

**DUTIES AND OBLIGATIONS OF EMPLOYERS OF FOREIGNERS /
IMPLICATIONS OF EMPLOYING FOREIGNERS NOT IN POSSESSION OF
THE RELEVANT WORK PERMIT**

- 1) In terms of section 38 of the Immigration Act (as amended), no person shall employ
 - a) an illegal foreigner (a foreigner who is in South Africa in contravention of the Immigration Act, i.e. not in possession of a valid permit or acting in contravention of his/her permit)
 - b) a foreigner whose status does not authorise him or her to be employed by such person
 - c) a foreigner on terms, conditions or in a capacity different from what is provided for in his or her permit.

- 2) An employer has the duty to ascertain the status or citizenship of his employees and to ensure that he does not employ any illegal foreigners.

- 3) If an illegal foreigner is found on any premises where a business is conducted, it shall be presumed that such foreigner was employed by the person who has control of such premises.

- 4) If employment of an illegal foreigner is proven (and not only presumed), knowledge of the illegality of status by the employer will be presumed and the employer has to prove that he/she acted in good faith and applied reasonable measures to ensure that no employees were illegal foreigners.

- 5) An employer is to keep the records relating to the employment of a foreigner for two years after termination of the employment.

- 6) Anyone who knowingly employs an illegal foreigner or a foreigner in violation of this Act shall be guilty of an offence and liable on conviction to a fine of to

imprisonment not exceeding one to three years (in cases of repeated convictions).

- 7) In terms of section 11 (8) of the Immigration Act, an application for a work permit (or the relevant work permit) either from within South Africa or from outside South Africa does not provide the applicant with a status or any benefits under the Immigration Act. This means that an application for a work permit does not give the applicant the right to start working.
- 8) The Immigration Act defines “work” to include
 - a) Conducting any activity normally associated with the running of a business; or
 - b) Being employed or conducting activities consistent with being employed or consistent with the profession of the person, with or without remuneration or reward; and
 - c) Within South Africa.

In summary,

- A. Employers of persons who are not South African citizens or in possession of a permanent residence permit (which shows no restrictions with regards to work) may only physically allow such persons to become active on their behalf or on their premises once they are in possession of a work permit for that specific employer.
- B. No activity consistent with being employed, including unpaid work or training, may be conducted by a person who holds a visitor’s permit only.
- C. Activities conducted by a foreigner for a South African employer in a foreign country does not fall within the definition of “work” in terms of South African immigration laws and will not require a South African work permit.

Exceptions

(please note that some of the following is based on information received by Departmental representatives and may change; obtaining an individual assessment on a case-by-case basis is strongly advisable):

1. Training conducted as part of ongoing studies may in most instances be done when holding a study permit.
2. Holders of study permits may work for a maximum of 20 hours per week.
3. Holders of visitor’s permits may upon application be granted permission to work by the Director-General.

I herewith acknowledge receipt of the above information and that I fully understand the content thereof. I confirm that I was advised by IMCOSA on my obligations as listed above and on the implications of non-compliance.

Date 200

Signature

Name (print)

Company