

Member's Quarterly

Fall 2021 Edition

Foreign Workers Hired in Canada on the Increase

Getting through the process

The importance of foreign workers to the Canadian economy as well as their prevalence in the labour market have been growing rapidly in recent years. In 2017, 2018 and 2019, the number of work permits activated were respectively 340,000, 390,000 and 470,000, indicating a steady increase in new foreign workers in Canada. Despite the important contributions they make to the Canadian workplace, the process through which foreign nationals are retained in Canada can often be problematic, as they can impose onerous obligations on Canadian employers looking to do so.



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The principal impediments typically associated with the hiring of a foreign national pertain to the need for the employer to first prove that attempts were made to recruit a Canadian for the job. This is accomplished through an application called a Labour Market Impact Assessment (LMIA) which usually requires that advertisements for the position be posted in multiple sources, for a certain period of time and contain specific information.

It should be noted here that in certain exceptional situations, the LMIA can be facilitated or even bypassed completely in some cases. These cases typically relate to the type of employment in which the foreign worker will be engaged, the nationality of the foreign worker and any applicable treaties between that country and Canada, or the area of Canada in which the foreign national will be working. Each case is different and certain programs are only available for brief periods and/or fill up quickly, so being informed of such exceptions and the eligibility criteria is important to utilize any facilitated options that might be available.

In the majority of cases however, an LMIA must be approved prior to the submission of a work permit and it is here that difficulties may arise and obstacles are often encountered.

Firstly, depending on the job and the specific skill set needed, it is entirely possible that there may be many Canadian applicants vying for the position in question. The LMIA is a measure of protection put in place to prevent foreign nationals from infringing on jobs that could be filled by Canadians. Therefore, if a Canadian employer is looking to hire a foreign national for a job that could be performed by a Canadian, the LMIA is not likely to be successful. Lower skilled jobs which do not require higher education, extensive training or lengthy experience are typically the ones for which LMIA applications are refused.

The recruitment efforts that must be demonstrated are another requirement that could derail the process if done incorrectly by the employer. The advertisements must be posted in sources deemed appropriate by Service Canada, the governmental organization to which the LMIA must be submitted. Quite often, there are location-specific and occupation-specific sources that must be used, yet there is no definitive list of acceptable sources provided by the government of Canada. In addition to this, the length of time for which a given advertisement must run is not consistent across sources. Some advertisements must be active for only 28 days, while for other government-related sources, the advertisement must run continuously until the LMIA is approved.

The content and wording of the advertisements are also the subject of intense scrutiny on the part of Service Canada in the assessment of these applications. The existence of objective standards in this regard serves to prevent abuse by prohibiting the Canadian employer from tailoring the advertisement specifically for the foreign national they hope to retain. If the advertisement laid out very specific requirements, to such degree that it would be difficult for a Canadian, or anyone other than the foreign national for that matter, to qualify, this would defeat the purpose of the LMIA.

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Feature continued

Therefore, it is not sufficient to merely post the required number of advertisements for the required amount of time, rather the advertisements must adhere to certain requirements and meet certain criteria. These vary widely depending on factors such as the nature of the occupation and the area of Canada in which the job is located. If the Canadian employer does not satisfy these conditions, then the LMIA will be refused. Omitting certain qualifications or credentials that should be required for a position or including extraneous and unnecessary requirements that unfairly narrow the field of eligible applicants are both errors committed by Canadian employers that usually result in a refusal.

In addition to the numerous pitfalls and potential roadblocks that could rear their heads during the application, the process itself is also often problematic in terms of the ability of the employer to bring in the foreign worker needed. This is due mostly to the lengthy delays associated with procuring both the LMIA and the work permit. The processing time for an LMIA can vary widely but is usually somewhere between 3 to 6 months. As previously stated, this must be approved prior even to the submission of the work permit application. Once approved and the work permit application is submitted, there are country-specific processing times that apply and determine how long it will take for work permit approval. For example, from India, a country from which Canada imports a large proportion of its foreign workers, the current processing time is listed at approximately 11 weeks. All this to say that retaining a foreign national is not a very expeditious process, which could hinder a Canadian employer's ability to effectively meet their labour needs.

Logistical hurdles, the subjective assessment of the immigration officer and the protections afforded to the Canadian citizen labour market are all factors that contribute to the difficulty often encountered by Canadian employers looking to retain foreign nationals. In many cases, the success of a given business venture is inextricably linked to an employer's ability to retain the workers needed. If the ability to do so is thwarted as a result of the numerous obstacles laid out above, this can be damaging to the Canadian company in question and can be challenging to the Canadian economy as a whole.

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