

**IMPORTANT NOTE: These FAQs are based on what is proposed in the Immigration (Amendment)(No.2) Bill, 2013. This Bill has not yet been debated in the Legislative Assembly and it cannot be assumed that all that is contained in it will become law. The answers to the questions below could therefore be subject to change.**

## **Term Limit Exemption Permits**

### **1. What happens to a Term Limit Exemption Permit on 28 October 2013?**

All Term Limit Exemption Permits will expire on or before 28 October 2013. A person holding a Term Limit Exemption Permit on 28 October 2013 may continue to work by operation of law on the same terms and conditions until 9<sup>th</sup> December, 2013. But before doing so the holder must present his passport to the Department of Immigration and his employer must pay the relevant fee. **You cannot present your passport to the Immigration Department before this Bill becomes law; therefore you must wait until October 28<sup>th</sup> (or the date on which the law is passed) before you can present your passport to the Department of Immigration.** A failure to comply with this requirement is an offence.

### **2. How much is the fee is payable for the 45 day working by operation of law period between 28 October and 9 December 2013?**

If an employer has paid for the grant or renewal of a Term Limit Exemption Permit since 9<sup>th</sup> December 2012 he will not be required to pay any further fees in respect of this additional working by operation of law period. However, the worker must have his passport stamped with the WOL.

### **3. Can I continue to employ a person currently on a Term Limit Exemption Permit after 9 December 2013?**

If the employee's term limit has not expired (bearing in mind that his seven year term limit now becomes a nine year term limit after the changes to the law take effect) he will be eligible to resume holding work permits. During the period between 28 October and 9 December you may therefore submit an application for the grant of a work permit but before doing you must comply with all requirements regarding advertising the position and interviewing all qualified Caymanians, persons

married to a Caymanian and permanent resident applicants to determine if there is a candidate who can fill the role.

**4. If I have already advertised this position in the past six months do I have to re-advertise?**

No. You can use the previous advertisements if they were published within three months of the Law coming into effect (in the case of an application to the Work Permit Board), or within six months in the case of an application to the Business Staffing Plan Board).

**5. What happens on 9 December 2013?**

The ability of a worker who has been working by operation of law until that date (having held a Term Limit Exemption Permit on 28 October 2013) will cease. But his employer may, if the worker's term limit has not expired, apply for the grant of a work permit to continue employing him beyond 9 December. And if the work permit application is submitted prior to 9 December 2013 the worker will be allowed to continue working by operation of law until the outcome of the application or any subsequent appeal. If the application is submitted after 9 December the worker will not be allowed to work pending determination of the application.

**6. When the law changes I will be able to count time spent on a Term Limit Exemption Permit towards the eight years required to apply for permanent residence. If my Term Limit Exemption Permit expired before the law changed, but I am still here on a visitor's extension, will I still be able to apply for permanent residence?**

No. To apply for permanent residence you have to have been legally and ordinarily resident in the Islands for eight years **and continue to be legally and ordinarily resident on the date that you submit your application for permanent residence**. In your case you may have reached the eight years required taking into account the time you spent working on a Term Limit Exemption Permit but you ceased to be legally and ordinarily resident when the TLEP expired. Even if you were authorized to remain here on the basis of a visitor's extension you are not said to be 'legally and ordinarily resident' in the Islands as per the definition of that term in the Law.

**7. If I hold a Term Limit Exemption Permit now will I be able to stay for two more years?**

No. If you have a Term Limit Exemption Permit that expires on 28 October 2013 you will be allowed to continue working by operation of law until 9 December 2013. But you will not be allowed to remain beyond that date unless you are eligible to resume holding work permits in accordance with a nine year

term limit. For example, if your seven year term limit expired on 20 October 2012 your new term limit would be 20 October 2014. You are therefore eligible to continue holding work permits until that date. You may also be, or become, eligible to apply for permanent residence.

**8. If a worker's Term Limit Exemption Permit expires before 28 October 2013 can it be renewed?**

Yes. Though it may only be renewed until 28 October 2013 and the employer will only receive a refund amounting to 50% of the annual fee. If it is renewed the worker would however be entitled to continue working by operation of law until 9 December 2013.

**9. Will the time I spent working on a Term Limit Exemption Permit count towards the eight years required to apply for permanent residence**

Although it did not previously, a change to the Law now allows holders of a Term Limit Exemption Permit to count the time spent working on a TLEP towards the eight years required to apply for permanent residence. The worker must however still be legally and ordinarily resident in the Islands at the time that they submit their application for permanent residence.

## **Term Limits and Work Permits**

**10. How will the changes to the law affect my term limit?**

If you are currently working on a seven year term limit this will become a nine year term limit.

**11. If my seven year term limit has already expired will I be able to hold work permits again in accordance with a nine year term limit?**

Not necessarily. If your term limit expired before the changes in the law and you had already left the Islands without having held a Term Limit Exemption Permit or any other permission to remain and work in the Islands then you will not be allowed to hold another work permit until you have had a break in stay of at least one year. But, if you are currently living and working in the Islands on a Term Limit Exemption Permit or a work permit granted on the basis that your spouse's term limit is still active, then you are eligible to continue receiving work permits until the end of nine years.

**12. Will time spent working on a Term Limit Exemption Permit count in respect to my new nine year term limit.**

Yes.

**13. After my term limit has expired how long do I have to leave the Islands for before I am eligible again to receive further work permits.**

One year.

**14. If my term limit now becomes nine years will I be allowed to apply for permanent residence?**

Yes. Once you have been resident for eight years you may apply for permanent residence but you must do so prior to reaching nine years. In other words, you will have a window of one year in which to apply after being resident for eight years.

**15. I already have a term limit of nine years because I am a key employee. Does this change anything?**

No. You will continue to have a nine year term limit and you will continue to enjoy a presumption in favour of work permit renewals until the end of your term limit provided you remain with the same employer with whom you have been designated as a key employee.

**16. If I already have a term limit of nine years because I am a key employee can I switch to a different employer and continue to have a nine year term limit?**

Yes. Though you would no longer be entitled to the presumption in favour of work permit renewals.

**17. My seven year term limit has expired but I currently hold a work permit because my spouse is a Government employee or still has an active term limit. Can I continue to work beyond nine years?**

Yes. As long as your spouse remains employed by Government or his or her term limit remains active.

**18. Can a worker who was previously employed on a Temporary Work Permit continue to work while awaiting a decision on an annual work permit application and any subsequent appeal in respect of that application?**

The worker may continue to work by operation of Law up until the date of the decision being communicated, not beyond even if an appeal has been made.

**19. I hold a ten year term limit because I work in an industry and occupation prescribed as being eligible. How am I affected?**

If you held a ten year term limit before the law changes took effect then you can continue to hold permits until the end of ten years. But if you were to change employment where the new employer is not in a prescribed industry then you would revert to a nine year term limit.

**20. Is it still going to be possible to have a ten year term limit if I am employed in a prescribed industry and occupation?**

No. The ability to hold a ten year term limit is being discontinued when the law changes take effect. Only persons who held a ten year term limit prior to the grant will be allowed to continue holding work permits in accordance with a ten year term limit.

## **Permanent Residence**

**21. When does a resident become eligible to apply for permanent residence?**

A person who has been, and remains, legally and ordinarily resident in the Islands for a period of at least eight years but not more than nine years may apply for the grant of permanent residence.

**22. What happens if I have been here for more than nine years already, can I apply for permanent residence?**

Any person who has been here for nine years or more on the date that the law changes take effect will have a period of ninety days from that date in which to apply for permanent residence.

**23. What will be the fee for the 90 days?**

It will be 25% of the annual work permit fee.

**24. If I submit my permanent resident application during the 90 day period, will I be allowed to continue to work after that permit expires to await the outcome of the application and any subsequent appeal?**

Yes, provided your permanent residency application is submitted prior to the expiration of the 90 day period you will be eligible to apply to the Chief Immigration Officer for permission to continue to work and if approved you will be stamped every six months and pay half the annual work permit fee each time.

**25. Can Permission to Continue to Work be refused, revoked or amended ?**

Yes an application may be refused, or permission granted may be revoked or amended to add or remove a dependant.

**26. What happens if I have been here for more than nine years already and I don't apply for permanent residence within the ninety days allowed?**

You will have lost your opportunity to apply.

**27. Do I still have to apply for permanent residence before I reach nine years even if that is shortly after the law changes take effect?**

Yes

**28. I am on a term limit exemption permit when the changes to the Law come into effect and I am 8 years and 10 months into my nine year term limit, do I only have two months in which to apply for Permanent Residency?**

Yes.

**29. I am a Government employee. If I have been here for nine years already would I also have to apply for permanent residency within ninety days of the changes to the Law?**

Yes

**30. I am a Government employee. If my application for permanent residence is unsuccessful will I be required to leave the Islands?**

No. Government workers are not subject to term limits so you may remain for as long as you hold a valid employment contract with the Government

## **Key Employees**

**31. I am a key employee. How to the law changes affect me?**

You will continue to be a key employee and your term limit will remain nine years. You will also continue to enjoy a presumption in favour of work permit renewals until the end of your term limit.

**32. What happens if I change employer before reaching the end of my term limit**

You would lose the presumption in favour of work permit renewals but your term limit would still be nine years.

**33. My application for key employee designation has not yet been decided by the Board. What will happen to the application after the law abolishes the key employee facility?**

All applications that are pending on the date that the law changes take effect will still be processed in accordance with the law that was in effect at the time of making the application. If the application is approved the worker will be entitled to a presumption in favour of renewals until the end of his term limit.

**34. If my application to have a worker designated as a key employee is not yet processed may I withdraw the application?**

Yes.

## **Appeals**

**35. How much does it cost to lodge an appeal to the Immigration Appeals Tribunal?**

\$1,000.

**36. How much does it cost to lodge an appeal against a decision of an Immigration Officer?**

\$100.

**37. Are there any changes to the process for submitting an appeal?**

The appeal process is now based entirely on written submissions (by you or your representative) unless you are invited by the Tribunal to attend. Also, if you fail to establish any of the available grounds of appeal through written submissions your appeal may be quashed by the Immigration Appeals Tribunal before reaching the rehearing stage of the appeal where the Tribunal rehears the original application including new evidence.

**38. Am I or my representative allowed to be present at a hearing on grounds or at the rehearing of the application?**

No. See above. Not unless you are invited by the Tribunal to attend.

**39. What happens if I am able to make out one or more of the available grounds for appeal?**

If the Tribunal agrees that one or more of the available grounds have been established it will proceed to a rehearing of the original application which is the subject of the appeal.

**40. What happens at the rehearing stage of the appeal process?**

The Tribunal will conduct a rehearing of the original application (the application you submitted originally which was subsequently refused) taking into account any information or evidence that you have submitted in writing that point to a change in circumstances or a material fact.

**41. Which law applies during the rehearing of the original application?**

The law in force at the time of the rehearing by the Tribunal or the Board will govern the proceedings.

**42. Can the Immigration Appeals Tribunal require me to pay costs in any circumstances?**

Where in the opinion of the Tribunal an appeal was made frivolously, vexatiously or in bad faith, it may award costs on an indemnity basis against you.

**43. Am I allowed to remain in the Islands to await the outcome of an appeal?**

Not usually, but where an appeal relates to –

- the refusal of a student visa application;
- the refusal or revocation of a temporary work permit;
- the refusal of a Residency Certificate for Persons of Independent Means, a Certificate of Direct Investment, a Residency Certificate (Substantial Business Presence) or a Certificate of Permanent Residency for Persons of Independent Means

you may be allowed to remain in the Islands if you are able to satisfy the Chief Immigration Officer that you are able to support yourself and your dependants, if any.

**44. If I currently have a WOL because I am awaiting the outcome of a decision from Immigration Appeals Tribunal based on my appeal against the refusal of my work permit grant (having previously held a temporary), do I lose that entitlement when the Law comes into effect?**

No. You will continue to be eligible to receive WOLs to await the outcome of the Immigration Appeals Tribunal if you remain employed under the same terms and conditions .

## **Certificate for Specialist Caregivers**

### **45. What do the changes in the law mean for employers/employees?**

After the changes to the law take effect there will be no new Certificates for Specialist Caregivers issued. However, any Certificate that was issued prior to the changes will remain valid and may be renewed. The employee in question will also be allowed to count the time working under a Certificate for Specialist Caregivers towards eligibility to apply for permanent residence.

### **46. I employ a worker under a Certificate for Specialist Caregivers. How am I affected by the law changes?**

If the Certificate was issued prior to the changes to the law then you can continue to employ the worker until its expiry. The Certificate can also be renewed.

### **47. I applied for the grant of a Certificate for Specialist Caregivers before the date that the law changed. Will the application still be decided?**

Yes.

### **48. I am employed under a Certificate for Specialist Caregivers. If I apply for permanent residence and my application is refused, will I be able to continue working on a Certificate?**

Yes.

### **49. Can a person working on a Certificate for Specialist Caregivers change employment and obtain further work permits?**

A worker may obtain a work permit for a different employer provided they have an active term limit (in other words, they have not reached nine years). But if they cease working on a Certificate for Specialist Caregivers they will not be allowed to return to that facility at any time.