

Introduction

This country guideline provides general information on the most common corporate immigration processes for Canada. Please note that immigration processes in every country are subject to frequent change, and also that each case is assessed on its own merits. Therefore, this guideline should be taken as providing general information only. Cases to Canada are handled by our Canada office in Toronto, Ontario. For specific, detailed advice, please contact your representative.

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Immigration Categories

A brief description of corporate immigration categories by assignment type follows. The appropriate immigration category or status for your employees will depend on their specific details and on your company. The most common category for corporate transfers in our experience is the Work Permit category. For details on non-typical categories not listed below (investors, special programs), please contact your representative.

- **Work Permit with Labour Market Impact Assessment:** Standard applications require a 'Labour Market Impact Assessment' (LMIA – also known as a Confirmation) from Service Canada (the administrative arm of Employment and Social Development Canada - ESDC), justifying the need to hire a foreign worker. Canada may, from time to time, put in place blanket LMIA approvals for certain categories (e.g. IT workers), where LMIA requirements will be relaxed or waived. In addition, exemptions may be made for certain professionals. LMIA applications will typically require evidence of recruitment efforts before a confirmation will be granted.

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- **Work Permit for Intra Company Transfers:** Certain types of Intra Company Transfers (ICT) are exempt from the need for a Labour Market Impact Assessment. To qualify as an ICT, the applicant must have at least one (1) year of full-time employment with the company outside of Canada in a specialized knowledge or managerial/executive capacity, and the foreign and Canadian companies must be affiliated.
- **Professionals:** Certain professionals under NAFTA for Americans and Mexicans, and under GATS for other countries, may be entitled to work in Canada on a non-LMIA work permit. Typical NAFTA categories include Engineers, Accountants, and Management Consultants.
- **Short Term Work Assignments:** The length of assignment is not necessarily determinative of whether or not a work permit is needed. Many business functions may necessitate Work Permits regardless of duration of stay or source of compensation. Depending on the specific circumstances, Confirmation (LMIA) may or may not be necessary. Where appropriate, some people will qualify for entry as business visitors (please see below).

Typical Process Overview

The following process overview is applicable for work permits for non-visa nationals where neither a Labour Market Impact Assessment (LMIA) nor an Entry Visa is required. Note that if a visa is required, the application must be made at a visa post. This can affect the average processing time displayed here. Approximate overall processing time from the time the first step is submitted to the time the employee is legal to work in Canada is five (5) to ten (10) days, depending on the destination location. In addition please note that as of March 15, 2016 all non-visa nationals will require an Electronic Travel Authorization (eTA) prior to flying to Canada. While non-visa nationals will still be able to apply in majority of cases for their work permits at the port of entry, the eTA will require some lead-time in gathering and filing of required information. In addition, lead time for document gathering at the start of the process should be factored in, as should processing time for completion of post arrival formalities. See the “[Application Materials](#)” section below for further details. Average processing time for each individual step is noted below.

Step One: Initiation and Assessment

Processing Time: Approximately one (1) to three (3) business days; varies depending on location and resources

Once a case has been initiated and assigned to a Country Coordinator, the assignee will be contacted within twenty-four (24) hours to begin the review process. Any additional information required to assess the case will be requested at this time. Once all information is received, one of our Case Managers will contact the assignee and HR professional within forty-eight (48) hours to confirm the applicable strategy. The following describes the LMIA-exempt, Port of Entry work permit application process.

Step Two: Employer-Specific Portal Registration and Offer of Employment

Processing Time: Depending on the availability of online registration this process can take five (5) to fifteen (15) business days; varies depending on whether employer previously has setup the portal and if the online system is functioning correctly at the time of the application.

Upon successfully registering the company on the immigration portal and creating secondary users for EW to log in and complete the application, the requisite employer business registration, company information and details

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of assignee's transfer (including the Offer of Employment form) are uploaded for review by the appropriate HR contact and validation by the employer. Once complete, the Employer Compliance government fee is paid online for the issuance the receipts for filing the work permit.

Step Three: Application for an Electronic Travel Authorization (eTA)

Processing Time: Same Day to several weeks/months (should there be inadmissibility concerns)

Nationals of non-visa required countries (not including U.S. citizens or foreign nationals who hold a valid Temporary Resident Visa or TRV) arriving to Canada by air are required to secure an eTA prior to boarding flights destined for Canada. Canadian dual-citizens are not eligible for eTAs and must enter with a Canadian passport. All non-visa requiring nationals entering Canada at a land border are exempt from securing an eTA.

The eTA is linked to valid passports and requires for each individual to complete an online application by providing basic information on address, employment status and purpose of entry to Canada are requested. Most applications are approved instantaneously, however eTA applications are screened for serious medical issues and prior criminal convictions (including DUIs and misdemeanors) and thus the approval of these applications may take several weeks/months. Applicants are liable to findings of misrepresentation for false information provided that impacts upon eTA issuance.

Step Four: Work Permit Application at Port of Entry

Processing Time: Same Day

Once case review, employer portal registration and offer of employment filing are all complete, the work permit application package is then provided to the assignee so they may submit their application to Immigration upon arrival at a Port of Entry. Documentation would be prepared to substantiate the legal basis for the application, and provided to the applicant for submission upon arrival. If pre-screening was utilized (optional), the same documentation would have been already submitted to a Temporary Foreign Worker Unit and now again be presented upon arrival.

Note: A non-visa national may apply at a visa post outside Canada as well, but typically, this is not expedient.

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Note: If an LMIA is required, processing times average from four (4) to twelve (12) weeks depending on existing exemptions.

Typical Documents Obtained

Following the application process for a work permit described above will result in the issuance of the following immigration documents. Typical validity is noted next to each document name. For details on the renewal process, please see the next section, "[Renewal](#)."

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- **Work Permit:** One (1) day to three (3) years initial validity

Renewal

Renewal is possible. Most categories of work permits have limits to the number of renewals allowed. Renewal processes vary, but can take two (2) to three (3) months; please allow six (6) months' lead time for document gathering. Renewals are usually granted in one (1) to two (2) year increments. Renewal applications must be approved (or in some cases simply submitted) prior to the expiration of the current work permit in order for the assignee to continue working uninterrupted.

Deregistration

Canada has no deregistration process upon departing the country. Nevertheless, in case of LMIA and some LMIA-exempt categories notifications are recommended as a best practice for ensuring program compliance. For employees terminated within twelve (12) months of obtaining permanent residence, legal advice is recommended for determining whether notification should be provided.

Permanent Residence

Aside from the various discussions of temporary residence in this profile, there are several methods by which to apply for permanent residence, if desired. Possessing a Canadian Work Permit for a period of time, especially under the LMIA category, will augment a permanent residence application, but the applications and approvals are completely separate. For further information on permanent residence, please contact your representative.

Dependents

Dependent immigration status approval depends on the immigration status of the principal applicant. Where the principal applicant is in Canada under a work permit, the following rules apply for dependents:

- **Minimum age (spouses):** Not applicable
- **Maximum age (children):** Eighteen (18). (Dependents nineteen (19) or older may be approved under special circumstances.)
- **Unmarried partners:** Yes
- **Same sex partners:** Yes
- **Non-traditional dependents (e.g. parents):** Citizens and Permanent Residents of Canada can now obtain a "Super Visa" to invite their parents and grandparents for a period up to twenty-four (24) months.
- **Work authorization granted?** Spouses/partners of workers in higher-level occupations can be granted an open work permit. In order to qualify, the principal applicant must have a work permit valid for six (6) months or longer. Dependent children in Ontario and Alberta may also obtain open work permits.

Application Materials

Application materials vary depending on the immigration category being applied for and on the specifics of the case. We will advise you in detail regarding your specific case; however, general application materials for work permit applications are noted below.

- A variety of personal and corporate documents will be needed to support the application. General application materials include copy of diploma(s), current resume (C.V.), marriage certificates, corporate letters, and corporate brochures.
- All documentation must be submitted in English or in French.

Business Visitors

- **Name of visa granted:** Business Visitor
- **Duration of stay:** Typically for short trips of few days to weeks but can be issued up to six (6) months intermittent entry with sufficient evidence that will not be entering labour market.
- **General activities permitted:** Notwithstanding the issue of length of assignment, there are scenarios where work without a permit may be in order. This may be relevant, for instance, for intra-company training, installation, after-sales service, or other international business matters. Further, orientation, home-finding, and other preparation for employment can be conducted under business visitor status. We can advise on the appropriateness of seeking business visitor vs. work permit status in specific circumstances.

Change of Status

Except for Mexican and U.S. nationals (under very limited circumstances), it is not possible to convert from visitor to work status without leaving Canada.

Salary and Payroll

Salary and payroll requirements vary depending on the immigration category and on the specifics of the case. In Canada, there are minimum salary requirements in place. Prevailing wage requirements may apply to LMIA and other work permit categories. Prevailing wage may apply to ICT and in case of specialized knowledge at times the wage requirements are higher than prevailing wage. Business Visitors must always be paid from abroad. Please contact your representative for more details for your specific situation.

Qualifications

Qualification requirements will vary from case to case and will depend on the immigration category under which the application is made. Please contact your representative for more details.

Red Flags

In our experience, the following points are important to note at the start of the process. If any of the below situations apply to you, contact your representative immediately for further detailed advice.

- An absence of post-secondary education, relevant experience, or sufficient compensation can complicate Work Permit applications.
- Quebec's immigration rules differ from other provinces.
- The Immigration Department may also look at the employer's ratio of foreign to local workers.
- In addition, any past criminal history (including D.U.I) and some medical conditions may render applicants inadmissible.

Compliance Reviews and Inspections

Employers that apply for and receive a LMIA as of December 31, 2013, must uphold certain conditions and be prepared to demonstrate their compliance with those conditions during a period of six (6) years beginning on the first day of the period of employment for which the work permit is issued to the foreign worker.

In addition, employers can be subject of inspections that assess whether employers have upheld the conditions that relate to requirements for employers, such as providing the agreed-to wages and making reasonable efforts to provide a workplace free of abuse, or specific agreements made at the time the LMIA is issued, such as future training commitments made by the employer.

Inspections may be conducted during a period of six (6) years beginning on the first day of the period of employment for which the work permit is issued to the foreign worker and extend to on-site visits and interview of employees.

As part of Employer Compliance Review (ECR) process the wages, occupation, and working conditions provided to foreign workers employed under previous LMIA's can be subject of review.

Moreover, as of December 2015 the Government of Canada has taken the next step in implementing changes to the Temporary Foreign Worker Program with the introduction of Regulations that considerably increase the liabilities and penalties faced by employers who employ foreign nationals under Canada's temporary work permit programs (including both Labour Market Impact Assessments (LMIAs) and LMIA-exempt categories).

Employers who employ Temporary Foreign Workers (TFWs) will continue to be subject to the possibility of an audit or inspection by government authorities to verify compliance with the conditions of Canada's temporary work permit programs, such as receipt of wages and working conditions that are substantially the same as those set out in the job offer that supported the initial Work Permit application, and compliance with federal and provincial laws regulating employment. Employers who are found to be non-compliant will now be subject to Administrative Monetary Penalties (AMPs) or fines, which will be assessed according to a new points system. The penalties under this point system will vary based on type and severity of violation, compliance history, size of business and completeness of the voluntary disclosure. Employers will also face potential program bans ranging from two (2) years to permanent bars. Employers deemed non-compliant will continue to be placed on a publicly available list of ineligible employers. AMPs will be capped at a maximum of \$1 million (Canadian dollars) per twelve (12) month period.

Penalties for Non-Compliance

The government of Canada takes immigration non-compliance very seriously. Penalties for non-compliance may include fines, deportation, and imprisonment.

Employee Penalties

Depending on nature and severity of non-compliance, employees can be subject to revocation of work permits and deportation orders that would bar them for minimum of six (6) months from seeking a new permit. For more serious offences, fines and convictions can range from \$10,000 and six (6) months imprisonment to significantly longer terms of imprisonment and fines that are reserved for aggravated breaches.

Employer Penalties

Employers found to be non-compliant as a result of an ECR or an inspection could be subject to:

- A ban of two (2) years and the employer name, address, and period of ineligibility published on the CIC website;
- A negative LMIA being issued for any pending applications; and/or revocation of previously-issued LMIA's.
- All employers of TFWs in Canada will be affected. Importantly, under the new regulatory regime, penalties are assessed according to the number of TFWs who are affected by each infraction. Each infraction that affects each TFW will be treated as a separate violation potentially leading to cumulative fines of several thousand dollars for larger employers. AMPs will be capped at a maximum of \$1 million (Canadian dollars) per twelve (12) month period

For more details, please contact your representative.

Bilateral Agreements

- **North American Free Trade Agreement (NAFTA):** Non-LMIA-based work permits may be obtained for United States and Mexican nationals for various categories, including intra-company transfers, and various professionals.
- **General Agreement on Trade in Services (GATS):** Non-LMIA-based work permits may be obtained for nationals of signatory GATS countries for various categories, including intra-company transfers, and various professionals.
- Bilateral agreements relevant to immigration also exist for Chile, Colombia, Peru, and most recently Korea and Europe.

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