

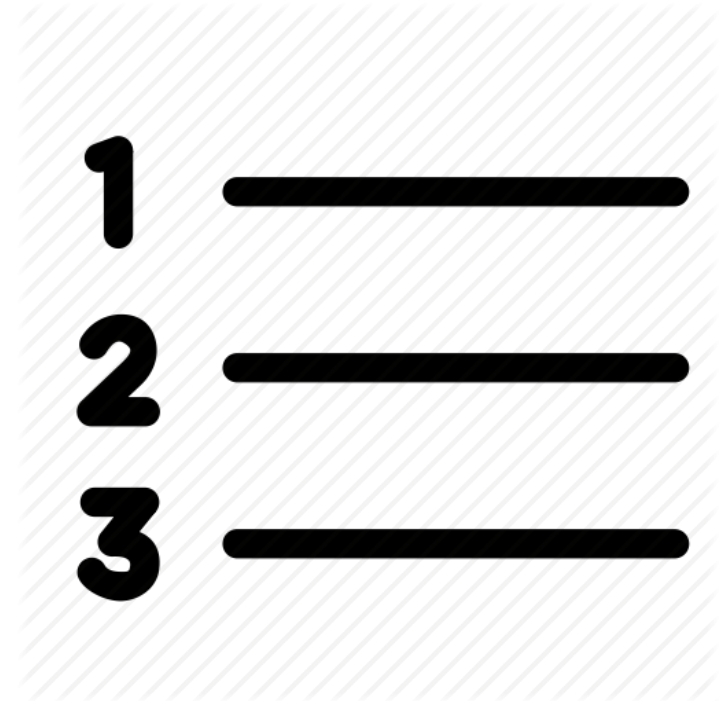


Hiring Foreign Workers: Understanding the Basics of Work Permits

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The Basics of Work Permits

1. Is a work permit required?
2. Types of work permits
3. Open work permits
4. Employer-specific work permits
 - a) LMIA-based work permits
 - b) LMIA-exempt work permits
5. Employer compliance requirements



Is a Work Permit Needed?

- “Work” is an activity:
 - For which wages are paid or commission is earned, or
 - That competes directly with activities of Canadian citizens or permanent residents in the Canadian labour market
- Generally, foreign nationals require a work permit to work in Canada with some exceptions (ex: Business Visitor)
- Business visitor vs work permit required worker
 - What will the worker be doing in Canada?
 - Where is the worker being paid and by who?
 - Where is the worker’s principal place of business?
 - Where are the profits accrued?



Types of Work Permits

- Open Work Permits
- Employer-Specific (Closed) Work Permits
 - Labour Market Impact Assessment (LMIA) Based Work Permits
 - LMIA-Exempt Work Permits

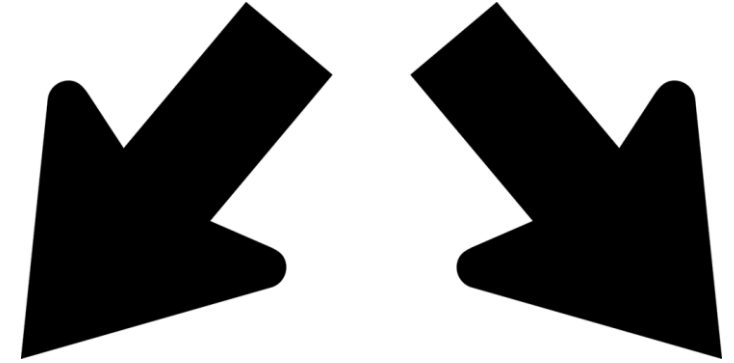


Open Work Permits

- Generally, no employer involvement required to obtain the work permit
- Not restricted to a specific position or employer
- Generally, limited employment location restrictions
- Terms of employment can change
- Only general restrictions, ex: cannot work in a business where there is a risk of sexual exploitation (ex: escort agencies, strip clubs)
- Types of open work permits:
 - Post-graduate work permit;
 - Open spousal work permit;
 - Bridging open work permit.

Employer-Specific Work Permits

- Routes to a work permit:
 - LMIA Application
 - LMIA-Exempt Work Permit Application
- Characteristics:
 - Restricted to a position, company, and location
 - Terms of employment must stay the same
 - Employer involvement required



LMIA-Based Work Permits

- Two step process:
 - Employer makes an LMIA application to Service Canada:
 - 4-week advertising and recruitment period
 - Must show that there are no other available and qualified Canadians Citizens or permanent residents
 - \$1,000 fee per worker
 - Application assessed by Service Canada
 - Work permit application
 - Employee uses LMIA approval letter to apply for work permit
 - Employee receives employer-specific work permit
- Substantial employer involvement required

Employer-Specific LMIA-Exempt Work Permits

- Employer-specific LMIA-exempt work permit categories:
 - Intra-company transferees; NAFTA professionals; emergency repair personnel; reciprocal employment; significant benefits, etc.
- Application process:
 - Offer of employment
 - Employer must file online offer of employment and pay \$230 compliance fee
 - Work permit application
 - Worker to use offer of employment number to apply for work permit
 - Employee receives employer-specific work permit
- Requires employer involvement

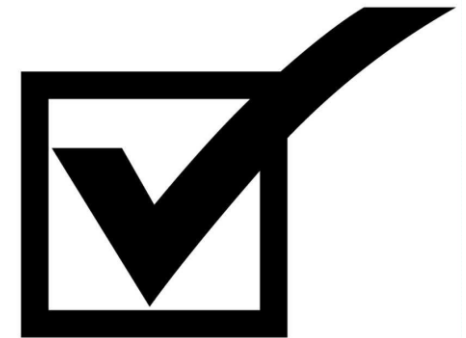
Employer Compliance Requirements

- Must comply with federal and provincial laws regarding employment
- Must adhere to the LMIA or the online offer of employment details
 - Must be actively engaged in business in which job offer made
 - Provide worker with employment in same occupation
 - Provide “substantially the same” wages and working conditions
- Keep records for 6 years
- Penalties for a finding of non-compliance:
 - Warnings
 - Monetary penalties/fines
 - Ban on hiring foreign workers and using the temporary foreign worker program
 - Listed on publically available list of employers who have not complied



Conclusion

- Plan in advance of hiring the foreign worker
- Determine whether a work permit is needed upfront
- Review and comply with the work permit conditions and restrictions
- Maintain good employment records
- Understand when you need to seek advice





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These materials should not be relied upon as a substitute for consultation with a lawyer with respect to the reader's specific circumstances. Each legal or regulatory situation is different and requires review of the relevant facts and applicable law.

If you have specific questions related to these materials or their application to you, you are encouraged to consult a member of our Firm to discuss your needs for specific legal advice relating to the particular circumstances of your situation.

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