



W5 - Restrictions on Non-Bermudians Seeking or Obtaining Employment

POLICY: RESTRICTIONS ON NON-BERMUDIANS SEEKING OR OBTAINING EMPLOYMENT REF: W5

- SEEKING EMPLOYMENT
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PURPOSE:

To define clearly certain conditions that apply to non-Bermudians who request permission to reside and seek employment in Bermuda.

STATEMENT:

Seeking Employment

A non-Bermudian resident may not look for a job without first obtaining permission from the Department of Immigration, unless exempted from work permit control by law. This does not apply to the holder of a WRC holder, a permanent resident or to the divorced parent of a Bermudian.

A non-Bermudian who was a primary work permit holder, but who is no longer employed, may not seek employment or apply for employment without the permission of the Department of Immigration.

An application to employ someone for whom another employer holds a valid work permit will not normally be considered unless the application is accompanied by a letter of release from the current employer.

In cases where the current employer refuses to give a release, the Minister will make a decision as to whether the employee should be allowed to move, after consultation with the current employer when that is appropriate. Normally, permission will not be given during the first two years of the permit holder's employment without a letter of release from the current employer, unless there has been some unfair employment practice/ employer abuse.

The following groups of people are forbidden to seek employment in Bermuda:

- Residential Certificate holders;
- those with permission to reside in Bermuda on an annual basis;
- non-Bermudian partners who are not fiancé(e)s, or married and do not already have work permits;
- visitors to Bermuda.

Where a Residential Certificate holder wishes to seek employment, he or she must first surrender the Residential Certificate before making such an application. There is no guarantee that the person will be granted a Residential Certificate again after the employment is finished.

If a person with permission to reside on an annual basis wishes to seek employment he or she must:

- wait until the current permission to reside on an annual basis expires; or
- surrender his or her permission to reside and leave Bermuda before applying for a job in Bermuda.

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Applicants from overseas must not visit Bermuda while a work permit application submitted on their behalf is being considered, unless prior permission has been obtained from the Department of Immigration.

Single Parent with Dependent Child or Married Couple with More Than Two Dependent Children

Prospective non-Bermudian workers who are:

- single parents with custody of a dependent child; or
- married couples with more than two dependent children;

are not encouraged to enter Bermuda to work.

The Minister of Labour, Home Affairs and Public Safety may waive the restriction. Requests will be considered on a case by case basis, and the degree of expertise or economic benefit which the individual will bring to the business concerned and the economy of Bermuda will be taken into account against the strain on the Island's infrastructure.

Self - Employment

Non-Bermudians will not normally be permitted to be self-employed. As self-employment is difficult to define precisely, there are numerous possibilities for businesses to run afoul of the spirit of the policy. In general terms, the Department of Immigration sees self-employment as the running of a business and the ability to make final decisions on its operation. The self-employed person is likely to be the principal beneficiary of the business. The Department of Immigration is, however, trying to avoid allowing non-Bermudians to set up and run businesses with Bermudian partners where the Bermudian's involvement with the business is negligible and in name only and where there is no obvious, direct benefit to Bermuda or Bermudians, e.g. jobs, physical presence.

Some examples of self-employment might be:

- a non-Bermudian who is the general manager of a business in which the Bermudian owner does not participate;
- a non-Bermudian manager who is a shareholder in the business and upon whose expertise the business depends.

Where there are local service providers, a work permit will not be granted to an employer who is not already providing that service, e.g. a hotel applying for work permits for masons; a lawyer applying for work permits for gardeners to be hired out.

Policies governing self-employment apply only to local businesses. Exempt companies may be owned and managed by non-Bermudians.

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Laid-off Staff in the Hospitality Industry

Where there is a need to lay-off or place workers on “short-time”, non-Bermudian employees, without exception, are to be laid-off first.

Laid-off non-Bermudian hospitality workers may apply for permission to seek alternative employment during the off-season (normally considered to be the months of November through February), but the grant of such permission will depend upon the following:

- the worker must have a letter from his or her primary employer stating that there is no objection to the employee seeking work during the lay-off period;
- the prospective employer must advertise and must satisfy the requirement to ensure that no qualified Bermudian is available.

On application for a work permit, the employer is required to give a written undertaking to terminate the temporary employment at the request of the Minister, should Bermudians wishing employment subsequently be laid-off.

The principle behind this policy is that non-Bermudian hospitality workers will not unreasonably be refused an off-season job, provided always that Bermudians are not disadvantaged by such employment.

Non-Bermudian Engaged to be Married to a Bermudian, or to a Work Permit Holder, to Reside and Seek Employment

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

- the wedding is held within twelve months of the application;
- the application is accompanied by a letter from the officiating marriage officer confirming the date of the wedding;
- there is an undertaking by the person that he or she will leave Bermuda should the marriage not take place by the designated date.
- the sponsor submits proof that he or she can support the fiancé(e). Proof can include:
 - bank statement
 - recent pay slips
 - confirmation that they have suitable accommodation

A work permit will be issued for up to six months in the first instance. Before the work permit is renewed, the couple are required to show proof that they have applied to the Registrar-General for a marriage licence or that they have had banns published.

This provision is a courtesy to non-Bermudians who are about to marry a Bermudian, or work permit holder, but who would not otherwise be able to find work in Bermuda in the normal way.

Restrictions on Non-Bermudians Seeking or Obtaining Employment

Employing non-Bermudian Relatives

An employer who applies for a work permit to hire a family member must declare the relationship at the time of application. Each such application is treated on its merits.

Generally a householder will not be permitted to hire his or her relatives as domestic servants.

Failure to declare the familial relationship could result in revocation of the work permit.

Non-Working Dependants

There is no guaranty that a dependent spouse, child or other relative will be given permission to reside with the work permit holder unless the sponsor submits proof that he or she can support the dependant(s). Proof can include:

- bank statement
- recent pay slips
- confirmation that they have suitable accommodation

The dependent spouse, child or other family relative, who has permission to reside with a person on a work permit, is issued with a personal entry/re-entry document. This document is issued, via the employer, at the time the work permit is issued.

It is essential that the non-working dependant always carries the re-entry document when he or she travels. Where such a dependant arrives in Bermuda without the re-entry document, he or she will not be landed as a resident. If allowed to land, the person will have to purchase a return ticket to his or her home country and will be landed as a visitor for 21 days.

Standard Work Permit Validity

Standard work permits are issued for up to five years at the Minister's discretion. The Government Fees Regulations define the duration of standard work permits as follows:

- one-year permit permission for any period less than 18 months
- two-year permit 18 months or more but less than 30 months
- three-year permit 30 months or more but less than 42 months
- four-year permit 42 months or more but less than 54 months
- five-year permit 54 months or more but less than 66 months

Periodic and Temporary Work Permits

A person who is employed on a periodic work permit or on a temporary work permit is considered to be a visitor and not a resident. The law allows visitors to spend no more than six continuous months in Bermuda on any one visit.

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A periodic permit may be valid for any period up to one year. It allows the person to enter Bermuda any number of times during that period of validity. If a person who would otherwise be accommodated with a periodic work permit is to spend more than six months in Bermuda at any one time, the employer should apply for a standard work permit.

A temporary work permit allows a person to work in Bermuda for up to three months continuously. A temporary work permit can only be extended once to bring the person up to his or her maximum permitted stay of six months in Bermuda. After that the person must either leave Bermuda or the employer should apply for a standard work permit.

Given his or her visitor's status, a person working in Bermuda on a periodic or temporary permit is not permitted to seek alternative employment with the same employer or with another. However, the current employer of such a person may apply to hire him or her on a standard work permit in the same job at which he or she worked on a periodic or temporary permit. Further, it should be noted that the normal application process for a standard work permit, including the requirements to advertise and to submit a chest X-ray and medical certificate, applies. Upon a standard work permit being granted in these circumstances, the employee's status will change from visitor to Bermuda resident.

Portuguese Nationals

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

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