

**THE FOREIGN NATIONALS AND COMMONWEALTH
CITIZENS (EMPLOYMENT) ACT**

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THE FOREIGN NATIONALS AND
COMMONWEALTH CITIZENS (EMPLOYMENT) ACT

Acts
48 of 1964,
14 of 2011.

[1st December, 1964.]

1. This Act may be cited as the Foreign Nationals and Commonwealth Citizens (Employment) Act. Short title.

2. In this Act—

Interpreta-
tion.
14/2011
S. 2.

“authorized person” means—

- (a) an immigration officer under the Aliens Act; or
- (b) any person appointed as an authorized person under section 5;

“Caribbean Community” means the Caribbean Community established by Article 2 of the Revised Treaty;

“CARICOM national” means a person who—

- (a) is a citizen of a Member State; or
- (b) has a connection with a Member State of a kind which entitles him to be regarded as belonging to or, if it be so expressed, as being a native or resident of the Member State for the purposes of the laws thereof relating to immigration;

“Commonwealth citizen” means a person who has the status of a Commonwealth citizen pursuant to section 9 of the Constitution of Jamaica and who is not a citizen of Jamaica;

“foreign national” means a person who is not—

- (a) a citizen of Jamaica;
- (b) a Commonwealth citizen; or

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(c) a CARICOM national;

“Member State” means a Member State of the Caribbean Community in accordance with Article 3 of the Revised Treaty, excluding an Associate member within the meaning of Article 231;

“Revised Treaty” means the Revised Treaty of Chaguanamas establishing the Caribbean Community, including the CARICOM Single Market and Economy, signed at Nassau, Commonwealth of the Bahamas, on the 5th day of July, 2001; and

“work permit” or “permit” means—

(a) in relation to a person who is or is about to be employed by another, a permit in writing—

(i) issued under this Act by the Minister to, and in the name of, the employee or person about to be employed; and

(ii) specifying the name of the employer, the place of employment, or both; and

(b) in relation to any other person, a permit in writing issued under this Act by the Minister authorizing such person to engage in an occupation.

3.—(1) Subject to the provisions of this Act, a foreign national or a Commonwealth citizen other than a CARICOM national falling within the category specified in the Schedule shall not:

(a) engage in any occupation in Jamaica for reward or profit; or

(b) be employed in Jamaica,

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

(2) Subject to the provisions of this Act, 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.

(3) Subject to the provisions of this Act—

- (a) any foreign national or Commonwealth citizen who engages in any occupation in Jamaica or is employed in Jamaica in contravention of the provisions of subsection (1); and
- (b) any person who has in his employment in Jamaica a foreign national or a Commonwealth citizen in contravention of the provisions of subsection (2),

shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment with or without hard labour for a term not exceeding six months or to both such fine and imprisonment.

14/2011
S. 3(b)(i).

(4) It shall be presumed, upon the trial of any person for a contravention of subsection (1), that the accused, and, upon the trial of any person for a contravention of subsection (2), that the person alleged to have been in employment in contravention of the said subsection (2), is not a citizen of Jamaica unless the contrary is proved.

(5) A prosecution in respect of a contravention of subsection (2) shall not be instituted without the sanction of the Director of Public Prosecutions.

(6) A Commonwealth citizen who is ordinarily resident in Jamaica at the date of the passing of this Act and who—

- (a) resided in Jamaica for not less than nine months (whether continuously or not) in each of the ten years immediately prior to that date; and
- (b) was employed in Jamaica for not less than nine months (whether continuously or not) in each of the ten years aforesaid,

may, notwithstanding subsection (1), engage in any occupation for reward or profit or be employed without a work permit so long as he continues ordinarily to reside in Jamaica.

In paragraph (b) of this subsection "employed" includes to engage in any occupation for reward or profit.

(7) In any proceedings under this Act against a Commonwealth citizen the proof that he satisfies the requirements of paragraphs (a) and (b) of subsection (6) shall lie upon him and as *prima facie* evidence he may produce a certificate from the Minister (which certificate the Minister may in writing at any time cancel if he shall think fit) that he satisfies those requirements.

(8) The Minister may, by order subject to affirmative resolution, amend the Schedule.

14/2011
S. 3(c).
Schedule.

Application
for work
permit.

4.—(1) An application for the grant of a work permit shall be addressed to the Minister, who may in his absolute discretion grant the permit either conditionally or without conditions or may refuse to grant it.

(2) A work permit shall be in such form as the Minister may think fit and different forms of work permit may be issued as respects different classes of persons and as the circumstances require.

Appointment
of authorized
persons.

5.—(1) The Minister may appoint such persons as he thinks fit to be authorized persons for the purposes of this Act.

(2) Every authorized person appointed under this section shall be furnished with a certificate of appointment and where he seeks to exercise his power under this Act, shall, if so required, produce his certificate of appointment.

Production
of work
permit.

6.—(1) Every work permit shall be kept by the person to whom it is issued, who shall at all times produce the permit to an authorized person or a constable on demand, or within three days after such demand at such police station as may be specified by the person first-mentioned at the time of the demand.

(2) A person having in his possession a work permit appearing to have been issued under this Act shall answer all questions put to him by an authorized person or a constable for the purpose of establishing his identity and shall, if so required by the authorized person or constable, submit to his finger-prints being taken for the purpose;

(3) Every person who—

(a) fails without reasonable excuse or refuses to produce a permit as required by subsection (1); or

(b) refuses to answer any question put to him, or to submit to his finger-prints being taken, contrary to subsection (2),

shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment with or without hard labour for a term not exceeding three months.

14/2011
S. 4.

7. The Minister may in writing at any time vary or cancel a work permit.

Power of
Minister to
vary or
cancel
work
permit.

8. The Minister may prescribe that any person or class of persons shall be exempt either unconditionally or subject to such conditions as may be prescribed from all or any of the provisions of this Act.

Power to
grant
exemptions.

9. Any person who—

Offences
and
penalties.

(a) makes any statement which he knows to be false for the purpose of procuring whether for himself or any other person the grant of a permit under this Act; or

(b) unlawfully uses or permits to be so used any permit issued under this Act; or

(c) obstructs, hinders or opposes any authorized person or constable in the execution of his duty under this Act; or

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- (d) being a person exempt, subject to conditions imposed by the Minister, from all or any of the provisions of this Act, contravenes any such condition,

shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment with or without hard labour for a term not exceeding six months, or to both such fine and imprisonment.

14/2011
S. 5.

Regulations.

10.—(1) The Minister may make regulations generally for giving effect to the provisions of this Act, and without prejudice to the generality of the foregoing may make regulations—

- (a) providing for the establishment and maintenance of a register of persons to whom or in respect of whom work permits have been issued;
- (b) providing for the issue to any person who is exempt from any of the provisions of this Act of a certificate stating the nature of the exemption;
- (c) regulating the issue, amendment or replacement of work permits and for the payment of fees by the persons or any class of persons applying therefor;
- (d) with respect to the surrender or cancellation of work permits and certificates issued by the Minister pursuant to subsection (7) of section 3;
- (e) for the making, with regard to any person to whom or in respect of whom a work permit has been issued, of returns containing particulars of any change of circumstances affecting the accuracy of particulars furnished by such person or recorded in the register mentioned in paragraph (a);

(f) prescribing forms to be used for the purposes of this Act; and

(g) prescribing any other matter or thing which is required to be or may be prescribed under this Act.

(2) Notwithstanding the provisions of section 29 of the Interpretation Act, regulations made under this section may prescribe greater penalties than those specified in the said section 29, so, however, that the maximum penalty that may be imposed shall be imprisonment with hard labour for a term of twelve months or a fine of one million dollars.

14/2011
S. 6(a)(b).

(3) Regulations made under this section shall be subject to negative resolution.

11. The Minister may, by order subject to affirmative resolution, increase any monetary penalty specified in this Act.

Minister may,
by order,
increase
monetary
penalty.
14/2011
S. 7.

SCHEDULE

(Section 3) 14/2011
S. 7.

*Category of CARICOM Nationals Exempt from Work
Permit Requirement*

CARICOM Nationals who, in accordance with the Caribbean Community (Establishment, Services, Capital and Movement of Community Nationals) Act, are already in, or are coming to, Jamaica to exercise rights of establishment, provide services or move capital.