



REPUBLIC OF VANUATU

SEASONAL EMPLOYMENT ACT NO. 23 OF 2007

Arrangement of Sections

PART 1 PRELIMINARY

- 1 Interpretation
- 2 Meaning of seasonal employment agent
- 3 Meaning of seasonal employment
- 4 Application of other Acts and laws

PART 2 LICENCES AND PERMITS

Division 1 Licences

- 5 Offence of operating without a valid licence
- 6 Effect of a licence and conditions etc of a licence
- 7 Application for a licence
- 8 Grant of a licence
- 9 Suspension and cancellation of a licence

Division 2 Permits

- 10 Offence of operating without a valid permit
- 11 Effect of a permit and conditions etc of a permit
- 12 Application for a permit
- 13 Grant of a permit
- 14 Suspension and cancellation of a permit

Division 3 General provisions applying to licences and permits

- 15 Offence in relation to an application
- 16 Application for renewal of a licence or permit
- 17 Voluntary surrender of a licence or permit
- 18 Replacement of a licence or permit

PART 3 DUTIES OF LICENSEES AND PERMIT HOLDERS

- 19 General duties
- 20 Selection of a person for seasonal employment
- 21 Seasonal employment agreement
- 22 Pre-departure orientation
- 23 Work visa application
- 24 General requirements for compliance while on seasonal employment
- 25 Records
- 26 Licensee to display notice on place of business etc

PART 4 RESPONSIBILITIES OF THE COMMISSIONER OF LABOUR

- 27 General responsibilities
- 28 Monitoring and compliance
- 29 Establishment and maintenance of register

PART 5 MISCELLANEOUS PROVISIONS

- 30 Service of notices and documents
- 31 Delegation
- 32 Regulations
- 33 Savings
- 34 Commencement

REPUBLIC OF VANUATU

Assent: 14/01/2008
Commencement: 04/02/2008

SEASONAL EMPLOYMENT ACT NO. 23 OF 2007

An Act relating to the seasonal employment of certain persons outside of Vanuatu, and for related purposes.

Be it enacted by the President and Parliament as follows:

PART 1 PRELIMINARY

1 Interpretation

In this Act, unless the contrary intention appears:

Commissioner of Labour has the same meaning as in the Employment Act [CAP 160];

company has the same meaning as in the Companies Act [CAP 191];

licence means a licence granted under section 8;

licensee means the holder of a licence;

Minister means the Minister responsible for labour matters;

permit means a permit granted under section 13;

permit holder means the holder of a permit;

regulations means the regulations made under this Act;

seasonal employment has the meaning given by section 3;

seasonal employment agent has the meaning given by section 2;

seasonal employment agreement means an agreement for seasonal employment made between a worker and his or her employer;

worker means a person who is employed under a seasonal employment agreement.

2 Meaning of seasonal employment agent

- (1) A person is a seasonal employment agent if the person acts, or holds himself or herself out to the public as ready to act, for reward for the provision of services relating to the engagement of persons for seasonal employment outside of Vanuatu.
- (2) A person who directly recruits other persons for seasonal employment is not a seasonal employment agent.
- (3) A person can be a seasonal employment agent, whether or not the person carries on any other business or is employed in any other capacity.

3 Meaning of seasonal employment

Employment is seasonal employment if the employment is performed outside of Vanuatu and is the kind of employment that can be performed only during certain periods of the year, and does not include any employment that can be performed throughout the entire year.

4 Application of other Acts and laws

Nothing in this Act affects the application of any other Act or law to a licensee or a permit holder.

PART 2 LICENCES AND PERMITS

Division 1 Licences

5 Offence of operating without a valid licence

If a person carries on the business of a seasonal employment agent and is not the holder of a licence, the person commits an offence and is liable on conviction:

- (a) in the case of an individual –to imprisonment for not more than 2 years or a fine not exceeding VT 2,000,000, or both; or
- (b) in the case of a body corporate –to a fine not exceeding VT 5,000,000.

6 Effect of a licence and conditions etc of a licence

- (1) A licence authorises the licensee to carry on the business of a seasonal employment agent.
- (2) A licence is subject to such conditions as are set out in this Act and the licence, and as are prescribed by the regulations.
- (3) Subject to section 9, the period of a licence is one year.
- (4) It is a condition of a licence that the licence is not transferable.
- (5) It is a condition of a licence that the licensee must not charge a person for any services provided by the licensee to the person to obtain seasonal employment for the person.

7 Application for a licence

- (1) A person must apply to the Commissioner of Labour for a licence to carry on the business of a seasonal employment agent.
- (2) The application must:
 - (a) be in the prescribed form and be accompanied by the prescribed fee; and
 - (b) state the place or places of business of the applicant; and
 - (c) if the applicant has or proposes to have 2 or more places of business, specify which of those places of business is the principal place of business; and
 - (d) include such other information required by the prescribed form.
- (3) The Commissioner can request additional information from the applicant in relation to any matter in the application and the applicant must comply with the request.
- (4) An application fee is not refundable.

8 Grant of a licence

- (1) Subject to subsection (3), the Commissioner of Labour must grant an applicant a licence if the applicant has paid the prescribed fee for the licence and:
 - (a) in the case of an applicant who is an individual, the Commissioner is satisfied that the applicant:
 - (i) is a resident of Vanuatu; and
 - (ii) is a fit and proper person to carry on the business of a seasonal employment agent; and
 - (iii) has at any time within 2 years before applying for the licence, been engaged in an employment agency business or has been a director or officer of a company that was engaged in an employment agency business; or
 - (b) the applicant is a company.
- (2) The Commissioner must have regard to the applicant's character, financial position and the interests of the public in order to determine whether the applicant is a fit and proper person to carry on the business of a seasonal employment agent.

- (3) The Commissioner must not grant a licence to an applicant if the applicant has:
- (a) a record of involvement in scam or fraudulent activities; or
 - (b) in the case of an individual, been convicted of a criminal offence the maximum penalty for which was imprisonment for one year or more; or
 - (c) in the case of an individual, a record of overstay in a foreign country; or
 - (d) provided false or misleading information in relation to the application; or
 - (e) failed to comply with a provision of this Act or the regulations.
- (4) A licence must be in the prescribed form.
- (5) Within 14 days after making a decision not to grant an applicant a licence, the Commissioner must give the applicant written notice of the decision.

9 Suspension and cancellation of a licence

- (1) If the Commissioner of Labour is satisfied on reasonable grounds that:
- (a) a licensee has not complied with or is not complying with a condition of the licence; or
 - (b) a licensee has not complied with or is not complying with a provision of this Act or the regulations; or
 - (c) the licence was granted contrary to subsection 8(3); or
 - (d) the licensee has ceased to be a fit and proper person to carry on the business of a seasonal employment agent,
- subject to subsection (2), the Commissioner must serve a notice of non-compliance on the licensee.
- (2) If in the Commissioner's opinion the circumstances are sufficiently serious, the Commissioner may suspend the licence under subsection (5), without the service of a notice of non-compliance.

- (3) A notice of non-compliance must specify:
 - (a) the grounds of non-compliance; and
 - (b) the period within which such non-compliance must be made good.
- (4) If the licensee, within the period stated in a notice of non-compliance, fails to make good to the satisfaction of the Commissioner the non-compliance, the Commissioner may suspend the licence under subsection (5).
- (5) The Commissioner may:
 - (a) suspend the licence by notice in writing to the licensee; and
 - (b) require the licensee to show cause, within the period stated in the notice, why the licence should not be cancelled on the ground or grounds specified in the notice.
- (6) Upon the suspension of a licence under paragraph (5)(a), all the operations of the licensee under the licence must immediately cease, and must not be resumed until such time, if any, as the Commissioner certifies in writing that the suspension is lifted.
- (7) If the licensee, within the period stated in the notice under paragraph (5)(b), fails to explain to the satisfaction of the Commissioner why the licence should not be cancelled, the Commissioner may cancel the licence by notice in writing to the licensee.

Division 2 Permits

10 Offence of operating without a valid permit

If a person directly recruits persons for seasonal employment and the person is not the holder of a permit, the person commits an offence and is liable on conviction:

- (a) in the case of an individual –to imprisonment for not more than 2 years or a fine not exceeding VT 2,000,000, or both; or
- (b) in the case of a body corporate –to a fine not exceeding VT 5,000,000.

11 Effect of a permit and conditions etc of a permit

- (1) A permit authorises the holder of the permit to directly recruit persons for seasonal employment.
- (2) A permit is subject to such conditions as are set out in this Act and the permit, and as are prescribed by the regulations.
- (3) Subject to section 14, the period of a permit is one year.

- (4) It is a condition of a permit that the permit is not transferable.

12 Application for a permit

- (1) A person must apply to the Commissioner of Labour for a permit to directly recruit persons in Vanuatu for seasonal employment.
- (2) The application must be in the prescribed form and be accompanied by the prescribed fee.
- (3) The Commissioner can request additional information from the applicant in relation to any matter in the application and the applicant must comply with the request.
- (4) An application fee is not refundable.

13 Grant of a permit

- (1) The Commissioner of Labour must grant the applicant a permit if the applicant:
 - (a) is not a licensee; and
 - (b) is a company incorporated outside of Vanuatu or is an individual who is not a resident of Vanuatu; and
 - (c) has been approved by relevant authorities in the person's country of residence or incorporation as a person suitable to directly recruit persons for seasonal employment; and
 - (d) has paid the prescribed fee for the permit.
- (2) A permit must be in the prescribed form.
- (3) Within 14 days after making a decision not to grant an applicant a permit, the Commissioner must give the applicant written notice of the decision.

14 Suspension and cancellation of a permit

(1) If the Commissioner of Labour is satisfied on reasonable grounds that a permit holder:

- (a) has not complied with or is not complying with a condition of the permit; or
- (b) has not complied with or is not complying with a provision of this Act or the regulations; or
- (c) has ceased to satisfy paragraph 13(1)(c);

subject to subsection (2), the Commissioner of Labour must serve a notice of non-compliance on the permit holder.

(2) If in the Commissioner's opinion the circumstances are sufficiently serious, the Commissioner may suspend the permit under subsection (5), without the service of a notice of non-compliance.

(3) A notice of non-compliance must specify:

- (a) the grounds of non-compliance; and
- (b) the period within which such non-compliance must be made good.

(4) If the permit holder, within the period stated in a notice of non-compliance, fails to make good to the satisfaction of the Commissioner the non-compliance, the Commissioner may suspend the permit under subsection (5).

(5) The Commissioner may:

- (a) suspend the permit by notice in writing to the permit holder; and
- (b) require the permit holder to show cause, within the period stated in the notice, why the permit should not be cancelled on the ground or grounds specified in the notice.

(6) Upon the suspension of a permit under paragraph (5)(a), all the operations of the permit holder under the permit must immediately cease, and must not be resumed until such time, if any, as the Commissioner certifies in writing that the suspension is lifted.

- (7) If the permit holder, within the period stated in the notice under paragraph (5)(b), fails to explain to the satisfaction of the Commissioner why the permit should not be cancelled, the Commissioner may cancel the permit by notice in writing to the permit holder.

Division 3 General provisions applying to licences and permits

15 Offence in relation to an application

- (1) A person commits an offence if:
- (a) the person makes an application for a licence or a permit, or the renewal of a licence or a permit; and
 - (b) the application contains information that is false or misleading in a material particular.
- (2) A person who commits an offence under subsection (1) is liable on conviction:
- (a) in the case of an individual –by imprisonment for not more than one year or a fine not exceeding VT 1,000,000, or both; or
 - (b) in the case of a body corporate –by a fine not exceeding VT 2,000,000.

16 Application for renewal of a licence or permit

- (1) An application for the renewal of a licence or permit is to be in the same form as an application for the grant of a licence or permit, and is to be dealt with under this Act as if it were an application for the grant of a licence or permit.
- (2) A person must apply for the renewal of a licence or permit before it expires.

17 Voluntary surrender of a licence or permit

- (1) A licensee may at any time surrender a licence by forwarding a written notice to that effect, together with the licence, to the Commissioner of Labour.
- (2) A permit holder may at any time surrender a permit by forwarding a written notice to that effect, together with the permit, to the Commissioner.
- (3) A surrendered licence or permit ceases to have effect on the day the notice of surrender is received by the Commissioner.

- (4) The surrender of a licence or permit does not affect the liability of the licensee or permit holder:
- (a) to perform any obligation required to be performed by the licensee or permit holder by or under this Act or the regulations, on or before the date on which the licence or permit ceases to have effect; or
 - (b) for any act done or default made before the date on which the licence or permit ceases to have effect.

18 Replacement of a licence or permit

The Commissioner of Labour must, upon payment of the prescribed fee, issue a substitute licence or permit to the licensee or permit holder if the Commissioner is satisfied that the licence or permit has been lost or destroyed.

PART 3 DUTIES OF LICENSEES AND PERMIT HOLDERS

19 General duties

- (1) A licensee must not register a person for seasonal employment if the person has provided the licensee with false or misleading information, unless the person has corrected the information within a period specified by the licensee.
- (2) A permit holder must not directly recruit a person for seasonal employment if the person has provided the permit holder with false or misleading information, unless the person has corrected the information within a period specified by the permit holder.
- (3) A licensee must not register a person for seasonal employment who has obtained a qualification from a recognized university or tertiary institution, unless:
 - (a) the person is not employed; or
 - (b) the person has his or her employer's approval in writing to apply for seasonal employment.
- (4) A permit holder must not directly recruit a person for seasonal employment who has obtained a qualification from a recognized university or tertiary institution, unless:
 - (a) the person is not employed; or
 - (b) the person has his or her employer's approval in writing to be employed in seasonal employment.
- (5) A licensee or permit holder may require a written reference from a Chief or a Church Leader in relation to a person.

20 Selection of a person for seasonal employment

- (1) A licensee must conduct a fair and transparent selection process in deciding whether or not to register a person for seasonal employment.
- (2) A permit holder must conduct a fair and transparent selection process in deciding whether or not to directly recruit a person for seasonal employment.
- (3) The following criteria must be used by a licensee or a permit holder:
 - (a) the person must be at least 21 years of age;
 - (b) the person must provide a medical certificate from a doctor concerning the status of his or her health;
 - (c) the person must provide a clearance from the police in Vanuatu;

- (d) the person must provide information, if any, on any previous overstay in another country, or any deportation or removal;
- (e) if the person is married, the person must provide the written consent of his or her spouse to the seasonal employment;
- (f) the person must provide a character reference from someone who is perceived to be of high standing in his or her community, church or employment;
- (g) the person's record on any previous seasonal employment;
- (h) such other criteria as are prescribed by the regulations.

21 Seasonal employment agreement

- (1) A seasonal employment agreement must be in writing.
- (2) A licensee or permit holder must:
 - (a) ensure that a person understands the content of the person's seasonal employment agreement before the person signs the agreement; and
 - (b) advise a person that he or she is entitled to get independent legal advice about the seasonal employment agreement at the person's cost.
- (3) As soon as practicable after a person has entered into a seasonal employment agreement, a licensee or permit holder must give the person a copy of that agreement.
- (4) The regulations may prescribe provisions which must be included in a seasonal employment agreement.

22 Pre-departure orientation

- (1) A licensee or permit holder must ensure that a pre-departure briefing takes place for every worker and maintain a copy of the information covered in the pre-departure briefings.
- (2) Pre-departure briefings must cover the following topics:
 - (a) the kind of work to be undertaken;
 - (b) the payment of wages and arrangements for savings;
 - (c) taxation information;
 - (d) the arrangements for travel, accommodation and food;
 - (e) medical services in cases of illness;

- (f) the worker's obligations while outside Vanuatu;
- (g) such other matters as the Commissioner determines in writing.

23 Work visa application

- (1) A licensee or permit holder must inform a person that he or she must apply for and obtain a visa for his or her seasonal employment.
- (2) If a licensee or permit holder assists a person in applying for a visa, the licensee or permit holder must:
 - (a) ensure that all requirements and other documents as stipulated by the relevant authorities in the country in which the seasonal employment will take place are in order for the person; and
 - (b) explain the application form to the person so that the person fully understand its contents; and
 - (c) declare in the application form that the licensee or permit holder has assisted the person in responding to questions in the application form; and
 - (d) provide the person with a receipt for any fees paid by the person specifying what those fees are for.

24 General requirements for compliance while on seasonal employment

- (1) A licensee or permit holder must:
 - (a) ensure that a worker understands his or her obligation to return to Vanuatu at the end of his or her seasonal employment; and
 - (b) explain to a worker the immigration requirements of the country in which the seasonal employment will take place; and
 - (c) ensure that a worker understands his or her obligation for savings to be remitted to Vanuatu; and
 - (d) ensure that a worker understands that poor work performance and unacceptable behaviour will not be tolerated and may result in termination of the worker's seasonal employment.
- (2) A worker who does not comply with his or her obligations under the seasonal employment program may not be allowed to participate again in the seasonal employment program for a period of five years.

25 Records

- (1) A licensee or permit holder must keep a record of the following information:
 - (a) in the case of a licensee, the names of the people registered for seasonal employment with the licensee;
 - (b) the names of the workers who have secured seasonal employment and details of the type of employment;
 - (c) a copy of any seasonal employment agreement and all other documents signed by any worker;
 - (d) the departure and return dates for any worker for whom the licensee has secured seasonal employment;
 - (e) the date of a pre-departure briefing attended by any worker with his or her signature certifying his or her attendance and all information covered in the briefing;
 - (f) copies of all financial transactions;
 - (g) such other information as is prescribed by the regulations.
- (2) If requested in writing by the Commissioner of Labour, a licensee must provide to the Commissioner within the time specified by the Commissioner copies of such of the records referred to in subsection (1) as the Commissioner - requires.
- (3) A person who fails to comply with subsection (1) or (2) commits an offence and is liable on conviction:
 - (a) in the case of an individual –to imprisonment for not more than one year or a fine not exceeding VT 1,000,000, or both; or
 - (b) in the case of a body corporate –to a fine not exceeding VT 2,000,000.

26 Licensee to display notice on place of business etc

- (1) A licensee must display in a prominent place at each of the licensee's places of business a notice of:
 - (a) the licensee's name and of the fact that the licensee is licensed to carry on the business of a seasonal employment agent; and
 - (b) the name under which the licensee carries on the business of a seasonal employment agent if the business is not carried on in the name of the licensee.

- (2) The information referred to in subsection (1) must be clearly shown on a notice, advertisement, letter, agreement or other document made by or on behalf of the licensee in carrying on the business of a seasonal employment agent.
- (3) A person who fails to comply with subsection (1) or (2) commits an offence and is liable on conviction:
 - (a) in the case of an individual –to imprisonment for not more than one year or a fine not exceeding VT 1,000,000, or both; or
 - (b) in the case of a body corporate –to a fine not exceeding VT 2,000,000.

PART 4 RESPONSIBILITIES OF THE COMMISSIONER OF LABOUR

27 General responsibilities

- (1) The Commissioner of Labour is to:
 - (a) advise licensees and permit holders of the names and addresses of likely employers outside of Vanuatu;
 - (b) inform licensees and permit holders of any relevant changes to the work policies of other countries;
 - (c) make available copies of guidelines to licensees and permit holders;
 - (d) prepare and disseminate information throughout Vanuatu on the seasonal employment program;
 - (e) compile information related to seasonal employment in a central database covering such information as the Commissioner considers appropriate;
 - (f) provide the Minister and the Director General responsible for labour with any information on the seasonal employment program that he or she requests;
 - (g) perform such other functions as are prescribed by the regulations.
- (2) The Commissioner must prepare an annual report on the seasonal employment program and give a copy to the Minister on or before 31 March of the year immediately following the year to which the report relates.
- (3) The Commissioner may issue advisory guidelines in writing for the purposes of this Act.

28 Monitoring and compliance

- (1) The Commissioner of Labour is to:
 - (a) work with licensees and permit holders to ensure that they adhere to this Act and the regulations; and
 - (b) respond to complaints from any person concerning a licensee or permit holder in a timely manner, including to hold an investigation into the complaint if the Commissioner considers it appropriate; and
 - (c) respond to complaints from any person concerning any activity which contravenes this Act or the regulations and, if appropriate, refer the matter to the Vanuatu Police.
- (2) A licensee or a permit holder must co-operate fully with the Commissioner so as to allow the Commissioner to conduct an investigation referred to in paragraph (1)(b), including providing any documents requested by the Commissioner or answering any questions asked by the Commissioner, unless to do so would incriminate the person.
- (3) The Commissioner must publish the findings of any investigation.

29 Establishment and maintenance of register

- (1) The Commissioner of Labour is to establish and maintain a register of licensees, permit holders and workers.
- (2) A person may, upon payment of the prescribed fee, inspect and copy any entry in the register.
- (3) The register is to be kept in such form as the Commissioner determines.
- (4) If a licence or permit is granted, renewed, surrendered, suspended or cancelled, the Commissioner is to make an appropriate entry in the register.
- (5) The Commissioner is to record such other particulars in the register as the Commissioner considers appropriate.

PART 5 MISCELLANEOUS PROVISIONS

30 Service of notices and documents

- (1) The Commissioner of Labour may serve any notice or other document on a person by:
 - (a) delivering it to the person personally; or
 - (b) posting it to the person's postal address or, if applicable, the person's registered office.
- (2) A person may serve any notice or other document on the Commissioner of Labour by:
 - (a) delivering it to the Commissioner personally, or
 - (b) posting it to the Commissioner at the office of the Commissioner.

31 Delegation

- (1) The Commissioner of Labour may delegate to any person all or any of his or her functions or powers under this Act, other than this power of delegation.
- (2) A delegation:
 - (a) must be made in writing; and
 - (b) may be made either generally or subject to express limitations or conditions; and
 - (c) may be given for a specified period, but may be revoked at any time by the Commissioner.
- (3) The Commissioner remains responsible for actions taken under a delegation.
- (4) The Commissioner may continue to perform a function or exercise a power that has been delegated.

32 Regulations

The Minister may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

33 Savings

- (1) On and after commencement of this Act, any licence or permit in force immediately before the commencement of this Act remains in force for the remainder of its term as if the licence or permit were granted under this Act.
- (2) However, any such licence or permit may be varied, suspended or cancelled in accordance with this Act.

34 Commencement

This Act commences on the date on which it is published in the Gazette.