

SAMOA

Arrangement of Provisions

1. Short title and commencement
2. Insertion of Part VIA
3. Amendments to section 42

1999, No. 17

**AN ACT to amend the Labour and Employment Act 1972
and to make provision for the employment of non-
citizens in Samoa.** *[25th August 1999]*

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:-

1. Short title and commencement-(1) This Act may be cited as the Labour and Employment (Employment of Expatriates) Amendment Act 1999 and shall be read with and form part of the Labour and Employment Act 1972 (the “principal Act”).

(2) This Act shall come into force on the date it is assented to by the Head of State.

2. Insertion of Part VIA – The principal Act is amended by inserting Part VIA as follows -

“PART VIA

Employment of Expatriates

36A. Interpretation – In this Part, unless the contrary intention appears:

“citizen” means a person who is a citizen of Samoa by virtue of the Citizenship Act 1972:

“employment” includes any contract of service to which the Labour and Employment Act 1972 applies, and work done by a non-citizen in Samoa, whether on a permanent, temporary or casual basis either for another person or on a self-employed basis; and includes employment of a non-citizen on a voluntary basis:

“non-citizen” means any person who is not a citizen of Samoa:

36B. Work Permits required – No employment shall be given to a non-citizen, and a person who is a non-citizen shall not undertake employment in Samoa, unless a work permit has been granted under this Part for the employment held, or to be held by that person.

36C. Grant of Work Permits-(1) The Commissioner shall have the power to grant work permits in accordance with this Part.

(2) Work permits granted under this Part shall be in respect of positions to be filled, or expected to be filled by non-citizens and the granting of a work permit shall constitute the authority under this Part for a non-citizen to be employed in or for the approved position.

36D. Application for Work Permits-(1) A person seeking approval for a position in his business, organisation or enterprise to be filled by a non-citizen shall make application in the prescribed form, which shall be accompanied by the prescribed fee.

(2) An applicant shall provide any additional information that the Commissioner may require to assess the application under this section.

(3) Upon receipt of an application under subsection (1) the Commissioner shall assess the application having regard to -

- (a) The nature of the position and the technical or professional requirements involved in the performance of the work; and
- (b) The likelihood of a citizen holding the requisite technical or professional requirements being available for that employment; and
- (c) The interests of Samoa generally; and
- (d) Any other matter that may be prescribed in relation to the assessment of applications;

and may -

- (i) grant the approval for the work permit;

or

- (ii) decline to grant the work permit on any stated grounds that are consistent with paragraphs (a) to (d) of this subsection.

(4) Upon granting a permit the Commissioner may, taking into account the matters referred to in paragraphs (a) to (d) of subsection (3), restrict the time for which the work permit shall be valid and may impose conditions relating to the employment and training of a citizen relevant to the position for which the work permit is granted.

(5) Subject to subsection (4) the period of any work permit granted under this section shall be as prescribed.

36E. Registers of work permits - The Commissioner shall keep and maintain a register of work permits granted under this Part and the register shall be open for inspection upon payment of the prescribed fee.”

3. Amendments to section 42 - Section 42 of the principal Act is amended as follows -

- (a) By deleting from paragraph (h) of subsection (2) the figure “\$100.00” and replacing it with “20 penalty units”; and
- (b) By adding paragraph (j) to subsection (2) as follows—
 - “(j) Prescribing all matters necessary or incidental to the issuing of work permits for the employment of non-citizens, including —
 - (i) the forms and fees for applications and work permits;
 - (ii) the criteria to be assessed in relation to the grant or refusal of an application for a work permit;
 - (iii) the procedure for monitoring work permits and the returns required to be furnished in respect of them;
 - (iv) the duration of work permits;
 - (v) the keeping of a register of work permits and the particulars required to be shown in it;
 - (vi) the fee for inspection of the register; and
 - (vii) the granting of work permits as part of approvals given under laws relating to foreign investment.”