

BRINGING FOREIGN WORKERS TO CANADA

**Please note that the current Canadian government is planning on making important changes to the immigration/work permit rules so that the ones described below are likely to be changed in the near to mid-future.*

Foreigners wishing to work temporarily in Canada must obtain a work permit from Citizenship and Immigration Canada (CIC). Most work permit applications are processed at a Canadian visa office abroad, although in certain cases applications can be processed at a port of entry. The general rule is that the Canadian employer must first obtain a positive “labour market opinion” from Human Resources and Skills Development Canada (HRSDC) before a foreign worker can apply for the work permit from CIC. A labour market opinion involves an assessment by HRSDC of the likely impact that the hiring of the foreign worker may have on the Canadian labour market. As the labour market opinion application process can be relatively time-consuming, there are fortunately certain categories of workers who are exempt from having to obtain a labour market opinion, including intra-company transferees. As well, certain individuals may enter Canada without a work permit, such as business visitors whose activities do not involve hands-on work in Canada. In every case it is important to fully evaluate the foreign worker’s situation to determine whether or not he/she qualifies for a work permit and which is the best category to apply under.

A. WORK PERMITS

i) General Procedure

Step One: Labour Market Opinion

Before a foreign worker may apply for a work permit, the Canadian employer must usually obtain a positive labour market opinion from HRSDC (which

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works in conjunction with Service Canada, the service branch of the federal government).

A labour market opinion allows HRSDC/Service Canada to determine whether the job can be filled from within Canada or if the foreign worker’s presence will help maintain or increase employment and training opportunities for Canadians.

The labour market opinion can be for a specific worker or position, or for pre-approval of a series of positions, where a large number of workers is required.

In order to obtain a positive labour market opinion, the Canadian employer must prove that:

- it cannot find suitable Canadians or permanent residents to fill the job; and,
- bringing the foreign worker to Canada will not have a negative impact on the Canadian labour market.

Specifically, the Canadian employer must show:

- that the job offer is genuine;
- that its efforts made to recruit and/or train willing and available Canadians/permanent residents were extensive (Service Canada’s Minimum Advertising Requirements for the specific occupation must be met) and unsuccessful;
- that the offered wages are consistent with the prevailing wage rate paid to Canadians in the

same occupation in the region (subject to certain exceptions);

- that the working conditions for the occupation meet the current provincial labour market standards; and,
- any potential benefits that the hiring of the foreign worker may have on the Canadian labour market (e.g. creation of new jobs, transfer of skills and knowledge, etc.).

HRSDC will also consider an employer's compliance with federal and provincial laws regulating employment and the recruitment of employees, as well as its past history of compliance to the commitments outlined in job offers to foreign workers hired in the past two years. In cases where the employer is found to have not complied with previous commitments to foreign workers, the employer may be deemed ineligible to hire a foreign worker for two years.

A positive labour market opinion will show that there is a need for the foreign worker to fill the job and that there is no Canadian worker available to do the job. The employer should forward the labour market opinion to the foreign worker.

All labour market opinions are valid for a maximum of six months.

If a negative labour market opinion is issued, HRSDC/Service Canada will re-assess the employer's request if the employer can provide new, relevant information concerning the job offer.

In Québec, the approval must also be given by the provincial government. The worker submits a joint application to the Canadian and provincial authorities and, as the case may be, receives an answer from both at the same time, namely a positive LMO from Service Canada / HRSDC) and a Certificate of

Acceptance of Québec from the MICC (Ministère de l'immigration et des communautés culturelles du Québec).

Step Two: Work Permit Application

Once a positive labour market opinion has been issued by HRSDC/Service Canada and a Certificate of Acceptance of Quebec from the MICC, as the case may be, the foreign worker can then proceed to apply for a work permit, either at a Canadian visa office abroad or at a port of entry.

The application must include a copy of the job offer and the positive labour market opinion, in addition to all other required documentation (completed application form, valid passport, photos, fee payment, police certificate). The application processing time depends on the responsible visa office.

Each applicant must prove that he/she:

- will leave Canada at the end of the work permit;
- has enough money to support her/himself and family while in Canada;
- has no criminal record and is not a security risk; and,
- is in good health.

Even with a positive labour market opinion, CIC and Canada Border Services officers can still refuse work permit applications and entry to Canada if they determine that the foreign worker is otherwise inadmissible to Canada (e.g. on criminal, security or medical grounds).

In 2011, CIC placed a 48 month cap on actual employment in Canada. Now foreign workers are only entitled to work in Canada for a maximum period of four years, although certain exceptions

apply, including for foreign workers in managerial or professional occupations, intra-company transferees, and spouses of certain workers.

ii) Labour Market Opinion Exemptions

Certain categories of workers need a work permit but do not need a labour market opinion. These include:

- *Certain business people covered under international agreements:* Professionals, traders, and investors coming to Canada to work under NAFTA or GATS;
- *Intra-company transferees/Significant Benefit to Canada:* Workers transferring within a corporate group, and other types of workers who will provide significant benefit to Canadians or permanent residents by working in Canada;
- *Spouses:* Spouses and common-law partners of certain foreign workers.

Intra-Company Transferees

Foreign companies may transfer qualified employees to Canada to work temporarily at a related Canadian business. Such employees require a work permit but are exempt from obtaining a labour market opinion as well as a Certificate of Acceptance of Quebec in the case of Quebec applicants, as they are considered to be providing significant economic benefit to Canada through the transfer of their expertise to Canadian businesses.

In order to obtain a work permit, an intra-company transferee:

- must be transferred to Canada to work temporarily for an affiliate, branch, parent or subsidiary of the foreign enterprise, and both the Canadian and foreign companies must be regu-

larly, systematically, and continuously providing goods or services;

- must work only at the executive or senior managerial level, or have specialized knowledge; and
- must have worked for at least one year in the preceding three-year period, on a full time basis, in a similar position for the foreign employer who wishes to effect the transfer, and be currently employed with such employer.

Initial work permits may be issued for up to three years for executives and senior managers, and one year for specialized knowledge workers. They can be renewed, for up to a maximum of seven years for executives and senior managers, and up to a maximum of five years for specialized knowledge workers. After having held a work permit for the maximum time allowed, intra-company transferees must complete one year of full-time employment in the company outside of Canada before they may re-apply under this category. However, in recognition of the fact that many intra-company transferees only work periodically in Canada, CIC now allows intra-company transferees to “recapture” time spent outside of Canada, such that they can effectively extend their status beyond the normal seven- and five-year limits that would otherwise apply. Foreign workers in Canada as intra-company transferees should thus make sure that they maintain detailed records of all trips outside of Canada during the period of their work permits.

An applicant seeking entry to open a new office on behalf of the foreign enterprise may also qualify if he can establish that the enterprise in Canada is expected to support a senior managerial or executive position or, in the case of specialized knowledge, is expected to be doing business in an area requiring the specialized knowledge of the foreign national. In this case, the initial work permit will be issued for one year and can be re-

newed. As part of its review, CIC will consider the viability of the new business.

The application can be processed at a Canadian visa office or at the port of entry. The application must include a description of the position in Canada, proof of the relationship between the Canadian and foreign employers, and proof of previous employment with the foreign employer, including evidence of executive or managerial capacity or specialized knowledge.

B. ENTRY WITHOUT A WORK PERMIT

Business Visitors

Business visitors do not require a work permit to enter Canada temporarily.

Business visitors are generally persons who plan to stay in Canada for a few days or weeks for purposes such as:

- attending meetings, conferences, conventions or trade fairs;
- engaging in market research or meeting with prospective clients;
- buying Canadian goods or services for a foreign business or government;
- taking orders for goods or services;
- providing after-sales service (mainly supervision, not hands-on labour);
- being trained by a Canadian parent company; or
- training employees of a Canadian subsidiary of a foreign company.

In order to be granted entry to Canada, a business visitor must prove to the border officer that:

- he/she intends to stay for less than six months

and does not plan to enter the Canadian labour market;

- his/her main place of business and source of income is located outside Canada; and
- profits from the business will accrue outside Canada.

It is helpful for business visitors to have a letter of invitation from the Canadian company, or a letter of support from the foreign employer, setting out the purpose and length of the trip and the details concerning the visitor, the Canadian company, and the foreign company, which letter can be provided to the border officer at the port of entry, along with other supporting documentation such as business cards, contracts, conference publications, etc.

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