

REPUBLIC OF VANUATU

THE LABOUR (WORK PERMITS) ACT No. 36 OF 1985

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THE LABOUR (WORK PERMITS) ACT No. 36 OF 1985

To consolidate with amendments the Labour (Work Permits) Regulation No. 28 of 1977.

BE IT ENACTED by the President and Parliament as follows:-

PART 1 - PRELIMINARY PROVISIONS

INTERPRETATION AND APPLICATION

1. (1) In this Act, unless the context otherwise requires -

"Commissioner of Labour" means the officer referred to as such in section 2 of the employment Act No. 1 of 1983;

"citizen" means a citizen of Vanuatu;

"employment" means the performance by an employee of a contract of service, whether written or not, and whether paid or unpaid and the words "employ", "employed", "employee" and "employer" shall be construed accordingly;

"Minister" means the Minister responsible for labour relations;

"occupation" means any commercial or industrial activity, intellectual or manual work or any specific work or task which a person may execute as part of his employment;

"worker" includes a director or manager of a company or firm.

(2) The provisions of this Act shall not apply to -

- (a) any person appointed by the Government to a post within the public service;
- (b) any person recruited under a written contract for employment in Government service;
- (c) any person rendering voluntary service in Vanuatu under any technical aid scheme where such service has been authorised by the Government;
- (d) any person entering Vanuatu at the request or invitation of the Government or consultant to the Government;
- (e) any other class or classes of persons as the Minister may by Order prescribe.

PART II - WORK PERMITS

WORK PERMITS

2. (1) It shall be an offence for any non-citizen worker to whom this Act applies to take up or to continue in any employment in Vanuatu, without first having obtained a work permit or, where such permit has been issued, otherwise than in accordance with the conditions thereof.
- (2) Every employer who wishes to employ any non-citizen worker shall make application for a work permit to the Commissioner of Labour in the form and manner prescribed in the First Schedule.
- (3) The Commissioner of Labour may issue work permits valid -
- (a) where the employment is not the subject of a written contract, for two years,
 - (b) where the employment is or is to be the subject of a written contract, for three years or the duration of the contract, whichever period is the less.
- (4) All work permits issued by the Commissioner of Labour shall contain-
- (a) the full name and business address of the employer;
 - (b) the full name of and the occupation to be carried out by the employee;
 - (c) a photograph of the employee;
 - (d) details of the residence permit of the employee in cases where the employee is subject to immigration control;
 - (e) such further matters as may be prescribed by the Minister by Order.

WORK PERMIT TAX

3. (1) An employer to whom a work permit is issued under this Act shall be liable to pay an annual tax (to be known as "the Work Permit Tax") at a rate of 50,000 Vatu, or such lower rate as the Minister may by Order prescribe for persons being citizens of, or ordinarily resident in, any country specified in the Order or for specified classes of persons.
- (2) The Work Permit Tax shall be paid in full for one year upon the issue of a work permit and thereafter shall be due on the anniversary of the date of the issue in each ensuing year while the work permit remains in force.
- (3) If the holder of a work permit fails to pay the Work Permit Tax in the second or any subsequent year while the work permit remains in force, within 30 days of the date on which it becomes due under subsection (2), the work permit shall be deemed to have lapsed on that date for all purposes of this Act.

- (4) If a non-citizen worker in respect of whom Work Permit Tax was paid ceases to be in employment during any year in respect of which the Work Permit Tax has been paid, the Tax shall be refunded in proportion to the unexpired part of that year to the employer upon delivery up of the Work Permit to the Commissioner of Labour. In calculating the amount of a refund no account shall be taken of an incomplete month.

CHANGE OF EMPLOYER OR OCCUPATION

4. An employer shall make application to the Commissioner of Labour in the manner and form prescribed in the First Schedule for the amendment of a work permit issued to any employee who -
- (a) wishes to change his occupation although remaining in the service of the said employer, or
 - (b) has previously been employed in any occupation by another employer.

RENEWAL OF EXTENSION OF WORK PERMITS

5. An employer who wishes to retain the services of any employee in respect of whom a work permit has been issued beyond the expiry of the period for which such permit is valid, shall make application in the manner and form prescribed in the First Schedule to the Commissioner of Labour not less than sixty days prior to the date of expiry of such permit.

OFFENCES

6. (1) It shall be an offence for any employer to employ any non-citizen worker in respect of whom a work permit has not been issued or whose work permit has been issued in respect of employment by another employer.
- (2) It shall be an offence for any employer to continue to employ any non-citizen worker in respect of whom a work permit has been issued for such employment beyond the date of expiry of such permit.
- (3) It shall be an offence for any employer to employ any non-citizen worker in respect of whom a work permit has been issued in any occupation other than that specified in such work permit.

CONSIDERATION OF APPLICATIONS

7. In considering any application made for the issue of a work permit or for the renewal or extension of a work permit or for the amendment of a work permit to authorise a change of employer or change of occupation, the Commissioner of Labour -
- (a) shall ascertain whether the employer has advertised the vacant position adequately and whether any suitably qualified citizen worker has applied for the position or has sought similar employment; and
 - (b) may have regard to such other matters as he considers relevant and in particular -
 - (i) the employment record of the employer;

- (ii) the ability of the employer to provide reasonable training facilities for a citizen-worker counterpart to a work permit holder;
- (iii) the professional or technical qualifications and experience of the prospective employee;
- (iv) the protection of local and national interests; and
- (v) whether the conditions of employment offered are in conformity with the laws of Vanuatu and with the terms of any collective agreement which may be in force in respect of the industry or occupation concerned, if any.

DECISIONS AND APPEALS

8. (1) The Commissioner of Labour shall reach a decision upon every application made to him under the provisions of this Part within thirty days from the date of receiving such application, or within such extended period as provided by subsection (2) and such decision shall be communicated by the Commissioner of Labour to the employer making the application without delay.
- (2) In cases where an application received by the Commissioner of Labour does not provide all the information required or where any of the information provided is required to be verified, the calculation of the period prescribed in subsection (1) shall be suspended until the date of receiving such additional information or of verification of such information and the employer making the application shall be so informed by the Commissioner of Labour.
- (3) If the employer making the application shall not receive the decision of the Commissioner of Labour within 30 days from the date of receipt of the application by him, the employer may appeal to the Minister for the determination of his application in accordance with the procedure prescribed in section 11.

PART III - RESERVED OCCUPATIONS AND VOCATIONAL TRAINING

DECLARATION RESERVED OCCUPATION

9. (1) The Minister may by Order declare any occupational activity whatsoever to be a reserved occupation. Such Order shall fix the proportion of non-citizen workers each employer may employ, if any, in such reserved occupation.
- (2) Any Order prescribing the number of non-citizen workers who may be employed in a reserved occupation by any particular employer shall be prescribed as a percentage of the total number of citizen workers employed in such reserved occupation by that employer:

Provided that where the calculation of such percentage does not produce a whole number, the percentage shall be deemed to be the next higher whole number where the proportion of a whole number is 0.5 or over or the next lower whole number where the proportion of a whole number is less than 0.5.

- (3) Any employer who wishes to employ a greater number of non-citizen workers than that prescribed in any reserved occupation shall make prior application to the Commissioner of Labour.
- (4) The Commissioner of Labour may in his discretion grant or refuse an application made in accordance with subsection (4); when granted, the permission shall stipulate the additional numbers who may be so employed and the duration of such employment.
- (5) Any employer who -
 - (a) employs any non-citizen worker in any reserved occupation otherwise than in accordance with the provisions of any order made under subsection (1) or
 - (b) employs a greater number of non-citizens workers in any reserved occupation than that prescribed by such Order otherwise than in accordance with the permission of the Commissioner of Labour granted under subsection (4); or,
 - (c) employs any non-citizen worker in any manner contrary to the decision of the Minister on any appeal made under section 12,shall be guilty of an offence against this Act.

VOCATIONAL TRAINING

10. (1) It shall be a condition of the issue of every work permit or its renewal or change of employment status, or transfer to another employer, that the employer shall train a citizen worker:

Provided that the Commissioner of Labour may exempt an employer from the training requirements if he is satisfied that there is no citizen worker available as a counterpart to the work permit holder.
- (2) Before issuing a work permit the Commissioner of Labour shall satisfy himself that the training provisions of the employer will be adequate and that the costs thereof will be borne by the employer.

PART IV - GENERAL PROVISIONS

SUBMISSION OF APPLICATIONS

11. (1) In the case of employing establishments situated on Efate, applications for work permits shall be lodged with the Commissioner of Labour who shall issue a receipt for such application.
- (2) In the case of other employing establishments such applications may be lodged with the District Labour Officers who shall be responsible for the transmission of such applications to the Commissioner of Labour who shall issue a receipt therefor.
- (3) The periods prescribed in subsection (1) of section 8 shall commence from the date of receipt of the application by the Commissioner of Labour.

APPEALS

12. Any person aggrieved by a decision of the Commissioner of Labour or who has not received his decision within the period prescribed by subsection (1) of section 8 may appeal to the Minister. The Minister may in his discretion confirm, modify, amend or rescind such decision, or determine any application which has not been so determined by the Commissioner of Labour within the said period. The decision of the Minister shall be final and shall not be called into question in any Court in any proceedings whatsoever.

REGISTER OF NON-CITIZEN WORKERS

13. Every employer shall maintain a register of non-citizen workers employed by him and such register shall contain the particulars prescribed in the Second Schedule. It shall be an offence against this Act to fail to maintain such register or to enter such prescribed particulars.

SUBSIDIARY LEGISLATION

14. (1) For the better carrying into effect of this Act the Minister may make Orders not inconsistent with this Act, and may prescribe anything that may be prescribed including fees for applications and appeals.
- (2) The Minister may provide penalties for the contravention of Orders made under this section which shall not exceed a fine of VT 10,000.

IMPLEMENTATION AND ENFORCEMENT

15. (1) The Commissioner of Labour and any labour officer authorised in writing by the Commissioner of Labour shall be responsible for the implementation and enforcement of this Act.
- (2) The Commissioner of Labour or any labour officer authorised by the Commissioner in that behalf, may without notice enter any business premises or place of employment other than any dwelling house (in which case the consent of the owner or occupier shall be required), and require the employer, manager or other person in charge to furnish any information and to produce any book or other document which in his opinion is or may be relevant to the implementation or enforcement of this Act and may, for the purpose of further investigations or for the purposes of evidence in an intended prosecution, retain or make copies of or extracts from such book or document.

REPORT OF OFFENCES

16. The Commissioner of Labour may report offences against this Act or any subsidiary legislation made under the provisions thereof directly to the Public Prosecutor.

OFFENCES

17. (1) Any person who shall furnish any information which he knows to be false or does not believe to be true, or shall produce any book or document which he knows to be incorrect, to the Commissioner of Labour or a labour office acting in the exercise of his powers or functions under this Act shall be guilty of an offence against this Act.
- (2) Any person who shall wilfully resist or obstruct the Commissioner of Labour or a labour officer, as the case may be, in the lawful performance of his duties under this Act shall be guilty of an offence against this Act.

PENALTIES

18. (1) Any person convicted of an offence against the provisions of section 13 shall be liable in the case of a first offence to a fine not exceeding VT. 10,000 and in the case of a second or subsequent offence to a fine not exceeding VT. 20,000 or to imprisonment for a term not exceeding one month or to both such fine and imprisonment.
- (2) Any person convicted of an offence against the provisions of this Act other than section 13 shall be liable in the case of a first offence to a fine not exceeding VT. 50,000 and in the case of a second or subsequent offence to a fine not exceeding VT. 100,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.
- (3) In this section, the expression "second or subsequent offence" means an offence which has been committed within five years of a previous conviction for the same offence.

ACT NOT TO DETRACT FROM OTHER LAWS

19. For the avoidance of doubt, nothing in this Act shall derogate from the responsibility of any person of complying with any law applicable to him governing his entry into and residence in Vanuatu.

REPEAL AND SAVING

20. (1) The Labour (Work Permit) Regulation No. 28 of 1977 is repealed.
- (2) Notwithstanding subsection (1) all work permits issued under the Regulation repealed by subsection (1) and all acts done under the repealed Regulation shall continue to be good and valid and shall be deemed to have been made under this Act.

COMMENCEMENT

21. This Act shall come into force on such day as the Minister may appoint by Order published in the Gazette.

FIRST SCHEDULE

(section 2(2), 4 and 5)

The Employment (Work Permits) Act No. of 19

APPLICATION FOR A WORK PERMIT OR ITS RENEWAL, CHANGE OF EMPLOYER
OR EMPLOYMENT STATUS

NOTES:

1. This form should be completed by the employer or prospective employer in block capitals or typescript and in duplicate, who is applying for:
 - (1) the employment of a non-citizen worker, whether temporary or permanent;
 - (2) the renewal of a Work Permit for a non-citizen worker;
 - (3) a change of employer by a non-citizen worker,
 - (4) a proposed change in employment status of a non-citizen worker.
2. Two copies of the completed forms should be lodged with the the Commissioner of Labour or the nearest District Labour Officer, together with:-
 - (1) the appropriate fee and tax;
 - (2) two passport-size photographs of the worker or prospective worker, duly certified to be a reasonable likeness;
 - (3) the original, or certified copies of the trade or professional qualifications or experience of the worker or prospective worker;
 - (4) a copy of the written contract of service under which the worker is employed or it is intended, he will be employed, if any;
 - (5) the current Work Permit where appropriate.
3. Parts I and II of this Form should be completed in respect of all applications for Work Permits, except Part I 1(ii) where a Temporary Work Permit is required. Unless the Form is correctly completed, it may give rise to delays or refusal to issue a Work Permit.
4. Further copies of this form may be obtained free of charge, from the Commissioner of Labour or the District Labour Office.

6. The fees and tax on application for a Work Permit are payable by the employer or prospective employer.

WARNING

- (1) It is an offence to provide incorrect details in the form, knowing them to be false in any material respect.
- (2) The lodging of this form for a Work Permit, in no way absolves the employee or prospective employee from compliance with any immigration regulations to which he may be subject.
- (3) The employment of a non-citizen workers (unless exempt), without a valid Work Permit, constitutes an offence by both the employer and worker.

P A R T I

Details of Employer

- (1) Full name of employer, business, organization, or undertaking:

- (2) Address of registered office: -----

TEL: -----
- (3) Postal address: -----
(if different from (2)) ----- TEL: -----
- (4) Nationality of employer: -----
- (5) Type or description of business, organization, or undertaking:

- (6) (a) Number of citizen workers currently employed: -----
(b) Number of non-citizen workers currently employed: -----
- (7) The reasons for the employment of the non-citizen worker:-

- (8) The full wage/salary to be paid to the non-citizen worker:
VT ----- p.a., p.m., per week.
- (9) The proposed occupation of the non-citizen worker: -----
- (10) Location of employment: -----

- (11) Full details of the training to be undertaken by the employer of a
ni-Vanuatu counterpart to the non-citizen worker, including-
 - (a) Duration of training;
 - (b) Qualifications and/or experience to be obtained;
 - (c) Methodology and place of training;-----

Details of non-citizen worker

- (1) Full names of the worker: _____

- (2) (a) Sex: _____ (b) Marital status: _____
- (3) Date and country of birth: _____

- (4) (a) Nationality: _____ (b) Religion: _____
- (5) Present address: _____

- (6) Country of normal residence: _____
- (7) Details of dependants (if applicable) already resident with the worker or to accompany him:
- (a) Wife (full names, dates of birth, nationality):

- (b) Children (full names, dates of birth, nationalities):
- (i) _____
- (ii) _____
- (iii) _____
- (iv) _____
- (8) Present occupation/profession: _____
- (9) Details and evidence of qualifications/experience obtained, including relevant dates and the name(s) of the issuing authority: _____

- (10) Passport No. : _____ Valid until : _____
- (11) Any other relevant information in support of the application:

P A R T I I

1. As the employer or prospective employer, I apply for:

- (1) A new (first issue) Work Permit of _____ years duration in respect of Mr/Mrs/Miss _____
- (2) The renewal of the attached Work Permit No. _____ for _____ years duration in respect of Mr/Mrs/Miss _____
- (3) The alteration of the attached Work Permit No. _____ for _____ years duration in respect of Mr/Mrs/Miss _____
- (4) The alteration of the attached Work Permit No. _____ for _____ years duration in respect of Mr/Mrs/Miss _____
_____ on change of employment status from (occupation) _____ to (occupation) _____
- (5) The issue of a Temporary Work Permit for _____ working days duration in respect of Mr/Mrs/Miss _____ (Delete items not applicable).

2. I certify that:

- (1) I have read and understand the contents of this application form.
- (2) I will adhere to any conditions stipulated in the Work Permit when it is issued.
- (3) To the best of my knowledge and belief, the information contained herein is true and accurate.

Dated this ___ day of _____ 198 _____

Signed: _____

(Employer or prospective employer)

SECOND SCHEDULE

(section 13)

EMPLOYER'S REGISTER OF NON-CITIZEN EMPLOYEES

1. The register required to be maintained by every employer of any non-citizen employee under section 13 of the Act shall include the following information:

Full names of employee.

Country of normal residence.

Nationality.

Trade, occupations or profession.

Date of commencement of employment.

Date of issue and serial number of Work Permit.

Period of validity of Work Permit.

Serial number of immigration entry and residence permit (where applicable);

Date of termination of employment.

2. The register shall be preserved by the employer in the same manner as accountancy documents and shall be produced on demand to the Commissioner of Labour or any labour officer authorized in that behalf.