

## **NEDLAC engagements on labour migration policy and Employment Services Bill start**

Government published a draft labour migration policy and a draft Employment Services Bill for public comment in October 2022. The main aim of the policy and Bill will be to ensure that labour migration to and from South Africa is undertaken in the interests of both migrant workers and the South African economy and society. Agbiz submitted comments on the policy and Bill through BUSA. Annelize Crosby will participate in the BUSA task team on the policy and Bill in the process of NEDLAC engagements that will now follow.

### **Obligations on employers who employ foreign workers**

Clause 12A of the draft Bill provides that no person may employ a foreign national to work within the territory of the Republic of South Africa, unless that foreign national has the right to be so employed in terms of a visa issued under the Immigration Act or is permitted to work within the territory of South Africa in terms of any other legislation or international agreement binding upon the Republic. Moreover, clause 12A (2) places certain responsibilities on employers that employ foreign workers. These responsibilities include verifying that the foreign national is entitled to work in South Africa and is entitled to perform the work for which they are employed. Employers also have to satisfy themselves in such manner as may be prescribed that there are no persons in the Republic, other than foreign nationals, with the requisite skills to fill the vacancy, before recruiting a foreign national to occupy such vacancy. In addition, employers will have to prepare a skills transfer plan in respect of any position in which a foreign national is employed and will need to keep the necessary records to show that the person is legally employed. The conditions of service of a foreign worker may not be inferior to those which would be provided to a South African citizen. It is important to note that most of these obligations are already contained in the current Act. What is new, is the provision that the way in which some of the obligations must be complied with, can be prescribed.

### **Quotas**

Clause 12(B) provides that the Minister may, after consulting the Board, by notice in the Gazette, specify a maximum quota for the employment of foreign nationals by employers in any sector. These quotas may be national or regional and may specify certain occupational categories. Interested parties will be given 30 days to comment on such a notice. The notice will specify the period within which existing employers must comply with the quotas in the notice. It will also specify the period within which newly established employers must comply with the quotas within a notice. Small employers, as defined in that notice, will not be required to comply with the quotas specified in the notice. BUSA has taken the view that quotas can only be prescribed if there is reliable market-intelligence data to base that on.

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The policy requires that the imposition of quotas should be accompanied by a transparent process, which allows for consultation also at the provincial level and with sectoral role-players. Among others, the unavailability of South Africans to occupy certain positions and the inability to attract South African with sufficient skills to work in certain sectors, are some of the matters to be considered in the course of the consultation.

The Bill proposes that for the purpose of determining a quota under this section, the Minister may take into account any relevant factor and must take into account—

- (a) the purpose of the Act, as set out in section 2(1)(h);
- (b) the availability of the requisite skills, including critical skills, among South African citizens, permanent residents or refugees and asylum-seekers who are available to work in the sector, area or occupational categories to which the quota is to be apply. This is positive as requisite skills will be considered not only skills on the critical skills list.

### **Process going forward**

The NEDLAC process will likely take between six weeks and three months, whereafter a NEDLAC report will be prepared and sent to Parliament. Public hearings in Parliament will the follow, in all probability only after the elections in 2024.

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