



National Labour Migration Policy (NLMP) and Employment Services Amendment Bill (ESAB)

A PRACTICAL GUIDE

1. What are the NLMP and the ESAB, and why do they matter?

The NLMP is South Africa's first comprehensive framework for managing the movement of workers into and out of the country. Rooted in human-rights principles and national development priorities, it aims to make labour migration fair, orderly and predictable while safeguarding the rights of every worker—South African and migrant alike.

The ESAB gives the NLMP legal force by amending the Employment Services Act 4 of 2014. In particular, it expands the Act's reach to cover:

- all private employment agencies, whether or not they operate for gain;
- digital labour platforms; and
- every category of worker, including informal, platform-based and atypical workers.

Most importantly, the Bill empowers the Minister of Employment and Labour (Minister) to:

- set binding quotas on the employment of foreign nationals by sector, occupation or region;
- grant exemptions from those quotas in limited circumstances; and
- issue detailed regulations governing recruitment, documentation and enforcement.

2. How will quotas on foreign workers operate?

The Minister may prescribe ceilings for the employment of foreign nationals by:

- economic sector (for example, agriculture, hospitality, tourism or construction);
- specific occupation; or
- geographical area (or across the entire Republic).

An employer may exceed the applicable quota only if:

- the post demands critical or scarce skills; or
- the employer secures a formal exemption from the Minister.

3. What must an employer do before hiring a foreign national?

Before appointing a foreign national, an employer must:

- confirm the person's legal right to live and work in South Africa;
- demonstrate that no suitably qualified South African citizen or permanent resident is available for the role;
- prepare a written skills transfer plan (see Question 4);
- offer the foreign national terms and conditions that are at least equal to those enjoyed by comparable South African employees; and
- retain records that prove compliance with all legal requirements.

4. What is a skills-transfer plan and what must it contain?

A skills transfer plan sets out how the expertise of a foreign employee will be passed on to a South African citizen or permanent resident. A compliant plan should:

- identify the South African beneficiary or beneficiaries;
- describe the training, mentoring or on-the-job exposure through which the transfer will occur;
- set realistic timelines and measurable milestones; and
- explain how progress will be monitored, documented and reported to the authorities.

5. What are the penalties for non-compliance?

A failure to observe any of the obligations described above may lead to:

- an administrative fine of up to R100,000 per infringement;
- enforcement action by labour inspectors, who may act in concert with officials of the Department of Home Affairs; and
- criminal prosecution under the Immigration Act 13 of 2002 (Immigration Act) where applicable.

6. How will the authorities enforce the new regime?

Labour inspectors will have explicit authority to police both the ESAB and the Immigration Act. They may enter workplaces, examine records and interview employees. The Department of Employment and Labour and the Department of Home Affairs will share information and coordinate inspections.

7. Are corporate visas still an option?

Yes, but they will be subject to tighter controls. The NLMP envisages:

- sector-specific limits on the issuing of corporate visas;
- restrictions on foreign nationals seeking to establish small or medium-sized enterprises; and
- the potential introduction of visas tailored to citizens of Southern African Development Community member states to promote regional integration.

8. May refugees and asylum seekers work in South Africa?

Refugees and asylum seekers may be employed provided their permits expressly authorise work and all ordinary compliance requirements, including quota adherence, are met.

9. Which sectors should prepare most urgently?

Cabinet has flagged agriculture, hospitality, tourism and construction as sectors with particularly high levels of foreign employment. Employers in these industries should:

- audit the composition of their workforces;
- evaluate the likelihood and impact of sectoral quotas; and
- participate actively in any consultation processes initiated by the Minister.

10. How does all this interact with employment-equity obligations?

Quota limits on foreign nationals must be reconciled with targets under the Employment Equity Act 55 of 1998. Employers will, therefore, need to balance their equity plans with any quota ceilings to ensure simultaneous compliance.

11. What is “Operation New Broom”?

Operation New Broom is a technology-driven initiative of the Department of Home Affairs that uses biometric verification and enhanced data sharing to curb illegal immigration and to streamline cross-departmental enforcement.





Application for Work Permit

12. How can an employer obtain an exemption from a foreign-worker quota?

Section 12B(6) of the ESAB permits an employer to exceed an applicable quota if:

- the post requires critical skills; or
- the Minister grants an exemption on application.

Under Section 12C of the ESAB, the Minister must, in consultation with the Employment Services Board, publish regulations that specify:

- the form and content of an exemption application;
- the supporting documents and justification required; and
- any categories of employer or employee that may be excluded from quota compliance.

Quick Reference FAQs

Can quotas be relaxed?

Only through a formal exemption granted by the Minister in writing.

Are quotas temporary or permanent?

Quotas are intended to be binding for as long as the relevant notice remains in force, though the Minister may amend or withdraw a notice at any time.

Which visa should a short-term foreign worker hold?

The answer depends on the nature and duration of the work. In most cases a business visa or a corporate visa endorsed for short-term deployment will be required.

What if a foreign worker's permit expires during a business transfer?

Responsibility is shared: the new employer should assist with the renewal process, but the foreign national must also ensure that their immigration status remains lawful.

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Our Employment Law team is externally praised for its depth of resources, capabilities and experience.

Chambers Global 2025 ranked our Employment Law practice in Band 1 for employment and from 2014–2024 in Band 2. *The Legal 500 EMEA 2020–2025* recommended the South African practice in Tier 1. *The Legal 500 EMEA 2023–2025* recommended the Kenyan practice in Tier 3 for employment.

The way we support and interact with our clients attracts significant external recognition.

Sammy Ndolo is the Kenya Managing Partner. *Chambers Global 2025* ranked Sammy Ndolo in Band 3 for Fintech. *Chambers Global 2021–2025* ranked Sammy in Band 4 for corporate/M&A. *Chambers Global 2025* ranked him in Band 3 for banking & finance and in Band 4 from 2023–2024. *The Legal 500 EMEA 2024–2025* recommended Sammy as a 'Leading Individual' for banking, finance & capital markets. *The Legal 500 EMEA 2022–2023* recommended him for banking, finance & capital markets. *The Legal 500 EMEA 2023–2025* also recommended Sammy for corporate, commercial/M&A. *IFLR1000 2021–2024* ranked him as a 'Notable Practitioner'.

Chambers Global 2021–2025 ranked **Imraan Mahomed** in Band 2 for employment and in Band 3 from 2014–2020. *The Legal 500 EMEA 2020–2025* recommended him for employment.



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

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