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Building Capabilities for Growth



Oh Canada – New Challenges Hiring Foreign Workers

Christopher McHardy

Work Permit Options

- Working-holiday Visas
- Labour Market Opinions
- Treaty-based Work Permits
- Exemptions
- Business Visitor Visa

Work Permit Options

- Working-holiday Visas:
 - 1 year duration
 - No LMO
 - Typically no extension or renewal (limited options to reapply)
 - Difficult to extend stay in Canada
 - Not available to all nationalities
 - Annual cap on number of available visas (which can often be quickly exhausted)
 - Eligible to work for any employer in any position
 - Age restrictions (for applicants between 18 - 35)

Work Permit Options

- Labour Market Opinions
 - Difficult to obtain
 - Recruiting requirement
 - Processing time of approx. 3 months or more
 - Difficult to expedite
 - For the time being, no A-LMO program
 - Restrictive employment terms
 - Difficult to renew – fresh recruiting and application needed
 - For single employer – restricted to the position applied for

Work Permit Options

- Pre-Approval / Unnamed LMO Confirmation
 - Issued before temporary foreign worker (TFW) has been identified – essentially **pre-approval** to hire
 - Can be used to apply for one or multiple positions
 - Employers have 6 months to identify the TFWs and have them apply for a work permit
 - Recruiting can only begin after pre-approval
 - Service Canada will issue the LMO confirmation 5 business days after receiving the TFW information
 - Used when prolonged/extensive recruitment is required, when a large number of workers are being recruited, or when recruitment is complex

Work Permit Options

- New LMO Rules (effective immediately)
 - Employers must pay foreign workers prevailing wage (eliminates previous wage flexibility)
 - Temporary suspension of A-LMO process
 - Greater Government authority to suspend and revoke work permits and LMOs for abuse
 - Additional LMO questions to ensure that employer is not outsourcing Canadian jobs
 - Ensure employers who rely on LMOs have a firm plan to transition to Canadian workers over time
 - New fees for LMO applications (\$275)
 - Increased fees for some work permits (\$85 biometric fee)
 - English and French are only languages that can be used as a job requirement unless foreign language is essential

Work Permit Options

- Treaty Work Permits (Bilateral/Trilateral Agmts)
- NAFTA (USA & Mexico)
 - Restricted to citizens
 - No LMO – US citizens can apply at border
 - Numerous professional categories
- Chile and Peru Free Trade Agreements
 - Not as broad as NAFTA, but good option for Chileans/Peruvians
- GATS
 - Restricted categories
 - Restricted to 90-day permits
 - Can be used to bridge time until LMO is obtained

Work Permit Options

- Exemptions
 - Business visitors
 - Diplomats
 - Media
 - Military
 - Emergency personnel
 - Performing arts
 - Public speakers
 - Religious and charitable workers
 - Sales representatives
 - Sports coaches and competitors
 - Trainers and trainees
 - Temporary foreign workers having “implied status”

→ Higher Scrutiny on Employers

- Rigorous government assessment of jobs offered to foreign workers
- Poor record can lead to rejection of applications
- Immigration will maintain an employer blacklist available to all immigration officers worldwide
- HRSDC and CIC will assess genuineness of job offers:
 - is the employer actively engaged in the business for which the offer is made?
 - is the offer consistent with its reasonable employment needs?
 - can the employer fulfill the terms of the job offer?
 - has the employer or authorized recruiter shown past compliance with applicable employment and recruitment laws?

- **FOUR-YEAR LIMIT ON CERTAIN WORK PERMITS IN EFFECT**
 - Four-year time limit for foreign workers in Canada
 - After four years, foreign workers must return home and wait four years before being eligible to work in Canada again
 - Effective April 1, 2011, regardless of how long the foreign worker had already been here (first removals in April, 2015)
 - Four-year limit can be extended where there are breaks in employment (e.g. extended unpaid or parental leaves, layoff)
 - Does not apply to all work permits: e.g. workers in managerial or professional occupations, PRs or PNP nominees, Live-in Caregivers, Federal Skilled Workers, Canadian Experience Class, NAFTA, LMO exemptions (such as spouses and common-law partners of international graduates and skilled workers), charitable or religious workers, entrepreneurs, intra-company transferees, researchers or academics
 - Limitation does not affect a foreign national's eligibility for permanent residence
 - Bridging Open Work Permits available for certain federal Economic Class applicants (since December 15, 2012)

- **NEW COMPLIANCE RULES FOR LMOs AND WORK PERMITS**
 - Employers filing for extensions of LMOs must satisfy the STS test (i.e. Substantially The Same wages and working conditions as local employees)
 - New documentary requirements for first time employers seeking LMOs include providing HRSDC with written proof demonstrating evidence of an active business
 - LMOs are valid for 6 months. If a work permit is not obtained before the six-month expiry, employers must apply for a new LMO
 - Upon expiry of a work permit, an employer must obtain a new LMO, complete with new advertising, in order to extend the existing employee's work permit
 - There are variations to min. advertising requirements for certain categories of foreign workers (e.g. academics) incl. no advertising/recruitment req't (e.g. digital media occupations)

- **CHANGES TO FEDERAL IMMIGRATION PROGRAMS cont'd**
 - **Federal Investor and Federal Entrepreneur Programs** - these programs, although formally still in existence, are defunct (and have been for some time) and applications are not accepted. Instead, applicants can apply to one of the various provincial and territorial nominee programs.
 - **Start-up Visa** – this new program (which started on April 1, 2013) is now open for applications. It is designed to lure start-up companies and entrepreneurs to Canada. The start-up visa will be limited to those who already have the backing of a venture capital firm in Canada. The trial period (pilot) was set to up to five years. The number of applications will be limited as well, at least initially.
 - **Self-employed** – program for foreign nationals that are self-employed in cultural activities, athletics or farming.

→ **CHANGES TO FEDERAL IMMIGRATION PROGRAMS**

In 2013, CIC changed multiple federal immigration programs and added a few new categories:

- **Federal Skilled Worker Program:** applicants must have 1 year of paid work experience in 1 of 24 eligible occupations or have a valid job offer from a Canadian employer. Only 300 applications accepted for processing per occupation and only 5,000 applications accepted in total. Applicants with validated job offers are not affected by caps. There is a new requirement for applicants to undergo an assessment of their foreign educational credentials – known as Educational Credential Assessment (ECA).
- **Federal Skilled Trades Program:** for applicants who want to become permanent residents based on being qualified in a skilled trade. Work experience in a specific skilled trade is required. A cap of 3,000 applications plus sub-caps is in place to manage intake. In total, 43 occupations will be eligible to apply under the Federal Skilled Trades program in the first year of the program (2013).

Immigration Issues

→ **INTRA-COMPANY TRANSFEREES – SPECIALIZED KNOWLEDGE POLICY CLARIFICATION**

- CIC will assess whether diploma/ degree is required, and if work experience with foreign affiliate/respective industry supports claim of specialized knowledge.
- Position in Canada must be similar to applicant's home position or higher, unless the applicant can show it is an exceptional situation.
- Foreign worker's knowledge, education, experience, and National Occupational Classification will be used to determine appropriate wage.
- Worker's prospective salary in Canada examined to see if it is realistic in terms of Canadian wage levels for the occupation concerned. Salaries of specialized knowledge workers should approximate the average wage for the stated occupation in the specified geographical location in Canada.
- CIC will consider if any previous training supports claim of specialized knowledge and may ask for supporting documentation.

- Local agreements or secondment agreement
- Conditional upon obtaining immigration status
- Terms limiting employer's responsibility to fund application and legal fees
- Enforceable terms addressing repatriation and termination terms
- Terms concerning moving expenses and expatriate packages (including upon termination)
- Establish renewal plan at time of initial application
- Bring forward dates

Employment Considerations

- Establish a needs inventory and a succession plan
- Use foreign affiliates as a training/recruiting ground
- use reciprocal exchanges with affiliates to maintain trained workforce (e.g. hotels)
- Recruit in areas that promote easier work permit applications (e.g. USA, foreign graduates in Canada, resort operators, young professionals overseas)

- Important to be pro-active
- Establish good lead times
- Establish bring forward system and deadlines
- Carefully monitor employees who make own applications
- Coach employees about their applications and border crossings
- Potentially serious consequences for failures

VANCOUVER

Suite 1300, 777 Dunsmuir Street
P.O. Box 10424, Pacific Centre
Vancouver BC V7Y 1K2
Tel: 604-643-7100
Fax: 604-643-7900
Toll-Free: 1-877-244-7711

CALGARY

Suite 4000, 421 7th Avenue SW
Calgary AB T2P 4K9
Tel: 403-260-3500
Fax: 403-260-3501
Toll-Free: 1-877-244-7711

TORONTO

Box 48, Suite 5300
Toronto Dominion Tower
Toronto ON M5K 1E6
Tel: 416-362-1812
Fax: 416-868-0673
Toll-Free: 1-877-244-7711

MONTRÉAL

Suite 2500
1000 De La Gauchetière Street West
Montréal QC H3B 0A2
Tel: 514-397-4100
Fax: 514-875-6246
Toll-Free: 1-877-244-7711

QUÉBEC

Le Complexe St-Amable
1150, rue de Claire-Fontaine, 7e étage
Québec QC G1R 5G4
Tel: 418-521-3000
Fax: 418-521-3099
Toll-Free: 1-877-244-7711

UNITED KINGDOM & EUROPE

125 Old Broad Street, 26th Floor
London EC2N 1AR
UNITED KINGDOM
Tel: +44 (0)20 7786 5700
Fax: +44 (0)20 7786 5702

