

Immigration Law

22 June 2026

South Africa

- Beware! Breaching South Africa's immigration laws has its consequences



For more insight into our expertise and services



Beware! Breaching South Africa's immigration laws has its consequences

The past few months have been plagued with anti-immigrant protests, with stern positions being taken against the presence of foreign nationals in South Africa. To address the civil unrest and concerns relating to this issue, on 7 June 2026 President Cyril Ramaphosa addressed the Nation (Presidential Address) on, amongst other things, the government's approach on the crackdown on illegal immigration and violations of immigration and employment laws.

In light of Government's strengthened approach to address illegal immigration, it is more important than ever for employers to understand the consequences that may arise where they do not comply with South Africa's immigration laws. This alert provides a practical overview of the consequences under the Immigration Act 13 of 2002 (Immigration Act), as well as highlighting the new regime that will follow if the proposed amendments to the Employment Services Act 4 of 2014 (ES Act) are enacted.

Criminal offences under the Immigration Act

Section 49 of the Immigration Act outlines a comprehensive range of offences and corresponding penalties for various role players in the immigration space in respect of breaching certain of its provisions. The offences relevant to employers in relation to their employment of foreign nationals specifically are dealt with below with reference to their employment obligations under the Immigration Act.

Section 38(1) of the Immigration Act prohibits any person from employing:

- an illegal foreigner;
- a foreigner whose status does not authorise employment by that employer; or
- a foreigner on terms, conditions or in a capacity different from those contemplated in the foreigner's status.

Immigration Law

Where an employer **knowingly** employs a foreigner in violation of the Immigration Act, they are guilty of an offence and liable on conviction to:

- a fine or imprisonment not exceeding one year for a first conviction;
- imprisonment not exceeding two years or a fine for a second conviction; and
- imprisonment not exceeding five years without the option of a fine for a third or subsequent conviction.

Importantly, section 38(3) of the Immigration Act creates a statutory presumption in that where it is proved that a person was employed in violation of the provision, the employer is presumed to have known of the illegal employment at the time, unless they can show that (i) the person was employed in good faith; and (ii) the employer complied with the good faith obligation to ascertain that no illegal foreigners are in its employ. Stricter compliance is required of any employer who employs more than five employees or has previously been found guilty of an offence under this section of the Immigration Act.

Failure to comply with any duties and obligations under sections 38 to 46 of the Immigration Act constitutes an offence under section 49(6), punishable by a fine or imprisonment not exceeding five years.

While the Immigration Act currently provides for consequences for breaching its provisions, during the Presidential Address, President Ramaphosa stated that Government was considering increasing the penalties applicable to employers who violate the Immigration Act, with specific emphasis on imprisonment. This is to address the situation where some employers who, after being charged and found guilty of violating the Immigration Act, merely pay a fine and continue employing undocumented foreign nationals whom they exploit.

A new enforcement regime

The revised Employment Services Amendment Bill, 2026 (ESAB), which was published on 29 May 2026, also seeks to introduce substantially higher penalties for contravening South Africa's immigration laws.

New obligations on employers

The proposed new section 12A of the ES Act would prohibit any person from employing a foreign national unless that foreign national is permitted to:

- be employed in terms of a visa issued under the Immigration Act or the Refugees Act 130 of 1998; or
- work in terms of any other legislation or binding international agreement.



REPUBLIC OF
SOUTH AFRICA
REPUBLIQUE
D'AFRIQUE DU SUD
PASSPORT
PASSEPORT

Immigration Law

Employers who employ foreign nationals will also be required to:

- ascertain that the foreign national is entitled to work in South Africa and to perform the specific work for which they are engaged;
- satisfy themselves, in the prescribed manner, that no persons in South Africa (other than foreign nationals) with the necessary skills to fill the vacancy before recruiting a foreign national;
- prepare a skills transfer plan in respect of any position in which a foreign national is employed (unless the Minister of Employment and Labour determines otherwise by notice in the Government Gazette);
- employ foreign nationals on terms and conditions of employment that are not inferior to those applicable to South African citizens; and
- retain copies of the relevant visa or permit and all other documents showing that the foreign national is lawfully entitled to be employed in South Africa.

The proposed new section 12E of the ES Act would further prohibit employers from requiring or permitting a foreign national to:

- perform any work not authorised in terms of their visa or permit; or
- engage in work contrary to the terms and conditions of their visa, permit or any applicable law.

Substantially increased civil penalties

The ESAB proposes a tiered civil penalty regime for contraventions of section 12A, section 12B(8) (exceeding a quota) and section 12E of the ES Act. On application by the Director-General, the Labour Court may impose:

- R100,000 in respect of a first-time contravention;
- R200,000 in respect of a previous contravention within the preceding three years; or
- the greater of R1 million or 10% of the employer's annual turnover in the preceding financial year for employers with two or more prior contraventions, taking into account any economic benefit derived from the contravention.

Additionally, the ESAB proposes to increase the existing maximum civil fine (for contraventions of the provisions listed in Schedule 3 to the ES Act) from R50,000 to R100,000.

Expanded enforcement by labour inspectors

The proposed amended section 49(1A) of the ES Act will empower labour inspectors (appointed under section 63 of the Basic Conditions of Employment Act 75 of 1997) to monitor and enforce compliance with both the amended ES Act and section 38 of the Immigration Act, through an inter-ministerial agreement between the Minister of Home Affairs and the Minister of Employment and Labour. This cross-enforcement mechanism aligns with the phased recruitment of 10,000 new labour inspectors mentioned in the Presidential Address to assist with compliance inspections and enforcement and intensified inspections by the Department of Home Affairs, the Border Management Authority, the South African Police Service and the Department of Employment and Labour to identify undocumented migrants, with specific attention placed on targeting employers of undocumented workers.

The dedicated immigration court – implications for prosecution and enforcement

On 9 June 2026, the Minister of Justice and Constitutional Development announced plans to establish a dedicated immigration court near OR Tambo International Airport, which represents a fundamental shift in how immigration prosecutions and deportation proceedings will be processed. The current backlog in adjudicating immigration appeals and enforcement matters (which can take up to two years to resolve) has historically diluted the deterrent effect of the criminal regime under the Immigration Act.

Immigration Law

A dedicated court is intended to:

- expedite prosecutions of employers who contravene sections 38 and 42 of the Immigration Act;
- speed up deportation orders and confirmation proceedings under section 34 of the Immigration Act;
- process civil penalty applications brought by the Director-General under the proposed ESAB more efficiently; and
- provide a specialised forum with the necessary expertise and capacity to deal with the increasingly complex intersection of immigration, labour and criminal law.

For employers and immigration practitioners, this means enforcement will move considerably faster than it has historically, and the risk of successful prosecution has materially increased.

Key takeaways

Against this backdrop, employers would be well-advised to proactively review their immigration compliance positions. The criminal consequences of non-compliance are significant, span multiple statutory provisions, and include imprisonment and, under the proposed ESAB regime, civil penalties of a magnitude not previously seen in South African immigration and employment law. With dedicated immigration courts on the horizon, the age of low-risk non-compliance is over.

Employers should therefore:

- Regularly audit the immigration status of all foreign national employees, with particular attention to visa or permit expiry dates, visa conditions and whether the employee is authorised to work in the role and for the employer in question.
- Discharge the good faith obligation under section 38(2) of the Immigration Act by implementing written compliance processes to verify and record the immigration status of all foreign employees, including keeping copies of relevant visas, permits and the employee's passport.
- Bear in mind that the statutory presumption in section 38(3) of the Immigration Act places the burden on the employer to disprove knowledge of illegal employment.
- Be alive to the fact that directors and HR personnel may themselves face criminal liability, including imprisonment upon conviction, for offences under section 49(3) of the Immigration Act.

Lee Masuku and Taryn York



OUR TEAM

For more information about our Immigration sector and services in South Africa, Kenya and Namibia, please contact:



Sammy Ndolo

Managing Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E sammy.ndolo@cdhlegal.com



Alex Muchira

Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E alex.muchira@cdhlegal.com



Frieda Kishi

Director | Namibia
T +264 (0)83 373 0100
E frieda.kishi@cdhlegal.com



Imraan Mahomed

Director:
Employment Law
T +27 (0)11 562 1459
E imraan.mahomed@cdhlegal.com



Lee Masuku

Senior Associate:
Employment Law
T +27 (0)11 562 1213
E lee.masuku@cdhlegal.com



Abednego Mutie

Senior Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E abednego.mutie@cdhlegal.com



Taryn York

Senior Associate:
Employment Law
T +27 (0)11 562 1732
E taryn.york@cdhlegal.com



Mapaseka Nketu

Paralegal:
Employment Law
T +27 (0)11 562 1178
E mapaseka.nketu@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.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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, 3rd 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

ONGWEDIVA

Shop No. 94, Oshana Mall, Ongwediva, Namibia
T +264 (0) 81 287 8330 E cdhnamibia@cdhlegal.com

STELLENBOSCH

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

WINDHOEK

2nd Floor, 4@Steps - East Tower, Hilltop Estate, Kleine Kuppe, Windhoek.
PO Box 97115, Maerua Mall, Windhoek, Namibia, 10020
T +264 833 730 100 E cdhnamibia@cdhlegal.com

©2026 15950/JUN

