



Work Permits for Temporary U.S. Workers in Canada

Lucy Latka
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Canada's work permit procedures facilitate temporary entry of skilled foreign workers as well as professionals, traders, investors and intra-company transferees. These recently re-codified procedures offer opportunities to U.S. companies interested in expanding into Canada, performing contracts in Canada or establishing strategic partnerships with Canadian companies to employ their key workers in Canada temporarily.

SUMMARY

This report represents a brief overview of the process involved in obtaining a work permit. These laws and regulations were re-codified in 2002 to incorporate changes in practice and procedures over the years. Knowledge of the laws and regulations can help U.S. companies interested in expanding into Canada, bidding on contracts to be performed in Canada, or establishing strategic partnerships with Canadian companies, to temporarily employ non-Canadian workers in Canada or to send them temporarily to work with their Canadian business partners in Canada.

Under current Canadian law, certain categories of persons may work in Canada only after obtaining a [Labor Market Opinion \(LMO\)](#) from Human Resources and Social Development Canada (HRSDC) and then a work permit from Citizenship and Immigration Canada (CIC).

However, other categories of persons, such as intra-company transferees, professionals, traders and investors, must obtain a work permit from CIC although a LMO from Service Canada is not required. A third category of persons, such as business visitors representing a company based outside of Canada, require neither a labor opinion and confirmation letter nor a work permit. As to U.S. citizens who are in either of these two categories, see the International Market Insight Report "Temporary Entry of People under NAFTA" published on June 7, 2000.

BACKGROUND

The Canadian Immigration and Refugee Protection Act (IRPA) came into effect June 28, 2002. It is a re-codification of the 1978 Immigration Act, and incorporates changes to practice and procedure that have been implemented over the years, including the rules and regulations concerning temporary foreign workers, especially skilled workers for whom there may be a need in Canada's labor market. According to CIC, every year over 90,000 workers enter Canada temporarily to help Canadian employers address skill shortages. In almost all cases, a valid Canadian work permit is required.

IRPA defines "work" 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 labor market," and CIC defines temporary as a six month period. The only criterion is that the CIC officer issuing a work permit must be satisfied the foreign worker is entering Canada for a temporary period of time. At the port of entry the Canada Border Services Agency (CBSA) has the final say on who may enter Canada. Officers can deny entry to a foreign worker if they believe the foreign worker does not meet the requirements of the *Immigration and Refugee Protection Act*.

THE PROCESS TO OBTAIN A WORK PERMIT FOR TEMPORARY WORK IN CANADA

The following steps must be followed in order that a foreign worker be employed in Canada (except in certain cases described below):

1. The employer first makes a formal job offer.
2. The employer submits a temporary foreign worker application with supporting documentation.
3. Service Canada checks the genuineness of the offer of employment and weighs the likely effect the employment of a foreign national will have on the Canadian labor market.
4. If the offer is found to be genuine and it is found that the employment of the foreign national will not adversely affect the Canadian labor market, a confirmation letter is sent to the employer.
5. The employer gives a copy of the letter to the foreign national.
6. The foreign national submits an application to Citizenship and Immigration Canada (CIC) at the point of entry into Canada for a work permit (or an extension of an existing work permit), attaching Service Canada's confirmation letter.

The nearest Canadian consulate or an office of Service Canada may also be consulted in advance of arrival for information and guidance. The above procedure is similar to the U.S. "H" visa category, which requires certification by the U.S. Department of Labor before a U.S. company can hire a temporary foreign worker.

The Employer's Role:

A Canadian employer must make a job offer to the prospective foreign worker before approaching Service Canada to obtain a labor market opinion and a letter of confirmation. The Canadian employer will have to demonstrate the following to Service Canada before a labor market opinion can be granted:

- That reasonable efforts were made to hire or train Canadian citizens or permanent residents;
- That suitable qualified Canadian citizens and permanent residents were considered first and were not available, or could not be trained in time to fill the position for which the foreign worker is requested;
- That the required skill level, working conditions, salary and other factors were sufficient to attract Canadians, as well as warrant the recruitment of foreign workers;
- That appropriate unions or professional associations were contacted to identify suitable candidates; and
- That the admission of the foreign worker can create or maintain employment in Canada, provide training opportunities or transfer specialized knowledge to Canadian citizens or permanent residents, or strengthen a company's competitive position in the international marketplace.

The Canadian employer is responsible to make sure that a worker has the necessary permits and follows the conditions and time limits described in the work permit.

HRSDC's Role:

As mandated by the *Immigration and Refugee Protection Act and Regulations*, HRSDC assesses offers of employment made by Canadian employers to foreign workers and develops an opinion on the likely effect of the employment of the foreign national on the labor market in Canada. This opinion is called a labor market opinion and is based on whether:

1. The work is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;
2. The work is likely to result in skills and knowledge creation or transfer for the benefit of Canadian citizens or permanent residents;
3. The work is likely to fill a labor shortage;
4. The wages and working conditions offered are sufficient to attract Canadian citizens or permanent residents to, and retain them in, that work;
5. The employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents; and
6. The employment of the foreign national is likely to affect the settlement of any labor dispute in progress or the employment of any person involved in the dispute.

How long it takes for HRSDC to issue a letter of confirmation can vary depending on how prepared the Canadian employer is in their search to find a Canadian citizen or permanent resident to fill the job. Typically, HRSDC will respond to the Canadian employer within 15 business days.

A letter of confirmation will be refused in situations where HRSDC's opinion is that the wages and working conditions offered are insufficient to attract and retain Canadian job seekers. This policy is to ensure that foreign workers are not improperly used by Canadian employers to drive down the wage structure in the Canadian labor market.

A list of HRSDC Centres that process foreign worker requests (i.e., LMO applications) in each province can be found at: http://www.hrsdc.gc.ca/en/workplaceskills/foreign_workers/listhrcc.shtml

The Worker's Role:

Foreign workers can apply for work permits at the port of entry, such as an airport or border crossing, once the letter of confirmation has been received from Service Canada. The foreign worker must present the letter of employment, Service Canada LMO and proof of citizenship at the port of entry. If employed by a U.S. company, also useful and recommended is a letter from the U.S. employer identifying and validating the employee's status within the firm and their travel plans. If the worker is a U.S. citizen, as of January 23, 2007, a valid U.S. passport or travel document is required. There is a CDN \$150 fee for each work permit issued, payable at the port of entry.

Foreign workers who accept an offer to work temporarily in Quebec may also require a Certificat d'acceptation du Quebec (CAQ) from the provincial immigration office – [Ministere des Relations avec les citoyens et de l'immigration \(MRCI\)](#). The Canadian employer should contact MRCI to determine whether a CAQ is required, and to follow necessary procedures.

Typically, a medical exam is not required for U.S. citizens coming to Canada to live and work for up to six months. For longer than six months a medical exam is required if the applicant has resided or sojourned for six or more consecutive months in a designated country or territory in the year immediately preceding the date of seeking entry into Canada. The country/territory list may be found on the CIC web site: <http://www.cic.gc.ca/english/information/medical/dcl.asp>.

CIC's Role:

CIC and its visa offices at Canadian embassies, high commissions and consulates outside Canada process applications for work permits to determine who may be eligible to work in Canada. When issued, the work permit states that the foreign worker can work at a specific job for a specific period of time for a specific employer. Once in Canada, applications for change of a work permit are required if the work will take longer than planned or there is a need to change jobs or employers. A complete list of CIC visa offices can be found at: <http://www.cic.gc.ca/english/information/offices/apply-where.asp>

Common Service Canada Confirmation-Exempt Categories of Work

A number of categories of persons may obtain a work permit without having to obtain a confirmation from Service Canada. These include the following:

Entry to Complete After-Sales Service:

Under NAFTA, in order for a worker to enter Canada to perform after-sales service, the company providing the service must be listed in the original contract. If the original contract does not stipulate the U.S. company's requirement to perform after-sales service, then it is necessary for the U.S. citizen to obtain a temporary work permit from Service Canada.

In addition to the contract requirement, NAFTA stipulates that the after-sales service must be performed on commercial or industrial equipment, machinery or computer software purchased

outside of Canada. Service on rented or leased equipment is not exempt. The work being performed must require specialized knowledge, which is defined to be a high degree of knowledge that can only be imparted on an already skilled person through extensive training. In addition, any worker entering Canada to perform hands-on labor (i.e. building or construction work) is not exempt under NAFTA regardless of the original contract.

To facilitate entry into Canada, the American professional must present a copy of the original contract indicating the requirement of after-sales service to the Canada Border Services Agent, proof of American citizenship, and a letter from the American employer. The letter will indicate that the person is not intending to enter the Canadian labor market, that their primary source of remuneration is outside Canada, that the person's primary place of business remains outside Canada, and that the profits of the business are accumulated primarily outside Canada. For more detailed information, please refer to the International Market Insight Report "Temporary Entry of People under NAFTA" published on June 7, 2000.

Persons Seeking Entry Pursuant to International Agreement: U.S. citizens such as professionals, traders, or investors entering under regulation pursuant to an international agreement such as the North American Free Trade Agreement (see the International Market Insight Report "Temporary Entry of People under NAFTA" published on June 7, 2000).

Entrepreneurs, Company Transfers: some types of entrepreneurs, intra-company transferees and other types of workers, who will provide significant benefit to Canadians or permanent residents by working in Canada.

Exchange Programs: persons whose employment in Canada provides similar employment to Canadians abroad, such as participants in youth exchange programs, exchange teachers and other reciprocal programs.

Students Doing Co-op: foreign students studying in Canada who need to work in order to fulfill co-op placements.

Spouses: spouses and common-law partners of skilled foreign workers, spouses and common-law partners of certain foreign students, spouses and common-law partners of a person doing post-graduation employment for certain foreign students and post-doctoral fellows.

Religious Work: persons undertaking charitable or religious work

Other Exceptions: certain persons who need to support themselves while they are in Canada for other reasons such as the refugee determination process or who have been accepted for permanent residence in Canada.

Employment Exempt from the Work Permit Requirement

Persons engaged in a number of activities and occupations do not need work permits to work temporarily in Canada. In addition to after-sales service personnel under NAFTA, these are:

Business visitors: business people working for a company outside Canada and coming to Canada representing their company (see also the International Market Insight Report "Temporary Entry of People under NAFTA" published on June 7, 2000).

Foreign representatives: diplomats and official representatives of foreign governments or international organizations such as the United Nations.

Family members of foreign representatives: family members of accredited diplomats who have received a "no objection" letter from the Canadian Department of Foreign Affairs and International Trade.

Military Personnel: members of an armed force from another country who possess movement orders that state that they are entering Canada under the terms of the *Visiting Forces Act*

Foreign Government Officers: foreign government officials coming to Canada pursuant to a bilateral exchange agreement for public officials to work in the other country's government departments (carrying a formal letter of agreement if the period of work is longer than three months).

Foreign Students Working On-Campus: certain foreign students at Canadian educational institutions who work on-campus.

Performing Artists: actors, musicians, other performing artists, and their essential staff to support performances, coming to Canada for a limited time, provided they will not perform in a bar or restaurant, will not enter into an employment relationship with the Canadian organization that has contracted for their services, and will not perform for the production of a movie or television or radio broadcast.

Athletes and Coaches: foreign teams, athletes and coaches participating in competitions in Canada.

News Reporters: reporters working for foreign newspapers, television channels, news agencies, or companies involved in reporting news events in Canada.

Public Speakers: guest speakers, commercial speakers or seminar leaders who speak or deliver training in Canada as long as the event is not longer than five days.

Convention Organizers: organizers and administrative staff (excluding providers of technical services such as persons who provide audio-visual services) who are organizing meetings or conventions in Canada.

Clergy: ordained ministers, lay persons or members of a religious order coming to Canada to perform religious duties including preaching doctrine, presiding at liturgical functions or spiritual counseling, or to assist a religious group.

Judges and Referees: officials at international amateur competitions coming to Canada to judge or officiate.

Examiners and Evaluators: professors and academic experts coming to Canada to evaluate or supervise academic projects, research proposals or university theses, either in Canadian research organizations or academic institutions.

Expert Witnesses or Investigators: experts coming to Canada to give evidence for a regulatory body, tribunal or court of law.

Health Care Students: foreign health-care students coming to Canada for clinical clerkships or short-term work if the work is for the primary purpose of acquiring training, provided that they have written approval from the Canadian regulatory board responsible for their occupation and provided that a normal training practicum should not exceed four months (Note: although a work permit is not required, a Canadian Immigration medical exam is required before entry.)

Civil Aviation Inspectors: inspectors coming to Canada to do safety inspections of flight operations or cabin safety of commercial airlines flying international flights

Accident or Incident Inspectors: accredited representatives or advisors coming to Canada to work as part of an aviation accident or incident investigation conducted under the authority of the *Transportation Accident Investigation and Safety Board Act*.

Crew Members: Foreign members of a crew working on foreign vehicles (for example: flight attendants or shipping crew) do not need a work permit if the vehicle is in Canada for the international transportation of cargo or passengers.

Emergency Service Providers: Persons coming into Canada to help out in emergencies do not need a work permit if they are entering to help preserve life or property. Examples of emergencies would be natural disasters such as floods or earthquakes, or industrial accidents threatening the environment.

Note: It is the responsibility of the applicant to provide appropriate documentation to prove their categorical status. For example, to obtain exemption for the work permit as a public speaker the applicant must provide relevant documentation verifying status as a public speaker; duration of stay, intended location of speech, ticket sales, and event flyer information. Further information on this and other categories is provided in the [Foreign Workers Manual, Section I](#).

IMPLICATIONS FOR U.S. BUSINESS:

U.S. companies contemplating bidding on Canadian procurement contracts or discussing strategic partnerships with Canadian companies should be aware of the opportunities that the work permit procedures offer to facilitate entry of their employees into Canada. Specialized skills are often required in Canada to expedite the completion of essential work. However, U.S. companies still need to remember that working in Canada generally remains dependent on the availability of local labor, so an application by an employer for a confirmation letter may not always be approved.

Further information is available from the following sources:

[Citizenship and Immigration Canada](#)
[Human Resources and Social Development Canada](#)

For More Information

The U.S. Commercial Service in Ottawa can be contacted via e-mail at: lucylatka@mail.doc.gov Phone: (613) 688-5219; Fax: (613) 238-5999.

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