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Write-Up

EMPLOYMENT SERVICES AMENDMENT BILL SEEKS BALANCED AND LAWFUL RESPONSE TO LABOUR MIGRATION



Minister of Employment and
Labour: Nomakosazana Meth

The Employment Services Amendment Bill seeks to strengthen South Africa's regulation of labour migration by placing the employment expectations of South Africans at the centre of the country's labour-market response, while protecting migrant workers and ensuring that employers operate within the law.

The Department of Employment and Labour briefed Parliament's Portfolio Committee on Employment and Labour on the Employment Services Amendment Bill, during a virtual meeting held on Wednesday, 5 August 2026.

Opening the briefing, the Minister of Employment and Labour said South Africa's status as a major destination for migrants required government to carefully balance the employment expectations of citizens, the protection of migrant workers and their families, and the country's regional and international commitments.

She said the Bill would give legal effect to the National Labour Migration Policy and close gaps in the existing Employment Services Act, particularly sections 8 and 9, which had proven inadequate in responding to the country's labour-migration challenges.

The Minister acknowledged the concerns expressed by South Africans regarding illegal immigration, but emphasised that these concerns should be addressed through lawful state processes.

"Illegal immigration must be handled through lawful state enforcement. Vigilantism must be rejected, but the concerns of South Africans must be acknowledged. The Employment Services Amendment Bill is contributing towards exactly that," the Minister said.

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Why the Bill matters

The Bill's strategic objectives include fulfilling South Africa's commitment to develop harmonised labour-migration policy and legislation within the Southern African Development Community, guiding government's management of labour migration and improving evidence-based data collection relating to recruitment, placement, skills transfer and the movement of workers.

The proposed framework also seeks to improve the labour and social protection of migrant workers through updated bilateral labour agreements. It would provide guidance for the recruitment of South Africans for employment abroad, protect their rights and working conditions, support their welfare and assist with their reintegration when they return home.

The Department said some of South Africa's bilateral labour agreements dated back to the 1960s and were no longer consistent with the Constitution. The Bill would provide a framework within which these agreements could be reviewed and renegotiated.

Placing South African work-seekers at the centre

A key feature of the Bill is the introduction of clearer requirements that employers would have to satisfy before employing foreign nationals.

These requirements include confirming that a foreign national is legally entitled to work in the country, first searching for suitably qualified South African candidates, preparing skills-transfer plans where applicable and maintaining proper employment records.

The Bill proposes a new Chapter 3A to regulate the employment of foreign nationals. The chapter would outline the circumstances in which foreign nationals may be employed, the requirements employers must meet and the conditions under which certain employers or categories of workers may be exempted from the requirement to prepare a skills-transfer plan.

The Department said the aim was to ensure that recruitment decisions were lawful, transparent and responsive to South Africa's labour-market needs, rather than simply to restrict the employment of foreign nationals.

Maximum employment quotas

The Bill would empower the Minister of Employment and Labour, after consultation with the Employment Services Board, to determine maximum quotas for the employment of foreign nationals.

The quotas could apply to a particular economic sector, occupational category or geographical area and would be published through a notice in the Government Gazette. Employers would also be required to keep prescribed records and would be able to apply for exemptions under procedures set out in regulations.

The Minister said the quota system would enable government to respond to specific labour-market conditions without having to return to Parliament whenever circumstances changed.

She emphasised that quota decisions would be made transparently, on the advice of the Employment Services Board and through a public-notice process that would allow affected parties to understand the basis for each determination.

Protecting migrant workers from exploitation

The Department stressed that regulating labour migration would not remove the labour rights of foreign nationals.

Under the proposed amendments, foreign nationals employed in contravention of South African law would still be entitled to enforce claims against their employers.

This provision is intended to prevent unscrupulous employers from using a worker's immigration status to pay wages or impose employment conditions that are inferior to those prescribed by labour legislation and collective agreements.

Labour inspectors and bargaining council agents would also be able to pursue claims on behalf of affected workers who were unable to enforce their rights personally.

Employers would further be prohibited from requiring foreign nationals to perform work not authorised by their visas, permits or applicable legislation.

The Minister said the legislation affirms that migrant workers are protected under South Africa's labour laws and should have recourse against non-compliant employers.

The Bill would strengthen the enforcement powers of the Department's labour inspectors and improve cooperation between the Departments of Employment and Labour and Home Affairs.

The proposed amendments would provide labour inspectors appointed under the Basic Conditions of Employment Act with a mandate to monitor and enforce compliance with the Employment Services Act.

They would also allow the Ministers of Home Affairs and Employment and Labour to enter into an agreement enabling designated labour inspectors to enforce specific provisions of the Immigration Act.

Stronger inspections and penalties

During the presentation, the Department explained that the proposed penalties would escalate for repeat offenders. The presentation referred to fines of R100,000 for a first offence, R200,000 for a repeat offence and, for a third offence, a fine of up to R1 million or 10% of a company's gross income.

The Department said the stronger penalties were intended to deter employers from repeatedly recruiting foreign nationals who did not have the required documentation and to prevent non-compliant businesses from gaining an unfair advantage over employers that observed labour and immigration laws.

The broader purpose of the Bill is to regulate the employment of foreign nationals consistently with the Employment Services Act, Immigration Act and Refugees Act, while expanding the Minister's regulatory powers and improving enforcement.

Supported Employment Enterprises

The Bill also proposes changes to the governance and functioning of Supported Employment Enterprises.

It would enable Supported Employment Enterprises to operate as an entity within the Department rather than as a national government component.

The amendments would further allow the entity to perform the functions of a trading entity, subject to approval by National Treasury, and require it to be administered in accordance with the Public Finance Management Act.

The Department said the proposed governance arrangement was intended to address existing operational challenges and provide greater flexibility while maintaining financial accountability.

Deputy Minister calls for closer consideration of SEE's future governance

Deputy Minister Nemadzinga-Tshabalala said the legal and governance position of Supported Employment Enterprises remained an important consideration, particularly because of SEE's mandate to create structured employment opportunities for persons with disabilities and other marginalised groups.

The Bill proposes that SEE operate within the Department of Employment and Labour as a trading entity governed in accordance with the Public Service Act and the Public Finance Management Act. The Deputy Minister said the proposed amendments were intended to address longstanding uncertainty surrounding SEE's legal standing and governance arrangements.

She, however, suggested that Parliament may also need to consider whether establishing SEE as a Schedule 3A public entity could provide a more sustainable institutional model.

“Looking at the mandate of SEE and how it needs to be positioned, the issue of establishing it as a Schedule 3A public entity is, in my view, quite important,” the Deputy Minister said.

She noted that such a change would represent a significant institutional reform and would have implications extending beyond the immediate provisions of the Employment Services Amendment Bill.

ESAB to strengthen ongoing inspection and enforcement work

Deputy Minister of Employment and Labour Jomo Sibiya assured the Portfolio Committee that workplace inspections and enforcement relating to the unlawful employment of foreign nationals were not new or once-off interventions by the Department.

He said labour inspectors were working across the country daily to enforce employment legislation and address a range of workplace contraventions, including the employment of foreign nationals who were not legally authorised to work in South Africa.

“The work being done by the Department is not new. We may have intensified it, but inspections and enforcement, including dealing with the employment of illegal foreign nationals, have always formed part of the work that we do,” the Deputy Minister said.

Deputy Minister Sibiya said the Department had deliberately strengthened its collaboration with the Department of Home Affairs and the South African Police Service to improve the impact of joint workplace operations.

He said the Department focused on sustained inspection and enforcement work that delivered measurable results, rather than responding only when particular incidents drew public attention.

“Our biggest responsibility as a Department is to make sure that there are results at the end of the day. We may not be shouting from the rooftops, but we are working every day.”

The Deputy Minister said the Employment Services Amendment Bill would strengthen the Department's enforcement capacity by addressing legislative loopholes and improving alignment between employment and immigration legislation.

Minister calls for a balanced and coordinated labour-migration response

In her closing remarks, the Minister of Employment and Labour said the Bill sought to balance the prioritisation of South Africans in the labour market with the lawful treatment of foreign nationals who were legally entitled to live and work in the country.

She said migration was a global reality that could not be addressed by South Africa in isolation. However, the country needed a legislative framework that ensured only those who met South Africa's legal requirements were permitted to work, while preventing employers from unfairly preferring foreign nationals over suitably qualified South Africans.

“We are trying to strike a balance: to prioritise South Africans, while ensuring that those who are legally in the country and qualify in terms of our laws are also given an opportunity,” the Minister said.

The Minister said this balance should be understood within the context of South Africa's constitutional and international obligations, including the protection afforded to recognised refugees and other legally documented migrants.

The Minister agreed with Committee Members who raised concerns about the Department's capacity to enforce the proposed legislation.

She explained that, under the current legislative arrangement, labour inspectors were not empowered to enforce immigration legislation, as those powers rested with designated immigration and border-management officials.

The Employment Services Amendment Bill seeks to address this limitation, as outlined earlier in the briefing, by enabling the two Ministers to conclude an agreement identifying which immigration-enforcement powers designated labour inspectors may exercise.

The Minister said the government's plans to strengthen the Inspectorate would provide additional capacity once fully implemented.

The Minister said the Department's approach extended beyond workplace inspections and penalties.

The Department was also conducting advocacy sessions to help employers understand their legal obligations, identify common areas of non-compliance and take corrective action before enforcement became necessary.

She said this combination of advocacy, inspection and enforcement was essential to securing sustainable compliance.

The Minister also addressed claims that South Africans were unwilling or insufficiently skilled to take up available employment opportunities. She said the Department was supporting work-seekers through career counselling and other employment-readiness programmes so that citizens were better prepared when opportunities became available.

Way forward

Following the briefing, the Portfolio Committee agreed that the next step would be to invite written public submissions on the Employment Services Amendment Bill. Once the public-comment period closes, the Committee's content and legal advisers will consolidate the submissions, after which the Department will be invited to respond. The Committee will consider the Motion of Desirability after receiving further clarity on the Bill and completing the public-participation process.

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