

# How to Obtain a Canadian Work Permit

COX & PALMER

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### Would you like to hire a foreign worker?

Obtaining a Canadian work permit is not easy, but it is often possible in the right circumstances. The following outlines the different types of work permits that are available and several exemptions to the regular rules which may allow your potential employee to obtain a work permit.

First, you must consider the definition of work. Work is defined by the *Immigration and Refugee Protection Regulations* as "an activity for which wages are paid or commission is earned, or that is in direct competition with the activities of Canadian citizens or permanent residents in the Canadian labour market." If the employment you are offering falls within this definition, then your potential employee needs a work permit.

Certain limited types of work are exempt from work permit requirements. Examples of such exemptions would be a worker who is a commercial speaker or seminar leader delivering a seminar that lasts no longer than five days; an employee of a foreign news company for the purpose of reporting on events in Canada; or an examiner or evaluator of research proposals, academic projects or programs or university theses, among other exceptions.

If your potential employee does not fall under this limited list of exceptions, the general rule is that the worker must be filling a position for which there is no Canadian citizen or permanent resident to do the work, in order for a work permit to be issued.

Usually, there is a two-step process required to obtain a work permit. The first step is for you as employer to apply to the Temporary Foreign Worker Program of the Employment and Social Development of Canada ("ESDC") for a "labour market impact assessment" or "LMIA". An LMIA confirms that there is no Canadian citizen or permanent resident who can do the job for which you are seeking to hire the foreign worker. As the employer, you will be required to provide evidence that you have searched for, and been unsuccessful in finding, a Canadian citizen or permanent resident to fill the position.

Once the LMIA is obtained from Service Canada, the employee can make an application for a work permit to the Canadian Consulate or Embassy abroad that is responsible for his or her country of residence or country of nationality. In the case of an employee from a country whose citizens do not require a visitor visa to enter Canada, such as the US, Australian or Western European countries, the employee can obtain his or her work permit at the border or airport once an LMIA has been obtained.

However, there are several exceptions to the general rule that an LMIA is required before applying for a work permit. The most common of these exceptions are as follows:

## **1 NAFTA**

If your potential employee is a citizen of the United States and is coming to Canada as a professional or an intra-company transferee as defined by NAFTA, he or she may be able to apply for and obtain a work permit at the border without first obtaining an LMIA. This is often a very easy and convenient way of bringing employees into Canada where there is a US parent, branch, subsidiary, or affiliate company of the Canadian employer company.

This LMIA exemption also applies to Mexican citizens but, since Mexican citizens now require a visitor visa to enter Canada, the application must be made at the Canadian Embassy in Mexico City. Mexican citizens who plan to stay in Canada for 6 months or longer are also required to undergo a medical exam as part of the work permit process.

## **2 Intra-Company Transferees**

If your potential employee is coming to Canada as an intra-company transferee as defined by the Immigration and Refugee Protection Act, he or she may be able to apply for and obtain a work permit at a Canadian port of entry without first obtaining an LMIA. This is often a very useful way of bringing employees into Canada where there is a foreign parent, branch, subsidiary, or affiliate company of the Canadian employer company.

## **3 Canada-Chile Free Trade Agreement (CCFTA)**

If your potential employee is a citizen of Chile and is coming to Canada as a professional or an intra-company transferee as defined by the CCFTA, he or she may be able to apply for and obtain a work permit without an LMIA.

## **4 Canada-Peru Free Trade Agreement (CPFTA)**

If your potential employee is a citizen or permanent resident of Peru and is coming to Canada as a professional or an intra-company transferee as defined by the CPFTA, he or she may be able to apply for and obtain a work permit without an LMIA.

## **5 Provincial Nominee Program Nominees**

If your potential employee has made an Application for Permanent Residence under a Provincial Nominee Program, it is possible for him or her to obtain a work permit without an LMIA. To obtain the work permit, a letter from the provincial government is required that confirms: (a) your potential employee has been nominated for permanent residence by the Province; (b) your potential employee is urgently required by you as employer; and (c) you have made the employee a permanent, full-time job offer.

## **6 Spouses & Common-Law Partners of Skilled Workers, Foreign Students and Provincial Nominee Program Nominees**

Your potential employee's spouse or common-law partner may also qualify for a work permit without first obtaining an LMIA. In fact, your employee's spouse or common-law partner may obtain an open work permit that does not restrict the employer for whom the person may work.

## 7 Post-Graduate Work Permits

If your potential employee has just successfully completed and passed a full-time course of study or program at an authorized educational institution in Canada, he or she may qualify for a work permit valid for up to 3 years. The student's course of studies must have been at least 8 months long and the work permit cannot be valid for longer than the duration of the student's studies. This application does not require an LMIA and the successful applicant is free to work in any field. This application must be submitted within 90 days of the student receiving his or her final marks or notification that he or she has met the requirements of his or her program of study, whichever comes first.

## Contact

*For advice on a particular situation or issue, please contact:*

**Suzanne I. Rix**

Halifax, NS

902 491 4124

[srix@coxandpalmer.com](mailto:srix@coxandpalmer.com)

*This document has been prepared by the Immigration Practice Group of Cox & Palmer and provides information of a general nature only and not legal advice.*