WORK PERMITS ISSUES

Q1  What are the work-permit application fees for Investors and employees in regard of the following?

ANSWER:

- **Fresh application?**
  - Investor: P1000.00
  - Employee: P600.00

- **Renewal?**
  - Investor: P500.00
  - Employee: P300.00

- **Variation?**
  - Investor: P150.00
  - Employee: P150.00

- **Duplicate?**
  - Investor: P100.00
  - Employee: P100.00

- **Appeal?**
  - Investor: P200.00
  - Employee: P200.00

Q2  What is the work-permit processing time?

ANS: Two to three weeks

Q3  What are the supporting documents requested for work-permit applications for both Employees and Investors
ANS: (a) INVESTORS

- Certificate of incorporation
- Share certificates
- Form II/Form 8, 13 and 14
- Current Bank Statement/Proof of investment if the company is new
- List of Company valued assets (Financial Statement)
- Lease Agreement
- Copies of valid passport
- Medical Report
- List of employees and copies of their Identity Cards (O mang)
- Fees

If renewal (in addition) provide the following:

A) Valid Trading License
B) Bank Statement

(b) Employees:

- Original advert- explicit
- Copy of valid passport
- Medical report
- Letter of application for work
- Certified copies of certificates (all certificates in foreign languages must be translated to English)
- Appointment letter/letter of offer/contract letter
- Curriculum Vitae (C.V.)

IN ADDITION, FOR VARIOUS FIELDS WE ALSO REQUIRE THE FOLLOWING:

- **Medical Field** - Permission from Botswana Nursing Council, Midwifery Council of Botswana or Ministry of Health Registration Certificate.
- **Teaching Field** - Permission to teach from Ministry of Education or Clearance from BOTA for Vocational Training- Supporting letter from TEC.
- **Nurse Aids/Care Taker** - Letter from patient’s doctor detailing the sickness of the patient.
- **Extra Heavy Duty Driver** - Copy of Botswana Driver’s License or classifications from Department of Transport - Motor Vehicle Registration Book for both vehicles/horses and trailers - B A Permits for Trucks - P A Permits for public Transport- List of vehicles and transport permit numbers.
- **Accountant** - Clearance from Botswana Institute of accounts or REGISTRATION CERTIFICATE from BIA.
- **Footballer** - Clearance from Botswana Football Association- International transfer certificate.
Pilot - Clearance from Civil Aviation
- Farm Worker/Herdgirl: Farm Certificate/Brand Certificate and employer’s National Identity card (Omang)

Q4 How much should the Bank Statement have to start a business in Botswana?

ANSWER: No specific amount, but there should be proof that the company operates an active account.

Q5 What is the requirement when an investor wants to open another business?

ANSWER: Apply for Variation

Q6 What if the Investor decides to close or sell his business and open a different one?

ANSWER: Apply for a new work permit.

Q7 What is the requirement for an employee who gets promoted, or changes positions at work while holding a work-permit, with regard to the changes to be endorsed in the work-permit?

ANSWER: Apply for variation

Q8 What are the requirements of variation in both instances above?

ANSWER: Application to be completed in variation forms, and attach supporting documents as in fresh application.

Q9 Where an employee holds a valid work-per mi, can they use it with a different employer in case of change of employment?
**ANSWER:** No, a work-permit is non-transferable

**Q10** An applicant who holds a valid work-permit, but intends to move from company A to company B is treated as a fresh applicant in terms of fees, yet when approved the permit is given the remaining period only. Why is it the case?

**ANSWER:** The applicant already holds a valid residence permit, and in terms of the Immigration processes, a residence permit cannot be extended while it is still valid, and a work-permit on the other hand cannot be given beyond a person’s valid stay in the country.

**Q11** What is required when a company has changed its name?

**ANSWER:** Apply for a duplicate work-permit. The fee is P100.00. attach proof of change of company name, i.e. “change of name certificate”.

**Q12** In case of renewal for employees, why is it necessary to advertise the posts?

**ANSWER:** The local market needs to be tested before a work-permit for an expatriate can be renewed.

**Q13** It is common nowadays to see expatriates looking for employment with valid work-permits, why is this the case and can the prospective employer engage the services of the expatriate based on the work-permit?

**ANSWER:** Once an employee leaves his/her employer, the validity of the work-permit ceases. It must be surrendered to the department of Labour and Social Security. Those seen around with valid work-permits have failed to do that and it is unlawful for them to use the work-permits that were issued for a specific Employer under a different one.

**Q13** Are short term permits still in existence?
ANSWER: Yes.

Q14 Under what circumstances?

ANSWER: For emergency purposes. The maximum validity period for short term permits is six (6) weeks. The permits are non-renewable.

Q15 I have people from outside the country coming to work for two to three months only. Can I get the short term permits for them?

ANSWER: It is not possible. You have to apply for long term permits as the period required is beyond six weeks.

Q16 We understand there some positions that have been exempted this year. Which are those and how do we go about it?

ANSWER: It's true and those positions are that of:

1. PRODUCTION MANAGER
2. FINANCIAL MANAGER
3. OPERATIONS MANAGER
4. SALES AND MARKETING MANAGER
5. CHIEF EXECUTIVE OFFICER
6. TECHNICAL MANAGER

For one to apply for the exemption certificate we need a supporting letter from BEDIA.

Q17 Where do I get the APPLICATION forms?

ANSWER: From our HEAD OFFICE and all REGIONAL LABOUR OFFICES throughout the country.
Q18  Can I get the forms on line?

ANSWER:  Not as yet. In the near future.

TRADE UNIONS AND EMPLOYERS ORGANISATIONS

Q1  How much does it cost to register a Union?

Answer:  P10.00

Q2:  How long does it take to register a Union / Employers Organization?

Answer:  3 months

Q3:  Why does it take this long?

Answer:  Process involves publication of every application for registration in the Gazette.

Q4:  What does it take for the employer to recognize a union?

Answer:  Such a Trade Union must represent at least a third of the employer’s employees.

Q5:  What happens if the employer refuses to recognize a Trade Union?

Answer:  Refer the matter to the Commissioner of Labour for mediation.

Q6:  When must Trade Unions/Employer Organization submit their Annual Returns?

Answer:  April 30th, annually.

Q7:  When Union membership falls below a third of the employers’ employees, is the employer obliged to continue the relationship with the Union?
Answer: When the employer wants to de-recognize the Union, he/she must apply to the commission of Labour for the de-recognition.

INDUSTRIAL RELATIONS.

Q1  How is severance calculated?
Answer: The first five years = daily rate * 60 months (5 years)
Subsequent months = Daily rate * 2 * no. of months

Q2  What is the length of notice that has to be served when either party intends to terminate a contract?
Answer: Determined by wage period unless the contract states otherwise. However termination during probation may be given by not less than 14 days notice.

Q3  How long is probation?
Answer: Three months for unskilled labour and twelve months for skilled labour.

Q4  How many rest days is an employee entitled to?
Answer: Four days in a month (one day in a week)

Q5  How long is maternity leave?
Answer: Six weeks before confinement and six weeks after confinement. However, employee can choose how to take the leave as long its six weeks.

Q6  How many leave days are employees entitled to per annum?
Answer: For employees working 5 days, 15 leave days per year
For employees working 6 days, minimum of 18 leave days per annum.
Q7  How many sick leave days per annum?

Answer: 14 days per annum.

Q8  Paid public Holiday (8)

Answer: - New years day
       - Good Friday
       - Easter Monday
       - Day following President Day
       - Christmas Day
       - Labour Day
       - Botswana day
       - President’s day

Q9  How many days of absence from duty can lead to dismissal?

Answer: Absence from duty is not allowed at all unless with reasonable cause, which must be communicated to the employer as soon as it is practicably possible to do so. Persistent absence from work without permission can lead to summary dismissal.

Q10 : How is the daily rate calculated for a monthly fixed salaried employee?

Answer: Divide the salary by: - 22 in respect of a 5 day working week;
       - 24 in respect of a 5.5 day working week;
       - 26 in respect of a 6 day working week

Q11 : What is the current minimum wage rate?
Ans: - Manufacturing, Service and repair trades = P3.80 per hour.
    - Building Construction, Exploration and Quarrying industries = P3.80 per hour.
    - Hotel Catering and Entertainment Trades = P3.80 per hour.
    - Garage, Motor Trade and Road Transport = P3.80 per hour.
    - Wholesale Distributive Trades = P3.80 per hour.
    - Retail Distributive Trades = P3.30 per hour
    - Night watchmen in the above trades = P3.20 per hour
    - Security guards employed by security Guard companies = P3.80 per hour.
    - Domestic Service Sector = P2.10 per hour.
    - Agriculture Sector = P408.00 per month

Q12 Should employers force us to work overtime?
ANS: employees have to work overtime as long as they are informed accordingly and the overtime is paid for or they are given day offs after working beyond their normal times.

Q13 How much is the trip allowance?
Answer: It is not provided for under the law. However this does not stop parties to a contract of employment to negotiate and agree on such an allowance.

Q14 Am I regarded as an employee if I have not an employment card?
Answer: Yes. It should be noted that contracts of employment can be in writing, oral and implied. Which means whether or not you have signed a contract you are still an employee.

Q15 Does the Employment Act apply to NON-CITIZENS.
Answer: Yes.

WORKERS COMPENSATION
Q1  Who should report an injury?
Answer  It’s the duty of the employer to report a work related injury.

Q2  When should an injury be reported?
Answer  An injury should be reported within 17 days of the date of injury.

Q3  Is there a deadline on submission of a workers compensation claim?
Answer  This should be done within 12 months of the injury.

Q4  Is there a form that is used to report a work related injury?
Answer  Yes BL form 43/10

Q5  Who identifies a doctor to do final medical examination?
Answer  It is the duty of the employer to take the injured employee to a medical practitioner of his choice.

Q6  Is an employee allowed to identify a doctor for him/herself?
Answer  Yes an employee is allowed to invite a doctor of his or her choice to the final examination at his or her own expenses.

Q7  When is an injured employee not compensatable?
Answer  When the injury does not incapacitate the employee from working and earning full wages.

Q8  How should I fill form 43/02
Answer  Should state details of basic pay over 12 months before the accident plus all other remuneration should be stated.
Q9 Who should fill 43/11?
Answer The employer should complete it.

Q10 If my employer does not have a workers compensation insurance policy does it mean I automatically lose my workers compensation entitlement?
Answer If the employer does not have a workers compensation policy employees do not lose their workers compensation entitlement, employer is charged for failing to insure and he is ordered to pay compensation.

Q11 What is the use of me insuring workers who are leaving employment at any time?
Answer It's lawful and advisable that you insure since you do not know when a worker will be injured because even if they get injured on their first day of employment they are compensable and you only have to insure the number of employees not according to their names.

Q12 What is the turn around time for workers compensation claims?
Answer A month for government employees.

Q13 Am I entitled to workers compensation if it happens that I do not get injured until the end of my contract?
Answer No, compensation is meant for injuries sustained as a result of employment only.

Q14 If my employer never reported my injuries in a seventeen days period or lodged a claim with you in twelve months, do I forfeit my workers compensation claim?
Answer No the employer will be liable for a charge for failing to report but the employees right to compensation is still intact. Workers compensation claims do not
Q15  Is it allowed for the employer or the insurance company to pay me without routing the payment process through Dept. of Labour Office?

Answer: It is not lawful for employer /employee to calculate and pay workers compensation without involving Labour Office.

Q16  What is my entitlement as regards wages when I am on prolonged sick leave?

Answer: You are entitled to 2/3 of your basic salary.

Q17  What type of injuries should be reported?

Answer: All injuries including those that are classified as temporary.

Q18  Do I get paid if I get injured on my way to work or after work?

Answer: No, workers compensation covers those injuries that result during the course of and out of duty.
INDUSTRIAL COURT PROCEEDINGS

INTRODUCTION

The IC is a specialized court, established as a court of law and Equity, under section 15 of the Trade Dispute Act No.150 of 2004. It is a Court with the same legal status with the high Court. The judges of the Industrial court are appointed by the President of the Republic of Botswana, as prescribed by section 96(3) of the Constitution.

VISION

To be the forum of first choice for justice in the work place consistent with world class standards.

MISSION

The Industrial Court is the court of law and equity, which exists to provide a professional, effective and just service in the settlement of trade dispute.

VALUES

Customer Care

Employee Welfare

Stakeholder Relationship

URGENT APPLICATION

This is a process where applications are brought before court on the basis that the application’s case is urgent and should not follow the normal process.