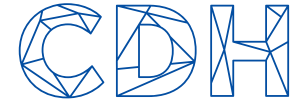


Immigration Insights

by CDH Employment Law



ALERT | 3 October 2024

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SOUTH AFRICA

The Department of Employment and Labour clamps down on employment of illegal foreigners: What employers should know



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**IMMIGRATION INSIGHTS
ALERT**

The Department of Employment and Labour clamps down on employment of illegal foreigners: What employers should know

The Department of Employment and Labour (DEL) has recently stepped up its inspection raids, which has attracted significant media attention, mostly prominently in the hospitality industry.

Pursuant to these inspections, approximately 80 people working in restaurants across the country have been arrested for violating the provisions of the Immigration Act 13 of 2002 (Immigration Act) by failing to produce the requisite documentation. These arrests have included restaurant owners, managers, human resource practitioners and foreign national employees themselves.

Section 38 of the Immigration Act obliges employers to ensure that they will not employ:

- an illegal foreigner;
- a foreigner whose status does not authorise them to be employed by such person; or
- a foreigner on terms, conditions or in a capacity different from their status.

In complying with their obligations, employers are required to make a good faith effort to ensure that no foreigner is illegally employed or to determine the status of any foreigner who is employed. Where an illegal foreigner is employed, an employer needs to be alive to how to manage the situation to avoid claims in the Commission for Conciliation, Mediation and Arbitration.

As the DEL has confirmed that it will continue with compliance inspections to clamp down on contraventions of the Immigration Act, employers are advised to audit the employment status of foreigners to avoid being caught on the wrong side of immigration, employment and criminal laws. The audits are wide ranging and should include verification of the validity of work visas or permits to understanding the employment restrictions that apply to the person.

Any inspection by the DEL or the Department of Home Affairs (DHA) must be conducted in accordance with the prevailing laws, which regulate the right of entry to a workplace as well as the ability to search, inspect, seize documents and arrest people suspected of having committed a criminal offence.

Over the last decade employers have regrettably become accustomed to political parties such as the Economic Freedom Fighters and organisations like Operation Dudula (and others) insisting on conducting their own inspections, which often resulted in conflict as these were unlawful. However, inspections by the DEL and the DHA, where conducted in accordance with the law, are to be welcomed by law-abiding employers to ensure compliance with the prevailing immigration, employment and occupational health and safety laws. It is best that employers be prepared.

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

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.

PLEASE NOTE

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