



International  
Labour  
Organization



## SOUTH AFRICA- Extract SADC Labour Migration Stocktaking Report

**SADC Labour Migration Policies and Governance:** Brief summaries of key elements of Labour Migration Policies<sup>1</sup>; Specific provisions pertaining to the employment of foreign workers<sup>2</sup>; and, Applicable requirements and procedures for obtaining work permits<sup>3</sup>.

South Africa	
Type of permit	<p>General Work Visa</p> <p>Critical Skills Work Visa: For high skill professionals such as engineers, planers, financial auditors, doctors etc</p> <p>Intra-company transfer work visa: When multi-national companies decide to transfer their key employees working in a foreign branch to South Africa</p>
Application requirements	<p>For General Work Visa:</p> <p>Prior to submitting an application for a general work visa, the applicant’s prospective employer is required to apply to the Department of Labour for a certificate confirming that-</p>

<sup>1</sup>Available information indicates that only 5 SADC Member States (Eswatini, Lesotho, Namibia, Seychelles and Zimbabwe) have a National Labour Migration Policy, with Mauritius formulating a Migration and Development Policy and Malawi having reached the stage of publishing a Situational Analysis report in preparation for the drafting of its NLMP.

<sup>2</sup>The authors express their gratitude to Ms Zoe Isaacs for the permission to reproduce the information pertaining to the employment of foreign nationals found in the SADC Labour Law Guide that is maintained by the SADC Private Sector Forum (SPSF) and available at <https://www.sadclabourlawguide.spsf.org/bw/>

<sup>3</sup>Information regarding requirements and processes for obtaining work permits was primarily sourced from official government websites and from <https://www.globalization-partners.com/globalpedia/> No information was available for Comoros.

	<p>despite diligent search, the prospective employer has been unable to find a suitable candidate with qualifications or skills and experience equivalent to those of the applicant;</p> <p>the applicant has qualifications or proven skills and experience in line with the job offer;</p> <p>the salary and benefits of the applicant are not inferior to the average salary and benefits of citizens or employees occupying similar positions in the Republic;</p> <p>a contract of employment stipulating the conditions of employment and signed by both the employer and the applicant is in line with the labour standards in the Republic and is made conditional upon the general work visa being approved;</p> <p>proof of qualifications evaluated by SAQA and translated by a sworn translator into one of the official languages of the Republic was submitted; and</p> <p>full particulars of the employer, including, where applicable, proof of registration of the business with the <a href="#">Commission on Intellectual Property and Companies (CIPC)</a>.</p> <p>Then the application to the general work visas can be submitted and the following will be required for a general work visa application:</p> <p>Job offer and acceptance.</p> <p>CV.</p> <p>Proof of the employer’s attempts to first recruit a South African permanent resident or citizen for the position.</p> <p>SAQA registration, confirming the applicant’s qualifications.</p> <p>Proof of good health and character.</p> <p>Visa application should be made in the applicants home country. Renewal process can be done in South Africa</p>
Duration of permit	<p>2 to 4 years and can be extended.</p> <p>After 5 years continuous work, the employee can apply for a permanent residency</p>
Employment of Foreign Nationals	<p>According to the Employment Services Act an employer may not employ a foreign national before verifying that the foreign national has a valid work permit. The Immigration Act provides detailed provisions and guidelines on the procedures to be followed when employing a foreign nation subject to specific requirements being met. Employers must ensure that they have a skills transfer program in place in respect of any position in whichever foreign national occupies. All</p>

	<p>employees in an employment relationship in South Africa, regardless of their status enjoy the protection of the labour laws. In order to work in South Africa, the employee should be a citizen or in possession of a valid work visa issued by the Department of Home Affairs, on satisfaction by the Department of Labour that the person has scarce or critical skills that cannot be performed by a South Africa. The employer must ensure that the following measures are adhered to before employing a foreign national: before recruiting a foreign national, the employer must satisfy themselves that there is no other persons in the Republic with suitable skills to fill a vacancy; and the employer must ensure that it has programme in place for skills transfer in respect of any position in which a foreign national is employed. The general work visa will be issued to a foreign employee who has obtained a position with a South African company. The employee's credentials will be screened by the Department of Labour to ensure they have the relevant qualifications for the positions.</p> <p>Generally, a foreign national with specialized or exceptional skills can be issued with a critical skills work visa for three years with a possibility for extension. The Minister of Labour and Minister of Trade and Industry annually publish a list of critical skills. The applicant does not have to obtain a position of employment prior to applying for critical skills work visa. Under the visa the individual may enter South Africa for up to one year at which time the visa will expire if relevant employment has not been obtained. The applicant must demonstrate that they have the said critical skills such as holding an advanced degree or publications in their field. The individual must register with the specialized South African professional group and the employee's qualifications will be evaluated based on South African standards.</p> <p>The Department of Home Affairs may issue an Intra-Company Transfer work visa, which allows a foreign employee of a company with business relations in South Africa to work in-country for up to 4 years with said company. Permissible companies include those with a branch, subsidiary, or affiliate in South Africa. The applicant must be an employee of the parent company for at least 6 months prior to transfer.</p> <p>An individual may hold a South African visa but not be employable. These visas include: relatives visa; spousal visa unless specific accommodation has been granted; life partner visa unless specific accommodation has been granted; retired persons visa; medical treatment visa and a volunteer permit.</p>
National Labour Migration Policy	No information available

<p>National Labour Market Institutions</p>	<p>The LRA provides for the establishment of the Commission for Conciliation Mediation and Arbitration, the Governing Body consisting of a chairperson and three members each from government, business and labour. It is headed up by a Director and is staffed with commissioners and support staff. The Commission is independent and operates throughout South Africa. The mandatory functions include resolving disputes through conciliation and arbitration in terms of the LRA; assist in the establishment of workplace forums; review rules and publish information. Discretionary functions include providing advice, training, conducting, overseeing or scrutinising of elections or ballots of unions or employers' organisations. One of the functions of the Commission is to accredit bargaining councils and private agencies for dispute resolution, provided the necessary conditions and standards are achieved. Specific provisions apply in relation to the effect of arbitration awards that may be enforced or reviewed in the Labour Court, or varied or rescinded by the Commission.</p> <p>The Labour Court is established under the LRA and consists of a Judge President and a number of permanent and acting judges. The Court has the same standing as the High Court in relation to matters under its jurisdiction. The Court has broad powers to grant interdicts, issue declaratory orders, order compensation, and damages. It has inherent jurisdiction in relation to employment matters. The Labour Appeal Court has a Judge President, and consists of a three person panel and also includes High Court judges. The Labour and Appeal Courts also have exclusive civil jurisdiction to grant certain relief under the BCEA. They also have concurrent jurisdiction with the civil courts on matters relating to employment contracts.</p> <p>The Department of Labour includes an Inspection Service that appoints labour inspectors to monitor all employment legislation including compliance with the Labour Relations Act, Basic Conditions of Employment Act, payment of levies and health and safety and employment equity compliance. This inspection service can also be conducted by a relevant Bargaining Council and is conducted by a separate inspectorate for the mines and transport.</p> <p>The Employment Conditions Commission is established under the BCEA and is an advisory Commission responsible for advising the Minister on any matter arising out of the application of the Act; trends and impacts in collective bargaining that may undermine the purposes of the BCEA; or related policies. The Commission consists of three experts appointed by the Minister that are knowledgeable about the labour market and conditions of employment; and one member and alternate</p>
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member representing organised labour and organised business nominated through NEDLAC. A chairperson is appointed from among the members.

The National Economic Development & Labour Council (NEDLAC) is an independent statutory body, constituted under separate legislation, consisting of an executive council with representatives of government, labour, business and community. Community is only represented on the Development Chamber, whereas the other constituents are represented on the trade and industry; public monetary and finance and labour market chambers. All employment matters must go through NEDLAC before being presented in Parliament, and other related socio-economic issues may also be referred to NEDLAC.

In terms of the Employment Equity Act, the Commission for Employment Equity is established and operates as an advisory body to the Minister on all matters of employment equity and affirmative action in terms of the EEA. It is constituted with two representatives each from government, labour, business and community and a chairperson appointed by the Minister.