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Employing Foreign Nationals in South Africa — What Every Employer Needs to Know Right Now

The current socio-political climate is creating pressure on employers to make hasty decisions about their foreign national staff. But be warned: reacting to public sentiment rather than the law will cost you more than staying the course.

Current tensions between South Africans and foreign nationals may create operational challenges, but they do not create a legal basis for dismissal.

The Law Is Clear — Everyone is Protected

It is an established constitutional principle that the right to fair labour practices applies to all individuals regardless of their legal status. Foreign nationals — documented or not — have protection under South African labour law. Courts have confirmed this repeatedly. The assumption that an undocumented employee is easier to dismiss is wrong.

You cannot summarily dismiss an employee based on their visa status or nationality. The *Nyakudya* case (Eastern Cape High Court, 2025) confirmed that even an expired work permit is not a shortcut to instant dismissal; employers must follow a fair incapacity process with proper notice, just as they would do for any other employee.

Non-Compliance Will Cost You

Employing a foreign national without valid work authorisation is a criminal offence under section 49(3) of the Immigration Act 13 of 2002. Employers have a duty to verify the work status of their employee and maintain accurate records.

Until recently, the consequence was a R10,000 admission of guilt fine. That era is over. The tabled Employment Services Amendment Bill introduces:

- A first offence fine up to R100,000 per undocumented worker
- A second offence within three years a fine of R200,000 per worker
- Multiple or ongoing contraventions a fine up to R1 million or 10% of annual turnover, whichever is greater

Criminal prosecution and imprisonment are also on the table. President Ramaphosa stated on 7 June 2026: "We cannot have a situation where employers merely pay a fine and continue employing undocumented foreign nationals." Imprisonment of 1 year (first offence), 2 years (second offence) or 3–5 years without the option of a fine for the third and subsequent offences.

Inspections by SAPS, Home Affairs and the Department of Employment and Labour are intensifying.

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Critically, the rules also apply to private households that employ domestic workers, gardeners, caregivers and other household staff — Employers in the domestic space are also exposed.

The risks are real long lasting, and potentially very costly

1. Immigration compliance risk

Employing an undocumented foreign national exposes the employer to fines, criminal liability, and now intense inspections from the Department of Labour.

2. Reputational and operational risk

The current climate introduces a risk that extends beyond the workplace – the reach of social media is far and long lasting! Everyone has a phone; a poorly handled situation does not stay behind closed doors. A business seen to be using or exploiting undocumented workers will face severe public backlash.

We have also seen in the media, organised movements approaching and entering businesses — intimidating employees, harassing staff, and disrupting operations.

3. Labour law risk

You cannot dismiss on the basis of nationality or visa status without a fair process. Doing so opens an Employer up to an unfair dismissal claim at the CCMA which the employee will win regardless of their documentation status.

4. Duty of care / OHS risk

Under the Occupational Health and Safety Act, Employers have a duty to provide a safe working environment for all employees. In many cases, perpetrators of xenophobic violence operate without consequence, reinforcing a culture where violence against foreigners is rarely punished. If a foreign national employee is assaulted at or near the workplace and the employer was aware of the threat environment and took no action, you have an OHS exposure.

What Employers Should Actually Do - Immediate steps:

- **Audit immigration documentation now.** Verify work permits, maintain records, and engage employees before permits lapse. ZEP and LEP holders have a current extension to 28 May 2027.
- **Do not take unilateral action.** Any separation, redeployment, or termination involving a foreign national must follow a fair process. Even a mutual separation agreement must be properly constructed for legal compliance.
- **Assess and document the safety risk.** Conduct a risk assessment for employees in exposed roles or high-risk commuting areas. Put your action plans and responses in writing.
- **Communicate with your workforce.** A clear message from management affirming workplace dignity and zero tolerance for harassment is both the right thing to do and evidence of OHS compliance.

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- **Prioritise local recruitment.** Where skills are available locally, demonstrate that you recruit or attempted to recruit South Africans first. This is both commercially prudent and aligned with the direction of the Employment Services Act.

If the employee wants to leave or return home: An alternative to a resignation would be a mutual separation agreement—the document must be correctly structured for UIF and provident fund purposes. It must accurately characterise the current situation, clearly state the termination reason, and set out the obligations on both parties.

The law is clear on what is required. Compliance is not optional, and the consequences of getting it wrong have never been more severe. Ultimately, as employers, we carry both a legal responsibility and a human one — and right now, both are being tested.

In a climate where fear, frustration, and social media sentiment are driving decisions that should be driven by law and conscience. And while dismissing a foreign national to appease social pressure may seem like the solution — it is neither legal nor ethical, and the consequences will outlast the noise.

Those employers who lead with integrity, act within the law, manage their workplaces with dignity, and refuse to be rushed into poor decisions by external pressure — they are the ones who will emerge from this moment with their businesses intact, their teams loyal, and their reputations untouched.

The law tells us what we must do. Our values determine how we do it.

Disclaimer: The views and opinions expressed in this article are those of the author in their personal professional capacity and do not constitute legal, labour, HR, or professional advice. The information provided is intended as general guidance only.

Every workplace situation is unique and should be considered on its own facts and merits. The content of this article must be assessed within the context of the applicable legislation, sectoral determinations, bargaining council agreements, and all relevant circumstances before any decision is made or action taken. Readers are strongly encouraged to obtain professional advice tailored to their specific circumstances.

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