

Permission Granted?



The response by Jamaican nationals to foreign entrepreneurs and employees varies from enthusiastic appreciation to open disdain. Some celebrate the fact that foreign proprietors create job opportunities for local employees while others entertain feelings of resentment if they consider that they have been ‘cheated’ out of employment by foreign employees. This has prompted several Jamaicans to ascertain whether we possess the legislative framework to govern the issuing and renewal of work permits.

The Legislation

The Foreign Nationals and Commonwealth Citizens (Employment) Act, (“the Act”) which governs work permit applications in Jamaica has been in force since 1964 and was amended in 2004.

In recent times, the Ministry of Labour and Social Security has been improving enforcement mechanisms geared towards ensuring compliance with the work permit regime in Jamaica. In April 2008 work permit application fees were increased drastically by almost 200%. This may be viewed as a possible deterrent to foreigners seeking employment in Jamaica. A non-refundable fee of \$14,400.00 is payable for each work permit application, in addition to which fees ranging from \$27,000.00 for three months to \$108,000.00 for one year, must be paid for a work permit.

A foreign national or Commonwealth citizen, subject to the provisions of the Act, shall not:

1. engage in any occupation in Jamaica for reward or profit; or
2. be employed in Jamaica,

unless there is in force, in relation to him/her a valid work permit and he/she engages or is so employed in accordance with the terms and conditions which may be specified in the permit.

In addition, no person shall have in his employment in Jamaica a foreign national or a Commonwealth citizen without there being in force a valid work permit in relation to that employment.

Failure to comply with these provisions constitutes an offence and on summary conviction before a Resident Magistrate, the offender is liable to a fine not exceeding \$200.00 or to imprisonment with or without hard labour for a term not exceeding six months or to both such fine and imprisonment. In the case of a continuing offence, the offender is liable to a further fine not exceeding \$50.00 for each day upon which the offence continues after conviction.

Since the application fees have been increased tremendously, it is recommended that the fine for non-compliance be increased to serve as a meaningful deterrent to persons who may be tempted to remain in default instead of paying the requisite application fees.

Work Permit Application

An application for work permit must be addressed to the Minister of Labour and Social Security (“the Minister”) who possesses absolute discretion to refuse to grant a work permit or to grant the permit conditionally or without conditions. The Minister may also vary or cancel a work permit at any time. Persons seeking to obtain a work permit may apply to the Minister through their prospective employer, contractor (individuals) or through an attorney-at-law.

It is prudent to consider the Foreign Nationals and Commonwealth Citizens (Employment) Exemptions Regulations, 1964 with a view to ascertaining whether an employee may be eligible for exemption from the requirements of the Act. Such persons the wives of citizens of Jamaica, persons registered as full-time students at the

University of the West Indies, persons employed as ministers of religion by any religious organisation approved in writing by the Minister, certain diplomats and nationals of Caribbean Community (CARICOM) Member States who participate in Jamaica in regional events as approved by the Minister.

CARICOM nationals are not considered to be “foreign nationals” under the Act and may also receive special consideration by virtue of the Caribbean Community (Free Movement of Skilled Persons) Act, 1997 which is intended to facilitate the free movement of Caribbean professionals within the Caribbean region.

An application for work permit must be accompanied by a myriad of documents including certified documentary proof of the Applicant’s qualifications, letters of recommendation from previous employers and police records from the applicant’s place of domicile. It is important that the prospective employers provide proof that they have made every effort to recruit Jamaican nationals. To this end, employers usually advertise the post in a local newspaper.

Production and Conditions of Work Permits

Under the Act, a work permit must be kept by the person to whom it is issued, who must at all times produce the permit when called upon to do so by the relevant authority or a constable on demand, or within three (3) days after such demand at a specified police station.

A work permit is not transferrable. It is also important to note that the holder of a work permit is required to adhere strictly to the terms and conditions outlined therein. For example, if the permit confines the holder to employment in a particular parish, it is an offence for him/her to be engaged in employment outside of that parish. In addition, if the holder of a work permit desires to cease employment with the employer in respect of which the permit was granted, he is required to make a new application which must be accompanied by a letter from the previous employer stating whether he objects to the employee accepting employment elsewhere in Jamaica.

Having highlighted the some of the legislative provisions which govern work permit applications in Jamaica, we acknowledge that the legislation is only as strong as the mechanisms put in place to enforce it. As we embrace foreign investment and expertise, we must endeavour to maintain high professional standards and ensure continued compliance.

Shuana-Kaye Hanson is an Associate at Myers, Fletcher & Gordon and a member of the firm's commercial department and compliance practice group. Shuana may be contacted at shuana-kaye.hanson@mfg.com.jm.