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Employment of foreigners

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Recently former Home Affairs Minister, Malusi Gigaba, announced that the Department of Home Affairs will move to punish employers who employ persons with illegal documents or no documents, instead of focusing on prosecution of undocumented employees. He warned businesses and companies that workplace inspections will be increased and that penalties for employing undocumented foreigners will be imposed and managers charged. In Tshwane and Johannesburg seven employers were recently arrested and charged for employing undocumented migrants after 567 business premises were inspected by the Department of Home Affairs.

The Immigration Act 13 of 2002 (as amended) ("the Immigration Act") requires that any foreigner (a person who is not a citizen of South Africa) must be in possession of a work permit entitling the person to work in South Africa, before such person can validly perform any work in South Africa. It is an offence in terms of the Immigration Act for an employer to employ a foreigner whose status does not allow the foreigner to perform work in South Africa.

In this regard section 49(3) of the Immigration Act provides that anyone who knowingly employs an illegal foreigner or a foreigner in violation of the provisions of the Immigration Act shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding one year, provided that such person's second conviction of such an offence shall be punishable by imprisonment not exceeding two years or a fine, and the third or subsequent convictions of such offences by imprisonment not exceeding three years without the option of a fine.

Should you require any information regarding the above please do not hesitate to contact us.

If you would like to learn more about Labour & Employment please visit our practice area page.

Sources:
"Clampdown of employers hiring undocumented migrants", The Citizen, 6 March 2017; "'We are coming for you' – Gigaba to businesses employing illegal immigrants", news24, 23 February 2017.



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