

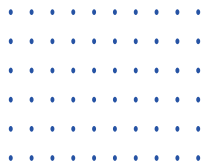


GLOBAL **BUSINESS** SOLUTIONS

FUTURE THINKING, NOW

CEA – TESD Webinar
15 October 2025

Foreign Nationals: Dos & Don'ts



Presented by: Natalie Singer, Executive Consultant, GBS





Agenda

- ❑ Current Immigration Landscape
- ❑ Department of Home Affairs Performance Update
- ❑ ZEP Extension: Critical Details
- ❑ Legislative Framework for Employers
- ❑ Employer Obligations & Due Diligence
- ❑ Criminal Liability & Penalties
- ❑ Practical Compliance Steps
- ❑ Q&A Session

FIRST THINGS, FIRST...

Who is a Foreign National?

According to the **Immigration Act**, a foreign national is defined as any person who is not a South African citizen or a permanent resident of South Africa. This includes individuals who are in the country legally on a temporary visa, those who are present illegally, and those who are seeking asylum.

Citizenship: An individual who is not a South African citizen is a foreign national.

Permanent Residence: A foreign national is also anyone who does not hold a permanent residence permit issued under the Immigration Act.

Legal Status: The definition applies regardless of whether the individual's presence in South Africa is authorized under the Immigration Act or not.

Refugees: Refugees are a separate category, defined under the Refugees Act, who are granted asylum or are awaiting confirmation of refugee status.

According to the **Employment Services Act (ESA)**:

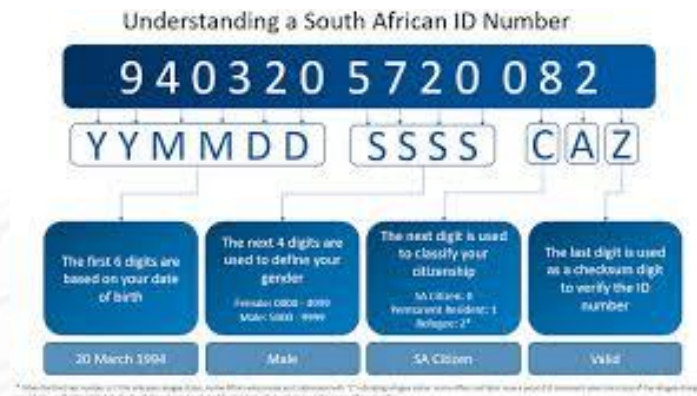
“‘**foreign national**’ means an individual who—

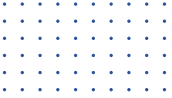
- (a) is not a South African citizen or does not have a permanent residence permit issued in terms of the Immigration Act; or
- (b) has not been granted recognition as a refugee in terms of the Refugees Act”;

Whilst the **Employment Equity Act (EEA)** does not specifically define a “foreign national” it clearly specifies who is deemed to be part of a designated group: -

an employee with a permanent residence permit is generally not counted as part of the "designated groups" for the purpose of South Africa's Employment Equity Act (EEA), as the law primarily defines these groups as citizens or those who became citizens by naturalisation before April 27, 1994.

Only South Africans in possession of an ID number whose third-last digit is “0” may be counted for EE stats. Those with “1” as the third last digit, who are permanent residence holders, will be reported for EE as a “Foreign National”, however not requirement to gather a work permit.





SECTION 1 |

CURRENT IMMIGRATION LANDSCAPE



ANTI-FOREIGNER SENTIMENT

POLITICS | SOUTH AFRICA

South Africa: 'Operation Dudula' hunts down illegal migrants

Martina Schwikowski
10/06/2025

The South African anti-immigration movement Operation Dudula has opened a new front in its crackdown on foreigners. Experts believe that socio-economic disparities and ensuing problems fuel the group's popularity.



13 Aug

'I delivered my baby alone': Mom recounts birth nightmare amid Dudula attacks at clinics

Nicole McCain
news24

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South Africa: Hundreds of Women and Children Chased From Their Homes in Deadly Xenophobic Attacks



Anti-xenophobia protesters in South Africa (file photo).

The Daily Vox

GroundUp

27 MAY 2025



Monday in protest outside Lilian Ngoyi Clinic in Diepkloof. Foreign nationals in they are being denied healthcare as anti-foreigner groups block access to



SOUTH AFRICA'S UNEMPLOYMENT CRISIS IN Q1 2025

- 32.9% official jobless rate
- 43.1% including discouraged seekers
- 482 business closures this quarter

Crime Statistics Q4 2024 (Jan-Mar 2025)

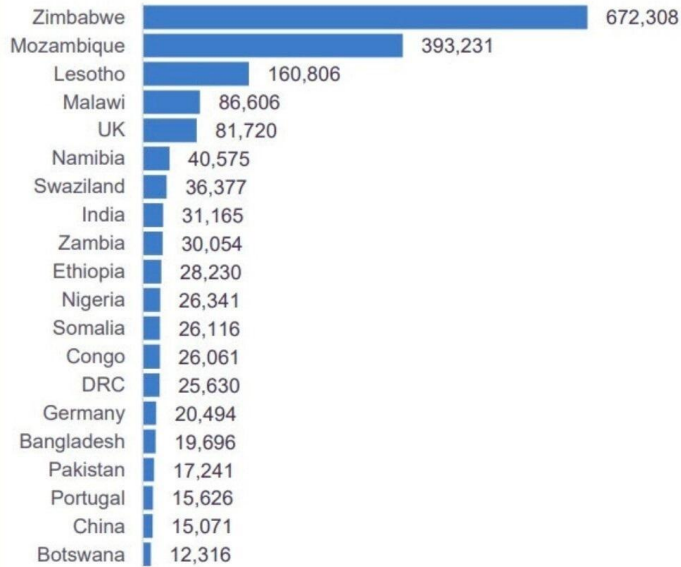
Year-on-year indicators

Contact crime category	2021	2022	2023	2024	2025
Murder	8 %	22 %	3 %	4 %	-12 %
Sexual offences	-4 %	14 %	-4 %	2 %	0 %
Attempted murder	9 %	25 %	8 %	20 %	-6 %
Assault with GBH	-9 %	18 %	0 %	7 %	-5 %
Common assault	-9 %	18 %	8 %	3 %	-3 %
Common robbery	-22 %	13 %	9 %	3 %	-8 %
Aggravated robbery	-8 %	7 %	5 %	3 %	-10 %

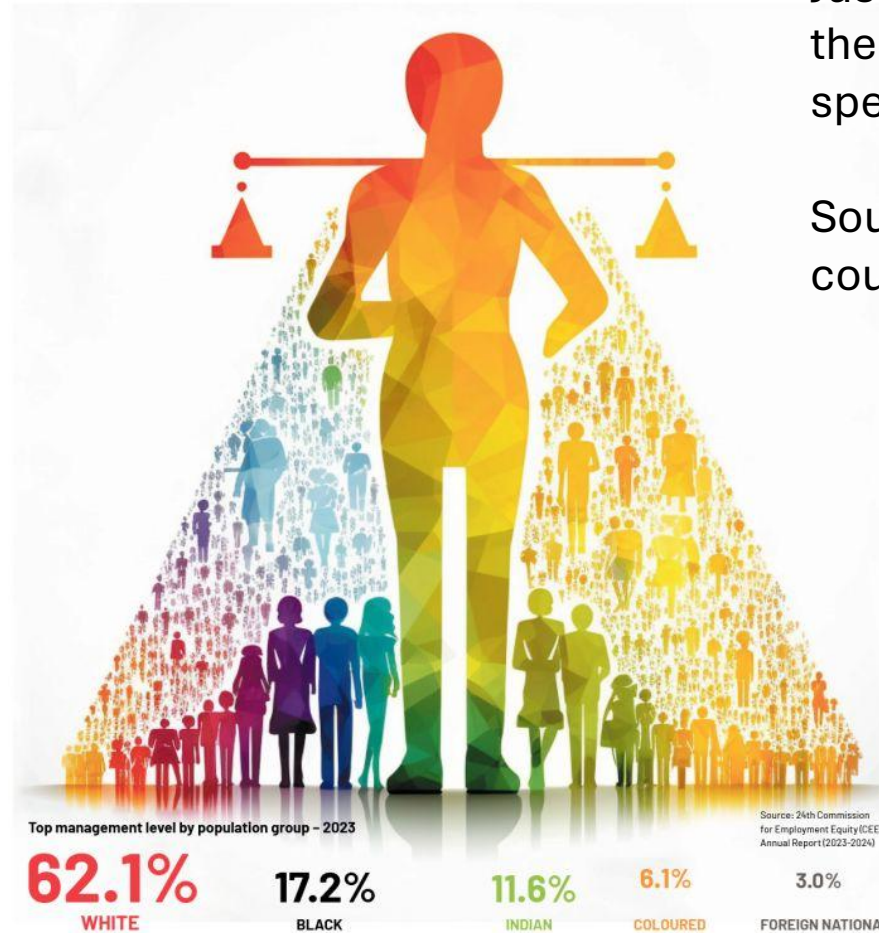
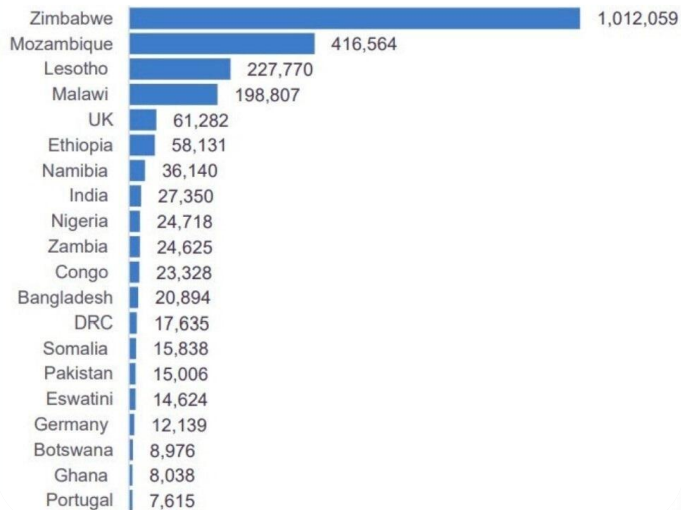
Source: SAPS • GRAPHIC: Sibusiso Biyela

FOREIGN NATIONALS IN SOUTH AFRICA

2011



2022

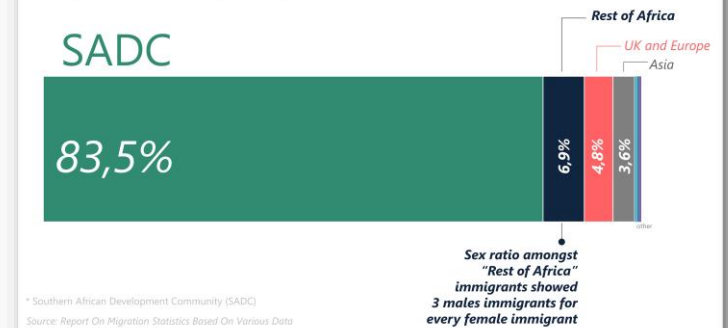


Just as the US, UK and Germany remain the top global destinations for migrants, specifically economic migrants...

South Africa remains the top destination country in Africa.

The majority of the immigrants in South Africa were from the *SADC region.

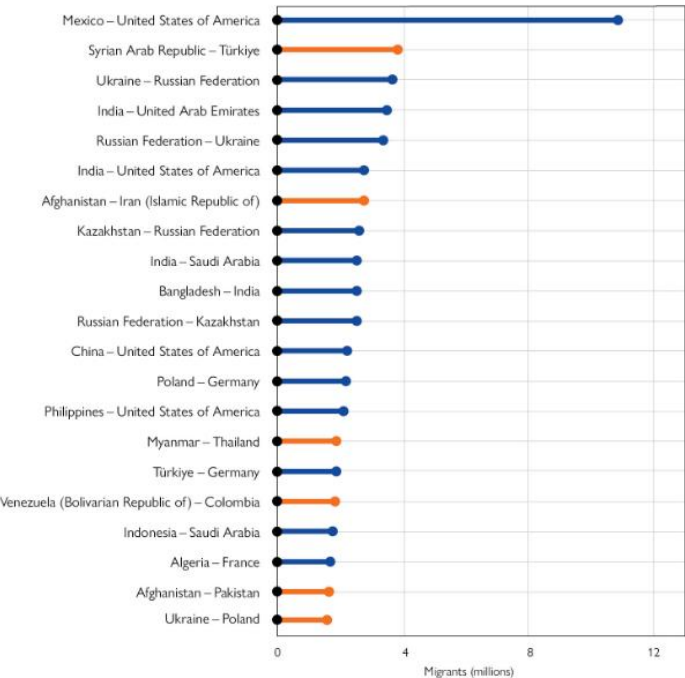
Percentage distribution of the immigrant population by region of birth and sex, Census 2022



GLOBAL MIGRATION TRENDS

WORLD MIGRATION REPORT 2024

Figure 1. Top international country-to-country migration corridors, 2024



Source: UN DESA, 2021a; UNHCR, 2023a.

Notes: The corridors represent the number of international migrants (millions) born in the first-mentioned country and residing in the second. Corridors represent an accumulation of migratory movements over time and provide a snapshot of how migration patterns have evolved into significant foreign-born populations in specific destination countries.

Those corridors comprising mainly displaced persons are coloured orange. Revisions have been made based on large-scale displacement from Ukraine to neighbouring countries (as at end October 2023).

Has migration been growing out of control over recent years?

FACT: In mid-2020 there were estimated to be 281 million international migrants in the world. This equates to 3.6% of the global population. The vast majority of people (96.5%) live in the countries in which they were born.

FACT: Over the past 50 years the number of international migrants as a proportion of the global population has remained relatively stable, increasing from 2.3% in 1970 to 3.6% in 2020.

FACT: While its full impact remains difficult to assess, it is estimated that the COVID-19 pandemic may have reduced the expected growth in the total population of international migrants by 2 million in 2020.

Table 1. International migrants, 1970–2020

Year	Number of international migrants	Migrants as a % of the world's population
1970	84 460 125	2.3
1975	90 368 010	2.2
1980	101 983 149	2.3
1985	113 206 691	2.3
1990	132 986 157	2.9
1995	161 209 976	2.8
2000	173 230 585	2.8
2005	191 446 828	2.9
2010	220 983 187	3.2
2015	247 958 644	3.4
2020	280 598 105	3.6

Source: UN DESA, 2008; UN DESA, 2021a.
Note: The number of entries (such as States, territories and administrative regions) for which data were made available in the UN DESA International Migrant Stock 2020 was 222. In 1970, the number of entries was 155.

For more information on the global population of international migrants, consult chapter 2, *Migration and Migrants: A Global Overview of the World Migration Report 2022*. To interact with different global data on migration, consult the *World Migration Report Interactive*.

Do migrant steal jobs from locals?

FACT: Although migrants are represented across all skill levels, many among them work in the so-called 3D jobs (dirty, dangerous, and demanding) such as in construction, domestic work, or hospitality. These jobs tend to be the least favored by the native-born.

FACT: Many countries of destination rely on international migrants to address labor market shortages. The COVID-19 pandemic has shed a light on the essential roles that migrant workers have long played in the functioning of society, including in critical sectors such as healthcare and the food industry.

FACT: Migrants provide a source of economic dynamism globally, and are overrepresented in innovation and patents, arts and sciences awards, start-ups, and successful companies.

For more information on migrants' contributions, consult the chapter *Reflections on Migrants' Contributions in an Era of Increasing Disruption and Disinformation* in the *World Migration Report 2020*. To learn more about the role migrants played during the COVID-19 pandemic, read the chapter *The Great Disrupter: COVID-19's impact on migration, mobility and migrants globally* in the *World Migration Report 2022*.

Key drivers contributing to the growing mobility of workers:

- Lack of jobs and decent working conditions;
- The widening income inequalities within and between countries;
- A growing demand for skilled and low-skilled workers in migrant destination countries (often driven by strong growth, 'shortages' of domestic labour or rigid societal norms);
- Demographic changes, with countries seeing declining labour forces and aging populations.

Key trends include:

- According to the ILO, women constitute 41.5% and men 58.5% of migrant workers (2021).
- Sector figures show that 66.2% of migrant workers are in services, 26.7% are in industry and 7.1% are in agriculture (2021).
- Of the estimated 169 million international migrant workers, 67.4% are in high-income countries and 19.5% in upper middle-income countries (2021).
- ILO research suggests that the world's migrant workers are distributed among the major regions as follows: Europe and Central Asia, 37.7%; Americas, 25.6%; Arab States, 14.3%; Asia and the Pacific, 14.2%; and Africa, with only 8.1% (2021).
- The labour force participation rate of migrants at 69% is higher than the labour force participation of non-migrants at 60.4% (2021).

Migrant Workers

International migrant workers comprise almost 5% of the global workforce but remain especially vulnerable to low wages, unsafe working conditions, discrimination and trafficking.



International migrants*

281 million

international migrants globally in 2020, or 3.6 per cent of the world's population

Females*	135 million	international female migrants globally in 2020, or 3.5 per cent of the world's female population
Males*	146 million	international male migrants globally in 2020, or 3.7 per cent of the world's male population
Children*	28 million	international child migrants globally in 2020, or 1.4 per cent of the world's child population
Labour migrants*	169 million	migrant workers globally in 2019
Missing migrants*	Around 8,500	dead and missing globally in 2023

CHAPTER 1 | 30 Apr 2024

Report overview: Migration continues to be part of the solution in a rapidly changing world, but key challenges remain



GLOBAL BUSINESS SOLUTIONS

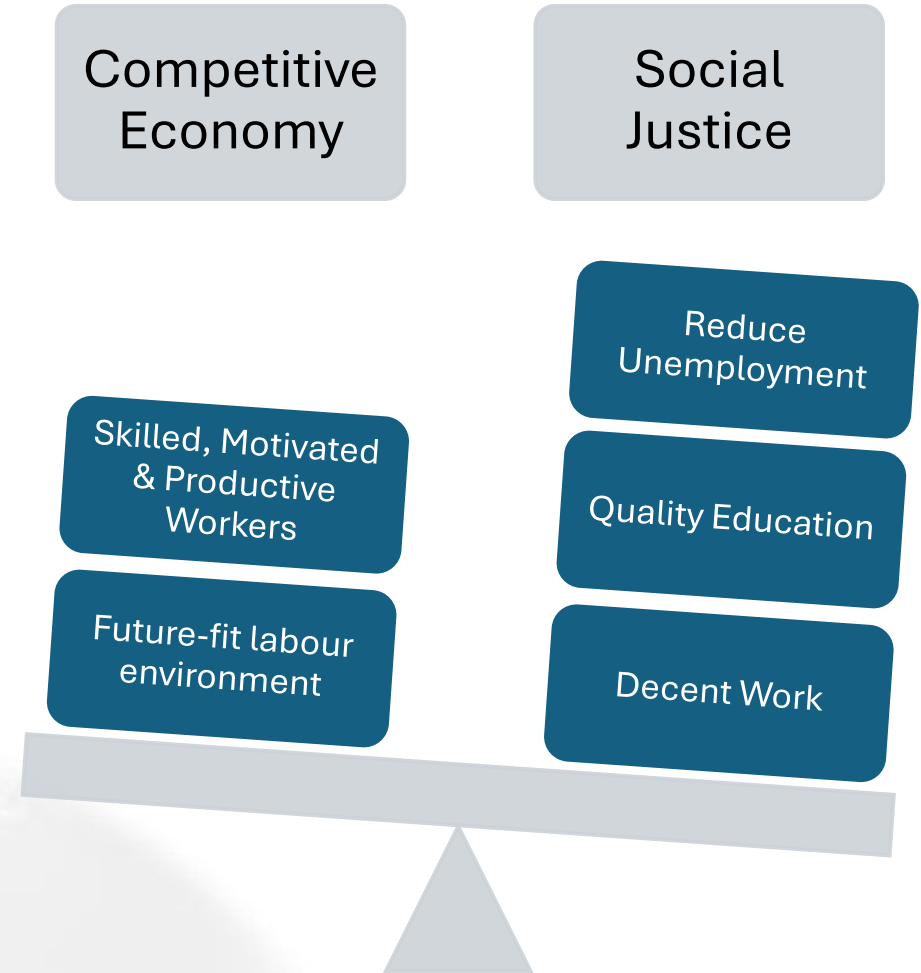
FUTURE THINKING. NOW

NATIONAL LABOUR MIGRATION POLICY

A careful balancing act

Vision of the National Labour Migration Policy:

“To give rise to efficient and effective Government leadership and intervention, supported by social partners and all major stakeholders, allowing for safe, orderly and regular migration for employment of highly, semi- and low-skilled workers to and from South Africa, in pursuit of the country’s national priorities.”



EMPLOYMENT SERVICES ACT AMENDMENTS

The **proposed amendments to the Employment Services Act (of 2014)** aim to limit the extent to which employers can employ foreign nationals in possession of a valid work visa, and codifies the obligations of an employer engaging foreign workers to, amongst others:

- only employ foreign nationals entitled to work in terms of the Immigration Act, the Refugees Act or any other provision
- ascertain the foreign national is entitled to work in the Republic in the relevant position;
- satisfy themselves that there are no South Africans with the requisite skills to fill the vacancy;
- prepare a skills transfer plan, where appropriate;
- employ foreign nationals on the same terms as local workers; and
- retain copies of relevant documentation.

The proposed Amendment Bill lays out a framework that will enable the Minister to set quotas for the employment of foreign nationals. “A **quota may apply in respect of a sector of the economy**, an occupational category or a geographical area. The Minister will establish a quota in a sector after consultation with the Employment Services Board and after considering public comments”.





KEY IMMIGRATION CATEGORIES

Right to Remain:

Permanent residents
Refugees

Others:

Asylum seekers
“Spousal” Visa

Work Permits:

General Work
Critical Skills
Intra-Company Transfer

Exemption Permits:

Zimbabwean Exemption Permit (ZEP)
Lesotho Exemption Permit (LEP)

Undocumented:

Expired,
Irregular,
Illegal status



QUICK CHECK: RIGHT TO WORK

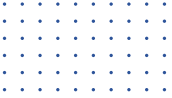
Status	Employment Criteria	Validity
South African citizen	Free to work (no restriction)	Indefinite
Permanent Resident	Free to work (no restriction)	Duration of Permanent Residency
Refugee	Free to work (no restriction)	Duration of Refugee Permit
Asylum Seeker	Free to work (as per visa condition)	Duration of Permit
ZEP holder	Free to work (no restriction)	Until 28 May 2027
LEP holder	Free to work (no restriction)	Awaiting confirmation
FN on Relative Visa	May not work	Indefinite
FN Spouse on 11(6) Visa	Work Endorsement required	Duration of Visa
FN on Work Permit	Work at specific employer in specific role as stipulated in permit	Duration of Permit and continued specified employment.
Study Visa	Work Endorsement required, with limitations dependent on study, including max 20-hours per week and no holiday work, unless practical work experience required to complete qualification.	Duration of studies. Max 36 months for school or 24 months for other institutions.

NEW ERA AT DEPT OF HOME AFFAIRS

Minister Dr Leon Schreiber's Reform Agenda

- Appointed April 2024 (Government of National Unity)
- Focus: Economic growth through immigration reform
- Digital transformation initiative
- G20 Summit November 2025 – showcasing South Africa
- Immigration Advisory Board (IAB) established under Section 4 of the Immigration Act 13 of 2002 with the role of advising the Minister on policy, regulation & strategic matters
- Business represented by Marisa Jacobs, CEO of Xpatweb, since 1 April 2025
- Current focus areas have been finding a long-term solution for ZEP and LEP holders

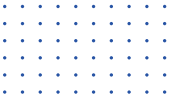
*Gazette extending ZEP to 28 May 2027
published last week, provides further relief*



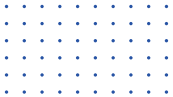
SECTION 2 |

DEPT OF HOME AFFAIRS PERFORMANCE UPDATE





DRAMATIC IMPROVEMENTS



2024/5 Annual Report Highlights

- ✓ **Critical Skills Visas:** 52% → 89% processed on time
- ✓ **Business Visas:** 61% → 97% processed on time
- ✓ **General Work Visas:** 10% → 98% processed on time
- ✓ **Immigration Affairs overall:** 40% → 87.5% performance improvement
- ✓ **Smart IDs produced:** 3.6 million (exceeded target by nearly 1 million)

CRACKDOWN ON CORRUPTION:

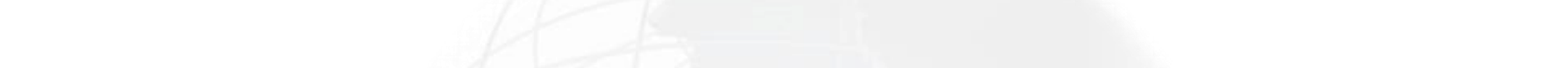
Task teams: A multi-disciplinary task team was established in 2023 to analyze data and combat corruption

Collaboration: The DHA is working with other bodies, such as the Hawks, to conduct joint operations

Dismissals: At least 27 Department of Home Affairs (DHA) officials were dismissed between July 2024 & Feb 2025

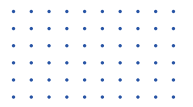
Criminal prosecution: Officials are being prosecuted for crimes such as fraud, ID manipulation, and bribery

Prison sentences: Some officials have been convicted and sentenced to prison terms, including a 12-year sentence for one individual involved in a fraudulent passport syndicate





BACKLOG REALITY



Progress & Remaining Challenges

- Visa backlog largely eradicated
- **Persistent backlogs:** Appeals & permanent residence applications
- Multiple extensions issued via Immigration Directives
- **Current concession extended to 31 March 2026** (Immigration Directive No.22 of 2025) allowing affected applicants to continue to their stay in South Africa and travel under specific conditions during this period.
- **Eligibility:** The concession applies to foreign nationals with *legally admitted status* in South Africa who have pending waiver or appeal applications as of the directive's effective date.
- **What about work?** The concession allows eligible foreign nationals (as above) to *continue their activities as per their last visas*. The protection applies if they can provide proof of their pending application (e.g., a receipt from VFS Global).



DIGITAL TRANSFORMATION INITIATIVE

Future Focused Improvements

- Electronic Travel Authorisation (ETA) system – late 2025 launch
- Digital Verification System operational
- 27.8 million civic records digitisation target
- AI and automation integration
- **Challenge:** System instability, network downtime at some locations
- **Resource constraint:** Only 40% of required staff currently employed

TRUSTED EMPLOYER SCHEME

Streamlining processes for compliant business

During the February 2022 State of the Nation Address (“SONA”), the Honourable President Cyril Ramaphosa announced that South Africa will be reviewing its visa application system to make it easier for foreigners to travel to the country for tourism, business and work.

Operation Vulindlela, which is part of the Presidential Project Management Office (the “PMO”) conducted a thorough review of the work visa framework with the aim of identifying and removing barriers to the attraction and retention of needed skills to enable economic growth and improve the efficiency of the work visa application process.

The Department of Home Affairs (the “Department”) is, therefore, inviting corporate employers to submit expressions of interest in the pilot of the Trusted Employer Scheme

South Africa Plans to Slash Time Taken to Issue Work Permits

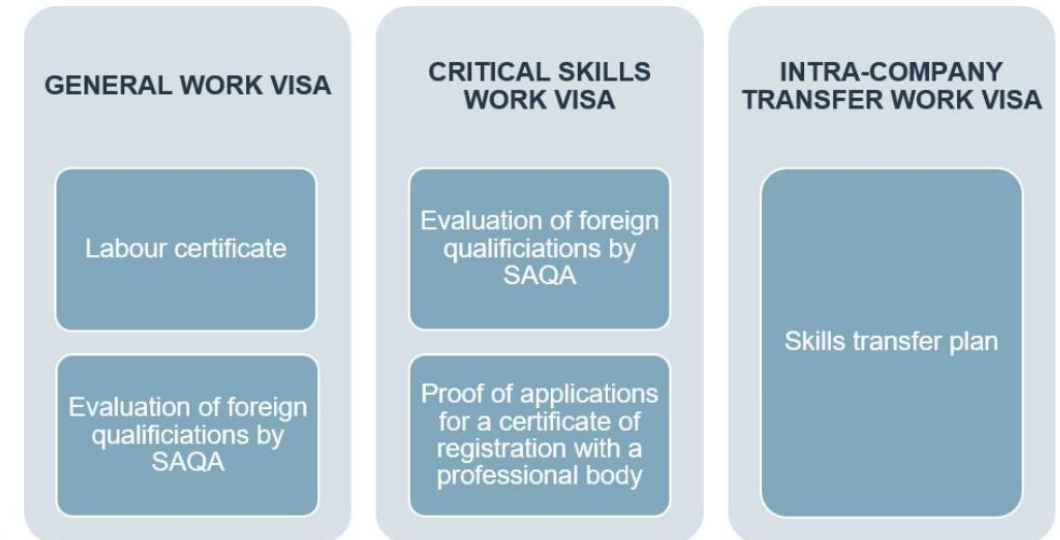
- Large companies to bring in employees within 20 days
- Investors have said South African visa delays limit expansion

By [Antony Sguazzin](#)

February 27, 2024 at 4:09 PM GMT+2

Updated on February 27, 2024 at 6:24 PM GMT+2

Fig. 1: List of supporting documents waived for TES members



The waiver of these documents is a great step towards speedy mobilisation of critical resources for organisations and South Africa, as procurement of these documents can take several weeks.

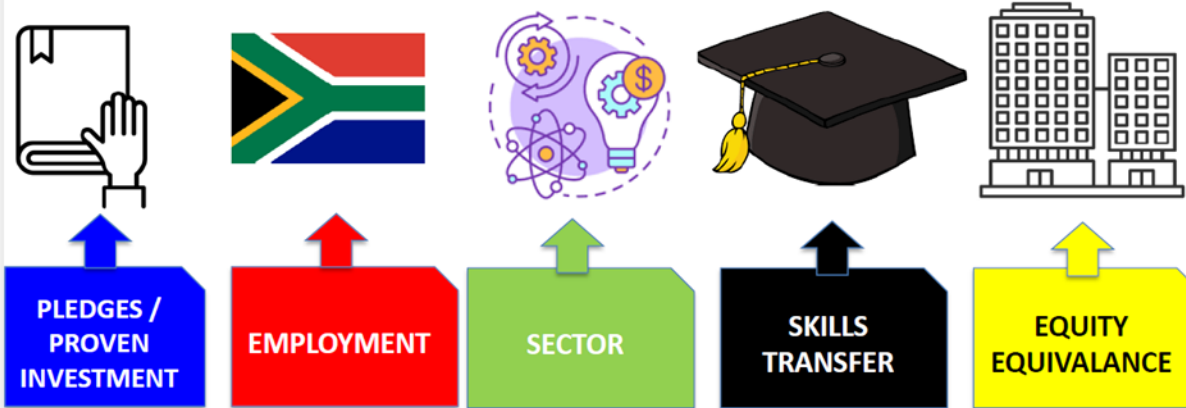
TRUSTED EMPLOYER SCHEME

Streamlining processes for compliant business

TRUSTED EMPLOYER SCHEME

SELECTION CRITERIA

In order to ensure that the selection process of companies is fair, ethical and transparent, the Department of Home Affairs will make use of the following score card system:



TES – SELECTION CRITERIA

PLEDGES

- Pledges to SAIC or Proven Investment since 2018.
- Investment within the boundaries of RSA.
- Fixed capital investment above R100 million (no operational expenditure included).
- 20 points for historical investments or SAIC Pledges between R100 million and R200 million.
- 30 points for historical investments or SAIC Pledges above R200 million.

EMPLOYMENT

- At least 60% of the staff complement are South African Citizens or Permanent Residents; and in terms of points allocation the following to be applicable:
- 20 points for 100 employees minimum, of which 60% are SAC or PRP holders.
- 25 points for more than 150 employees of which 60% are SAC or PRP holders.

TRUSTED EMPLOYER SCHEME

Streamlining processes for compliant business

TES – SELECTION CRITERIA

SECTOR

Operations / Investment in Sectors (as identified by the DTIC):

Sector 1: Manufacturing
Sector 2: Advanced manufacturing
Sector 3: Services
Sector 4: Resourced based Industries
Sector 5: Energy (Power Generation and Renewable Energy)
Sector 6: Infrastructure
10 points for the Sectors 1 to 4
15 points for sector 5 and 6

SKILLS TRANSFER

Proof of a Skills Transfer Programme, Bursary Scheme or Graduate Development Programme for South African Citizens or Permanent Residents.
20 points for proof of an active Skills Transfer Programme, Bursary Scheme or Graduate Development Programme

EQUITY EQUIVALENCE

5 points for BEE level 5-8
10 points for BEE level 1-4
10 points for Equity Equivalence agreement with the DTIC

TES – SCORE CARD

PLEDGES / PROVEN INVESTMENT

30
points

EMPLOYMENT

25
points

SECTOR

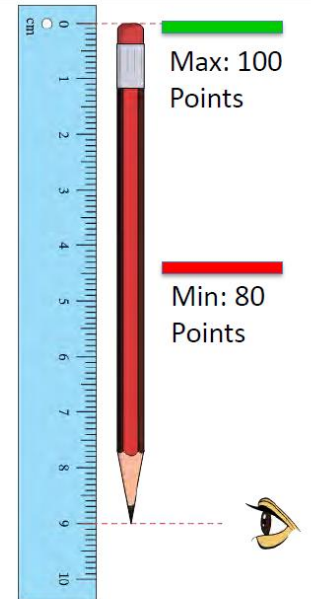
15
points

SKILLS TRANSFER

20
points

EQUITY EQUIVALENCE

10
points



ENFORCEMENT STATISTICS

Increased Immigration Enforcement

- **Deportations 2024/25:** 46,898 (18% increase from previous year)
- Highest in 5 years – triple recent annual figures
- Exceeds France (22,000) & Germany (20,000) combined
- Improved collaboration: DHA, Border Management Authority, SAPS, local law enforcement, DEL

News 'Undocumented' staff flee as state descends on Sandton eateries

By Coseta Mgubane | 18th September 2024



An undocumented Zimbabwean national was one of the staff members arrested during an employment and labour department raid on restaurants in Sandton in September 2024.

It was chaos inside Sandton City Mall on Wednesday when authorities from the departments of Employment and Labour as well as Home Affairs conducted raids.

Anxious waiters and waitresses were seen hastily fleeing from the opulent eateries located in Africa's richest square mile in order to avoid arrests. The raids form part of the government of national unity's strategy to enforce the rule of law in the hospitality sector. Raids conducted in Pretoria this week found some restaurants flouting laws. Ocean Basket and Babel in Menlyn were found to have employed undocumented foreign nationals.

According to reports, some of the workers fled in Sandton because they are undocumented foreign nationals. They are working in the country illegally.

Blitz started in Tshwane on Tuesday

Among the six restaurants in the vicinity that were raided on Wednesday, were Tang and Doppio Zero. The department found that the majority of the establishments paid their staff solely commission and gratuities.

Advocate Michael Msiza, the Gauteng chief inspector at the Department of Employment and Labour, said they started the blitz on Tuesday in Tshwane.

THE STAR NEWS Countrywide clampdown on undocumented foreign nationals



Published Jul 30, 2024

SHARE      

There have been a series of arrests of undocumented immigrants caught on the streets or at workplaces across the country in joint operations the SAPS, Home Affairs and Employment and Labour departments.

Manager, three foreign nationals arrested in joint blitz operation

Four are subjected to fines after admitting guilt, according to labour department

BY SOWETAN REPORTER - 10 April 2024 - 11:48

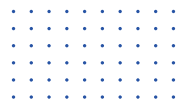
SECTION 3

ZEP EXTENSION: CRITICAL UPDATE





HISTORY & BACKGROUND



Understanding the Context

- Introduced 2009 (originally as Dispensation of Zimbabweans Project)
- Became ZEP in 2017, replacing Zimbabwean Dispensation Permit (ZSP)
- Just 178 000 ZEP issued – not all Zimbabweans are covered!
- Purpose: Regularise Zimbabwean nationals fleeing economic/political instability
- Restrictions: Allowed for freedom to live, work and travel in/out of South Africa but specifically excluded right to apply for permanent residence
- December 2021 (expiry of ZEP): Government announced discontinuation
- Legal challenges followed
 - Gauteng High Court ruled termination unlawful (2023)
 - Court mandated: Consultations with stakeholders required
 - Multiple extensions since 2022
 - Helen Suzman Foundation successful legal challenge
 - Government obligation: Meaningful consultation process



OCTOBER 2025 EXTENSION



What this means for ZEP holders

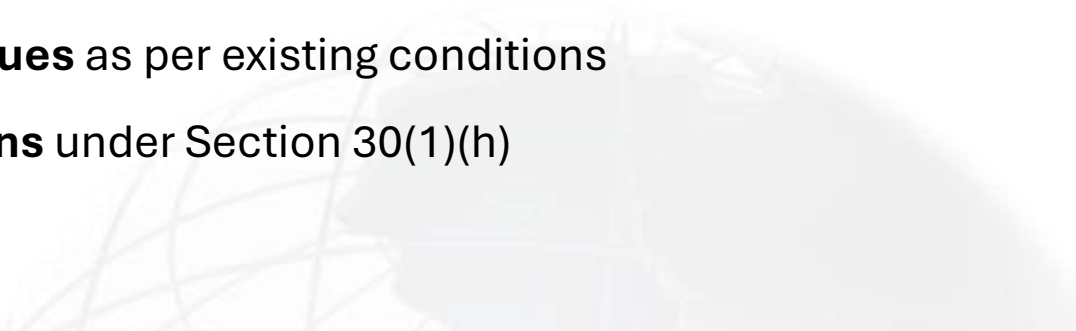
Minister's Immigration Directive No. 21 of 2025, published on 7 October 2025 (Government Gazette No. 53484) allows for an 18-month extension from previous extension expiry date 28 November 2025.

ZEP validity extended to **28 May 2027**

What This Means for ZEP Holders

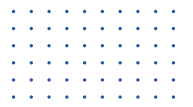
During the extension period:

- ✓ **No arrest or deportation** for lacking valid exemption certificate
- ✓ **Travel rights protected:** Can exit and re-enter South Africa
- ✓ **No visa requirement** when applying for other visa categories under Section 10(2)
- ✓ **Work authorisation continues** as per existing conditions
- ✓ **No undesirable declarations** under Section 30(1)(h)





WHAT HAPPENS NEXT?



Meeting legal consultation requirements

The Consultation Process

- IAB deliberating on long-term solutions
- Stakeholder consultations underway

Timeline: Consultations must conclude before May 2027

Options being considered:

- Pathway to permanent residence
- New visa category creation
- Mainstreaming into existing visa types
- Phased transition plan



EMPLOYER OBLIGATIONS

Compliance, Monitoring & Recordkeeping

Immediate Steps for Organisations:

Audit: Identify all ZEP holders in your workforce (only 178,000 issued total)

Verify: Confirm validity of existing ZEP documentation

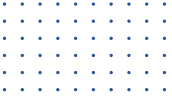
Plan: Prepare for potential mainstreaming to regular visa categories

Communicate: Inform affected employees of extension and their rights

Compliance: Ensure payroll & HR records accurately reflect ZEP status, with documents available (inspection)

Monitor: Stay informed of IAB decisions and consultation outcomes





SECTION 4 |

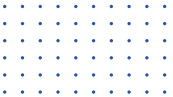
LEGISLATIVE FRAMEWORK & EMPLOYER OBLIGATIONS



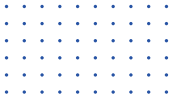
PRIMARY LEGISLATION

- Immigration Act 13 of 2002 (as amended)
- Immigration Regulations 2014
- Employment Services Act 4 of 2014
- Labour Relations Act
- Basic Conditions of Employment Act
- Employment Equity Act
- Skills Development Act

Even “illegal” foreign nationals are protected by the Constitution and labour legislation.



EMPLOYER PROHIBITIONS



Immigration Act and Employment Services Act

Immigration Act Section 38(1) states no person shall employ:

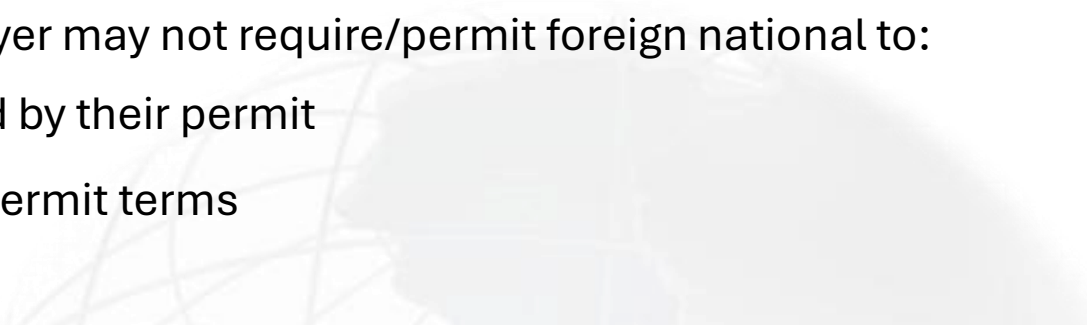
- (a) An illegal foreigner
- (b) A foreigner whose status does not authorise employment by such person
- (c) A foreigner on terms, conditions or capacity different from those in their status

Section 38(2): Employers must make **good faith effort** to ascertain no illegal foreigner is employed

Employment Services Act Section 8(1) requirements:

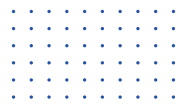
- Employer may not employ foreign national without valid work permit
- Employee retains rights to enforce claims despite invalid permit

Section 9 states that an Employer may not require/permit foreign national to:

- Perform work not authorised by their permit
 - Engage in work contrary to permit terms
- 
- 



GOOD FAITH STANDARD



What the Courts consider

Immigration Act Section 38(3) creates a **rebuttable presumption**:

If employment violation proven, employer presumed to have known

Defence requires proof of:

- ☐ Employment in good faith, AND
- ☐ Compliance with due diligence requirements

Stricter standard applies to:

- Employers with more than 5 employees
- Employers with prior immigration offences



CRIMINAL PENALTIES

Immigration Act and Employment Services Act

Immigration Act 13 of 2002

Section 49(3) – Employing Illegal Foreigners:

First conviction: Fine or imprisonment up to 1 year

Second conviction: Imprisonment up to 2 years OR fine

Third or subsequent: Imprisonment up to 5 years **WITHOUT option of fine**

Section 49(6) – Failing Duties (Sections 38-46):

Fine or imprisonment up to **5 years**

Employment Services Act (additional liabilities)

Section 50(4):

Employer contravening Section 8(1) guilty of offence

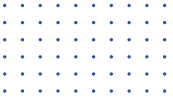
Liable as per Immigration Act Section 49(3)

Section 50(5):

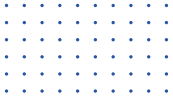
Employer contravening Section 9 guilty of offence

Liable as per Immigration Act Section 49(6)

Dual liability under
both acts!



CRIMINAL PENALTIES



Immigration Act and Employment Services Act

Extended Liability Provisions

Prohibited to aid, abet, assist or help illegal foreigners or foreigners violating their status, including:

- ☐ Issuing licences or authorisations for business
- ☐ Entering agreements for business/profession
- ☐ Conducting business in cooperation
- ☐ Assisting in conducting business
- ☐ Obtaining licences on their behalf

Exception: Necessary humanitarian assistance



CORPORATE VS. PERSONAL LIABILITY

Who bears the risk?

Corporate liability:

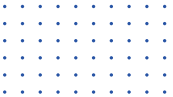
- Company can be prosecuted and fined
- Reputational damage
- Regulatory scrutiny increases

Personal liability:

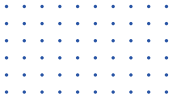
- Directors, HR managers, hiring managers
- Criminal records for individuals
- Potential imprisonment
- Professional consequences

Whilst not directly responsible for employees of TES workers, contractors or sub-contractors working on site, you would be found wanting in a raid and would need to prove due diligence to avoid potential liability under the act.

Reality check: Enforcement increasing with improved DHA-SAPS collaboration



DEPARTMENT OF LABOUR AUDITS



Increased Inspection Activity

Current environment:

DHA target: 2,000 compliance inspections (2024/25)

Joint operations: Department of Employment & Labour

Focus areas:

- Construction sites
- Hospitality sector
- Agriculture
- Retail operations
- Manufacturing

Typical scenarios resulting in prosecution:

- Employing expired visa holders without verification
- Failing to track visa expiry dates
- No documentary verification system
- Employing persons with tourist visas in work roles
- Continuing employment after visa expiry
- Poor record-keeping and inability to produce documents

Consequences of non-compliance discovered during audit:

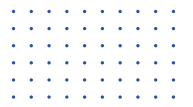
- Criminal charges
 - Business disruption
 - Public exposure
 - Labour law violations compound penalties
- 
- 

SECTION 5 |

EMPLOYER OBLIGATIONS: DUE DILIGENCE



PRE-EMPLOYMENT OBLIGATIONS



Before hiring Foreign Nationals

Labour Market Test

- Attempt to fill position with SA citizen/permanent resident first
- Advertise in national media
- Document search efforts

Department of Employment & Labour Certification (for General Work Visas)

- Confirm no suitable local candidate available - *Note: Current waiver may apply*
- Verify salary/benefits not inferior to SA standards

Skills Transfer Plan (for certain visa types)

- Develop plan to transfer skills to SA employees
- Prescribed timeframes must be met

Compliance with Labour Laws

- Basic Conditions of Employment Act / Collective Bargaining Agreements
- Employment Equity Act
- Skills Development Act

Qualification Verification (where applicable)

- SAQA recognition confirmation - *Note: Current waiver may apply*

Professional Body Registration

- For regulated professions - Eligibility confirmation required



DOCUMENTATION REQUIREMENTS

Due Diligence Checklist

Essential documents to obtain & verify:

- Certified copy of passport (personal details page)
- Valid visa or permanent residence permit
- Proof of capacity matching visa conditions
- IRP5 certificate of earnings
- Job description aligning with visa type

Verification methods:

- DHA verification (dha.gov.za or VFS Global)
- Document authenticity checks
- Biometric verification where available

BEWARE!

Not everything presented is as it seems...

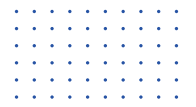
Forged = fake document (physical forgery)

Fraudulent = false information in document
(content-based deception)

Fraudulently obtained = real document,
dishonest application (process-based fraud),
also due to corruption



7 PILLARS OF DUE DILIGENCE



Comprehensive Compliance Framework

1. Document Inspection

- ☐ Carefully examine all documents for tampering/inconsistencies
- ☐ Check security features, holograms, stamps
- ☐ Verify expiry dates clearly visible and valid

2. Official Verification

- ☐ Verify authenticity with DHA or VFS Global
- ☐ Use official channels only
- ☐ Document verification results

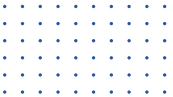
3. Record Keeping

- ☐ Maintain copies of all relevant documents
- ☐ Store verification results
- ☐ Minimum 2-year retention after employment termination

4. Monitoring & Oversight

- ☐ Implement tracking system for visa expiry dates
- ☐ Calendar alerts for renewals (90-120 days advance)
- ☐ Regular status reviews (quarterly recommended)





7 PILLARS OF DUE DILIGENCE

Comprehensive Compliance Framework

5. Training

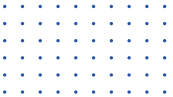
- ☐ Ensure HR staff trained in document verification
- ☐ Red flag identification training
- ☐ Regular updates on regulatory changes

6. Written Policies

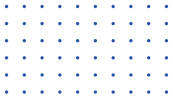
- ☐ Establish clear company policies on hiring foreign nationals
- ☐ Align contracts with the permit; timelines, conditions, etc.
- ☐ Document verification procedures
- ☐ Escalation protocols

7. Third-Party Assistance

- ☐ When in doubt, seek immigration lawyers/consultants
 - ☐ Complex cases require specialist input
 - ☐ Preventive legal review recommended
- 
- 



RED FLAGS TO WATCH FOR!



Warning signs for Documentation

Physical document concerns:

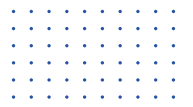
- Poor print quality, smudged text
- Misaligned stamps or inconsistent fonts
- Altered photographs or lamination irregularities
- Missing security features
- Handwritten corrections without official stamps

Status concerns:

- Visa conditions don't match role
 - Permit expired or about to expire
 - Tourist visa but seeking employment
 - Study visa but not enrolled
 - Refugee permit but working in restricted sector
- 
- 



ONGOING COMPLIANCE



Post Employment Requirements

Continuous monitoring:

- Track all foreign employee visa expiry dates
- Initiate renewal processes 3-4 months before expiry
- Verify renewed documents upon receipt
- Update HR systems with new expiry dates

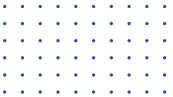
Notification obligations:

- Inform DHA of employment termination (permitcompliance@dha.gov.za)
- Report any breach of foreign national's status
- Maintain records for 2 years post-termination

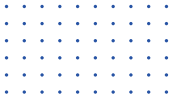
Change management:

- Monitor for role changes requiring visa amendments
- Salary changes may require updates
- Promotions need compliance review





INSPECTION PREPAREDNESS



Documents to present

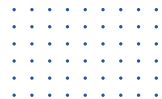
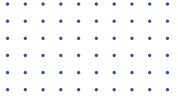
- ☐ Certified passport copy (personal details)
- ☐ Copy of relevant visa/permanent residence permit
- ☐ Proof of employment capacity matching visa
- ☐ IRP5 certificate
- ☐ Job description aligned with visa conditions
- ☐ Verification results from DHA
- ☐ Record of monitoring activities

Best practice: Maintain digital and physical compliance files for easy retrieval



SECTION 6 |

PRACTICAL COMPLIANCE



CONDUCTING A COMPLIANCE AUDIT

Proactive Risk Assessment

Step 1: Identification

- ☐ How many foreign nationals employed?
- ☐ Which roles do they occupy?
- ☐ What employment status/contract types?
- ☐ Which visa categories represented?

Step 2: Documentation Review

- ☐ Are documents valid and complete?
- ☐ Compliance with visa conditions?
- ☐ Approaching expiry dates?

Step 3: Verification

- ☐ Have official verifications been conducted?
- ☐ Are results documented?
- ☐ When was last verification?

Step 4: Impact Assessment

- ☐ What are renewal/change possibilities?
- ☐ What's the operational impact if employees must exit?
- ☐ Skills gap analysis
- ☐ Succession planning needs

Step 5: Scenario Planning

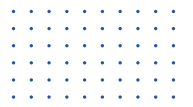
- ☐ Options for everyone
- ☐ Risk assessment by category
- ☐ Transition plans
- ☐ Alternative recruitment strategies

Step 6: Remediation

- ☐ Address non-compliance immediately
- ☐ Initiate renewal/regularisation processes
- ☐ Document all corrective actions
- ☐ Legal advice for complex situations



WHEN THINGS GO WRONG



Managing Non-Compliance Situations

Scenario: Expired visa discovered

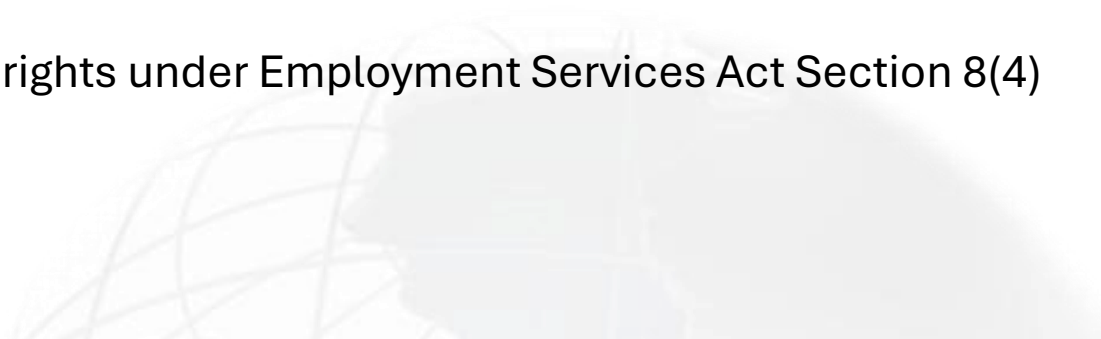
Immediate actions:

- ☐ Suspend work duties (if visa-dependent role)
- ☐ Legal consultation
- ☐ Assess regularisation options
- ☐ Document discovery and actions taken
- ☐ Consider incapacity process if no solution available

Do not:

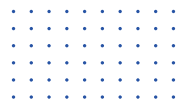
- ⊗ Continue employment as if nothing happened
- ⊗ Delay addressing the issue
- ⊗ Fail to document

Remember: Employee retains rights under Employment Services Act Section 8(4)





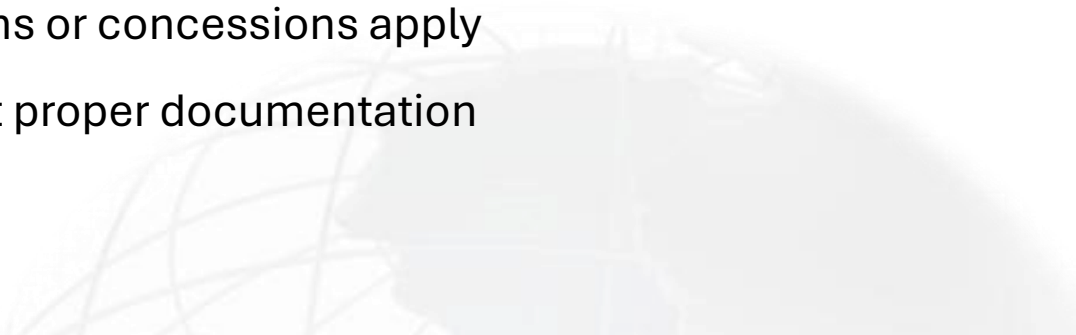
COMPLIANCE MANAGEMENT



Prevention is better than prosecution

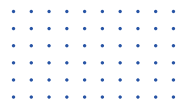
STOP and consult an expert when:

- ⚠ Employee cannot produce original documents
- ⚠ Documents appear tampered with or fraudulent
- ⚠ Visa conditions don't clearly match the role
- ⚠ Employee has history of visa violations or overstays
- ⚠ Facing Department of Labour inspection
- ⚠ Discovered multiple compliance issues
- ⚠ Employee marked "undesirable" or has prior deportation
- ⚠ Complex family/dependent situations
- ⚠ Unclear whether exemptions or concessions apply
- ⚠ Pressure to employ without proper documentation





INCAPACITY PROCESS



Fair Dismissal Procedures

When no visa solution available:

Identification

- ☐ Visa status confirmed expired/invalid
- ☐ Impact on job fulfilment assessed
- ☐ Timeline established

Exploration

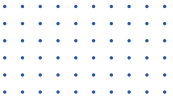
- ☐ Investigate visa options comprehensively
- ☐ Consider reasonable accommodation
- ☐ Assess suitable alternative positions
- ☐ Temporary staff availability

Fair Hearing

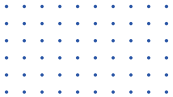
- ☐ Formal consultation process
- ☐ Documented throughout
- ☐ No-fault dismissal with notice pay

Key: Due diligence must be demonstrable





TERMINATING FN EMPLOYEE



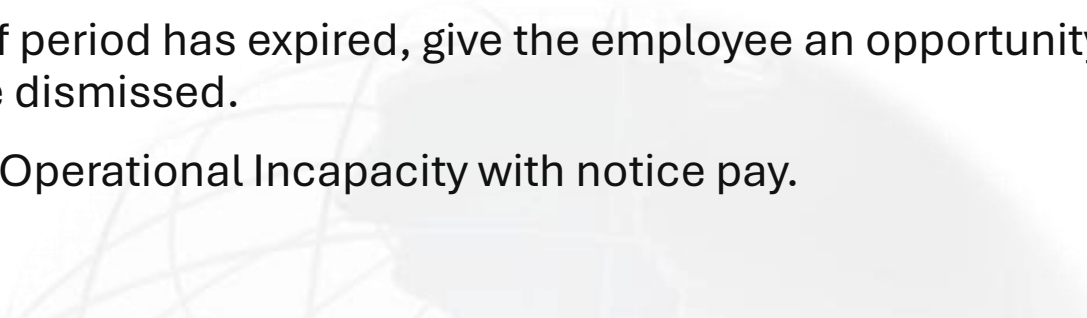
Fair Dismissal Procedures

BEFORE THE EXPIRY OF THE WORK PERMIT:

Communicate the following to the employee:

- a. Remind the employee about the date of expiration of his / her work permit;
- b. Make it clear that it is the employee's responsibility to renew the work permit;
- c. Inform the employee that he/she should timeously approach the employer if documentation is required and that the employer will assist to provide the documentation that is within its means to provide; and
- d. Clearly state what the consequences will be if the employee fails to renew the permit timeously.

AFTER THE EXPIRY OF THE WORK PERMIT:

- a. Place the employee on defined temporary lay off (e.g. 6 months);
 - b. Agree on feedback dates to monitor the status of any visa / permit applied for;
 - c. Once the temporary lay off period has expired, give the employee an opportunity to make representations on why he / she should not be dismissed.
 - d. Dismiss the employee for Operational Incapacity with notice pay.
- 
- 

TERMINATING FN EMPLOYEE

Sample Lay Off Letter

Subject: Temporary Layoff Due to Expired Work Permit

Dear [Employee Name],

I regret to inform you that effective immediately, you are being placed on temporary layoff from your position at [Company Name]. This decision has been made due to the expiration of your work permit, which we have recently discovered during an internal audit.

As per the Immigration Act 13 of 2002, Section 38(1), no person shall employ an illegal foreigner or a foreigner whose status does not authorize them to be employed by such person. Furthermore, the Employment Services Act 4 of 2014, Section 8(1) stipulates that an employer may not employ a foreign national within the territory of the Republic of South Africa prior to such foreign national producing an applicable and valid work permit.

Given these legal requirements, we are obligated to suspend your employment until your work permit is renewed or a new one is obtained. This action is necessary to ensure our compliance with South African law and to protect both the company and yourself from potential legal consequences.

During this temporary layoff period:

1. You will not be required to report to work.
2. You will not receive compensation or benefits.
3. Your employment status will be considered "temporary layoff" rather than terminated.
4. You will be entitled to claim UIF

We strongly encourage you to take immediate steps to renew your work permit or obtain a new one. Once you have valid documentation, please present it to the Human Resources department for review. Upon verification of a valid work permit, we will reassess your employment status.

Please note that if you are unable to obtain a valid work permit within [specify timeframe, e.g., 30 days], we may need to reassess your employment status, which could result in termination of your employment contract.

If you have any questions about this process or need assistance, please contact the Human Resources department at [contact information].

We value your contributions to our company and hope to resolve this situation promptly. Thank you for your understanding and cooperation in this matter.

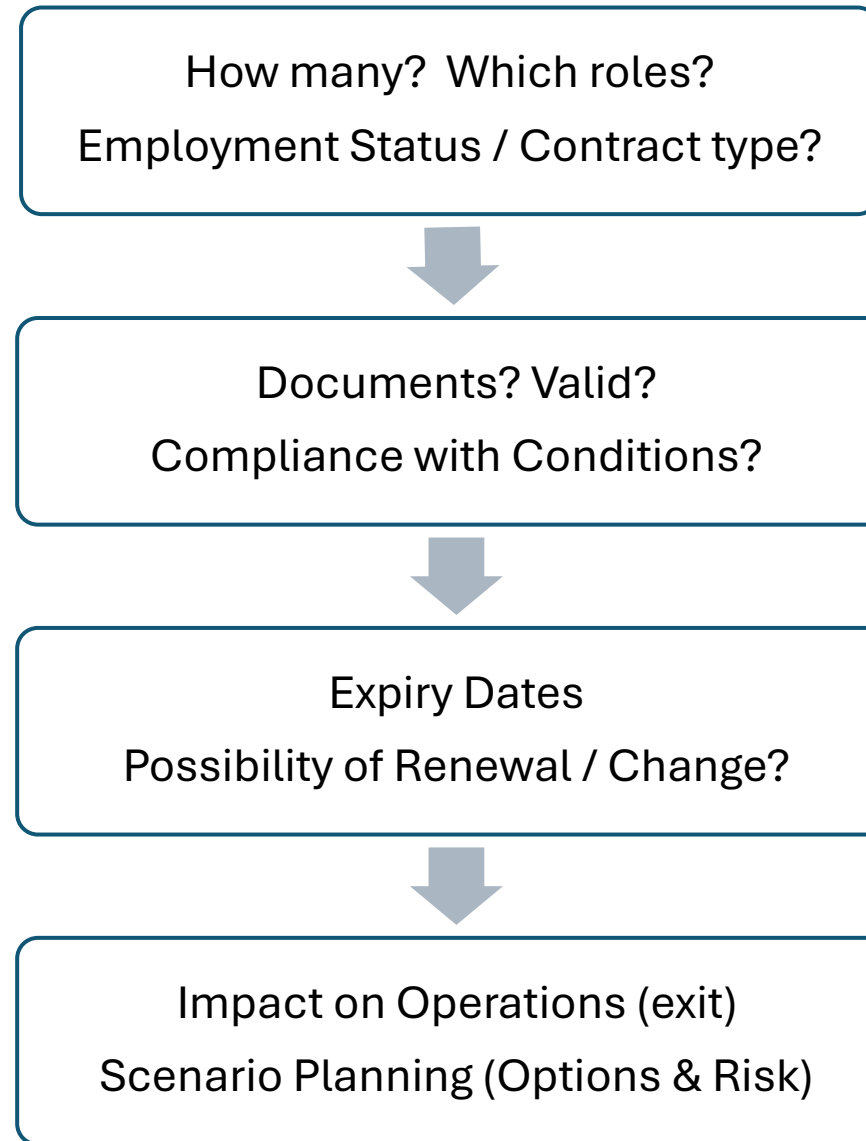
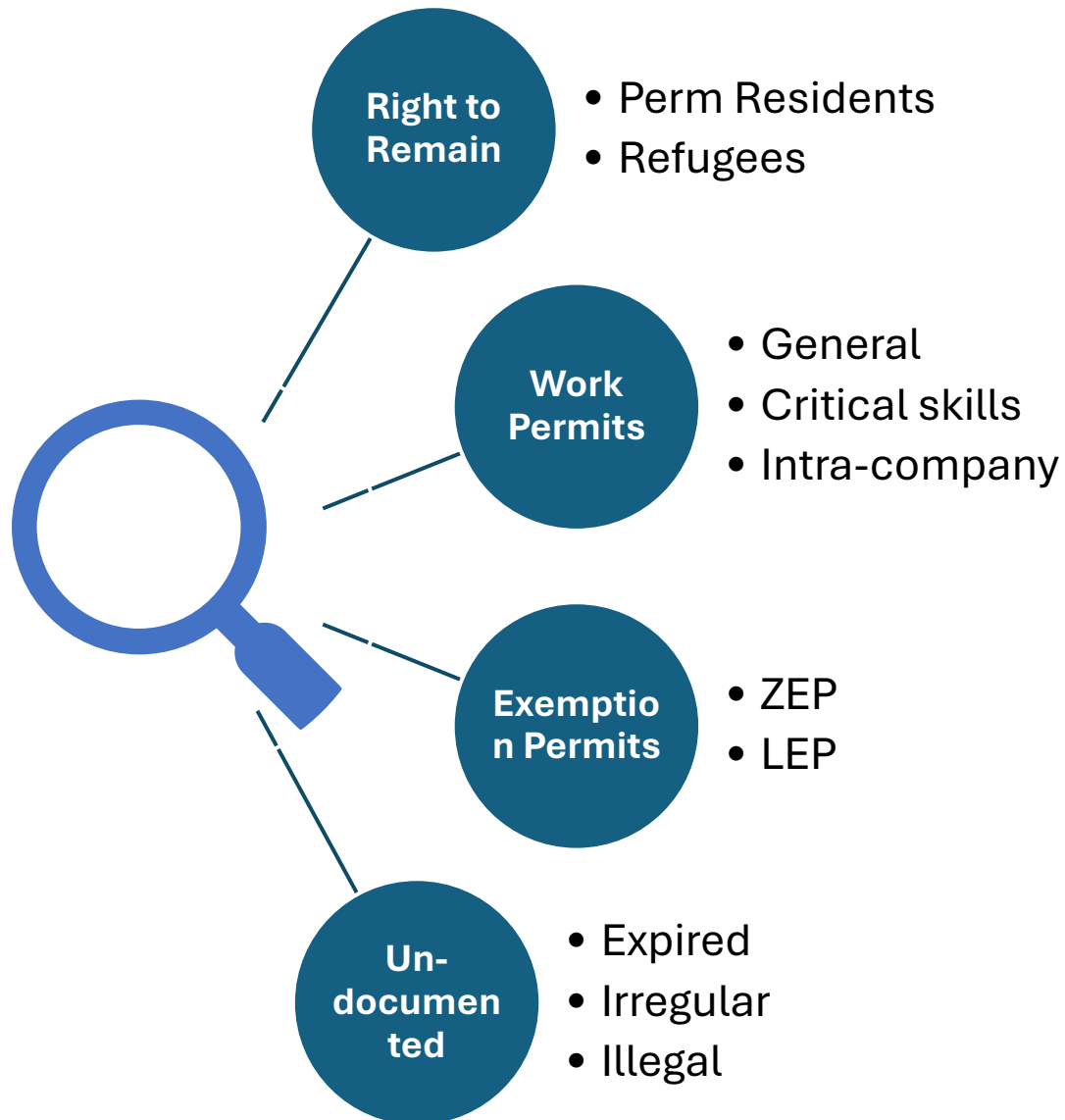
Sincerely,

[Your Name]

Human Resources Manager

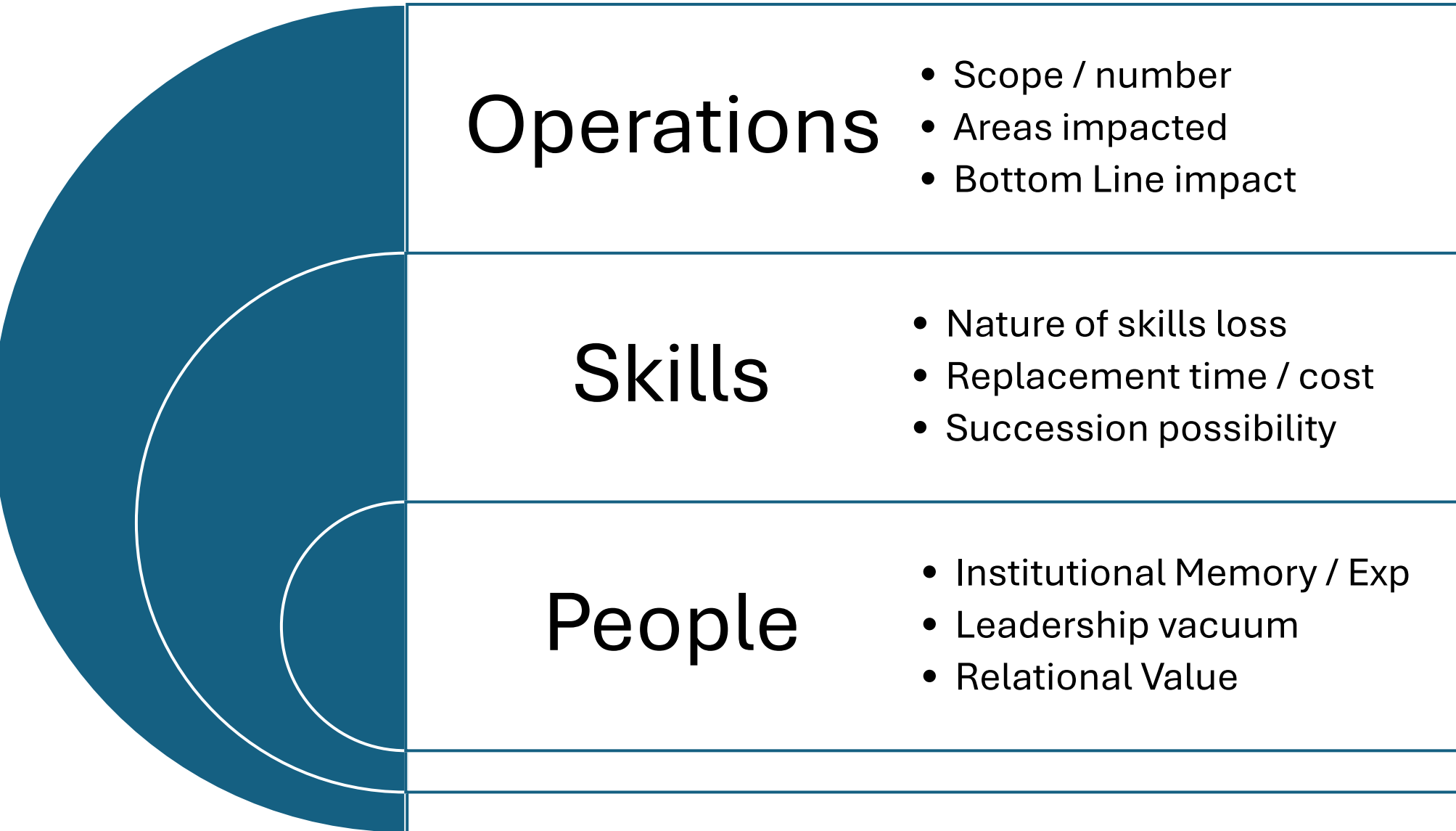
[Company Name]

DUE DILIGENCE



General Compliance with Labour Legislation across
organisation in case of DEL inspection.

ORGANISATIONAL RISK ASSESSMENT



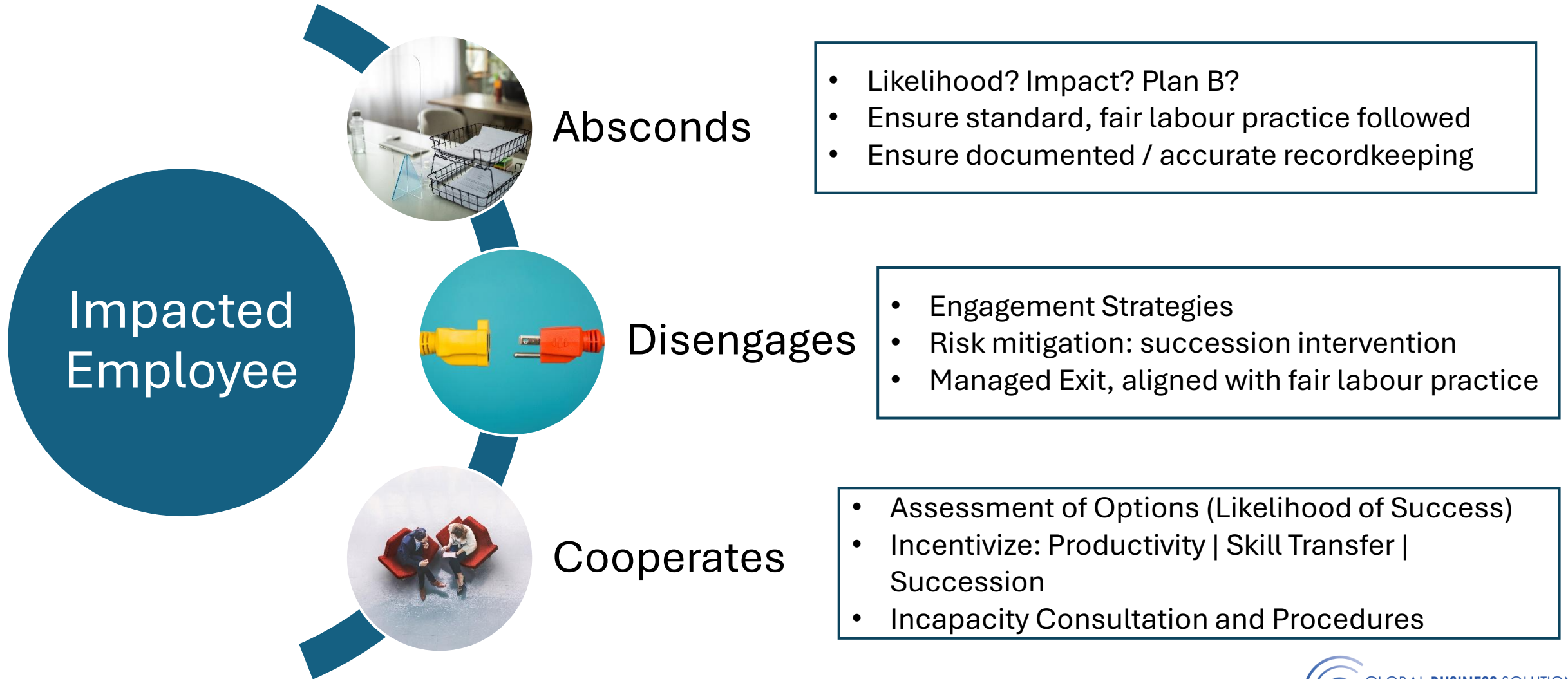
Organisational policy (principles) in respect of engagement, assistance of impacted workers. Exit Management. Process & Financial Support.



GLOBAL BUSINESS SOLUTIONS

FUTURE THINKING, NOW

EMPLOYEE RISK ASSESSMENT



COMPLIANT EXIT

Foreign Nationals afforded same protection under labour legislation.

Contractual Conditions

For those on FTC, assess current end date and manage accordingly. Exit contract, in line with obligations & fair labour practice.

Disciplinary Processes

For those “at fault”, i.e.: provides fraudulent/fraudulently obtained documents, conduct usual Misconduct proceedings.

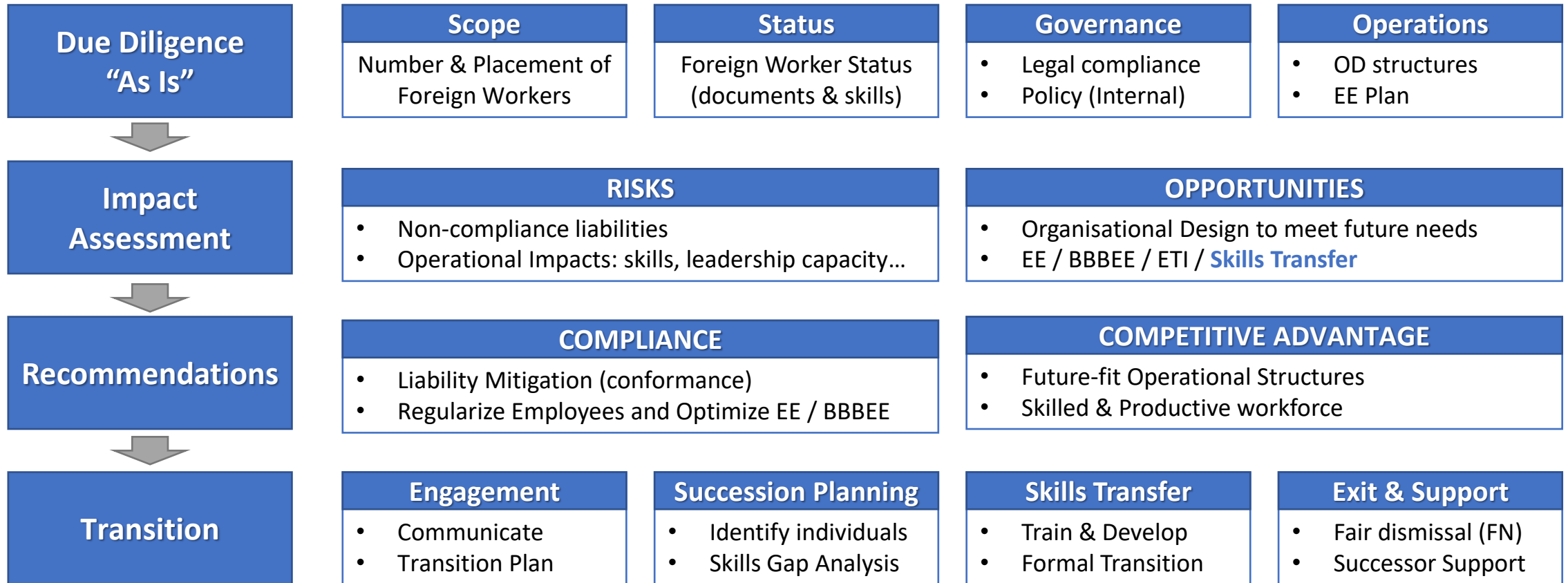
Incapacity Processes

No fault dismissal option for individuals who cannot execute their duties, as a result of their “right to work” status.

Deferred Decision

Engage “no work, no pay” period, say 6 months, in which job remains available, providing individual returns with right to work status, failing which, incapacity dismissal.

NLMP FOREIGN WORKER ORGANISATIONAL RISK ASSESSMENT



GLOBAL **BUSINESS SOLUTIONS**

FUTURE THINKING, NOW

Global Business Solutions offers a comprehensive and holistic assessment. Our subject-matter experts, including labour lawyers, immigration consultants, transformation (BBBEE/EE), skills development, human capital, workforce and organisational design specialists, offer Future-Fit solutions that drive competitive advantage, not just compliance!

Contact: Natalie Singer | natalies@globalbusiness.co.za | 084 450 5196



OUR LEADERS

Through our leaders, we have been at the forefront of labour law and transformation in South Africa for more than 35 years, with a track record that includes –

- ❑ ILO/ ILC representation for 3 years
- ❑ Lead negotiators at NEDLAC
- ❑ Ministerial appointments at the Employment Equity Commission
- ❑ Ministerial appointments to the National Minimum Wage Commission
- ❑ International and local qualifications and certifications
- ❑ Authors and sought after speakers
- ❑ Award winners across various employment relations disciplines
- ❑ World first DE BOT launched successfully

Global Business Solutions (GBS) has a 35-year track record that includes –

- ❑ 51% Black-women owned
- ❑ BBBEE Level 2, QSE
- ❑ National footprint
- ❑ Clients across all sectors and industries
- ❑ Permanently employed attorneys, consultants and developers.



GLOBAL **BUSINESS** SOLUTIONS

FUTURE THINKING, NOW



THANK YOU FOR ATTENDING

Please feel free to reach out if you need further assistance

Natalie Singer

natalies@globalbusiness.co.za

084 450 5196

