Employing Foreign Workers In Canada: 5 Key Employment Considerations

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Employers must ensure compliance with both employment and immigration requirements throughout the employment relationship when employing a temporary foreign worker. Failing to monitor work authorization, maintain proper records or comply with program requirements can expose employers to significant financial penalties, inspections and restrictions on hiring foreign workers in the future. Below are five key considerations employers should keep in mind when employing foreign workers in Canada.

1. Understanding Work Permit Conditions

Employer-specific work permits, also known as “closed work permits,” restrict the foreign worker to only work for the employer, in the occupation and in the location listed on the work permit, whereas an “open work permit” authorizes the foreign worker to work for most employers in Canada in most occupations, subject to any other conditions noted on the work permit. Employers should carefully review the temporary foreign worker’s work permit at the beginning of employment to ensure the position complies with all stated conditions set out on the work permit. Work permit holders must also maintain valid status and comply with all permit restrictions throughout their **employment in Canada**.

Best Practice Tip: A common condition on a foreign worker’s work permit is “Not Authorized to work in Childcare, Primary/Secondary School, Teaching, Health Services Field Occupation.” This restriction is typically imposed when the foreign worker did not complete an upfront medical exam as part of their work permit application. **Immigration, Refugees and Citizenship Canada** (“IRCC”) applies this condition to prevent foreign workers from working in roles where public health may be at risk or where they may work with vulnerable populations. Employers must ensure that either the foreign worker’s work does not fall within a restricted sector or that the work permit does not contain the above condition.

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2. Tracking Work Permit Expiry Dates

Employers are responsible for ensuring that foreign workers remain legally authorized to work in Canada throughout their employment. Given the significant decrease in the number of options for obtaining permanent resident status, many foreign workers may no longer have a viable immigration path to extend their status and continue working in Canada. Therefore, it is important to understand whether any portion of your workforce has upcoming permit expirations so you can plan accordingly.

Implementing a system to track work permit expiry dates can help employers avoid unintentionally employing someone who no longer has authorization to work. Employers may wish to keep a tracking chart for all foreign worker employees to monitor the following types of information:

- Employee name
- Work permit type
- Issue and expiry dates
- Proof of authorization (for example, a copy of the current work permit)

To stay ahead of potential immigration issues, employers should flag upcoming expiry dates well in advance and discuss with the employee whether they have sufficient time to gather documents and submit extension applications and whether they require the employer to support the extension application. The following is a sample timeline employers may wish to follow:

- **At the time of hiring or upon receiving the work permit:** diarize the permit expiry date and create a reminder six months before expiry.
- **A few months before work permit expiry:** check in with the employee regarding their plans to maintain work authorization in Canada. If employer support is required, advise the employee of any deadlines for providing supporting documentation.
- **Close to the work permit expiry date:** ensure the employee has proof of continued work authorization. If they do not have sufficient documents to demonstrate authorization to work in Canada, their employment may need to be terminated.

If an employee's work permit expires and they have not applied for an extension prior to the expiry date, the employer must immediately stop assigning work. Employers should seek legal advice before ending the employment relationship to ensure they meet their legal obligations.

Best Practice Tip: Employers should consider implementing processes to monitor work authorization and seek advice when questions arise regarding an employee's ability to continue working in Canada. If questions arise regarding an employee's ongoing work authorization, employers should seek legal advice before making decisions that could affect the employment relationship.

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3. Understanding Maintained Status

If an employee applies to extend their work permit before it expires, they may be eligible to continue working under maintained status while IRCC processes the application. If the application was received after midnight Coordinated Universal Time ("UTC") on the date of expiry, the employee does not maintain their status.

While on maintained status, an employee:

- must stay in Canada.
- may continue working only under the same conditions as their original work permit until a decision is made on the extension application. For example, if the employee has an employer-specific (closed) work permit, they may continue working only for the employer named on that permit.

Employers should also be aware that maintained status is lost if an employee leaves Canada while their work permit extension application is pending.

Because maintained status can be affected by an employee's circumstances, employers should ensure they understand the rules surrounding maintained status and seek advice where there is uncertainty regarding an employee's continued authorization to work.

Best Practice Tip: Understand what maintained status permits an employee to do – and what it does not. Before allowing an employee to continue working under maintained status, ensure they have provided the necessary documents demonstrating their authorization to work.

4. Verifying Maintained Status and Work Authorization

When a work permit is approaching its expiry date, employers should ask whether the employee has applied for an extension and request documentation confirming submission of the extension application. Keep in mind that maintained status ends when a decision is made on the extension application. Therefore, it is the employee's responsibility to notify the employer when they receive a decision on their immigration application. Notwithstanding, it is prudent for employers to regularly ask the employee to provide proof that the extension application is still in process.

If the employee applied online, they typically will receive a letter from IRCC confirming that the extension application has been submitted, with the application number as well as a letter confirming their maintained status. An employer will know that a work permit extension application has been submitted based on the application number starting with a "W". If neither of these letters are issued by IRCC, then the employee can provide a screenshot of

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their portal to evidence submission of the application.

Note that the letter from IRCC confirming maintained status will indicate that the foreign worker is authorized to continue working with the same conditions until a specified date or until a decision is made on the application. The date inserted is based on the proposed processing time and can be ignored as the foreign worker can continue to work past the date if their work permit extension application is still in process. Subsection 186(u) of the *Immigration and Refugee Protection Regulations* (SOR/2002-227) provides the authorization for a foreign worker to work on maintained status until a decision is made on the work permit extension application.

If the employee applied by paper, it could take a significant amount of time to receive a confirmation letter. In this case, employers may request other forms of proof, such as:

a. receipt or proof of payment of fees
b. postal or courier tracking information confirming submission of the extension application; and
c. if available, a copy of a webform confirming the extension application is in process.

Best Practice Tip: Request proof that a work permit extension application has been submitted prior to the expiry of the employee's current work permit, which will typically be in the form of an IRCC confirmation letter.

5. Assessing Immigration Impact of Changes to Salary, Job Duties, Occupations and/or Work Locations

Before increasing foreign workers' salaries, modifying their job duties, reclassifying their positions and/or changing their work location to reflect evolving business needs, it is important to pause and assess any immigration impact. Even positive changes, such as a promotion or wage increase, may have immigration implications, depending on the type of work permit held and the requirements of the applicable immigration program. For example, if the foreign worker was hired through a **Labour Market Impact Assessment** ("LMIA"), employers may only make certain minor modifications before a new LMIA and work permit are required. The following are examples of minor modifications that do not need to be reported:

- Minor changes in job duties that would not modify the **National Occupational Classification** ("NOC")
- An increase in wages equal to or less than the highest of the following:
  - 2%.
  - The prevailing wage or Statistics Canada's Consumer Price Index ("CPI") annual average inflation rate for the previous year. The rate to be used in 2026 is 2.1%.

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- An increase in wages to comply with federal, provincial or territorial laws.

Best Practice Tip: Before taking any action, employers should consult with a legal professional to determine whether additional immigration steps are required and ensure that any changes to the **terms of employment** accurately reflect the employee's role and compensation.

Related Resource

For information on hiring foreign workers, including addressing legal and practical considerations during recruitment and onboarding, we refer you to our article titled "**Hiring Foreign Workers in Canada: Employer Considerations | TDS Law**".

For information regarding employer compliance and penalties, which can occur during employment and post-employment, we refer you to our article titled "**Terminating Foreign Workers in Canada: 5 Key Post-Employment Considerations**".

TDS is a full-service law firm with a team of lawyers experienced in both employment and immigration law who can guide you and your company to ensure appropriate steps and safeguards are in place when employing a foreign worker.

This article was prepared with the assistance of summer law student Minseo Kim.

Need assistance with business immigration or employment matters?

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