

To be made effective 1st December 2014

DRAFT WORK PERMIT POLICY

FOR CONSULTATION

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1.0

INTRODUCTION

The Bermuda Immigration and Protection Act 1956 (“the Act”) requires that all persons must obtain specific permission by or on behalf of the Minister if they are to engage in gainful occupation in Bermuda unless they are Bermudian; a spouse, widow or widower of a Bermudian; or a permanent resident. The purpose of this section of the policy is to introduce the philosophy that underpins Government’s immigration policy as it relates to employment and provide details about how the Department of Immigration (“the Department”) administers the policy.

1.1 Mission

The mission of the Ministry of Home Affairs (“the Ministry”) is *“to improve the economy by addressing the needs of the local and international business community and the career aspirations of Bermudians.”*

1.2 About the Department of Immigration

The Minister responsible for Immigration is Senator The Honourable Michael M. Fahy, JP and the Permanent Secretary is Mr. Randy Rochester.

Under the direction of the Chief Immigration Officer, the Department is comprised of 46 employees who have been assigned to three (3) core operations divisions, which include the Corporate Services Division, the Personal Services Division, and the Compliance Division, together with the Finance & Administration Division and the Policy and Planning Division.

The Corporate Services Section

In pursuit of the Ministry’s mission, the Corporate Services Section (“the Section”) is committed to working as a team in the performance of its duties to ensure that it responds to the needs of its customers in an efficient, effective and timely manner.

More specifically, the Section is responsible for administering Part V (Regulation of Engagement in Gainful Occupation) of the Bermuda Immigration and Protection Act 1956 and the policies for processing work permits and permissions to reside while seeking employment or attending school or college. To this end, the Section is responsible for processing a wide range of applications (including related landings). The Corporate Services Manager, Industry Relationship Officers and Customer Service Representatives liaise directly with employers and work in conjunction with the Immigration Board, the Permanent Secretary and the Minister to make recommendations on each application.

Contacting a Member of the Corporate Services Section

The Section is located in the Government Administration Building at 30 Parliament Street, Hamilton HM 12. Contact information for each team member, including the Head of Department, follows. The fax number is 441-295-4115.

Dr. Danette Ming, Chief Immigration Officer, 441-295-5151, extension 1444

Mr. Steven Lambert, Assistant Chief Immigration Officer, 441-295-5151, extension 1385

Ms. Michelle A. White, Corporate Services Manager, mawhite@gov.bm, 441-295-5151, extension 1940

Finance & Business

Ms. Darlene Smith, Industry Relationship Officer, drsmith@gov.bm, 441-295-5151, extension 1534

Ms. Nekia Richardson, Customer Service Representative, nrichardson@gov.bm, 441-295-5151, extension 1031

Ms. Marilyn Cupidore, Customer Service Representative, mdcupidore@gov.bm, 441-295-5151, extension 1942

Hospitality

Ms. Jannell Burgess, Industry Relationship Officer, jcburgess@gov.bm, 441-295-5151, extension 1388

Ms. Karen Bean, Customer Service Representative, kjbean@gov.bm, 441-295-5151, extension 1382

Ms. Meladene Harris, Customer Service Representative, mlightbourne@gov.bm, 441-295-5151, extension 1032

Other

Ms. Zelia Paulos, Industry Relationship Officer, zpaulos@gov.bm, 441-295-5151, extension 1389

Ms. Crystal Lightbourne, Customer Service Representative, crlightbourne@gov.bm, 441-295-5151, extension 1394

Ms. Sanshae Morrissey, Customer Service Representative, slmorrissey@gov.bm, 441-295-5151, extension 1390

1.3 Service Levels and Application Forms

For applications properly submitted, employers can expect the following turnaround times:

APPLICATION TYPE	TIME <i>(for approved applications from day of submission to issuance of documentation)</i>
Standard Work Permits	Twenty (20) working days
Bermuda Employment Visa	Fifteen (15) working days
Short Term, Periodic, Global, New Business, and Entrepreneurial Permits	Ten (10) working days
Travelling Salespersons	Ten (10) working days
Landing Permits	Five (5) working days
Emergency Permit (see section 3.11)	Within Forty-eight (48) hours (with conditions per section 3.11)

* Employers should note that when the Department of Immigration experiences a high volume of submissions, applications may sometimes experience processing delays.

Application forms are available for all applications in this policy on-line through the Department of Immigration website at www.gov.bm. Click on the Ministry of Home Affairs and scroll to Department of Immigration. Please note: (1) application forms are NOT available at the Department; (2) Completed applications are NOT accepted by email.

1.4 Appealing a Decision to Refuse Permission to Employ a Foreign National

In the event of a decision to refuse permission to work/grant a work permit, employers have the right to appeal to the Minister. Appeals should be submitted in letter form **within seven (7) working days of the date of the refusal letter**. The appeal must clearly specify the rationale for reconsideration of the application. If the appeal is in relation to a new work permit application for a work permit holder whose work permit has expired, the employee may continue to work while the appeal is being considered ***provided that the appeal is submitted on time***. For the sake of clarity, if an appeal is submitted outside the said time frame then the employee **must** stop working. There is a fee for making appeals. If a work permit is revoked/withdrawn by the Minister there is a right to appeal to the Immigration Appeal Tribunal per the Bermuda Immigration and Protection Act 1956.

1.5 Payment of Government Taxes and Employee Benefits

An employer will be required to certify that it is not delinquent by more than ninety (90) days in meeting its statutory obligations in respect of payments of payroll tax, health insurance, social insurance and pension contributions **for all employees**. In the event that an employer is delinquent the employer shall provide documentation that they have made the required payments before the work permit is processed and/or provide proof of an agreed payment plan with the relevant Government departments.

1.6 Penalties and Compliance

Section 71A of the Bermuda Immigration and Protection Amendment (No. 2) Act 2013 empowers the Chief Immigration Officer to impose civil penalties of up to \$10,000 on employers who abuse immigration policy. Employers and employees should review the relevant legislation to ensure they understand the consequence of making untruthful applications. See www.bermudalaws.bm. Complaints regarding behaviour of employers and employees abusing this policy can be made to the Compliance Section of the Department headed by Ron-Michel Davis on 295-5151 extension 1395 or anonymously via the Immigration Hotline 296-5202.

1.7 Fees

All fees in relation to this policy are contained in the Government Fees Regulations 1976 (as amended) under Head 6 available on www.bermudalaws.bm.

1.8 Landing Without Correct Documentation

See Appendix III.

1.9 Responsibilities of the Employer in Filling Job Vacancies

In most cases the main criterion in assessing whether or not to grant foreign nationals permission to work in Bermuda is whether there is a suitably qualified Bermudian, Spouse of a Bermudian or PRC holder who is interested in the job and available to do it.

Consequently most work permit categories require employers to conduct a bona fide search including advertising vacancies on the Government Job Board and in the newspaper. Additionally, employers should take care to hire suitably qualified Bermudians, Spouses of Bermudians or PRC holders who fulfil the minimum advertised requirements.

An employer who applies to employ a foreign national in a job for which there was a Bermudian, Spouse of a Bermudian or PRC holder applicant is required to give clear, satisfactory reasons for not employing the Bermudian, Spouse of a Bermudian or PRC holder.

It is important to note that although the Department of Immigration carefully scrutinises each application submitted by employers, the Department does not possess the power to force an employer to hire Bermudians, Spouses of Bermudians, PRC holders or any particular person. The Department can only prevent the hiring of a foreign national by refusing to grant permission to work.

1.10 Responsibilities of the Work Permit Holder

An employee must at all times, be mindful of and adhere to the conditions placed on his/her work permit. He/she must also take note of the 'General Information' listed on the back page of his/her work permit document. *Also*, where it is the responsibility of the employee to repatriate his/her dependants, he/she must honour this commitment and take immediate steps to ensure that when he/she departs Bermuda, his/her dependants will depart too unless the dependants have permission to reside and seek per section 5.9.

1.11 Requirement for Proficiency in English Language

Persons coming to work in Bermuda under the Portuguese Accord as well as those employed in the construction industry are required to have a working knowledge of the English language. This is to ensure that persons perform their work duties in a safe manner. Persons will not be allowed to work in the construction industry if their English language skills are deemed by the Minister to be inadequate to comply with health and safety standards. In cases where English language skills are questionable, the person will be landed for seven (7) days and may be required to undergo testing by the Department of Immigration. Failure may result in the person being asked to leave Bermuda.

1.12 Employer's Requirement to Repatriate

The guarantee of repatriation by the employer is now enshrined in law under the Bermuda Immigration and Protection Amendment (No. 2) Act.

1.13 Employer's Requirement to Inform Bermudians, Spouses of Bermudians and PRC Holders of the Outcome of their Application

Employers are required to inform all unsuccessful Bermudians, Spouses of Bermudians and PRC holder candidates of the outcome of their application prior to submitting work permit applications to the Immigration Department. Employers may be asked to provide evidence of such notification to the Immigration Department.

1.14 Advertising Criteria

Employers are required to advertise available positions prior to applying for Short Term or Standard Work Permits (unless otherwise set out in this Policy). The position must, at a minimum, be advertised three times over a period of eight (8) days, in a local newspaper as well as, at a minimum, eight (8) consecutive days on the Government Job Board. Each advertisement must include the following details:

- the title of the job being filled and the name, telephone number and mailing address of the employer;
- the title of the job being filled;
- clearly specify the minimum standards of qualification and experience;
- a brief description of the job to be filled which should be consistent with the normal functions associated with the job. An advertisement will be invalid if it contains a job description that appears to be tailor-made to fit a particular existing or potential work permit holder; and
- notice of the deadline for application.

The work permit application must be submitted within three (3) months of the date on which the position was last advertised. However, in cases where the length of the recruitment process does not permit the employer to submit an application within three (3) months of the date the position was last advertised, employers may pay the **Advertisement Extension Fee** which will permit them to submit the application within six (6) months of the date on which the position was last advertised.

Should such advertised contact details change prior to the expiry of five (5) working days following the date of the last advertisement, the advertisement shall be invalid and the employer will be required to re-advertise the position. This is intended to allow sufficient time for Bermudians, Spouses of Bermudians and PRC holders to apply.

1.15 Refunds

Refunds in respect of work permit fees paid **will be** given in the following circumstances:

- Where a particular term of work permit is applied for and the Department of Immigration grants a term less than that applied for, the difference in fees between the two work permit terms will be refunded less an administration fee (e.g. If a 3 year standard work permit is applied for and a 2 year standard work permit is granted the Department of Immigration will refund the differential of 1 year less the administration fee).
- Where a particular term of work permit is applied for and the Department of Immigration refuses to grant the work permit applied for the work permit fee will be refunded less an administration fee.

Refunds in respect of work permit fees **will not** be given in the following circumstances:

- Where a work permit is applied for and granted and the work permit holder does not in fact come to Bermuda to commence employment.
- Where a particular term of work permit is applied for and granted and the work permit holder ceases employment (for whatever reason) prior to the expiry of the term of the work permit.

1.16 Ministerial Discretion and Policy Amendments

Notwithstanding any policy prescribed throughout this document, the Minister may exercise his discretion per The Bermuda Immigration and Protection Act 1956 (“the Act”) to waive specific policies upon written request or justification for the same. The Minister has no discretion to waive any fees prescribed in the Act, related Regulations or this policy.

It should be noted that certain job categories are exempt from work permit control per the Act. Applicants should make reference to the Act in certain circumstances. In addition employers and employees should cross-reference this policy with updates posted on the Home Affairs website. Every effort will be made to notify the public of any such amendments via the press and electronic media. Frequently asked questions can be found in Appendix IV of this policy.

2. POLICY REGULATING BUSINESS VISITORS

The purpose of this section of the policy is to regulate non-residents who visit Bermuda for business purposes.

2.1 Business Activities for which Business Visitors have the Tacit Approval of the Minister to Conduct Business in Bermuda.

There is no need for an employer to obtain Immigration approval to land a business visitor in Bermuda provided that the:

- i. business visitor is in possession of a return ticket (as well as a valid multi-re-entry visa if the business visitor is a Visa Controlled National);
- ii. total length of the stay does not exceed twenty-one (21) consecutive days (unless specified differently below); and
- iii. activities undertaken by the business visitor are limited to:
 - a) broker meetings;
 - b) director meetings;
 - c) shareholder meetings;
 - d) attending general business meetings with employees of an organisation where the visitor is not being remunerated by the Bermuda based organisation (including external examination boards);
 - e) presenting business seminars or other presentations provided the seminars and presentations are not open to the general public and are not for the purpose of promoting investment schemes or other money-making ventures;
 - f) entering Bermuda for training in techniques and work practices, provided that the training is conducted by a company affiliated by an ownership relationship and that the training is limited to observation, familiarisation and classroom instruction;
 - g) entering Bermuda for a job interview;
 - h) entering Bermuda to gather information, or make a presentation, in response to a Request for Proposal or a similar tendering process, provided the business visitor is not being paid for his/her services by the Bermuda based-organisation;
 - i) attending, presenting or exhibiting at conferences;
 - j) internal auditing, including school accreditation and certification audits;
 - k) visiting potential customers, purchasing, checking details or examining goods or services;
 - l) visiting current clients to negotiate deals, contracts, policies and other agreements as a service provider (excluding travelling salesman);
 - m) providing advice as a financial adviser provided they are not in contravention of the

Investment Business Act, 1998;

- n) work lasting not greater than seven (7) days for a journalist, model or photographer on an assignment for an international publication or for international electronic media; or a religious official, photographer or entertainer to provide services to a private wedding party or private function; or an entertainer(s) for a convention/conference, private function or local festivals; advisers, consultants, trainers, and trouble shooters provided that they are employed abroad, directly by the same company (or group of companies) to which the Bermuda client belongs but that (i) the services of such business visitors does not extend to clients of the Bermuda business and (ii) the training is for a specific, one-off purpose;
- o) interpreters or translators who are existing employees of an overseas organisation and who are accompanying the business visitors;
- p) certified installers of equipment or software entering Bermuda to deploy, troubleshoot/debug and/or enhance their products for a Bermuda company whose purchase agreement includes installation and maintenance;
- q) not a travelling salesperson, but is a businessperson visiting prospective clients;
- r) a fine artist creating works of art who intends to sell paintings of Bermuda abroad;
- s) sports professional(s) or professional team(s) who will be participating in a tournament or sporting event (providing that they are not compensated); or
- t) lawyers and arbitrators visiting Bermuda to participate in international arbitration proceedings.

Business visitors who require a stay longer than twenty-one (21) days may, after landing, make a Visitor Extension application which allows visits for up to a maximum of an additional twenty-one (21) days.

Business visitors conducting activities not specified in this policy must apply for a Periodic Permit or Short Term Permit. See section 2.4.

2.2 Permission for Volunteers

Any person may work as a volunteer for any **Bermuda registered charity or any Bermuda educational or religious institution** provided that they **do not** receive remuneration for their service. The post must be a volunteer post only; i.e. post must not be a paid position. There is no requirement to make an application or inform the Department of Immigration.

Volunteers arriving in Bermuda from overseas can expect to be questioned by the Immigration Officer. If the Officer has any doubt about the purpose of the visit, the Officer will land such persons for seven (7) days while the matter is referred to the Chief Immigration Officer.

2.3 Letter of Permission

A Letter of Permission may be granted to a not-for-profit organisation, such as a registered charity, for a coach or teacher of sports, clergy, a speaker or a musician who is being remunerated.

Such a person is given permission to stay for thirty (30) days at the time the application is made. After landing, an extension (using the Visitor's Extension application) may be granted upon application and payment of the appropriate fee provided the total stay does not exceed sixty (60) days. Should longer than sixty (60) days be required a work permit should be applied for.

In cases where a group is landed for the same purpose (e.g. an orchestra or choir or remunerated sports team) the Letter of Permission fee is payable for each member. However this fee is capped at five (5) persons (see fee regulations).

2.4 Periodic Work Permits

Purpose and Specifications

A Periodic Work Permit is to be used by employers seeking to hire non-resident individuals who will make multiple visits to the Island over a period of time, staying no greater than thirty (30) days for each visit.

Periodic Work Permits may be granted for periods of 1, 2, 3, 4 or 5 years.

After arrival, if the holder of a Periodic Work Permit requires a stay longer than thirty (30) days, the employer may apply for an extension of up to a further thirty (30) days by submitting a Visitor Extension Application.

Eligibility

Employers may apply for a Periodic Work Permit for individuals who work for an overseas office of their company or for an individual who is a service provider contracted to work for the Bermuda company including travelling salesperson (see section 2.5). Other applications outside these categories will be considered on a case by case basis by the Minister.

Alternatively, in cases where a service provider is under contract to provide service to a Bermuda company (e.g. maintenance agreements, equipment warranties, training contracts) and the business visitor may not always be the same person, the employer may request that the Periodic Work Permit be issued in the name of the foreign company providing the service rather than an individual. Only one representative of the foreign company may land per Periodic Work Permit.

Application Process

To obtain a Periodic Work Permit employers must:

- a) complete the Periodic Work Permit Application Form; and
- b) submit the CV of the individual (or evidence of the service agreement if a representative permit is desired).

2.5 Periodic Permit for Travelling Salespersons

Travelling salespersons are not permitted to visit Bermuda to sell products without first obtaining a Periodic Permit.

Applications for Periodic Permits in respect of travelling salespersons will be accepted from either (a) a local business acting as an agent or (b) by the Bermuda Chamber of Commerce (“the Chamber”). The Chamber screens each application to determine if the product is already represented by one of the business firms and whether the permit will threaten that firm’s interests or, if the product is not yet available on the Island, determine which businesses would have an interest in the product and set up appointments with interested firms on behalf of the visiting traveling salesperson.

Periodic Permits for travelling salespersons are valid for one (1) year only with restrictions as deemed appropriate by the Department of Immigration upon recommendation by the Chamber.

3. POLICY REGULATING GAINFUL OCCUPATION IN BERMUDA

The Bermuda Immigration and Protection Act 1956 (“the Act”) requires that the Minister regulate the employment of all persons who are not Bermudian or the Spouse of a Bermudian (including a widow or widower) or a Permanent Resident’s Certificate holder (“PRC holder”). The purpose of this policy is to specify how employers can obtain work permits in various categories and Bermuda Employment Visas.

3.1 Short Term Work Permit

Purpose and Specifications

The Short Term Work Permit is used by all employers, including not-for-profit and charitable organisations (unless section 2.2 or 2.3 apply), to employ an individual to work for periods of up to six (6) months.

Applications will be accepted for terms of three (3), four (4), five (5) or six (6) months. At the conclusion of the term of the Short Term Work Permit, the holder will be expected to leave Bermuda, unless an extension has been sought within the proper processing period. Short Term Work Permit holders will **not** normally be granted permission to reside and seek employment.

Eligibility

Short Term Work Permits will be granted to individuals to perform any type of work provided that the employer first advertises the position pursuant to part 1.14 of this Policy. An automatic exemption from the advertising requirement is granted in respect of Short Term Work Permit Applications where the purpose of the application is to:

- a) extend, for up to six (6) months, an existing Short Term Work Permit of a person who is leaving Bermuda after the expiry of the Short Term Work Permit; or
- b) utilise the services of someone employed by a Bermuda company’s overseas subsidiary, affiliate organisation, or parent company; or
- c) deploy a service provider or consultant in a specialised field; or
- d) hire a specialised technician for the purpose of maintaining equipment under contract; providing repairs to pipe organs; installing an upgrade of the business’ computer software; servicing inter-company communications networks; or
- e) provide services to a **private** function/convention/conference including the employment of entertainers performing for a conference or convention; or
- f) employ featured act entertainers for a public event performing for a single period of fourteen (14) days or less; or
- g) utilise someone to work for and be compensated by a non-profit organisation or a registered charity, as sports coach, teacher of sport or recreation, clergy, speaker, trainer or musician; or
- h) land sports professionals or a professional team who is participating in an event for a single period of fourteen (14) days or less; or

- i) employ a *locum tenens* minister of religion or physician; or
- j) provide short-term in-house training offered by the Bermuda Employers' Council, the Bermuda College, Bermuda Chamber of Commerce or other recognised training bodies or institutes.

Short Term Work Permit applications for those persons for whom a standard work permit application will be submitted within forty-five (45) days but whom the employer wishes to have employed immediately must include the advertisement which was published for the Standard Work Permit application together with an explanation of how the Bermudian, Spouse of Bermudian or PRC holder applications, if any, were not qualified and suitable for the role. The application must also include the reason that the Standard Work Permit application could not have been submitted earlier. Applications for Short Term Work Permits for those individuals from jurisdictions identified as high risk for tuberculosis (TB), or who have ever resided in such a jurisdiction for a period of three (3) months or more must provide a chest x-ray and a letter from a certified physician confirming they pose no health risk and are free from TB. See Appendix II for those jurisdictions.

Application Process

To obtain a Short Term Work Permit employers must:

1. Submit the Short Term Work Permit Application; and
2. Results of the advertisement of the post (if required).

Employers that obtain a Short Term Work Permit may apply for a new Short Term Work Permit for the same individual if they wish them to stay longer. However, the job must be re-advertised (unless automatically exempted as specified in paragraphs (a) to (j) above). The individuals will not need to leave the Island on extension applications.

3.2 Bermuda Employment Visa (“BEV”)

Purpose and Specifications

The purpose of the BEV is to enable exempted companies, per the definition in the Bermuda Companies Act, to employ a limited number of foreign nationals without the need to advertise the position and apply for a Standard Work Permit (see section 3.7). The number of BEVs issued to each exempted company will be limited to twenty percent (20%) of the total Bermuda-based workforce.

The determination as to which employees receive a BEV will be made by the employer and each application is automatically approved by the Department of Immigration provided that the employer is eligible and the application process is followed precisely.

BEVs will be issued for a period of up to seven (7) years. If the employer wishes for the holder of a BEV to stay beyond the expiry of their BEV, the employer must apply for a new BEV or a Standard Work Permit. The post must then be advertised pursuant to section 1.14.

Holders of the BEV may be employed in any job category provided that their position is not an entry level position or specified in a closed or restricted category (see sections 3.8, 3.9 and 3.10).

In the event that a company downsizes such that it has more than twenty percent (20%) of its workforce holding BEVs, current holders of BEVs will not have to forfeit them but no additional BEVs will be granted until such time as the percentage of BEV holders falls below twenty percent (20%).

An employer demonstrating that it has Bermudians, Spouses of Bermudians or PRC holders training abroad to gain international experience with the plan upon completion of a specified period not exceeding three (3) years to return to Bermuda, may apply for additional BEVs equal to the number of Bermudians, Spouses of Bermudians or PRC holders being trained abroad for the same length of time in similar positions of employment.

Eligibility

Only exempted companies that obtain the Bermuda Employment Visa Accreditation (BEVA) are eligible to apply for BEVs. See Appendix I.

Applications for BEVs for those from jurisdictions identified as high risk for tuberculosis (TB), or who have ever resided in such a jurisdiction for a period of three (3) months or more must provide a chest x-ray and a letter from a certified physician confirming they pose no health risk and are free from TB. See Appendix II for those jurisdictions.

Application Process

In order to obtain a BEV, the employer must submit:

- a) a completed BEV Application Form for each applicant that has Immigration approval;
- b) BEVA certificate; and
- c) An accurate and up-to-date listing of all employees (as defined by the Employment Act) identifying the immigration status of each employee, thus demonstrating that the total number of BEVs for the organisation will not exceed twenty percent (20%) of the total workforce. The listing must include:
 - the name, immigration file number and job title of each work permit holder;
 - the name and job title of each employee not requiring a work permit; and
 - company profile.

3.3 Global Work Permits

Purpose and Specifications

A Global Work Permit allows a person who is already employed by a global company in another jurisdiction to transfer to the Bermuda office without the requirement to advertise the position. The company must demonstrate that the Global Work Permit holder is **not** being transferred to fill a pre-existing position in Bermuda. The term of a Global Work Permit is 1, 2, 3, 4 or 5 years. If the employer wishes for the holder of a Global Work Permit to stay beyond the expiry of their Global Work Permit, the employer must apply for a BEV or a Standard Work Permit.

Applications will be automatically approved in respect of individuals who have been employed for greater than one year and who earn a gross salary greater than \$125,000 per year. Applications in respect of individuals employed for less than one year and/or those earning less than \$125,000 will be considered on a case by case basis and approval will depend substantially on demonstrating that the addition of the Global Work Permit holder will add value to Bermuda. A Global Work Permit is not applicable to positions listed in the closed or restricted categories of the Work Permit Policies (see sections 3.8, 3.9 and 3.10).

Eligibility

Only global employers are eligible to apply for Global Work Permits. For the purposes of this policy a global employer is defined as any company in Bermuda that employs people in jurisdictions outside of Bermuda. Franchise businesses that operate in Bermuda are not global employers for the purpose of this policy.

Application Process

To apply for a Global Work Permit employers must complete the Global Work Permit Application Form.

3.4 New Business Work Permit

Purpose and Specifications

A New Business Work Permit allows an exempted company that is new to Bermuda to receive automatic approval of work permits for the first six (6) months of its operation. There is no need to advertise the positions (which is the requirement of the Standard Work Permit – see section 3.7). New Business Work Permit holders may be employed in any job category provided that their position is not entry level or specified in a closed or restricted category (see sections 3.8, 3.9 and 3.10).

Although there is not a maximum number of permits that can be issued under this policy, new businesses that anticipate requiring greater than ten (10) work permits within the first six months of operation (e.g. relocating a existing business from another jurisdiction) will be required to

present to the Minister their Bermuda office staffing plan including their projections for hiring and developing Bermudians as well as engaging local service providers to support their organisation.

New Business Work Permits will be issued for 1, 2, 3, 4 or 5 years. At the end of the New Business Work Permit term, if the employer wishes the incumbent to remain in Bermuda, they must apply for a BEV or Standard Work Permit.

Eligibility

To qualify for a New Business Work Permit, employers must provide a certificate of incorporation of a Bermuda exempted company and, in cases where the first day of operation is not the same as the date of incorporation, state the date that the company has or will commence operating.

Application Process

To apply for a New Business Work Permit employers must complete the New Business Work Permit Application Form. The ultimate decision on what constitutes a new business lies with the Minister.

3.5 Global Entrepreneur Work Permit

The Global Entrepreneur Work Permit may be issued for person(s) for a period of up to one (1) year to work and reside in Bermuda in respect to an exempted company start up. The work activities may include business planning, seeking appropriate Government or regulatory approval(s), meeting compliance or financial requirements or raising capital.

A letter of application must be sent to the Department of Immigration justifying the request together with a letter from a Bermudian or Bermuda business services company verifying the intent of the applicant. The Minister will grant a permit provided he is satisfied that the applicant is a bona fide investor or business person that is likely to domicile a company in Bermuda.

3.6 Standard Work Permits

Purpose and Specifications

The purpose of a Standard Work Permit is to allow all organisations in Bermuda to employ foreign nationals provided that they can demonstrate that a Bermudian, Spouse of a Bermudian or PRC holder was not suitably qualified or available to be hired.

Employers may apply for Standard Work Permits of 1, 2, 3, 4 or 5 years.

Eligibility

Employers are permitted to apply for Standard Work Permits for jobs that are in the open, special or restricted category. Applications for Standard Work Permits are not allowed for closed category jobs.

Application Process

The application process for each category of job is specified below:

Closed Category Jobs – section 3.7

Airline Ground Agent; Retail Floor Supervisor; General Labourer; Office Receptionist; Painter; Salesperson; Tourist Retail Salesperson; Taxi Driver; Wallpaper Technician; Grocery Packer; Cashier; and Courier.

Restricted Category Jobs – section 3.8

Bank Teller; General Bartender (customer facing); Carpet Installer; Commercial Cleaner; Entertainer/Musician; Fisherman; Photographer; Technical Salesperson; Travel Agent/Consultant; General Carpenter; Administrative Assistant; Room Attendant; Kitchen Porter; Dish/Pot Washer; Landscape Gardener; General Mason.

Special Category Jobs – section 3.9

Accountant Employed at Auditing or Accounting Firm; Child-Care Giver; Fine Artist; Hospital Nurse and Physician; Hospitality: Seasonal Work Permit; Live-In Nanny/Housekeeper (Private Home); Locum Pharmacist; Part-time Occasional Model; Music School Teacher; Musician or Entertainer; Other Live-In Domestic Employees (Private Home); Photographer; Senior Care Giver.

Open Category Jobs – section 3.10

All jobs that are not categorised as Closed, Restricted or Special are considered Open.

3.7 Application Process for Standard Work Permit in the Closed Category

Work permit applications for jobs in the Closed category will not be accepted. Employers must hire Bermudians, Spouses of Bermudians or PRC holders.

3.8 Application Process for Standard Work Permit in the Restricted Category

The application process for jobs in the Restricted category is the same as that for the Open category (see section 3.10) except the employer must:

- a) apply for a maximum term of one (1) year; and
- b) submit evidence that any candidates screened and recommended by the Department of Workforce Development have been properly considered.

3.9 Application Process for Standard Work Permit in the Special Category

The application process for jobs in the Special category is the same as that for the Open category (see section 3.10) except the employer must ensure that they meet the additional requirements as specified in section 7.0.

3.10 Application Process for Standard Work Permit in the Open Category

Prior to making an application for a Standard Work Permit in the Open category, employers must demonstrate that they have made a bona fide attempt to recruit a suitably qualified Bermudian, Spouse of a Bermudian or PRC holder. At a minimum, employers must:

- a) advertise the position pursuant to section 1.14; and
- b) properly consider all those Bermudian, Spouse of Bermudian and PRC holder applicants that meet the minimum standards using reasonable selection practices such as interviews and testing.

The requirement to advertise does not apply to any job filled by an applicant who:

- occupies the post of CEO or other Chief Officer or Head of Department posts (such posts will be considered on a case by case basis); or
- occupies the post of Resort Hotel General Manager at a hotel with greater than 175 beds.

Upon request of the employer and upon payment of the requisite fee, the Minister may waive the requirement to advertise in exceptional circumstances. These exceptions are likely to be in cases where the applicant is uniquely qualified or the position would not exist if it were not for the applicant filling the job.

To make an application for a Standard Work Permit, employers must submit:

- a) A cover letter summarising the particulars of the application together with the Standard Work Permit Application Form;
- b) A copy of the job advertisement and posting (if required); and

- c) A copy of a Statement of Employment as defined in subsection 6(2) of the Employment Act 2000. All Statements of Employment may be signed upon submission of the work permit application with a notation “subject to Immigration approval”.

Employers submitting more than one application for one category of employment must submit a copy of the advertisement for each application. All Bermudians, Spouses of Bermudians or PRC holder applicants that meet the minimum requirements **must** be given an opportunity to be interviewed.

The Minister shall consult with the statutory body that regulates matters dealt with by that profession. Those bodies are:

1. Allied Health Professions Council
2. Bermuda Architects' Registration Council
3. Bermuda Bar Council
4. Bermuda Clinical Social Work Council
5. Bermuda Dental Board
6. Bermuda Educators Council
7. Bermuda Medical Council
8. Bermuda Nursing Council
9. Bermuda Pharmacy Council
10. Bermuda Psychologists' Registration Council
11. Chartered Professional Accountants of Bermuda
12. Optometrists and Opticians Council
13. Professional Engineers' Registration Council
14. Professional Surveyors' Registration Council
15. Veterinary Practitioners Council

To ensure prompt processing of applications, employers are strongly encouraged to send applications directly to the respective council concurrently with the submission of their application to the Department of Immigration. The statutory council is expected to review the qualifications and experience of the applicant and determine their eligibility to work in Bermuda. For the avoidance of any doubt, restraint of trade is not considered by the Minister to be a valid reason for a statutory council to oppose the approval of immigration applications. The Minister expects a response in writing from the respective council within seven (7) working days of receipt of the application from an employer failing which the Minister may not consider the submissions in coming to a decision. Please see the Department website for the relevant instructions and forms for each council listed.

3.11 Emergency Work Permit

It is recognised that there are genuine business emergencies that may arise from time to time. In such cases employers should contact their respective Immigration representative by phone and later submit in writing the particulars of the situation by way of a letter justifying the request for emergency service.

The following events are non-exhaustive examples of those that tend to constitute *bona fide* emergencies for Short Term Work Permits:

- Loss of key staff;
- Mass exodus of staff, other than that arising from an industrial dispute;
- Break down of equipment, including computer hardware and software, which is integral to the operation of the business;
- Secondment of an employee of any of its overseas branches, subsidiaries, affiliates or parent company required to troubleshoot a problem;
- Retaining an outside consultant to troubleshoot a problem;
- Temporarily filling a vacancy where there is potential risk to life or economic survival, e.g. *locum tenens* in the emergency room of the Hospital;
- A potential disaster situation; and
- Business recovery after a disaster.

Provided that the Department of Immigration is satisfied that the situation warrants emergency service, a decision can normally be made within forty-eight (48) hours of receipt of the application (unless statutory board referrals are required or a Minister's decision is required). While the work permit is not likely to be issued within this period, the person will be cleared for landing in Bermuda without penalty. The work permit will be processed according to the usual processing timelines. In some instances even faster service is required in which case the Chief Immigration Officer should be contacted directly. Advertising is not required for such permits.

3.12 Notice of Termination

Within seven (7) days of the notice of termination of employment of a Standard Work Permit holder or BEV holder, employers are required to submit a letter addressed to the Chief Immigration Officer titled "Notice of Termination". The letter must contain:

1. the full name of the employee;
2. the date on which the employee terminated employment;
3. the date on which the employee left or is planning to leave the island (if known);
4. the reason for the termination (e.g. end of contract, redundancy, dismissal, quitting).

The employer must also return the work permit (if still valid) and, if applicable, explain why original copies of the permit were not included with the notice of termination.

4. APPLICATIONS TO EXTEND OR MODIFY THE CONDITIONS OF A WORK PERMIT

Employers are to ensure that work permit holders comply with all the terms of their work permit. It is particularly important that work permit holders perform only the job specified on the permit and that they do not work beyond the expiry date of the permit. The following policies regulate how work permits may be extended or modified.

4.1 Applications to Extend the Term of a Work Permit Holder

If an employer intends to continue to employ a work permit holder in the same job beyond the expiry date of the current work permit, they must apply for a new permit. The same process that was followed to obtain the original permit must be followed again. Applications should be submitted no less than one (1) month and no more than three (3) months prior to expiration of the current work permit.

The Ministry of Education and schools are permitted to apply for work permits of teaching staff up to nine (9) months prior to the start of the upcoming academic year due to the recruiting cycle for teachers.

Provided that the employer has submitted a complete application within the time frame specified in this policy, the incumbent may continue working beyond the expiry of the work permit in the event that the work permit expires while their new application is still pending. If the complete application is not submitted within the time frame specified, the employee must stop working unless specifically authorised by the Minister.

4.2 Promotions

For an employer to promote a person on a Standard Work Permit or BEV from his/her current job to another in the same business, the employer must first obtain permission. While the employer is not required to advertise the post externally before applying by letter for permission to promote or otherwise transfer an employee internally, evidence of consideration of internal Bermudian, Spouse of Bermudian and PRC holder candidates must be submitted to the Department of Immigration. For larger employers that advertised posts internally, “evidence of consideration” would be the results of the advertisement. For smaller employers where internal advertising is not always necessary, submission of lists of Bermudian, Spouse of Bermudian and PRC holder employees considered but not qualified may suffice.

4.3 Changing Job Title

Where an employer wishes to change an employee’s job title, provided the job description, the duties of the post, remuneration and benefits remain the same, the employer does not first have to obtain the Minister’s permission to do so. The employer may make the changes and, before or after the change, inform the Department by letter, including a new Statement of Employment. There is no need to advertise the post, or undertake internal recruiting efforts.

4.4 Transferring to Another Employer

In a business merger, acquisition or amalgamation, the surviving entity may wish to retain the services of employees in the business that has been absorbed. In such a case, the employer must apply for permission to make the transfer. The employer may apply, without advertising the post in such cases to transfer a person on a Standard Work Permit from one company to another company, provided the duties remain the same. Bermudians, Spouses of Bermudians and PRC holders have priority over work permit holders in such transfers so employers should fully disclose the implications on the total workforce.

A letter from the employer must be sent to the Department of Immigration providing:

- the full name of the employee;
- the details of the employer's action taken;
- a new or amended Statement of Employment;
- certificate of incorporation, if the company is new or has changed its name; and
- a non-refundable fee.

4.5 Sharing the Services of an Employee

Sometimes more than one employer wishes to hire a particular person. This is permitted but each employer must obtain a work permit for the individual. The requisite fee must be submitted by each employer.

An application may be made separately or jointly. An application that is submitted jointly by the employers may be advertised jointly provided the name of each employer appears in the advertisement and each employer provides a Statement of Employment.

4.6 Permission to Seek Employment and Job Changes During the First Two Years

Any Standard Work Permit or BEV holder may seek alternative employment without obtaining permission of the Minister. Although there is no limitation on the number of job changes that a Standard Work Permit or BEV holder may have, a person on a Standard Work Permit or BEV is not normally permitted to change employers during the first (2) two years of employment with an initial employer. Exceptions may be made in circumstances where the applicant has been made redundant; where the applicant has lodged a complaint against their employer with the Department of Workforce Development (and it has been determined that the applicant has a bona fide grievance with the employer); upon making written request to the Minister to waive the two year requirement. This is subject to the Employment Act 2000 and employment contracts governing probationary periods.

Residents not serving on a current work permit (e.g. former work permit holders and dependants of work permit holders) must apply for permission to seek employment.

5.0 SPONSORED DEPENDANTS

Many employees that are granted permission to reside and work in Bermuda wish for their partner and/or children to accompany them. The purpose of this section of the policy is to specify the qualifications and conditions surrounding sponsored dependants. A sponsored dependant is defined as a partner or child of a work permit holder. For the purposes of section 5, the term 'work permit' means a New Business Permit, Global Business Permit, Standard Work Permit or BEV only.

For the purpose of this policy, children under eighteen (18) years of age are classified as dependants of their parents. In cases where the children are attending a college or university, the children continue to be classified as dependants up to the age of twenty-five (25) years. Dependant children, on attaining eighteen (18) years of age, who are not attending a college or university and who wish to reside in Bermuda, require permission in their own right to do so.

5.1 Entry / Re-entry Permit

A dependant of a work permit holder may be permitted to land in Bermuda as a bona fide resident after the issuance of an entry/re-entry permit. The entry/re-entry permit does not allow the holder to seek employment unless permission is given by the Minister.

To obtain an entry/re-entry permit, employers must follow the instructions in the relevant forms when requesting a work permit.

For all successful applications, the dependant(s) will be issued an entry/re-entry permit that is aligned with the end date of the sponsor's work permit. If the passport of the dependant expires before the end date of the sponsor's work permit, the entry/re-entry permit will be granted to coincide with the dependant's passport expiry date. Once a certified copy of the new passport is submitted to the Immigration Department, a request to amend the dates of the entry/re-entry permit can be made. It is essential that the dependant always carries the re-entry document when travelling. Where such a dependant arrives in Bermuda without the re-entry document, an undocumented fee may be levied at the airport.

5.2 Sponsored Dependants Residing in Bermuda

Upon application, sponsored dependants of the work permit holder will be given permission to reside with the work permit holder provided that the sponsor submits proof of financial support for the dependants. Proof includes a bank reference and evidence of medical coverage. The Department of Immigration reserves the right to require further proof if required to assess the ability of the sponsor to support the dependant.

Applications for permission to work and reside in Bermuda with partner and/or children must include evidence that the following total remuneration thresholds will be met:

Demographic Profile	Household Remuneration
2 person household	\$60,000 per annum
3 person household	\$100,000 per annum
4+ person household	\$125,000 per annum

Upon making application the Minister may waive the minimum remuneration requirement. Should the sponsored dependant status change in any way the work permit holder and/or the partner must advise the Department of Immigration of the change.

5.3 Children Born in Bermuda

Where a child is born in Bermuda to a Work Permit holder or to a dependant of a Work Permit holder, proof must be provided to the Department that the Bermuda-born child possesses the citizenship of one or other or both of the parent(s). Proof can take the form of:

- A valid passport for the child;
- Certificate of registration or birth certificate of the child as a citizen of a country; or
- A certified letter from the authorities of a country confirming that the child is a citizen of that country; and
- A valid multi re-entry visa (for visa controlled nationals).

Without such proof, new work permits will not be issued.

5.4 Special-Needs Children

At the time of application, employers must inform the Department of any special-needs child under the age of eighteen (18) years. If the work permit is approved and the child enters the Government school system, the information about the special-needs child will be forwarded to the Department of Education so that proper arrangements can be made.

5.5 Convictions of Dependant

In the event that a dependant of a work permit holder is convicted of a criminal offence, the Department of Immigration will consider each case on its merits. In serious cases where the Minister believes that the dependant poses a threat to Bermuda, the dependant may be required to leave Bermuda.

5.6 Employment of a Dependant

A dependant may be permitted to work only if they are hired by an employer who has followed the normal policy to obtain a work permit.

5.7 Employing Relatives

An employer who makes an application to hire a family member must declare the relationship at the time of application. Each such application is treated on its merits. Failure to declare the familial relationship could result in revocation of permission to work.

5.8 Cost of Repatriation of Employee and Dependants

The Bermuda Immigration and Protection Act 1956 requires the most recent employer of a person (“former employee”) whose work permit has expired, been revoked, or is deemed to have been revoked shall be responsible for any costs associated with repatriation of the former employee and his qualifying dependants, and for reimbursing the Accountant General if he incurs any such costs.

The obligation of costs to repatriate does not apply if the employer and former employee have agreed in writing that the former employee will be responsible for any such repatriation costs, but it shall apply if in any case the former employee is unable to meet those costs. Any costs associated with repatriation of dependants who were not listed on the former employee’s original work permit application shall be the responsibility of the former employee, who shall be responsible for notifying the Chief Immigration Officer of any changes to the dependants listed on the original work permit.

5.9 Dependants Who Wish to Remain after the Work Permit Holder has left Bermuda

Dependants who wish to remain after the work permit holder has left Bermuda require permission to reside and seek employment.

5.10 Settling Affairs and Leaving Bermuda

In cases where permission to work has expired and persons are required to leave Bermuda, the Department of Immigration allows up to ninety (90) days to close off personal residency arrangements i.e. accommodation lease agreements, utility bills, repatriation, transportation of personal effects. Should additional time to settle one’s affairs be required, persons must submit a written request to the Department of Immigration including justification for the extra time being requested (e.g. dependants to complete the school year).

Where there is an agreement between the employer and the work permit holder to leave Bermuda and/or to vacate accommodation in a period of time less than the time frames specified above, the time frame agreed between the employer and work permit holder shall prevail.

Employers should remind persons that they are not permitted to seek alternative employment after the expiry of their work permit. Persons who wish to seek alternative employment may request permission from the Department of Immigration to do so.

6.0 CATEGORIES OF PERSONS GIVEN SPECIAL CONSIDERATION

6.1 Persons Engaged to be Married

Consideration will be given to an application from a Bermudian, PRC holder or a work permit holder, for the person to whom he/she is engaged to be married to be able to reside and seek employment in Bermuda before the marriage. To qualify:

- The wedding must be held within twelve (12) months of the application;
- The application must be accompanied by a letter from the officiating marriage officer confirming the date of the wedding;
- There must be an undertaking that the person will leave Bermuda should the marriage not take place by the designated date; and
- The Bermudian, PRC holder or work permit holder must submit proof that he/she can support the fiancé (e). Proof can include: bank statements; recent pay slips; medical coverage; confirmation of suitable accommodation.

If approved, an entry/re-entry permit will be issued. Under certain circumstances, upon request, consideration will be given for extensions.

6.2 Extension of Spouse's Employment Rights to the Divorced Parent of a Bermudian

The Extension of Spouse's Employment Rights (ESER) confers privileges to the divorced parent of a Bermudian child or children until the youngest Bermudian child of the household reaches the age of eighteen (18) years, or if he or she is still in college/university, twenty-five (25) years.

A "divorced parent of a Bermudian" is defined as a person with custody of a Bermudian child. Custody includes joint custody as well as sole custody.

These privileges include:

- to reside in Bermuda;
- to seek employment in Bermuda without restriction;
- if one is already employed, to continue to work in that employment without having to apply to the Department of Immigration for a work permit; and
- to retire from work and reside in Bermuda without the need to apply for any additional permission to do so.

To qualify for the ESER, the applicant must immediately before the divorce from the Bermudian spouse, have been exercising, or was eligible to exercise, his or her spouse's employment rights under section 60 of the Bermuda Immigration and Protection Act 1956 ("the Act"); must have custody of a Bermudian child; and must be of good character and conduct.

A person wishing to apply for the ESER is required to submit certain documents in support of his or her application. These include:

- a) a completed ESER Application Form which is available from the Department of Immigration;
- b) two (2) passport-type photographs of the applicant;
- c) a certified copy of the applicant's birth certificate or passport;
- d) a certified copy of the divorce absolute;
- e) a certified copy of each child's birth certificate or passport (only for the child(ren) with whom the divorced parent is attaching his/her request for the ESER); if older than eighteen (18) years but under twenty-five (25) years, proof that the child is in college/university on a full time basis; i.e. letters/transcripts from learning institutions, including relevant dates;
- f) proof of custody – sole or joint;
- g) proof that the applicant had exercised, or was eligible to exercise, his or her spouse's employment rights immediately prior to the divorce (i.e. letters from the applicant's employers), or proof of the former Bermudian spouse's ordinary residence in Bermuda (i.e. letters from the former Bermudian spouse's employers), or a letter from a professional person attesting to the continuous ordinary residence in Bermuda of the applicant's former Bermudian spouse; and
- h) two (2) character references in support of the application.

The Minister has the right to revoke the ESER at any time under section 34 of the Bermuda Immigration and Protection Act 1956. Without prejudice to the generality of the Minister's rights under the Act, non-exhaustive examples of occurrences, which could lead to the revocation of an ESER, are as follows: the ESER was obtained by fraud, false pretences or concealment of a material fact; or the holder is convicted of a crime, whether in Bermuda or abroad, which resulted (or would have resulted if convicted in Bermuda) in a sentence or a term of imprisonment of two years or more whether or not the sentence was served in full or suspended; or the holder resides outside Bermuda for two years or more, without seeking leave from the Minister to do so prior to his or her departure.

6.3 Spouses of Consular or Diplomatic Service Officers

Under section 60(6) of the Bermuda Immigration and Protection Act 1956 ("the Act"), the spouses of certain consular officers, or of others with diplomatic privileges, are permitted to work outside work permit control provided they fulfil certain requirements. Refer to the Act for details.

6.4 Portuguese Nationals

Employers wishing to employ Portuguese nationals recruited from a Portuguese territory are advised that a formal agreement, the Portuguese Accord between the Bermuda Government and the Government of Portugal, governs the conditions and terms of employment of such persons in Bermuda. Please contact the Department for the required form.

Nationals from the following islands and cities must comply with the Portuguese Accord which is available on the Home Affairs website.

Corvo; Faial; Flores; Graciosa; Pico; Sao Jorge (Azores); Sao Miguel; Santa Maria; Teceira Angra do Heroismo (historic capital/diocese); Horta (legislative capital); Ponta Delgada; (regional administrative capital); Ribeira Grande; Praia da Vitoria.

7.0 JOB CATEGORIES WITH SPECIAL CONDITIONS

The application process for job categories with special conditions is the same as that for the Open category (see section 3.10) except the employer must ensure that they meet the additional requirements as specified in this section of the policy.

7.1 Accountants Employed at Auditing or Accounting Firms

It should be noted that where an accounting firm is accepting Certified General Accountant (CGA) and Certified Management Accountant (CMA) applicants, the firm must demonstrate, through its advertisements, that they have given Bermudian, Spouse of Bermudian and PRC holder CGAs and CMAs an equal opportunity for employment. Unless there is a particular job requirement of one designation over another, the Department will suggest the advertisement be framed so that it advertises for professionally qualified accountants.

7.2 Child-Care Giver

Child-care givers often hold more than one work permit because they care for more than one child. A child-care giver is limited to the care of three children, a regulation set by The Ministry of Health. Therefore, work permit holders in this category will be limited to one permit for three (3) children, one permit for two (2) children plus one permit for a third child, or three permits for one (1) child per employer.

7.3 Beauty Salon, Spa and Hairdressing Staff

Contracts of employment for beauty salon, spa and hairdressing staff must include information relating to holiday and sick pay entitlements (i.e. if remuneration is by way of commission only the contract of employment must specify if the commission payments are inclusive or exclusive of holiday and sick pay entitlement).

7.4 Family Support

Those persons employed on BEVs, Global Work Permits or New Business Work Permits, who personally employ household staff prior to relocating to Bermuda, will automatically be granted a work permit for the staff to relocate to Bermuda and continue working. There is no need to advertise the positions. This is limited to nannies, in-house elderly and medical care personnel. Should the sponsor family be required to leave Bermuda or make arrangements to relocate to another country, the household staff will also be required to leave unless they find alternative employment like any other work permit holder.

7.5 Fine Artist

A person does not require a permit to create a work of art but only galleries are permitted to show and sell the work of artists who are not Bermudian, Spouses of Bermudians or PRC holders.

A gallery is defined as a permanent place of business whose purpose is to display and sell works of art. The definition can include a specialised department in a retail store. For the avoidance of doubt, a hotel that shows and sells paintings or other works of art does not fall within the definition of a gallery.

Galleries who wish to show and sell the work of a visiting artist must first inform the Department by writing a letter giving the name of the artist, the duration of the person's stay and by enclosing the required fee.

Where a resident artist wishes to sell their work of art, they must first obtain a Standard Work Permit but advertising for the position is not required. This is an exception to the general policy prohibiting self-employment.

Each gallery that wishes to show and sell the work of an artist must satisfy itself that the artist in question is lawfully permitted to do so.

7.6 Graduate Trainees

Many exempted companies, especially those with a global presence, have graduate training programmes where participants can opt to work in an overseas office for a period of time. Advertising for this position is not required.

The employer that has an established graduate training programme should write a letter of application to the Chief Immigration Officer identifying the graduate who will be coming to Bermuda as well as:

- the job category and length of training in Bermuda for the graduate;
- a completed Short Term Work Permit Application;
- a copy of the foreign graduate's employment agreement; and
- confirmation the graduate has medical insurance valid for Bermuda for the duration of their stay in Bermuda.

It is expected that participants in such programmes will not be taking the position of a qualified Bermudian, Spouse of Bermudian or PRC holder and that Bermudians, Spouses of Bermudians and PRC holders should be given equal opportunity to participate in related programmes in the employer's overseas offices.

7.7 Hospital Nurse and Physician

Once every three months, the Bermuda Hospitals Board is required to advertise for Bermudians. After each advertisement period, the Hospitals Board is required to submit quarterly reports to the Department on scheduled dates: 31 March, 30 June, 30 September and 31 December, detailing, for the previous three months, information about all nurses and physicians on staff, stating for each one whether the person is Bermudian.

7.8 Hospitality: Seasonal Work Permit

This work permit allows a hotel or restaurant to recruit seasonal workers for up to eight (8) months during the period between 1 April and 30 November in any given year. Seasonal workers will receive vacation pay and health insurance benefits, according to the actual period of the Seasonal Work Permit.

Applications for a Seasonal Work Permit follow the same procedure as a Standard Work Permit (section 3.6).

7.9 Interns

A business may establish an exchange internship programme with a counterpart organisation overseas to allow the reciprocal exchange of overseas interns and Bermudians, Spouses of Bermudians or PRC holder interns for training purposes. Advertising for this position is not required.

The employer that has established an exchange internship programme should write a letter of application to the Chief Immigration Officer identifying the intern who will be coming to Bermuda as well as:

- the job category and length of internship in Bermuda for the foreign intern;
- the job category and length of internship of the Bermudian counterpart;
- a completed Short Term Work Permit Application;
- a copy of the foreign intern's employment agreement; and
- confirmation the intern has medical insurance valid for Bermuda for the duration of their stay in Bermuda.

The Department will issue a work permit in respect of the intern provided that the exchange programme clearly benefits Bermudians, Spouses of Bermudians or PRC holders.

7.10 Live-In Domestic Employees Including Senior Caregiver (Private Home)

When making application for a live-in employee, other than a nanny/housekeeper, an employer should submit to the Immigration Department a Statement of Employment signed by both parties. The terms of employment must be fair and reasonable by Bermuda's employment standards.

7.11 Live-In Nanny/Housekeeper (Private Home)

The employer of a live-in nanny/housekeeper is to pay all of the employee's health insurance premiums, social insurance premiums and payroll tax as well as a wage equivalent of at least \$10.00 an hour. Room and board must be calculated at \$700.00 a month (\$158.00 a week).

The minimum weekly wage is calculated by converting the weekly periods of work into hours then multiplying the weekly hours by \$10.00 to obtain the minimum, gross, weekly pay. The minimum weekly wage expected is the minimum, gross, weekly pay minus \$158.00.

The period of notice of termination from either party is to be the same. One month is considered the shortest reasonable period of notice.

7.12 Locum Pharmacist and Shared Pharmacists

This work permit allows local pharmacies to share qualified pharmacist(s) where cover is required for short periods of time (i.e. three (3) months or less, when either the pharmacist has to leave Bermuda and/or where no Bermudian pharmacists are available).

An application for a shared service of pharmacists is made under section 4.5. As a member of the Bermuda Pharmacy Owners Association, each local pharmacy is allowed to apply for one (1) Standard Work Permit for a pharmacist who is already engaged in employment in Bermuda. The application must have a letter from the current employer agreeing to the arrangement.

7.13 Model - Occasional Work Permit for Casual or Part-Time Employment

Applications will be considered for persons to be employed as a casual or part-time model for up to one hundred (100) hours in any twelve (12)-month period. The Occasional Work Permit, if granted, may enable the model to be employed on any project during the period of the Occasional Work Permit.

Each application of this type is considered on its merits and it is not required to be advertised.

A model's Occasional Work Permit does not confer the right to do voice-overs for television commercials. Separate Occasional Work Permits for voice-overs must be applied for, and, if granted, that permit may be more restrictive than for the employment of models.

Application for an Occasional Work Permit is by a covering letter specifying:

- The name and immigration file number of the model or resident status;
- The name of the employer responsible for the Occasional Work Permit; and
- Efforts to employ Bermudians, Spouses of Bermudians or PRC holders and the name(s) with contact information of employed Bermudians, Spouses of Bermudians and PRC holders.

7.14 Musicians or Entertainers

The initiatives of the Department of Tourism and/or the Tourism Authority and the passage of the Hotel Concession Act 2000 provide the framework for granting incentives for the hiring of local entertainers. Work permits for foreign entertainers to perform at commercial locations open to the public (clubs, pubs and hotels) may be granted, provided that they are advertised in the normal way. The maximum period for a work permit in the entertainment industry will normally be a Seasonal Work Permit of eight (8) months.

7.15 Music School Teacher

Any teacher of music employed under a work permit by a school may take up paid employment, on a casual basis, for up to ten (10) hours per week, as a performer or tutor outside the school's teaching requirements with the permission of the employer.

Teachers who perform on an unpaid voluntary basis (e.g. weddings, receptions, private parties, Philharmonic Society concerts, musical theatrical productions and similar one-off or short-term engagements) have the Minister's tacit permission to undertake such work (see section 2.1). Voluntary performances by teachers do not count against the weekly ten (10) hours allowance for paid employment.

However, if the teacher is performing either solo or with a group on a regular part time basis, the place of business (i.e., churches, hotels, restaurants, pubs or bars) must obtain a work permit to hire the teacher in such capacity.

7.16 Occasional Work Permit for Casual or Part-Time Employment

A work permit under this section allows a person, who is already resident in Bermuda, to work in any category of work (e.g. instructor, tutor, fine artist) on a casual or part time basis provided the amount of work done is no more than nine (9) hours a week. A work permit may be granted for up to one year.

To obtain a work permit under this section, a person must submit a work permit application.

Applications can be made for more than one employer to hire the same instructor or private tutor for less than nine hours each but the total hours for all employers cannot exceed nine (9) hours per week. Such an arrangement is permitted provided each employer has a separate part-time permit.

7.17 Photographer

Photographers approved to work will be limited to those who are:

- Journalists;
- Working for overseas print or motion picture media publications;
- Working for overseas clients such as advertisers wishing to use Bermuda as a backdrop;
- Specialists in photography including architectural, food, aerial, medical, motion picture, digital or video provided that the job is advertised in the usual way per section 1.14; or
- Working for an international hotel group including those working on behalf of a convention client for the purpose of photographing their event provided that services of a local photographer are utilised.

7.18 Restaurant Staff

Contracts of employment for restaurant staff applications must include clear information relating to the minimum weekly remuneration for restaurant staff.

7.19 Self-Employed Persons and Part Owners of a Bermuda Business

Self-employment is not normally permitted. The Department defines self-employment as providing leadership and labour to a business in which the self-employed person makes final decisions on its operation and is the principal beneficiary of the business.

Part ownership in a local business does not confer any right to work. For part owners to obtain permission, the applicant must apply for permission in the normal way. Permission is likely to be granted based on the strength of the application giving consideration to:

- the character of the applicant and, where relevant, of his or her spouse;
- the existing and likely economic situation of Bermuda;
- the availability of the services of local companies and persons already residing in Bermuda;
- the desirability of giving preference to the spouses of persons possessing Bermudian status;
- the protection of local interests;
- the requirements of the community as a whole; and
- Where a Bermudian employer has greater than 60% ownership of the business and is a full-time employee in the business.

Where the industry is new, part owners are more likely to be encouraged, especially where the enterprise creates a new source of quality employment for Bermudians, Spouses of Bermudians and PRC holders and there is a clear and demonstrable benefit to Bermuda and the local workforce.

If there is no obvious benefit to Bermuda, the part owner is unlikely to obtain permission to work. This is particularly true in situations where the applicant is in partnership with one or more Bermudians whose involvement or employment with the business is not bona fide and significant.

This policy applies only to local businesses. Exempted companies may be owned and managed by foreign nationals.

7.20 Categories of Jobs Identified by the Minister where there are Large Numbers of Work Permits

The National Training Plan calls for employers to play a key role in ensuring that Bermudians and Spouses of Bermudians are developed and employed in specific occupations which have a high number of work permit holders. The following occupations have been identified as having a large number of work permit holders and are subject to change:

Registered Nurse, Qualified Accountant, Waiter/ Waitress, Mason, Landscape Gardener, Chef

Employers who employ more than five (5) work permit holders in the occupations listed above may be invited by the Department of Workforce Development and/or the Department of Immigration to participate in initiatives led by the National Training Board to boost the number of Bermudians and Spouses of Bermudians employed in these job categories. Employer participation will be considered by the Immigration Board and the Minister when considering work permit applications.

APPENDIX I

Bermuda Employment Visa Accreditation (BEVA)

Exempted companies are eligible to apply for BEVs provided they are BEVA accredited. The aim of the accreditation programme is to ensure that companies are genuinely committed to good employment practices. Grounded in the principles of credibility and accountability, the BEVA accreditation is administered by the Bermuda Employers Council (BEC) and audited by the Bermuda Government's Department of Workforce Development. To be accredited, companies must meet the following standard of good employment practice.

Principle	Standard		Examples of Evidence	Verification Examples
Compliance Verification of compliance with employment laws and regulation.	1	The organisation has provided employees with a written Statement of Employment (SoE) as well as a handbook of employment policies.	<ul style="list-style-type: none"> Example statements of employment and policy handbooks issued at the time of hire and upon amendment of employment terms. 	Test sample SoE's on site; reviews; handbook receipts and amended SoE terms; Officer records results of tests; initials reviewed documents.
Hiring Standards to help ensure fair hiring practices.	2	The organisation complies with employment regulations and laws.	<ul style="list-style-type: none"> Evidence that social insurance payments and payroll tax is paid up to date. Evidence that required health insurance and pension plans are offered and any employee contributions have been remitted. 	Test samples on site: monthly payments to Social Ins/Health compared with persons on payroll; records month(s) sampled and results; confirms policy for NBdn /Bdn pensions; confirms sample payments to pension plans.
	3	The organisation ensures fairness in advertising vacancies by publishing a bona	<ul style="list-style-type: none"> Examples of job descriptions and advertisements. 	Test samples job advertisements compared with internal job descriptions and organisational structure; records copies of sample.

		fide description of the job and <i>minimum</i> qualification requirements in accordance with immigration policy.		
	4	The organisation provides interviewers with training in interviewing and selection techniques.	<ul style="list-style-type: none"> ▪ Course descriptions and/or evaluations of courses attended. ▪ Lunch'n Learns or other such in-house instruction, training or coaching. ▪ Description of vetting and interview process provided to managers. 	Interviewer(s) name(s) recorded with their training/experience; Officer verifies instruction is reasonable and from <i>bona fide</i> organisation(s); verifies training/experience with interviewers, records results.

Principle	Standard		Examples of Evidence	Verification Examples
Training Best practices to encourage investment in employee training and development.	5	The organisation plans and budgets for training and development based on individual needs and organisational requirements.	<ul style="list-style-type: none"> ▪ Personal and/or organisational training plans. ▪ Training budgets and succession plans. 	Officer verifies

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	6	The effectiveness of employee training and development activities is assessed and development is linked to relevant external qualifications or global standards where appropriate.	<ul style="list-style-type: none"> ▪ Training attendance records, course evaluations and achievement credentials. ▪ Evidence of on-line learning, on-the-job training and/or coaching/mentoring. ▪ Promotion and support of industry relevant qualifications. ▪ Policies of support for training (e.g. funding, study leave, rewards, recognition). 		Officer selects sample from list provided then reviews HR files for training certificates/competition/achievements/CEU's and training objectives in performance appraisals or other docs reviewed then compared to actual; confirms OTJ training with employee; confirms industry relevant qualifications with HR; reviews any plans or evidence of recognition of employees that have undertaken training or achieved designations and certifications.
	7	The organisation offers and provides managers training on how to effectively manage and develop employees.	<ul style="list-style-type: none"> ▪ Course descriptions and/or evaluations of courses attended. 		Officer selects sample of managers, reviews information on their management training and training plans; verifies related training is reasonable from <i>bona fide organisations</i> .

Exempted companies seeking BEVA accreditation must contact the BEC to schedule the BEVA Officer to visit the company. The BEVA Officer will review the company's evidence and provide an accreditation report to the applicant company and the Immigration Department. In the event of a report denying accreditation, six (6) months will be allowed to correct deficiencies. The company may appeal to the Minister a report denying accreditation.

As a quality control, the Department of Workforce Development (DWD) will randomly select companies, and a DWD officer may accompany the BEVA Officer to verify the accreditation standards are being properly assessed. Additionally, the Minister, in consultation with Industry, will appoint a non-statutory Advisory Board to make recommendations for continuous improvement of the standard, confidentiality measures and procedures for the BEVA Officer. For more detailed information on the accreditation process, contact the BEC on 441-295-5070.

APPENDIX II

Individuals from jurisdictions identified as high risk for tuberculosis (TB), or who have ever resided in such a jurisdiction for a period of three (3) months or more must provide a chest x-ray and a letter from a certified physician confirming they pose no health risk and are free from TB.

This list is based on the World Health Organisation's Yearly Report on tuberculosis. This list will mirror the high risk jurisdiction list as published yearly (or more frequently as may be necessary) by the World Health Organisation.

Afghanistan, Bangladesh, Brazil, China, DR Congo, Ethiopia, Indonesia, India, Kenya, Cambodia, Myanmar, Mozambique, Nigeria, Pakistan, Philippines, Russian Federation, Thailand, Tanzania, Uganda, Viet Nam, South Africa, Zimbabwe.

APPENDIX III

Landing Policies at L.F. Wade International Airport

- Passengers who arrive in Bermuda as a work permit holder with a copy (not the original) of their work permit or whose work permit is approved but who have forgotten to carry a copy or the original work permit with them – will be referred to the Immigration Referral Office so that the Senior Immigration Inspector can verify that a valid work permit exists. Once the relevant checks have been made and the work permit has been confirmed, NO penalty fee shall be imposed and the passenger should be reminded and encouraged to travel with their original work permit.
- Passengers arriving in Bermuda as a work permit holder without a work permit at all – will be referred to the Immigration Referral Office so that the Senior Immigration Inspector can conduct inquiries to ascertain if a valid work permit exists. Once it has been confirmed in the system that no valid work permit exists, or that no application has been submitted to the Department on the passenger's behalf, the passenger shall be charged the penalty fee. He/she shall be landed as a 'working visitor' for one (1) business day and instructed to report to Department of Immigration Headquarters with his/her prospective employer so that the employer can address the matter with the Corporate Services team. Additionally, the Senior Immigration Inspector shall contact the employer and get a verbal guarantee that they (the employer and the working visitor) will attend the Department as instructed to address the matter. Finally, an email will be sent to Immigration Headquarters by the Senior Immigration Inspector updating the relevant persons on the matter.
- Passengers arriving in Bermuda as a work permit holder without a work permit in hand but where it can be seen in the system that a work permit is in process (no decision on the work permit application) - will be referred to the Immigration Referral Office so that the Senior Immigration Inspector can verify whether a valid work permit exists. Once it has been confirmed in the system that no valid work permit exists, but that an application has been submitted and is in process then the passenger shall be landed in the appropriate category, charged the penalty fee and instructed not to commence work until the application has been approved or until otherwise instructed by Immigration Department officials. In addition, the Senior Immigration Inspector shall also contact the employer and advise them that the passenger has been landed but cannot work until a decision is made on the work permit application.
- Passengers arriving in Bermuda as a work permit holder or who require a Letter of Permission and who attempt to mislead Officers by telling them that they are arriving as regular vacationing visitors when in fact they are arriving to perform work-related functions that would ordinarily require the Minister's specific permission; i.e. either a work permit or a Letter of Permission – will be referred to the Immigration Referral Office so that the Senior Immigration Inspector can conduct further inquiries. Once it has been confirmed that the passenger did mislead Immigration and Customs officials about their reason/purpose for entering Bermuda, the passenger may be refused entry.

- Passengers arriving in Bermuda on Periodic Work Permits but who are not in possession of a physical Periodic Work Permit – will be referred to the Immigration Referral Office. All working visitors arriving in Bermuda on Periodic Work Permits must have in their possession the original or a copy of the work permit. In cases where it has been confirmed that the local host company has more than one (1) active Periodic Work Permit, the employer will be contacted and invited to provide a copy of the Periodic Work Permit and confirm that there is not currently a person in Bermuda working against that Periodic Work Permit. Once it has been confirmed with the employer that a valid Periodic Work Permit exists, it should be scanned to the Senior Immigration Inspector at which point the passenger shall be landed as a working visitor without penalty. In instances where it has been confirmed that no Periodic Work Permit exists, the passenger shall be charged the penalty fee, landed for one (1) business day as a working visitor and the employer contacted and instructed to attend the Department of Immigration Headquarters to address the matter. This will allow the local host company to resolve the issues that prevail. If the local host company cannot or does not provide the requisite documents/proof, the working visitor will be directed to leave Bermuda; all related travel expenses will be borne by the local host company.

The only exception to the above process is where the local host company only has one active Periodic Work Permit on record by the Department of Immigration i.e. barring exceptional circumstances, the person shall be landed without penalty in this case.

- Effective March 1st, 2014 the Department of Immigration removed the requirement for Bermuda entry visas and visa waivers for all persons who plan to travel to Bermuda as a tourist or business visitor or as a work permit holder. Consequently, all tourist and business visitors and all work permit holders who require a multiple re-entry visa for the UK, US or Canada will be permitted to land in Bermuda without a Bermuda entry visa or visa waiver. Such persons must also possess a passport that is valid for 45 days past the expiration of travel and/or of the work permit. In addition to these requirements, such persons whose multiple re-entry visa and passport validity is less than the time specified above may not be landed.

Notwithstanding any of the aforementioned scenarios, other circumstances may require that an alert be placed in the system instructing that actions be taken contrary to those indicated above.

APPENDIX IV

FREQUENTLY ASKED QUESTIONS

1. **Is a “Letter of Release” required to be submitted with an application of a person currently employed in Bermuda by another employer?**

No. The “Letter of Release” that was previously required to ensure that employers had no objection to an employee obtaining employment elsewhere is no longer required. Employers are instead required to submit a “Letter of Termination” (see section 3.12). Employers that wish to enforce restrictive covenants of contracts of employment (e.g. no-competition clauses) or any alleged breach of contract must seek remedy in the courts rather than involve the Department of Immigration. Employers should note, however, permission will not normally be granted to allow persons to move to a second job until they have completed two years’ service with their first employer in Bermuda.

2. **Is there a policy that prohibits someone from visiting Bermuda while an application is pending with the Immigration Department?**

No. In the past, persons were not allowed to be in Bermuda while a new work permit application was in process. But under the current policy persons may visit Bermuda while an application is in process, however, they may NOT engage in gainful occupation until such time as their application is approved and visitors may not seek employment unless they have permission from the Minister. Individuals and employers are warned that amendments to the Bermuda Immigration and Protection Act in 2013 increased the penalties for working without permission. The law will be strictly enforced so individuals and employers who commence employment prior to their application being approved can expect a refusal of their application as well as the maximum civil penalties and criminal prosecution.

3. **What is the longest work permit term that an employer may apply for?**

The longest term for a Standard Work Permit is 5 years. The 10-year Work Permit Policy introduced in 2011 has been eliminated and replaced by the Bermuda Employment Visa which has a term of 7 years.

4. **Are employers required to submit a police report, health certificates and x-ray and professional and character references with their applications?**

Employers are required to provide a written declaration that they have thoroughly screened the applicant and to the best of their knowledge and belief the applicant is of good character, possess the qualifications purported in the application, is in good health and free of any communicable disease, and does not have a criminal record. Employers are encouraged to keep evidence of their screening practices because they will face civil penalties and/or criminal prosecution if they sign the declaration and it is later found that they knew or should have known that an employee was unfit to be granted permission to work in Bermuda. **Individuals from jurisdictions identified as high risk for tuberculosis (TB), or who have ever resided in such a jurisdiction for a period of three (3) months or more must provide a chest x-ray and a letter from a**

certified physician confirming they pose no health risk and are free from TB for all work permit categories and BEVs.

5. Has the Temporary Permit been eliminated?

The 3 month Temporary Permit has been superseded by the Short Term Work Permit which can be applied for in 3, 4, 5 or 6 month terms. Short Term Work Permits are processed in 10 working days. In the event extensions are requested, employees will no longer be required to leave the Island.

6. Can employers still apply for Permission in Principle?

No. The Permission in Principle policy was introduced in 2001 to provide a means of speeding up work permit approvals which often took 3-6 months. The policy was eliminated because Permission in Principle applications became rare in recent years due to faster processing times and the policy in respect of advertising now allows applications to be submitted up to 6 months after the last publication date (previously job ads would expire after 3 months).

7. How much discretion may the Minister exercise in making decisions that are guided by these policies?

Under the Bermuda Immigration and Protection Act 1956 (Parts IV and V), the Minister has the right to create, modify, eliminate and make exceptions to any immigration policy. So where individuals or employers believe that the circumstances of a situation warrant special consideration of the Minister, they should justify their case in writing to the Minister.

8. Is there a policy which regulates how long a person who has previously worked in Bermuda must be a non-resident prior to returning to the Island?

No. The policy which previously required a one year absence has been eliminated.

9. Are employers required to submit a letter guaranteeing repatriation of employees and their dependants?

No. The guarantee of repatriation by the employer is now enshrined in law under the Bermuda Immigration and Protection Amendment (No. 2) Act.

10. When required, how will the employer demonstrate that it has met the requirement to advertise in the newspaper and on the Workforce Development website?

Newspaper advertisements may be photocopied or a screenshot from the electronic editions of the publication may be submitted. Job postings may be printed.

11. Do married applicants need to submit a “letter of undertaking” to promise to leave Bermuda if their marriage dissolves?

No. Such a letter is no longer required.

12. Has the New Business Permit changed?