

## Immigration Law Updates that Every Employer Should Know

Stefanie Di Francesco

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While some industries are facing hiring freezes and layoffs, there continue to be labour shortages in many industries across Canada and employers are increasingly turning to foreign workers to fill job vacancies. As a result, the Government of Canada has implemented facilitative measures that help employers engage foreign workers to meet operational needs and enhance the protection of foreign workers by setting new compliance requirements for employers.

### New and Extended Temporary Public Policies

To assist in temporarily filling Canada's labour shortages and to help sustain Canada's economic growth, the Government of Canada has introduced new public policies and extended certain others:

- *Public policy to continue to facilitate access to permanent resident status for out-of-status construction workers in the Greater Toronto Area (GTA)*

This policy, which gives a limited number of construction workers in the GTA and their dependents a pathway to permanent residence, has been extended and will remain in effect until January 2, 2024. For this policy, the GTA is defined as the City of Toronto and the regions of Durham, Halton, Peel, and York. Employers in the construction industry who rely on foreign workers may wish to explore whether this program is a pathway to securing permanent resident status for any of their workers.

- *Public policy to lift the limitation that eligible study permit holders can work without a work permit no more than 20 hours per week off-campus during regular academic sessions*

This policy allows eligible foreign nationals who are studying full-time in Canada to work off-campus without a work permit for more than 20 hours per week during regular academic sessions between November 15, 2022, and December 31, 2023 (or until this policy is revoked, whichever comes first). To be eligible for this policy, the foreign national's study permit application must have been received by IRCC on or before October 7, 2022 (in addition to other eligibility requirements).

- *Public policy to facilitate the issuance of an open work permit to certain former or current post-graduation work permit holders*

This policy enables post-graduation work permit holders whose work permits expired between September

20, 2021, and December 31, 2022, to maintain or restore their legal status in Canada and temporarily work in Canada without work authorization. Eligible individuals will be exempted from the requirement to have work authorization until May 31, 2023.

Employers in many industries, including retail and hospitality sectors, rely heavily on students (including international students) and recent graduates to meet staffing needs. Given the latter two policies, employers should consider whether any current staff or potential new hires are eligible to work an increased hours or without work permits as part of their strategies for alleviating labour shortages.

## New Employer Compliance Requirements

Recent amendments to Regulations under the *Immigration and Refugee Protection Act* add compliance responsibilities for employers of foreign workers under both the Temporary Foreign Worker Program (TFWP) and the International Mobility Program (IMP).

The TFWP is based on work permits issued pursuant to an employer's approved Labour Market Impact Assessment (LMIA). Work permits issued under the IMP are LMIA- exempt and based on an employer filing an offer of employment through the Government of Canada's Employer Portal.

The amendments require employers to:

- Provide foreign workers with an employment agreement signed by both parties prior to commencement of employment containing the terms and conditions of employment as outlined in the approved LMIA or as represented in the offer of employment submitted on the Employer Portal. This requirement applies to both long-term and short-term work assignments in Canada. Accordingly, employers must ensure that appropriate employment agreements, which would include a secondment agreement, are in place before each foreign worker starts work in Canada.
- Provide foreign workers with a copy of the "[Temporary Foreign Workers: Your rights are protected](#)" summary prior to the commencement of their employment. Employers should consider appending a copy of this document to a foreign worker's employment agreement and advising the foreign worker in writing that the summary is available anytime and in other languages from the employer and on the Government of Canada website.
- Attest that the employer has not charged or recovered from the foreign worker any fees or costs, directly or indirectly, related to obtaining an LMIA or submitting the offer of employment on the Employer Portal. The amendments also specify that employers must ensure that any recruiters they use do not charge or recover such fees or costs.
- Make reasonable efforts to provide access to healthcare services where a foreign worker is injured or becomes ill at the workplace. For example, ensuring there is a phone available to the foreign worker to call emergency services.

- Provide private health insurance for emergency medical care to foreign workers for periods not covered by provincial and territorial healthcare coverage (TFWP only). Since most provincial and territorial health insurance regimes impose a waiting period of a few months prior to foreign workers becoming eligible for public health coverage, it is important that employers make the necessary arrangements to provide private health coverage for emergency medical needs when planning to employ a foreign worker through the TFWP.
- Make reasonable efforts to provide a workplace that is free from “abuse”, which is now defined to include “reprisal” as a form of abuse. This amendment was made in response to concerns that foreign workers may fear reprisal from employers, such as demotion, disciplinary measures or dismissal, if they report suspected non-compliance with immigration laws.

The LMIA application process now also includes additional employer evaluations to help ensure foreign workers are not entering an abusive workplace, including assessing whether the employer or any related companies are ineligible to participate in the TFWP or have outstanding administrative monetary penalties. The amendments also confirm that the processing of new LMIA applications under the TFWP will be suspended for employers (including related companies) if an employer is suspected of not complying with any program requirements. Additionally, the IRCC now has the authority to require documents from third parties, such as banks and payroll companies, to verify the employer’s compliance with program requirements, such as those relating to a foreign worker’s wages.

## Take-Aways for Employers

Employers should consider how these public policies and regulatory amendments may assist them in filling labour shortages, but also how they interact with their existing internal policies and procedures respecting hiring and global mobility. For more information about these topics, or any employment or immigration law-related matters, please contact our [Employment & Labour Group](#).

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