍人员，确认雇员具备合法就业身份（即工作权）或公民身份，并针对特定签证类别制定技能转移计划。违反上述规定的，最高可处以 10 万兰特罚款、监禁，并对企业声誉造成损害。

To legally employ foreign nationals, businesses must ensure that the individual holds a valid work visa appropriate to the role, such as a general work visa, critical skills visa, or intra-company transfer visa. Employers must also verify qualifications (often through the South African Qualifications Authority (SAQA)), ensure the employee has legal residence, and prepare a skills transfer plan for certain positions. Non-compliance with these requirements can result in fines of up to R100,000, reputational damage, or even bans on future foreign hiring. To legally employ foreign nationals, businesses must ensure that the individual holds a valid work visa appropriate to the role, such as a general work visa, critical skills visa, or intra-company transfer visa. Employers must also make a good faith effort to ascertain that no illegal foreigner is employed by them and ensure the employee has the appropriate status (i.e., a right to work) or citizenship, and prepare a skills transfer plan for certain visa categories. Non-compliance with these requirements can result in fines of up to R100,000, imprisonment and reputational damage.

3. 劳动关系的分类 Classification of Employment

在南非，劳动关系分属多个法律类别，各类别均有特定权利与义务。常见类型包括：永久雇佣、固定期限雇佣、非全日制雇佣、临时雇佣服务（TES）及独立承包商。永久合同提供持续性雇佣，职业保障程度最高。受《劳动关系法》（LRA）第 198B 条规制的固定期限合同，适用于特定项目或临时岗位。若该类合同无正当理由超过三个月，雇员可能被认定为永久雇员。除非有客观正当理由，非全日制劳动者必须获得与全日制雇员同等对待。

In South Africa, employment relationships fall into multiple legal categories, each with specific rights and obligations. Common types include permanent, fixed-term, part-time, temporary employment services (TES), and independent contractors. Permanent contracts offer ongoing employment with the highest job security. Fixed-term contracts, governed by Section 198B of the Labour Relations Act (LRA), are used for defined projects or temporary roles. If such contracts exceed three months without valid justification, the employee may be deemed permanent. Part-time workers must be treated equally to full-time staff unless objectively justified.

临时雇佣服务安排由劳务中介将劳动者派至客户公司工作。除特定例外情形外，劳动者被派遣满三个月后，将被视为客户公司的雇员。独立承包商依据服务合同提供劳务，不享有法定福利。但《劳动关系法》第 200A 条规定，若劳动者存在经济依附性或被纳入业务经营体系，则可被推定为雇员；错误归类可能导致不当解雇索赔、未付福利及税务责任。

TES arrangements involve labour brokers placing workers with client companies. After three months, unless the placement meets specific exceptions, the worker is deemed an employee of the client. Independent contractors work under a contract for services and are not entitled to statutory benefits. However, Section 200A, of the LRA states that if a worker is economically dependent or integrated into the business, they may be presumed an employee and misclassification can lead to claims for unfair dismissal, unpaid benefits, and tax liabilities.

外国企业越来越多地通过记录雇主（EOR）服务在南非招聘雇员，而无需设立本地实体。记录雇主为法定雇主，负责合同、薪酬、税务合规及法定福利事宜，外国企业则负责日常工作管理。记录雇主安排必须遵守《基本雇佣条件法》《劳动关系法》及税务法律。法院审查的是实际用工关系，而非仅看合同文本。因此，若劳动者实际履行雇员职责，即享有完整法律保护。

Foreign companies increasingly use Employer of Record (EOR) services to hire in South Africa without setting up a local entity. The EOR becomes the legal employer, handling contracts, payroll, tax compliance, and statutory benefits, while the foreign company manages day-to-day duties. EOR arrangements must comply with the BCEA, LRA, and tax laws. Courts assess the actual working relationship, not just the contract wording. Therefore, if a worker functions as an employee, they are entitled to full legal protections.

4. 外籍雇员 Foreign Workers

在南非，外籍雇员的雇佣受移民法与劳动法双重规制，以保障公平待遇与合法合规。雇主仅可聘用持有内政部签发的有效工作签证的外籍人士。

In South Africa, the employment of foreign nationals is governed by both immigration and labour laws, ensuring fair treatment and legal compliance. Employers may only hire foreign nationals who hold a valid work visa issued by the Department of Home Affairs.

南非无全国统一的本地与外籍雇员比例规定，但部分签证类别（如商务签证）要求至少 60%的雇员为南非公民或永久居民。《2025 年就业服务修正案》与《2025 年国家劳工移民政策》提议在农业、酒店、旅游及建筑等行业设立行业专属配额。仅当岗位需关键技能或获就业与劳工部长豁免时，雇主方可超出配额。配额由就业与劳工部长在征询就业服务委员会意见并收集公众评论后设定，并通过政府公报发布。

There is no fixed national ratio of local to foreign workers, but certain visa categories, such as the Business Visa that requires that at least 60% of the workforce be South African citizens or permanent residents. The Employment Services Amendment Bill, 2025 and the National Labour Migration Policy (NLMP) 2025, introduces proposes sector-specific quotas, in industries like agriculture, hospitality, tourism, and construction. It is proposed that employers may exceed these quotas only if a position requires critical skills, or if an exemption is granted by the Minister of Employment and Labour. These quotas are to be set by the Minister of Employment and Labour, following consultation with the Employment Services Board, as well as upon receipt of public comments, and are published via Government Gazette notices.

外籍人士可申请多种工作签证，包括：

Foreign nationals may apply for various work visas, including the following:

- 普通工作签证：实行积分制，需提供工作邀约与南非学历认证局（SAQA）认可的资质。
General Work Visa: Which is governed by a points-based system, requiring a job offer and SAQA-accredited qualifications.
- 关键技能签证：同样实行积分制，需在列入清单的高需求领域获得工作邀约并完成专业注册。
Critical Skills Visa: Also points-based, requiring a job offer in a listed high-demand field and professional registration.
- 公司内部调动签证：适用于跨国企业雇员调至南非，有效期最长四年。
Intra-Company Transfer Visa: For multinational employees being transferred to South Africa, valid for up to four years.
- 企业签证：允许企业在配额制度下聘用多名外籍雇员。
Corporate Visa: Allows companies to hire multiple foreign workers under a quota system.
- 数字游民签证：面向远程工作者，要求年收入不低于 650,976 兰特。
Digital Nomad Visa: For remote professionals earning at least ZAR 650,976 annually.¹

外籍雇员享有平等劳动权利，包括最低工资、安全工作环境及法定休假。他们也必须缴纳失业保险基金（UIF）及其他社保费用。

Foreign workers are entitled to equal labour rights, including minimum wage, safe working conditions, and statutory leave. They must also contribute to the Unemployment Insurance Fund (UIF) and other social protections.

¹ Department of Home Affairs. (2024). Remote Work Visa Requirements. Section 11(1)(B)(iv) of the Immigration Act

根据《移民法》第 49(3)条，雇佣无有效证件的外籍人士属刑事犯罪，可处最高 10 万兰特罚款或监禁。雇主被推定知晓其雇员的合法身份。

Under Section 49(3) of the Immigration Act, employing foreign nationals without valid documentation is a criminal offense, punishable by fines up to R100,000 or imprisonment. Employers are presumed to know the legal status of their employees.

III. 招聘与雇佣合同 **Recruitment and Employment Contracts**

1. 背景审查 **Background Examination**

雇主可对求职者进行背景调查，但此类调查必须遵守劳动法、隐私法及反歧视法。法律并未完全禁止背景调查，但调查必须合法、与岗位相关且公平开展。雇主可直接进行调查，或通过已注册的第三方机构开展，第三方机构须符合《就业服务法》的规定。但即便委托第三方，雇主仍不能免除因任何非法行为所应承担的责任。

Employers are allowed to conduct background checks on job applicants, but these checks must comply with labour, privacy, and anti-discrimination laws. There are no outright prohibitions, but checks must be lawful, relevant to the job, and conducted fairly. Employers can perform these checks directly or through registered third-party agencies, which must be compliant with the Employment Services Act. However, using a third party does not absolve the employer of responsibility for any unlawful practices.

允许开展的背景调查包括犯罪记录核查（尤其针对涉及信任或安全的岗位，且须通过认证渠道进行）。雇主也可核实雇佣历史及离职原因，但必须避免诽谤或列入黑名单的行为。体检仅在与岗位直接相关时方可进行，且须符合《就业公平法》，该法禁止基于健康状况的歧视，除非属于真正的职业任职要求。信用核查仅允许用于财务敏感岗位，但须获得书面同意，并遵守《国家信用法》。

Permissible background checks include criminal record checks, especially for roles involving trust or security, provided they are done through accredited channels. Employment history and reasons for termination can also be verified, but employers must avoid defamatory or blacklisting practices. Medical checks are allowed only if they are directly relevant to the job and must comply with the Employment Equity Act, which prohibits discrimination based on health unless it's a genuine occupational requirement. Credit checks are permitted for financially sensitive roles but require written consent and must comply with the National Credit Act.

严格禁止基于种族、性别、宗教、残疾或怀孕等任何形式的歧视性筛选。2013 年《个人信息保护法》（第 4 号）要求雇主在招聘广告或面试候选人时遵守其相关规定。保护雇员个人信息是雇主持续承担的法定义务。

Any form of discriminatory screening based on race, gender, religion, disability, or pregnancy is strictly prohibited. The Protection of Personal Information Act 4 of 2013 requires employer compliance with its provisions when advertising or interviewing candidates. The protection of employees' personal information is an ongoing employer obligation.

2. 雇佣合同类型 Contract Types

如上所述，最常见的雇佣合同类型包括永久（无固定期限）合同、固定期限合同、非全日制合同，以及临时雇佣服务（TES）或劳务中介派遣。各类合同均具有不同的法律意义，适用于特定用工场景。

As discussed above, the most common types of employment contracts include permanent (indefinite-term) contracts, fixed-term contracts, part-time contracts, and temporary employment service (TES) or labour broker placements. Each of these contract types has distinct legal implications and is suited to specific employment scenarios.

永久或无固定期限合同是最常见的雇佣形式，适用于无预定终止日期的持续性岗位。该类合同提供最高水平的职业保障，并包含完整法定福利，如休假权利、通知期及不当解雇保护。此类合同通常用于长期全职雇员，仅可通过辞职、裁员或程序公正的解雇予以终止。

A permanent or indefinite-term contract is the most common form of employment and is used for ongoing roles without a predetermined end date. It provides the highest level of job security and includes full statutory benefits such as leave entitlements, notice periods, and protection against unfair dismissal. These contracts are typically used for long-term, full-time employees and can only be terminated through resignation, retrenchment, or a procedurally fair dismissal.

为满足企业灵活获取符合特定需求服务的商业需要，可采用多种方式使用非标准雇员（标准用工方式为全职永久雇佣）。常见的非标准雇佣类型包括：

In recognition of the business need to have some flexibility in obtaining required services that meets the business' particular needs, various ways may be employed to allow for non-standard employees, (where the standard method will be full-time, permanent employment). Commonly used non-standard employment types include:

- 固定期限雇佣合同
Fixed-term contracts of employment
- 独立承包安排
Independent contracting arrangements
- 通过临时雇佣服务（TES）派遣
Placements through temporary employment services (TES)
- 非全日制雇佣
Part-time employment

但需注意，若实际关系与合同条款不符，法院将以实际关系为准。立法修订已对年收入低于法定收入门槛（目前为每年 261,748.45 兰特）的雇员部分或完全限制上述部分或全部用工选择。

Take note however that courts will give effect to the reality of the relationship, rather than the contractual terms, where the two differ. Legislative amendments have partially or completely limited some or all of the aforesaid employment options for employees earning below a statutory income threshold (currently R261,748.45 per annum).

例如，雇主使用固定期限雇员超过三个月的，必须具备正当理由，否则劳动关系将转为永久。就临时雇佣服务而言，派遣雇员工作满三个月且收入低于法定门槛的，除少数例外情形外，客户将被视为 TES 雇员的雇主。上述两种情形（TES 雇员及固定期限雇员）在三个月后均有权获得与其他永久雇员同等的待遇。

For instance, employers must be able to justify the use of fixed-term employees, where such employees are utilised for more than three months failing which employment will become permanent. In the case of temporary employment services, after three months and where the placed employee earns below the statutory income threshold, the client is deemed to be the employer of the TES employees except if a limited number of exceptions apply. In both cases (TES employees and fixed-term employees) become entitled to not be treated less favourably than the other permanent employees, after three months.

除上述标准合同外，南非法律还认可独立承包商协议，该类协议属于服务合同而非雇佣合同。独立承包商不被视为雇员，不享有法定雇佣福利。

In addition to these standard contracts, South African law also recognises independent contractor agreements, which are contracts for services rather than contracts of employment. Independent contractors are not considered employees and are not entitled to statutory employment benefits.

尽管南非法律不要求劳动关系必须具备正式书面雇佣合同方为有效，但《基本雇佣条件法》规定雇主必须在雇佣开始时向雇员提供书面雇佣详情。该详情须包括职位名称、薪酬、工作时间、休假及通知期等主要信息。未提供将产生相应法律后果。

While South African law does not require a formal written employment contract for an employment relationship to be valid, the BCEA mandates that employers must provide employees with written particulars of employment upon commencement. These particulars must include main information such as job title, remuneration, working hours, leave, and notice periods. Failure to provide this can lead to consequences.

3. 试用期 Probationary Period

在南非，试用期是法律认可的雇佣初始阶段，雇主在此期间评估新聘雇员的工作表现、行为及岗位适配度，雇员也可判断工作、职场文化及职责是否符合自身预期。试用期受《解雇实务守则》（属《劳动关系法》一部分）规制，该守则设定了试用期内公平对待的标准。

In South Africa, the probationary period is a legally recognised as an initial phase of employment during which an employer evaluates a newly appointed employee's performance, conduct, and overall suitability for the role. This period also allows the employee to assess whether the job, workplace culture, and responsibilities align with their expectations. Probation is governed by the Code of Good Practice on Dismissal (as part of the Labour Relations Act) and sets the standards for fair treatment during this phase.

法律未规定试用期的最长期限，但其时长必须与岗位性质及有效评估所需时间合理匹配，不得用于不当拒绝给予永久雇佣。例如，重复设置试用期不被鼓励，且可能被视为规避授予永久雇佣的行为。

There is no fixed maximum duration for probation periods. However, the length must be reasonable in relation to the nature of the job and the time required to assess performance effectively and must not be used to deny permanent employment unfairly. For example, repeated probation periods are discouraged and may be viewed as an attempt to avoid granting permanent employment.

雇主必须提供合理指导（如培训、指示或咨询），协助雇员达到要求标准。在试用期结束前确认转正、延长试用期或解雇前，雇主必须给予雇员陈述机会。试用期内或期满时的解雇程序与理由要求低于转正后，但仍须遵循公平程序。

Employers must provide reasonable guidance, such as training, instruction, or counselling, to help the employee meet required standards. Before confirming, extending, or dismissing after probation, the employer must allow the employee to make representations. Dismissal during or upon expiration of the probation period requires less rigorous processes and reasoning than after probation, but a fair process must still be followed.

试用期内允许解雇，但仍须符合实体与程序公平原则。即雇主必须开展公平评估、明确告知问题，并允许雇员回应（可由工会或同事代表参与）。未遵守上述程序可能被认定为不当解雇，即使雇员处于试用期。

Dismissal during probation is permitted but must still comply with the principles of substantive and procedural fairness. This means the employer must conduct a fair evaluation, communicate concerns clearly, and allow the employee to respond, sometimes done with representation from a trade union or a colleague. Failure to follow these procedures may result in a finding of unfair dismissal, even if the employee was on probation.

法律未规定试用期雇员必须领取全额工资的特定比例，但惯例为试用期雇员领取约定全额工资，除非雇佣合同另有约定。任何例外必须合理且经书面同意。

There are no statutory rules requiring that probationary employees receive a specific percentage of the full salary, but it is standard practices for probationary employees to receive their full agreed salary unless otherwise stipulated in the employment contract. Any deviation must be reasonable and agreed upon in writing.

IV. 工作标准

Working Standards

1. 薪酬

Remuneration

工资与薪酬的定义可见于《基本雇佣条件法》（BCEA）及相关公布附表。理解二者区别十分重要，且须采用正确计算基数，以核算加班费、代通知金、病假工资、年假工资，以及因经营需要解雇时的法定经济补偿金等法定权益。薪酬的范围比工资更广，包括住宿等实物支付。部分薪酬（如年假与经济补偿金）必须按薪酬计算，而病假工资仅基于工资计算。薪酬可根据浮动结构累计，例如佣金。

The definitions of wages and remuneration can be found in the BCEA and the related published schedule. It is important to understand the distinction, and to use the correct basis from which relevant statutory entitlements such as overtime payment, payments in lieu of notice, sick leave, annual leave pay and statutory severance pay in the event of dismissals for operational

requirements, are calculated. The term remuneration is wider than wages, and includes, for instance, payments in kind such as accommodation. Some payments (such as annual leave and severance pay) must be calculated by reference to remuneration, while sick leave is paid based on wages only. Remuneration may be accrued based on fluctuating structures, eg commission.

2018年《全国最低工资法》（第9号）规定，适用该法的所有劳动者均有权获得雇主支付的不低于全国最低工资标准的薪酬。雇主可申请豁免支付最低工资。违反该法可能导致雇主被处以罚款，或被雇员向调解、调停与仲裁委员会（CCMA）或相关法院提起欠付薪酬索赔。

The National Minimum Wage Act, No 9 of 2018 (NMW Act) mandates that every worker to which the NMW Act applies is entitled to be paid at least the national minimum wage by his or her employer. Employers can apply for an exemption from paying the national minimum wage. Non-compliance with the NMW Act may result in fines being imposed on the employer or referrals for claims for underpayment to the CCMA or appropriate court.

《基本雇佣条件法》就薪酬的支付方式、时间与支付要求规定了多项严格条款，雇主应当遵守。该法还严格禁止雇主在少数法定情形之外扣除雇员薪酬。

The BCEA sets out a number of strict provisions in relation to the manner, timing and payment of remuneration that employers should comply with. It also strictly prohibits deductions being made by an employer from an employee's remuneration other than in certain limited circumstances.

南非雇主有时会向雇员发放自由裁量的年终薪酬、双薪或第十三个月薪水，通常在12月发放。若合同中包含奖金条款，则不再完全由雇主自行决定支付，除非该自由裁量权被明确保留且与长期惯例不冲突。雇员可就自由裁量奖金的发放是否公平，向劳动仲裁机构提起不公平劳动行为申诉。

South African employers sometimes provide employees with a discretionary end-of-year payment, double pay or thirteenth cheque. It is usually paid out during December. Where bonus provisions are included in an employment contract they are no longer payable at the discretion of the employer unless such discretion is clearly retained and is not contradicted by long standing practice. The exercising of a discretion in the payment of discretionary bonus may be tested for fairness by the appropriate employment tribunal pursuant to referral of an unfair labour practice by an employee party.

为雇员设立激励计划的情况较为常见。法律要求同工同酬，或同等价值工作同等薪酬。It is not uncommon to find schemes incentivising employees. Legislation requires equal pay for equal work, or work of equal value.

2. 法定福利与社会保障

Statutory Benefits and Social Security

法定雇员福利与社保缴费受国家立法及行业专项规定共同调整。南非社会保障体系由三大支柱构成：非缴费型、缴费型及私人自愿计划。此类福利旨在为雇员在失业、疾病、工伤、退休及其他生活事件中提供经济保障。

Statutory employee benefits and social security contributions are governed by a combination of national legislation and sector-specific regulations. The country's social security system is structured around three pillars: non-contributory, contributory, and private voluntary schemes.

These benefits aim to provide financial protection for employees in cases of unemployment, illness, injury, retirement, and other life events.

失业保险基金（UIF）是缴费型支柱的核心组成部分，由雇主与雇员共同缴费。UIF 福利涵盖失业、生育、收养、疾病及遗属抚恤。缴费须于每月 7 日前完成，受雇于多家雇主的雇员须就各收入来源分别缴费。

The Unemployment Insurance Fund (UIF) is a key component of the contributory pillar. Employers and employees each contribute. UIF benefits cover unemployment, maternity, adoption, illness, and dependents' claims in the event of death. Contributions must be paid by the 7th of each month, and employees working for multiple employers must contribute separately for each income source.

另一项适用时的强制缴费为技能发展税（SDL），该基金用于支持雇员培训与发展项目。此外，雇主必须缴纳职业伤害与疾病补偿基金（COIDA），费率根据行业风险等级与雇员收入确定。

Another mandatory contribution, where applicable, is the Skills Development Levy (SDL). This fund supports employee training and development initiatives. Additionally, employers must contribute to the Compensation for Occupational Injuries and Diseases (COIDA), with rates varying based on the industry's risk profile and employee earnings.

南非雇员因工作产生的伤害可获得保障。雇主须每月向法定基金缴费，以覆盖与工作相关的疾病或伤害索赔。遵守相关职业健康安全及缴费义务的雇主，可就雇员因工作产生的疾病或伤害索赔获得免责保障。

Employees in South Africa are covered in respect of injuries arising out of and in the course of employment. Employers on a monthly basis must make contributions to the statutory fund created to cover claims arising from employment related illness or injury. The benefit to the employer (that complies with the relevant health and safety and payment obligations), is that it is indemnified against claims made by employees relating to illness developed or injuries sustained at work.

南非全国层面未强制要求住房或交通补贴，此类福利通常通过集体协议、公司政策或行业裁定提供。例如，可向经常因公通勤的雇员提供交通补贴，但该类福利属自主决定事项，以雇主政策为准。劳动法院裁定，若此类补贴构成合同条款，取消时须遵守公平劳动惯例，不得单方取消。

While South Africa does not mandate housing or transport allowances at a national level, these benefits are often provided through collective agreements, company policies, or sectoral determinations. For example, travel allowances may be offered to employees who regularly commute for work, but such benefits are discretionary and subject to employer policy. The Labour Court has ruled that removal of such allowances must follow fair labor practices and cannot be done unilaterally if they form part of contractual terms.

雇主亦可提供退休基金缴费、医疗援助补贴及团体人寿保险作为私人福利计划，此类福利非强制性，但在正规就业领域较为普遍。雇主无义务为雇员加入强制退休基金。若将退休基金作为雇佣福利提供，基金规则通常要求雇主与雇员按雇员相关收入的指定比例缴费。退休基金受法规制，政府虽在规划但目前无强制性全国退休基金计划。

Employers may also offer retirement fund contributions, medical aid subsidies, and group life insurance as part of private benefit schemes. These are not compulsory but are common in

formal employment sectors. . Employers are not required to enrol their employees in a mandatory retirement fund. Where such a retirement fund is offered as a benefit of employment, both the employer and the employee are normally required by the rules of the fund to contribute to the fund at a specified rate of the employee's relevant income. Retirement funds are regulated by statute. There is no obligatory national retirement fund scheme although one is contemplated by Government.

3. 工作时间 Working Hours

法定工作时间与加班规则受《基本雇佣条件法》(BCEA) 规制, 旨在确保公平劳动实践并保护雇员身心健康。对于收入低于门槛的雇员, 标准工时制度为每周最多 45 小时, 每周工作 5 天者每日不超过 9 小时, 每周工作超过 5 天者每日不超过 8 小时。上述上限不含午餐休息时间, 午餐休息通常为 1 小时, 经双方同意可缩短至 30 分钟。每日工作少于 6 小时的雇员无权享受午餐休息。

Statutory working hours and overtime regulations are governed by the Basic Conditions of Employment Act (BCEA), which aims to ensure fair labor practices and protect employee well-being. For employees earning below the threshold, the standard working hours system allows for a maximum of 45 hours per week, with no more than 9 hours per day for employees working a five-day week, and 8 hours per day for those working more than five days per week. These limits exclude lunch breaks, which are typically 1 hour but may be reduced to 30 minutes by mutual agreement. Employees working fewer than six hours per day are not entitled to a lunch break.

法律同时认可弹性与不规则工作安排, 包括压缩工时、平均工时及夜班。压缩工时允许雇员每日工作最长 12 小时(含用餐休息), 前提是不超过每周 45 小时的标准上限。工时可在最长四个月周期内进行平均计算, 但须书面同意, 且不得超出法定每日或每周上限。夜班及周末工作需额外安排, 如交通、补贴或缩短工时, 且须经雇主与雇员双方同意。

The law also recognises flexible and irregular working arrangements, including compressed workweeks, averaged hours, and night shifts. Compressed workweeks allow employees to work up to 12 hours per day, including meal breaks, provided they do not exceed the standard weekly limit of 45 hours. Averaging of hours is permitted over a period of up to four months, but must be agreed upon in writing and cannot exceed daily or weekly statutory limits. Night work and weekend work require additional considerations, such as transport arrangements, allowances, or reduced hours, and must be agreed upon between employer and employee.

加班须出于自愿或经双方同意。每日最长加班时间为 3 小时, 每周不超过 10 小时。加班费按正常工资的 1.5 倍计算, 周日或公共假日工作则须按正常工资的两倍支付。作为替代方案, 雇员可获得调休, 但须事先约定。

Overtime is voluntary or must be agreed between the parties and must be agreed upon by both parties. The maximum permissible overtime is 3 hours per day or 10 hours per week. Overtime pay is calculated at 1.5 times the normal wage rate, except for work performed on Sundays or public holidays, which must be compensated at double the normal rate. Alternatively, employees may receive time off in lieu of payment, but only if this is agreed upon in advance.

年收入高于法定收入门槛（目前为 261,748.45 兰特）的雇员，不适用 BCEA 的部分条款，包括上述工时与加班相关规定。BCEA 第 48 条禁止强迫劳动，高收入雇员的任何加班安排均须双方协商一致。

Employees earning above the earnings threshold which is currently R261,748.45 per annum, are excluded from certain provisions of the BCEA, including the above relating to working hours and overtime. Forced labor is prohibited under Section 48 of the BCEA, and any overtime arrangements for high-earning employees must be mutually agreed upon.

4. 休息与休假 Rest and Leave

法定休息及休假权利受 1997 年《基本雇佣条件法》（第 75 号）（BCEA）规制。雇员有权享有最低天数的带薪年假，每个年假周期内最低带薪年假为连续 21 天全额薪酬，或经约定可按每工作 17 天累积 1 天年假计算。

Statutory rest and leave entitlements are governed by the Basic Conditions of Employment Act 75 of 1997 (BCEA). Employees are entitled to a minimum number of paid annual leave days. The minimum period of paid annual leave is 21 consecutive days on full remuneration for each annual leave cycle, or by agreement it can be accrued based on one day's annual leave accrued for every 17 days.

南非目前认可 12 个法定节假日，所有雇员均有权在法定节假日带薪休假。若雇员被要求在公共假日工作，则适用专门的加班费率。

There are currently 12 statutory holidays recognised in South Africa and all employees are entitled to paid leave on statutory holidays. Special overtime rates apply, to the extent that an employee is nonetheless required to work on public holidays.

《基本雇佣条件法》规定，在每个病假周期内，雇员享有的带薪病假天数等同于其六周内的正常工作天数。病假周期为 36 个月，自雇佣开始及上一病假周期结束起算。但在雇佣前六个月内，雇员每工作 26 天仅享有 1 天带薪病假。

The BCEA states that employees are entitled to paid sick leave equal to the number of days the employee would normally work in a period of six weeks, in every sick leave cycle. A sick leave cycle is 36 months and begins on commencement of employment and on completion of every prior sick leave cycle. However, during the first six months of employment an employee is only entitled to one day paid sick leave for every 26 days worked.

尽管雇员正常每周工作时间可达 45 小时，《基本雇佣条件法》仍规定了最低休息时长：每周至少连续 36 小时休息，每日至少连续 12 小时休息。

While employees may, in the normal course, be required to work up to 45 hours per week as part of their normal working week, the BCEA imposes certain minimum rest periods. For instance, employees are entitled to a minimum of 36 consecutive hours weekly and 12 consecutive hours daily rest periods.

家庭责任休假给予符合条件的雇员每年 3 天带薪假期，用于处理家庭紧急情况，如子女生病、配偶 / 父母 / 祖父母 / 子女等近亲属去世。

Family responsibility leave provides eligible employees with three paid days off per year to deal with family emergencies, such as a sick child or the death of a spouse, parent, grandparent, child.

南非现行统一的育儿假制度：所有父母（亲生、收养、委托代孕父母）均有权享有四个月零十天育儿假，可自行分配、连续或分段休完。

South Africa now has a universal parental leave regime. All parents—biological, adoptive, and commissioning—are entitled to four months and ten days of parental leave, to be shared as they choose and can be taken either consecutively or successively by the parents.

- 休假分配：若父母双方均受雇，须协商分配休假；无法达成一致的，尽可能平均分配。

Leave Sharing: If both parents are employed, they must agree on how to divide the leave. If they cannot agree, the leave is split as equally as possible.

- 收养与代孕：收养假自法院裁定将儿童交由准养父母安置时起算；委托代孕育儿假自代孕协议下子女出生之日起算。

Adoption and Surrogacy: adoption leave may begin when a child is placed with a prospective adoptive parent by court order. Commissioning parental leave may begin on the date of birth under a surrogate motherhood agreement.

- 怀孕及产后休假：女性雇员可在预产期前四周开始休育儿假，医学需要可提前。产后六周内不得工作，经医学证明适合工作的除外。上述期间计入总育儿假额度。
Pregnancy and Post-Birth Leave: Female employees who are due to give birth may begin parental leave up to four weeks before the expected birth, or earlier if medically necessary. No female employee may work for six weeks after giving birth unless certified medically fit. These periods are included in the total parental leave allocation.
- 单亲父母：仅一方父母受雇的，该方有权享有完整四个月育儿假。
Single Parent or Single Employed Parent: Where only one parent is employed, that parent is entitled to a full period of four months parental leave.

通知要求：雇员须至少提前四周书面通知雇主拟休假日期及返岗日期（收养 / 委托代孕假为一个月），无法提前通知的除外。

Notification Requirements: Employees must notify their employer in writing of their intended leave dates and return date, at least four weeks in advance (or one month for adoption/commissioning leave), unless not possible to do.

尽管宗教休假未专门立法，但 1998 年《就业公平法》（第 55 号）要求雇主通过年假或无薪假期合理迁就宗教仪式。无正当理由拒绝可能构成不公平歧视，尤其在批准其他同信仰雇员类似请求的情况下。

While religious leave is not specifically legislated, the Employment Equity Act 55 of 1998 requires employers to reasonably accommodate religious observances through annual or unpaid leave. Refusal without justification may constitute unfair discrimination, particularly if similar requests are granted to other employees of the same faith.

V. 职业健康与特别保护 Occupational Health and Special Protection

1. 职业健康与安全

Occupational Health and Security

职场健康与安全受 1993 年《职业健康与安全法》（第 85 号，OHSA）规制，该法规定雇主必须在合理可行范围内为雇员提供安全、无健康风险的工作环境。根据 OHSA 第 8 条，雇主对雇员的一般义务包括：采取措施消除危害或潜在危害、确保雇员免受有害物质风险、开展风险评估、保持设备处于安全状态、提供个人防护装备（PPE）以及开展职场危害培训。雇员在法律上也有义务合理关注自身及他人安全、遵守安全规程并报告不安全状况。

Workplace health and safety is governed by the Occupational Health and Safety Act 85 of 1993 (OHSA), which mandates that employers provide, as far as reasonably practicable a working environment that is safe and without risk to the health of its employees. The general duties of the employer towards its employees under Section 8 of OHSA include taking steps to eliminate hazards or potential hazards, making arrangements to ensure that its employees are free from risks associated with hazardous substances, conducting risk assessments, maintaining equipment in safe condition, providing personal protective equipment (PPE), and offering training on workplace hazards. Employees are also legally obligated to take reasonable care for their own safety and that of others, comply with safety procedures, and report unsafe conditions.

就业与劳工部（DoEL）通过其检查与执法服务司（IES）执行 OHSA。检查员开展例行和应对性检查、调查事故，并对违规行为发出合规通知或处罚。

The Department of Employment and Labour (DoEL) enforces OHSA through its Inspection and Enforcement Services (IES) division. Inspectors conduct routine and reactive inspections, investigate incidents, and issue compliance notices or penalties for violations.

当发生工伤或职业病时，适用 1993 年《职业伤害与疾病补偿法》（第 130 号，COIDA）。COIDA 为雇员提供无过错补偿，包括医疗费用、临时或永久残疾以及遗属死亡抚恤金。雇主必须在收到雇员通知后 7 天内将伤害报告给补偿基金，职业病则在收到诊断通知后 14 天内报告。雇员必须提交医疗报告及证明文件以核实索赔。

When a workplace injury or occupational disease occurs, the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA) applies. COIDA provides no-fault compensation to employees for medical expenses, temporary or permanent disability, and death benefits for dependents. Employers must report injuries to the Compensation Fund within 7 days of being notified by the employee and occupational diseases within 14 days of receiving notice of a diagnosis. Employees must submit medical reports and supporting documentation to validate claims.

COIDA 项下的补偿根据伤害严重程度计算：

Compensation under COIDA is calculated based on the severity of the injury:

- 临时残疾：最高为月收入的 75%，最长支付 24 个月。
Temporary disability: up to 75% of monthly earnings for a maximum of 24 months.
- 永久残疾：损伤程度 30% 及以下的，支付一次性款项；超过 30% 的，按月发放抚恤金。例如，100% 残疾（如完全失明）可终身领取月薪的 75%。
Permanent disability: if the impairment is 30% or less, a lump sum is paid; if above 30%, a monthly pension is awarded. For example, a 100% disability (e.g. total blindness) entitles the employee to 75% of their monthly salary for life.

- 法律要求雇主在补偿基金注册、提交年度收入申报表，并根据所在行业风险等级缴纳评估费。未合规可能导致处罚，并无法获得良好信誉证明函，该函件通常是参与投标和签订合同所需。获取该函件要求雇主完成注册、申报与缴费均及时更新，且无未偿债务。

Employers are legally required to register with the Compensation Fund, submit annual Returns of Earnings, and pay assessment fees based on their industry's risk profile. Failure to comply may result in penalties and disqualification from receiving a Letter of Good Standing, which is often required for tenders and contracts. To obtain this letter, employers must be fully registered, have up-to-date returns and payments, and no outstanding debts.

2. 特别保护 Special Protection

如上所述，南非劳动法根据适用收入门槛，为弱势雇员提供针对性保护。职业健康与安全框架亦已概述，《就业公平法》明确禁止不公平歧视，并要求雇主在职场消除歧视。基于一项或多项受保护事由的歧视均属不公平歧视，包括种族、性别、性、怀孕、婚姻状况、家庭责任、民族或社会出身、肤色、性取向、年龄、残疾、宗教、艾滋病毒感染状况、良知、信仰、政治见解、文化、语言、出身或其他任意事由。

As noted above, South Africa's labour laws provide targeted protections for vulnerable employees based on the applicable income threshold. The occupational health and safety framework has also been outlined, and the Employment Equity Act expressly prohibits unfair discrimination while imposing a duty on employers to eradicate it in the workplace. Discrimination is unfair when it occurs on one or more protected grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth, or any other arbitrary ground.

根据《就业公平法》颁布的 2022 年《防止与消除骚扰良好行为准则》将职场骚扰界定为任何有损尊严或制造恐吓、敌对或冒犯环境的不当行为。该准则强调，种族骚扰构成不公平歧视，并要求雇主建立预防和消除骚扰的机制。

The Code of Good Practice on the Prevention and Elimination of Harassment (2022), issued under the Employment Equity Act, addresses workplace harassment as any unwanted conduct that undermines dignity or creates an intimidating, hostile, or offensive environment. The Code underscores that racial harassment constitutes unfair discrimination and requires employers to implement mechanisms to prevent and eliminate it.

VI. 个人信息与隐私 Personal Information and Privacy

1. 一般规定 General Rules

2013 年《个人信息保护法》（第 4 号，POPI）对雇主就从雇员处收集的个人信息及特殊个人信息的管理规定了多项义务，旨在平衡雇主的经营权与雇员的隐私权。

The Protection of Personal Information Act 4 of 2013 (POPI) places several obligations on employers in the management of personal and special personal information collected from employees, in an endeavour to balance the right of employers to conduct business with the rights of employees to privacy.

POPI 适用于雇主对雇员个人信息及特殊个人信息的“处理”或“进一步处理”。信息“处理”涉及广泛活动，包括最初获取或收集个人信息、保存与使用、查阅与披露，以及最终的数据处置。

POPI applies to the ‘processing’ or ‘further processing’ of personal and special personal information of employees by an employer. The ‘processing’ of information relates to a comprehensive range of activities. It includes the initial obtaining or collection of personal information, the retention and use thereof, access and disclosure and finally the disposal of the data.

尽管 POPI 禁止处理特殊个人信息，但在以下情形下雇主可进行处理：获得雇员明确同意；负有法定义务；信息属于公开领域；或为历史、统计或研究目的处理信息。

Although, POPI prohibits the processing of special personal information. An employer can process this information if, amongst others; it obtains express consent of the employee; it has a legal duty to do so; the information is available in the public domain or the information is being processed for historical; statistical or research purposes.

此外，雇员有权查阅其个人信息，并请求更正、销毁或删除其个人信息。雇员亦可基于特定理由反对对其个人信息进行处理或进一步处理。

An employee, in addition, has the right to access his or her personal information and to request the correction, destruction or deletion of his or her personal information. The employee may also on specified grounds object to the processing or further processing of personal information.

为符合合规要求，建议雇主采取以下措施：

To be compliant an employer is recommended to take the following steps:

- 任命信息官
Appoint an information officer
- 对从招聘到退休过程中收集和保存的个人信息进行分析，重点关注：
Conduct an analysis of the personal information collected and retained in the process from recruitment to retirement paying attention to:
 - 信息收集目的
The purpose for the collection of the information
 - 信息来源与质量
The sources of and the quality of the information
 - 信息用途
What the information is used for
 - 记录保存原因及期限
Why records are retained and for how long
 - 保护信息的安全措施
The security measures to protect the information
 - 已备案的同意书

- The consents on record
- 特殊个人信息的界定及处理方式
What constitutes special personal information and how it is treated
- 对个人信息保护措施开展风险评估
Conduct a risk assessment on the measures to protect personal information
- 修订人力资源及沟通政策以确保符合 POPI
Revisit their HR and communication policies to ensure compliance with POPI
- 确保与向其提供个人信息的第三方的合同安排充分合规
Ensure that their contractual arrangements with third parties to whom they supply personal information are adequate
- 为雇员提供 POPI 合规培训
Provide training to their employees on compliance with POPI
- 建立雇员查阅个人信息的程序
Put in place procedures for employees to gain access to their personal information
- 修订雇佣合同，约定同意处理及进一步处理个人信息
Revise contracts of employment to provide for consent to process personal information and for further processing

VII. 反歧视与反骚扰 Anti-Discrimination and Anti-Harassment

1. 一般规定 General Rules

如上所述，《就业公平法》（EEA）通过禁止不公平歧视促进职场平等与公平对待，同时作为实施平权行动的机制，纠正因历史原因导致的雇佣及职场弱势地位。平权行动措施适用于指定雇主与指定群体。

As indicated above, the EEA promotes workplace equality and fair treatment, by prohibiting unfair discrimination. It also serves as a mechanism to enforce affirmative action to redress disadvantages in employment and the workplace due to historical reasons. The affirmative action measures are applicable to designated employers and designated groups.

不公平歧视：《就业公平法》明确禁止不公平歧视，并要求雇主在职场消除不公平歧视。基于一项或多项列明的受保护理由实施的歧视均属不公平歧视，包括：种族、性别、性、怀孕、婚姻状况、家庭责任、民族或社会出身、肤色、性取向、年龄、残疾、宗教、艾滋病毒感染状况、良知、信仰、政治见解、文化、语言、出身或其他任意理由。

Unfair Discrimination: The EEA explicitly prohibits unfair discrimination and places a duty on employers to eliminate unfair discrimination in the workplace. Discrimination is unfair if it is committed on any one or more of the listed or protected grounds. These grounds are as follows: race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth or on any other arbitrary ground.

同工同酬：《就业公平法》保障“同工同酬”，消除基于种族等理由的不公正薪酬差异，在所有人群中推行公平薪酬实践。

Equal Pay for Equal Work: The EEA ensures “equal pay for equal work” to address any unjust pay differences based on race, among other grounds, enforcing fair compensation practices across all demographics.

根据《就业公平法》颁布的 2022 年《防止与消除骚扰良好行为准则》将职场骚扰界定为任何有损尊严或制造恐吓、敌对或冒犯环境的不当行为。该准则强调，种族骚扰构成不公平歧视，并要求雇主建立预防和消除骚扰的机制。

The Code of Good Practice on the Prevention and Elimination of Harassment (2022), issued under the Employment Equity Act, addresses workplace harassment as any unwanted conduct that undermines dignity or creates an intimidating, hostile, or offensive environment. The Code underscores that racial harassment constitutes unfair discrimination and requires employers to implement mechanisms to prevent and eliminate it.

南非就业公平立法中的平权行动主要针对种族、性别和残疾。《就业公平法》将平权行动定义为“确保来自指定群体的合格人员享有平等就业机会，并在指定雇主的所有职业层级中公平代表的措施”。但平权行动不得对非指定群体人员构成绝对障碍。

Employment equity legislation in South Africa in terms of affirmative action primarily focuses on race, gender and disability. The EEA defines affirmative action as "measures designed to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational levels in the workforce of a designated employer." However, affirmative action measures cannot constitute an absolute barrier to people who are not a part of the designated groups.

《就业公平法》近期修订后，指定雇主定义为：雇员 50 人及以上的雇主、市政当局、国家机关，以及根据《劳动关系法》集体协议被指定为指定雇主的雇主。指定雇主必须遵守《就业公平法》中的平权行动措施。

The EEA has recently been amended to define designated employers as an employer who employs 50 or more employees, municipalities, organs of state, and employers bound by a collective agreement in terms of the LRA that appoints it as a designated employer. A designated employer is obliged to adhere to the affirmative action measures in the EEA.

指定群体指南非公民（无论出生或血统），包括黑人（非洲人、印度人或有色人种）、女性及残疾人。

Designated groups are citizens of South Africa, either by birth or descent, and who are black (African, Indian, or Coloured), women or people with disabilities.

平权行动计划：指定雇主必须制定平权行动措施，根据经济活跃人口结构，以及近期修订后由就业与劳工部长设定的行业目标，提高指定群体在各级岗位的代表性。包括消除阻碍公平代表的障碍，尤其对历史弱势群体，并实施公平招聘与职业发展措施。

Affirmative Action Plans: Designated employers must establish affirmative action measures aimed at increasing representation of the designated groups within all levels of the workforce in line with the economically active population demographic and, based on the recent amendments, sectoral targets set by the Minister of Employment and Labour. This includes removing barriers that hinder equitable representation, especially for historically marginalised groups, and implementing measures to ensure equitable hiring and career advancement.

就业公平计划：指定雇主须制定 1 至 5 年期多年度就业公平计划，规划并跟踪公平就业举措。计划必须包含全面的劳动力分析、具体公平目标及对指定群体的问责措施，并与国家 / 区域人口结构、行业目标保持一致，准确反映劳动力多样性。

Employment Equity Plans: Designated employers are required to create multi-year employment equity plans, with durations ranging from one to five years, to structure and track their employment equity initiatives. These plans must incorporate a comprehensive workforce analysis, specific equity targets, and accountability measures for designated groups. The plans must align with, among other things, national and regional demographics and sector targets to accurately reflect the diversity of the workforce.

就业公平报告：指定雇主有义务每年提交就业公平报告，说明多元化目标进展及现存差距。报告须与代表性工会或雇员提名代表协商制定，确保透明与包容。

Employment Equity Reporting: Designated employers are obligated to submit an annual employment equity report outlining progress toward diversity targets and identifying any existing gaps. Reports must be developed in consultation with representative trade unions or employee-nominated representatives to ensure transparency and inclusivity.

2. 受保护特征 Protective Characters

《就业公平法》（EEA）在其反歧视框架下列出了全面的受保护特征清单。这些特征旨在保护个人在工作场所免受不公平待遇，并在所有雇佣行为中促进机会均等。《就业公平法》禁止基于以下理由的直接歧视和间接歧视：

The EEA outlines a comprehensive list of protected characteristics under its anti-discrimination framework. These characteristics are designed to safeguard individuals from unfair treatment in the workplace and promote equal opportunity across all employment practices. The EEA prohibits both direct and indirect discrimination on the following grounds:

- 种族
Race
- 性别
Gender
- 生理性别
Sex
- 怀孕
Pregnancy
- 婚姻状况
Marital status
- 家庭责任
Family responsibility
- 族裔或社会出身

- Ethnic or social origin
- 肤色
- Color
- 性取向
- Sexual orientation
- 年龄
- Age
- 残疾
- Disability
- 宗教
- Religion
- 艾滋病毒感染状况
- HIV status
- 良知
- Conscience
- 信念
- Belief
- 政治见解
- Political opinion
- 文化
- Culture
- 语言
- Language
- 出生
- Birth

任何其他可能损害人格尊严或以类似方式对个人产生不利影响的理由

Any other arbitrary ground that may impair human dignity or adversely affect the individual in a comparable way.

“任何其他任意理由”的纳入允许对歧视进行灵活解释，使法院和仲裁机构能够评估某一特征是否被不公平地用于使雇员处于不利地位。

The inclusion of “any other arbitrary ground” allows for a flexible interpretation of discrimination, enabling courts and tribunals to assess whether a particular characteristic has been used unfairly to disadvantage an employee.

雇主必须在雇佣的各个方面消除不公平歧视，包括招聘、晋升、培训、薪酬和终止劳动关系。雇主还必须实施平权行动措施，以提高历史上处于弱势地位群体的代表性，

包括南非黑人（非洲人、有色人种和印度人）、妇女和残疾人。这些措施必须合理、有针对性，并记录在就业公平计划中，该计划须接受就业和劳动部的审查。

Employers are required to eliminate unfair discrimination in all aspects of employment, including recruitment, promotion, training, remuneration, and termination. They must also implement affirmative action measures to advance the representation of historically disadvantaged groups, including Black South Africans (African, Coloured, and Indian), women, and persons with disabilities. These measures must be rational, targeted, and documented in an employment equity plan, which is subject to review by the Department of Employment and Labour.

VIII. 内部政策 **Internal Policies**

1. 适用性 **Applicability**

雇主通过内部雇佣政策管理职场，既常见也符合法律建议。此类政策确保劳动关系各方面的一致性、公平性与合法合规，适用于所有类型劳动者，包括永久雇员、固定期限雇员、非全日制及临时雇员，在某些情况下，根据合作性质与职场环境，甚至适用于独立承包商。

It is both common and legally advisable for employers to manage the workplace through internal employment policies. These policies ensure consistency, fairness, and legal compliance across all aspects of the employment relationship. They are applicable to all categories of workers, including permanent, fixed-term, part-time, and temporary employees, and in some cases, even to independent contractors depending on the nature of the engagement and the workplace environment.

内部政策通常涵盖纪律程序、申诉处理、休假、绩效管理、职场行为及健康安全标准等领域。此类政策并非仅为行政指引，而是构成更广泛雇佣框架的一部分，并经常在雇佣合同中引用。

Internal policies typically cover areas such as disciplinary procedures, grievance handling, leave, performance management, workplace conduct, and health and safety standards. These policies are not just administrative guidelines, instead they form part of the broader employment framework and are often referenced in employment contracts.

鼓励雇主制定既符合自身组织独特需求、又遵守法定要求的政策。

Employers are encouraged to develop policies that reflect the unique needs of their organisation while remaining compliant with statutory requirements.

2. 有效性 **Validity**

内部雇佣政策属于职场治理的一部分，但其有效性与可执行性取决于政策的推行方式，以及是否对雇员的雇佣条款和条件产生实质性影响。对于非合同性质的政策（如行为守则、着装守则），雇主一般可单方实施；但当政策影响薪酬、工时、休假等核心雇佣条款时，则必须履行协商程序。

Internal employment policies are a part of workplace governance, but their validity and enforceability depend on how they are introduced and whether they materially affect employees' terms and conditions of employment. Employers are generally allowed to implement policies unilaterally if they are non-contractual, such as codes of conduct or dress codes, but must follow consultation procedures when policies impact core employment terms like remuneration, working hours, or leave.

若某项政策实质性变更雇佣条件，雇主须与受影响的雇员或其工会代表协商。

When a policy materially alters employment conditions, employers are required to consult with affected employees or their trade union representatives.

关于母公司政策的适用，南非劳动法优先于外国公司标准。即使母公司位于境外，其南非分公司或子公司也必须遵守当地劳动法律。南非法院一贯裁定，在南非工作的雇员，即使受雇于外资实体，亦受南非劳动法保护。

Regarding the application of parent company policies, South African labor law takes precedence over foreign corporate standards. Even if a parent company is based abroad, its South African branch or subsidiary must comply with local labour legislation. South African courts have consistently ruled that employees working in South Africa, even for foreign-owned entities, are protected by South African labour laws.

因此，外国母公司的内部政策可作为参考或框架，但除非与南非劳动法一致，否则不得直接适用。

Therefore, while internal policies from a foreign parent company may be used as a reference or framework, they cannot be applied directly unless they are aligned with South African labour laws.

3. 吹哨人制度 Whistleblowing

南非的举报框架主要受 2000 年《受保护披露法》（第 26 号，PDA）规制。该法为公营和私营部门中披露职场不当行为信息的雇员提供法律保护。若披露内容包含关于不当行为的信息（如犯罪活动、违法行为、腐败或不道德行为），且向适当对象（包括雇主、法律顾问、国会议员或公共保护人、审计长等指定机构）作出，则该披露可获得保护。

South Africa's whistleblowing framework is governed primarily by the Protected Disclosures Act 26 of 2000 (PDA). It provides legal protection to employees in both the public and private sectors who disclose information about workplace impropriety. A disclosure qualifies for protection if it contains information about misconduct, such as criminal activity, legal non-compliance, corruption, or unethical behavior and is made to an appropriate party, including the employer, a legal advisor, a Member of Parliament, or designated authorities like the Public Protector or Auditor-General.²

² Section 1 and 6 of the Protected Disclosures Act 26 of 2000.

雇主负有法定义务建立内部举报程序、告知雇员其在《受保护披露法》下的权利、保护举报人免遭报复，并公平及时地调查披露事项。未履行上述义务可能导致法律责任及声誉损害。举报人不得因作出受保护披露而受到纪律处分或解雇。

Employers are legally obligated to establish internal whistleblowing procedures, inform employees of their rights under the PDA, protect whistleblowers from retaliation, and investigate disclosures fairly and promptly. Failure to meet these obligations can result in legal liability and reputational harm. Whistleblowers must not be subjected to disciplinary action or dismissal for making a protected disclosure.³

IX. 企业交易事项 **Transactions**

1. 劳动关系 **Employment Relationship**

根据 1995 年《劳动关系法》（第 66 号，LRA）第 197 条，当一项业务作为持续经营实体进行转让时，该业务的雇员将自动由新业主雇佣，且整体雇佣条件不得低于原有水平，雇员与新雇主无需签订新的雇佣合同。因此，《劳动关系法》第 197 条对“未经雇员同意不得转让雇佣合同”的原则作出了例外规定，并具有双重目的，即保护雇员和为企业转让提供便利。股权转让交易不适用第 197 条，因为雇主身份并未改变，雇佣合同因此不受影响。但是，如果在股权转让的同时进行了业务重组，则可能触发第 197 条的适用。这需要结合第 197 条的构成要件以及法院列明的相关考量因素进行事实认定。

In terms of section 197 of the Labour Relations Act 66 of 1995 (LRA), when a business is transferred as a going concern, the effect is that employees of that business automatically become employed by the new owner of the business, on terms which are on the whole not less favourable, without the need for new contracts of employment between the employees and the new owner. Section 197 of the LRA therefore makes provision for an exception to the principle that the contract of employment may not be transferred without the consent of the employees, and it has the dual purpose of protecting employees and facilitating business transfers. Sale of share transactions do not attract the attention of section 197, as the identity of the employer remains unchanged, and hence contracts of employment remain unaffected. However, to the extent that businesses are restructured pursuant to the sale of shares, section 197 may be triggered. This will be a factual enquiry taking into account the elements of section 197 together with the relevant factors for consideration as outlined by the courts.

任何商业转让方式均可适用，无论其形式或实质为业务出售、合并、收购、外包、交换、赠与或任何其他导致用工主体从一个雇主转移至另一雇主的方式。相关交易的类型并非判断是否发生雇主间转让的决定性因素。在每一情形中，均须对相关事实进行评估。该判断始终遵循实质重于形式的原则。在南非，服务转让无论属于首次转让还是后续多次转让，均可能适用第 197 条。

Any commercial transfer mechanism may suffice, irrespective of whether it takes the form of, or is in reality, a sale of business, merger, takeover, outsourcing, exchange, donation or any

³ Section 3 of the Protected Disclosures Act 26 of 2000.

other mechanism which has the effect of shifting an entity from one employer to another. The type of transaction involved is not determinative of the question of whether there was a transfer from one employer to another. In each instance, the relevant facts must be evaluated. The enquiry is always one of substance over form. In a South African context, transfers of services, whether as ‘first’ or a subsequent generation transfer, are likely to attract the application of section 197.

对《劳动关系法》第 197 条适用的判断遵循实质重于形式原则，必须结合交易具体情况客观认定。法院进一步指出，应考虑以下非穷尽性因素（各因素并非单独具有决定性）：是否转让有形或无形资产、是否转让雇员、是否转让客户，以及新雇主是否继续经营相同业务。

The assessment of the application of section 197 of the LRA is one of substance over form and must be determined objectively with reference to the particular circumstances of the transaction. The court held further that the following non-exhaustive factors should be considered (each factor is not individually determinative): whether there are tangible or intangible assets being transferred; whether workers are transferred; whether customers are being transferred; and whether the same business is being undertaken by the new employer.

2. 补偿与待遇 Compensation

由于劳动关系继续存续，雇员无权主张经济补偿金或额外补偿，除非转让后被裁员、雇佣条件未经同意被实质性降低，或转让直接导致劳动关系终止。

As the employment relationship remains intact, there is no legal basis for severance pay or additional compensation unless the employee is retrenched post-transfer, their terms are materially worsened without consent, or the transfer results in termination.

经济补偿金受《基本雇佣条件法》（BCEA）第 41 条规制，被裁员的雇员每完成一年工龄可获得一周工资作为经济补偿金，除非其无正当理由拒绝提供的替代性工作。

Severance pay is governed by Section 41 of the Basic Conditions of Employment Act (BCEA), which entitles retrenched employees to one week’s pay per completed year of service unless they unreasonably refuse an offer of alternative employment.

X. 劳动关系的终止 Termination of Employment

1. 解雇事由 Termination Grounds

根据《劳动关系法》（LRA）规定，解雇必须同时具备实体公平性与程序公平性。雇主不得随意或无正当理由解雇雇员。只有基于正当理由并遵循公平程序的解雇才属合法。

Dismissals must be both substantively and procedurally fair, as required by the Labour Relations Act (LRA). Employers may not dismiss employees arbitrarily or without cause. A dismissal is only lawful if it is based on a fair reason and follows a fair procedure.

《劳动关系法》认可三项解雇理由：不当行为、能力不足及经营需要。不当行为包括盗窃、严重不服从、骚扰等违规行为；能力不足指工作表现不佳、健康状况不佳或岗位不适任；经营需要指因经济、技术或结构调整而进行的裁员。基于上述理由的解雇必须合理且有证据支持。例如，以工作表现不佳为由解雇前，须先提供辅导、培训及改进机会。

The LRA recognises three grounds for dismissal: misconduct, incapacity, and operational requirements. Misconduct includes infractions such as theft, gross insubordination, or harassment. Incapacity refers to poor performance, ill health or incompatibility, and operational requirements relate to retrenchments due to economic, technological, or structural changes. Dismissals based on these grounds must be proportionate and supported by evidence. For example, poor performance dismissals require prior counselling, training, and an opportunity to improve.

若解雇基于以下禁止性理由，则自动构成不公平解雇：参与合法罢工、怀孕、歧视（如种族、性别、宗教），或行使劳动法规赋予的权利。

A dismissal is automatically unfair if it is based on prohibited grounds such as participation in a lawful strike, pregnancy, discrimination (e.g. race, gender, religion), or the exercise of rights under labour legislation.

程序公平同样重要。雇主应将涉嫌的不当行为或解雇理由告知雇员，允许雇员准备并作出回应，并清晰告知处理结果。

Procedural fairness is equally important. An employer should notify the employee of the alleged misconduct or reason for dismissal, and for the employee to prepare and respond to the allegations, and communicate the outcome clearly.

即使解雇理由正当，若缺乏正当理由或未遵循公平程序，仍会构成不公平解雇。雇员可向调解、调停与仲裁委员会（CCMA）或劳动法院质疑该解雇。

Failure to effect a dismissal for a fair reason or without following a fair process, even if the reason for dismissal is valid, can render the dismissal unfair. Employees may challenge such dismissals at the Commission for Conciliation, Mediation and Arbitration (CCMA) or the Labour Court.

2. 解雇程序

Termination Procedure

劳动关系的终止主要受《基本雇佣条件法》（BCEA）和《劳动关系法》（LRA）规制。两部法律规定了解雇的要求，包括通知期、代通知金，以及即时解雇、裁员等例外情形。

Termination of employment is primarily governed by the BCEA and the LRA. These statutes set out the requirements for dismissal, including notice periods, payment in lieu of notice, and exceptions such as summary dismissal or retrenchment.

在大多数情况下，解雇前必须发出终止通知。根据 BCEA，最低通知期为：工作六个月或以下的雇员为一周；工作超过六个月但不足一年的为两周；工作一年或以上的为四周。通知期不得在假期（病假除外）内发出，也不得与假期同期计算。

In most cases, notice of termination must be given prior to dismissal. According to the BCEA, the minimum notice periods are: one week for employees with six months or less of service;

two weeks for those employed for more than six months but less than a year; and four weeks for employees with one year or more of service. It cannot be issued during periods of leave (except sick leave) and must not run concurrently with such leave.

在裁员情形下，雇主必须遵循《劳动关系法》第 189 条规定的协商程序，包括与受影响雇员或其工会协商解雇替代方案、遴选标准、经济补偿金及减轻裁员影响的措施。雇主必须以书面形式披露所有相关信息，并在发出终止通知前进行充分协商。

In the case of retrenchments, employers must follow the consultation process outlined in Section 189 of the LRA. This includes engaging with affected employees or their unions to discuss alternatives to dismissal, selection criteria, severance pay, and measures to mitigate the impact of retrenchment. The employer must disclose all relevant information in writing and allow for meaningful consultation before issuing termination notices.

3. 离职补偿与赔偿 **Severance and Compensation**

经济补偿金权利受《基本雇佣条件法》（BCEA）规制，专门适用于因经营需要（如裁员）而被解雇的情形。因不当行为、能力不足被解雇或自愿辞职的雇员无权获得经济补偿金，除非合同或协商协议另有约定。

The right to severance pay is governed by the BCEA and applies specifically to dismissals due to operational requirements, such as retrenchments. Employees dismissed for misconduct, incapacity, or who resign voluntarily are not entitled to severance pay unless a contractual or negotiated agreement provides otherwise.

雇员须已完成至少一年连续服务方可享有经济补偿金。法定最低标准为每满一年工龄支付一周薪酬，“薪酬”不仅包括基本工资，还包括定期奖金、住房或交通补贴，以及食物、住宿等福利的现金价值。佣金制雇员的经济补偿金按平均收入计算，包含基本工资与佣金。

To qualify for severance pay, an employee must have completed at least one year of continuous service. The statutory minimum is one week's remuneration for each completed year of service, and "remuneration" includes not only basic salary but also regular bonuses, housing or transport allowances, and the cash value of benefits like food or accommodation. For commission-based employees, severance is calculated on average earnings, which includes both base salary and commission.

雇主可通过雇佣合同、集体协议或裁员协商，提供高于法定最低标准的补偿方案。Employers may offer more generous packages than the statutory minimum through employment contracts, collective agreements, or during retrenchment consultations.

经济补偿金不同于代通知金、累积假期工资等其他终止支付款项。Severance pay is distinct from other termination payments such as notice pay and accrued leave.

4. 不当解雇 **Wrongful Termination**

根据南非劳动法，不当解除劳动合同即构成不公平解雇，雇主可能因此面临法律争议，并可能被判支付赔偿金及 / 或恢复雇员职位。《劳动关系法》为救济措施确立了规范框架，其中恢复原职为首要救济方式。恢复原职旨在将雇员恢复至原有职位，并补发全部欠薪与福利，实质上撤销解雇决定。然而，恢复原职并非自动适用，若雇员不愿返回、雇佣关系已无法维系，或因经营运营变动导致恢复原职不具备合理可行性，则相关申请可被驳回。

Under South African labour law, wrongful termination which is referred to as unfair dismissal, can expose employers to legal challenges that could result in compensation and/or reinstatement. The LRA provides a structured framework for remedies, with reinstatement being the primary remedy. Reinstatement aims to restore the employee to their previous position with full back pay and benefits, effectively undoing the dismissal. However, reinstatement is not automatic and may be denied if the employee does not wish to return, if the employment relationship has become intolerable, or if reinstatement is not reasonably practicable due to operational changes.

如果恢复原职不具备可行性，调解、调停与仲裁委员会（CCMA）或劳动法院可以判令支付赔偿金。对于普通的不公平解雇，例如基于不当行为或工作能力不足的解雇，赔偿金上限为 12 个月的薪酬。在自动不公平解雇的情形下，例如涉及歧视或举报行为的解雇，赔偿金上限提高至 24 个月的薪酬。

If reinstatement is not feasible, the CCMA or the Labour Court may award compensation. For ordinary unfair dismissals, such as those based on misconduct or incapacity, the compensation is capped at 12 months' remuneration. In cases of automatically unfair dismissal, such as those involving discrimination, or whistleblowing, the cap increases to 24 months' remuneration.

5. 大规模解雇与裁员 Mass Termination and Layoffs

根据南非劳动法，《劳动关系法》第 189 条及第 189A 条对大规模解雇（通常称为裁员）作出了详细规范。该等规定适用于因经营需要而解雇雇员的情形，经营需要包括经济、技术、结构性需求或其他类似的商业需求。

South African labour law provides a detailed framework for mass terminations, commonly referred to as retrenchments, under Sections 189 and 189A of the LRA. These provisions apply when employees are dismissed due to operational requirements, which include economic, technological, structural, or similar business needs.

当考虑进行裁员时，雇主必须与受影响的雇员或其代表启动寻求共同共识的协商程序。该程序必须在作出任何最终决定之前开始，且必须涵盖关键事项，例如解雇的原因、所考虑的替代方案、受影响雇员的人数和类别、遴选标准、经济补偿金、提供的协助、解雇的时间安排以及未来重新雇佣的可能性。

When retrenchment is contemplated, employers must initiate a joint consensus-seeking consultation process with affected employees or their representatives. This process must begin before any final decision is made and must cover key issues such as the reasons for dismissal, alternatives considered, the number and categories of affected employees, selection criteria, severance pay, assistance offered, timing of dismissals, and possibilities for future re-employment.

第 189A 条适用于雇员人数超过 50 人的雇主进行的大规模裁员。当拟议解雇人数达到特定阈值时，该条款即适用：

Section 189A applies to large-scale retrenchments involving employers with more than 50 employees. It is triggered when the proposed number of dismissals meets specific thresholds:

- 10 名雇员（若雇主雇员人数不超过 200 人）
10 employees (if the employer has up to 200 employees)
- 20 名雇员（若雇主雇员人数为 201–300 人）
20 employees (if the employer has 201–300 employees)
- 30 名雇员（若雇主雇员人数为 301–400 人）
30 employees (if the employer has 301–400 employees)
- 40 名雇员（若雇主雇员人数为 401–500 人）
40 employees (if the employer has 401–500 employees)
- 50 名雇员（若雇主雇员人数超过 500 人）
50 employees (if the employer has more than 500 employees)

在此类情形下，协商期为 60 天，除非各方另有约定，否则在此期间不得实施解雇。若未能达成共识，雇员可发起罢工，或雇主可终止劳动关系。

In such cases, a 60-day consultation period follows, during which no dismissals may occur unless agreed otherwise. If consensus is not reached, employees may strike or the employer may terminate employment.

XI. 保密义务、竞业限制与非招揽条款 **Confidentiality, Non-Compete and Non-Solicitation**

1. 保密义务 **Confidentiality**

保密协议并非对所有雇员都具有强制性，但在雇员能够接触敏感信息或专有信息的岗位中通常会使用。此类协议通常包含在劳动合同中，或作为独立文件签署，只要其内容合理且不侵犯宪法权利，根据南非法律即可强制执行。雇员通常有义务为雇主的最佳利益行事。

Confidentiality agreements are not mandatory for all employees but are commonly used in roles where individuals have access to sensitive or proprietary information. These agreements are typically embedded in employment contracts or signed as standalone documents and are enforceable under South African law, provided they are reasonable and do not infringe constitutional rights. Ordinarily employees are required to act in the best interests of the employer.

2. 竞业限制与非招揽条款 **Non-Compete and Non-Solicitation**

竞业限制与禁止招揽条款在符合合理性及公共政策合规性的特定标准时，具有合法性及可执行性。此类条款通常被纳入雇佣合同，以保护雇主的专有利益，例如商业秘密、客户关系以及保密的商业信息。

Non-compete and non-solicitation clauses are legal and enforceable, provided they meet specific criteria of reasonableness and public policy compliance. These clauses are commonly included in employment contracts to protect an employer's proprietary interests, such as trade secrets, client relationships, and confidential business information.

竞业限制条款限制前雇员在特定期限内、特定地域范围内为竞争对手工作或创办竞争性业务。该等条款若要具备可执行性，必须：

A non-compete clause restricts a former employee from working for a competitor or starting a competing business for a defined period and within a specific geographic area. For such a clause to be enforceable, it must:

- 保护合法的商业利益，并且
Protect a legitimate business interest, and
- 在期限、地域范围以及受限活动范围上具有合理性
Be reasonable in duration, geographic scope, and scope of restricted activities

南非法院采用平衡测试来评估可执行性，权衡雇主保护其业务的需求与雇员谋生的权利。

South African courts apply a balancing test to assess enforceability, weighing the employer's need to protect its business against the employee's right to earn a living.

XII. 员工代表与工会 **Work Representation and Trade Unions**

1. 员工代表制度 **Work Representation**

《劳动关系法》对工会和工作场所论坛的设立及职能作出规范。此外，该法规定了工会及工作场所论坛作为代表雇员与雇主进行集体谈判的机构的角色，通过申请组织权、谈判集体协议以及在产业行动中代表雇员来维护雇员利益。进一步而言，工会和工作场所论坛还可在各类工作场所程序中代表雇员，例如纪律处分、能力不足调查以及裁员程序。

The LRA regulates the establishment and functions of trade unions and workplace forums. In addition, it provides for the role of trade unions and workplace forums as bodies which engage in collective bargaining with employers on behalf of employees to advocate for the interests of employees through applying for organisational rights, negotiating collective agreements, and representing employees in industrial action. Furthermore, trade unions and workplace forums may represent employees during various workplace procedures such as disciplinary action, incapacity enquiries, and retrenchments.

XIII. 争议解决 **Dispute Resolution**

1. 程序与执行 **Procedure & Enforcement**

劳动争议的解决受《劳动关系法》规制，该法确立了由调解、调停与仲裁委员会（CCMA）和劳动法院组成的结构化处理流程。调解、调停与仲裁委员会为解决不公平解雇、不当劳动行为等常见争议提供了便捷的解决途径，主要通过调解和仲裁方式处理。若调解失败，案件可进入仲裁程序，或在某些情况下提交至劳动法院。

Resolution of labour disputes is governed by the LRA, which establishes a structured process involving the CCMA and the Labour Court. The CCMA serves as an accessible forum for resolving common disputes such as unfair dismissals and unfair labour practices through conciliation and arbitration. If conciliation fails, the matter may proceed to arbitration or in certain cases to the Labour Court.

劳动争议诉求适用严格的时效期限：

Strict limitation periods apply to employment claims:

- 不公平解雇：须在解雇之日起 30 日内提交申请
Unfair dismissal: must be referred within 30 days of dismissal.
- 不当劳动行为：须在事件发生或知晓之日起 90 日内提交申请
Unfair labour practices: within 90 days of the incident or awareness thereof.
- 歧视诉求：须在该作为或不作为发生之日起 6 个月内提交申请
Discrimination claims: within 6 months of the act or omission.
- 向劳动法院申请复审：须在仲裁裁决送达之日起 6 周内提交申请
Review applications to the Labour Court: within 6 weeks of the arbitration award being served.

若未能遵守上述期限，当事人可申请宽恕延期，该申请需证明存在合理事由，法院将综合考量延误程度、延误原因、胜诉可能性以及对另一方可能造成的损害等因素。

If these deadlines are missed, parties may apply for condonation, which requires showing good cause by considering the degree of lateness, reasons for delay, prospects of success, and potential prejudice to the other party.

2. 权利放弃与执行

Waiver & Enforcement

雇员通常不得放弃其法定权利，尤其是受《劳动关系法》及《基本雇佣条件法》保护的權利。这些成文法确立了最低雇佣标准，并保障基本权利，例如免受不公平解雇的保护、最低工资、休假权利以及经济补偿金。任何试图排除这些保障的约定，如果违背公共政策或宪法权利（如《宪法》第 23 条规定的公平劳动实践权利），则很可能不具有执行力。

Employees generally cannot waive their statutory rights, particularly those protected under the LRA and BCEA. These statutes establish minimum employment standards and safeguard fundamental rights such as protection against unfair dismissal, minimum wage, leave entitlements, and severance pay. Any agreement that attempts to contract out of these protections is likely to be unenforceable if it undermines public policy or constitutional rights, such as the right to fair labour practices under Section 23 of the Constitution.

XIV. 其他事项

Others

1. 文化与宗教考量 Cultural and Religious Considerations

南非具有多元文化特征，拥有 11 种官方语言、多个族群以及广泛的宗教信仰。英语是主要商务语言。以重视社群与相互尊重为核心的乌班图理念塑造了职场文化，商业关系往往通过人际往来与信任逐步建立。会议可能以非正式交谈开始，尽管守时受到重视，但耐心与灵活性在谈判中同样重要。

South Africa is diverse, with 11 official languages, multiple ethnic groups, and a wide range of religions. English is the main business language. The philosophy of Ubuntu, valuing community and mutual respect shapes workplace culture, and business relationships often develop through personal interaction and trust. Meetings may start with informal conversation, and while punctuality is valued, patience and flexibility are important in negotiations.

宗教在社会中也发挥着重要作用。大多数南非人信奉基督教，星期日及基督教节日被广泛遵守。同时存在伊斯兰教、印度教、犹太教等少数宗教信仰，雇主应重视祷告时间、饮食需求及宗教节日。包容性的休假及职场政策有助于避免冲突并体现尊重。

Religion also plays a role in society. Most South Africans are Christian, with Sundays and Christian holidays widely observed. Minority faiths such as Islam, Hinduism, and Judaism are present, and employers should be sensitive to prayer times, dietary needs, and religious festivals. Inclusive leave and workplace policies help avoid conflict and demonstrate respect.

对投资者而言，成功往往取决于尊重劳动权利与劳动者尊严，因为工会具有较强影响力，且雇员十分重视公平对待。

For investors, success often depends on showing respect for labour rights and worker dignity, as unions are influential and workers value fair treatment.