

Hiring Foreign Workers in Canada: 5 Key Pre-Employment Considerations

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Hiring foreign workers in Canada can help employers fill important roles, but it also requires cautious planning. Before making an offer, employers should stay informed about the legal and practical issues that can arise during the recruitment, contracting and onboarding of foreign workers. Taking the appropriate steps early on can reduce potential legal complications and help the hiring process proceed smoothly. Below are five key tips for employers to keep in mind.



An Employer Should Only Ask Whether a Candidate Is Legally Authorized to Work in Canada

The Human Rights Code of Manitoba (the “Code”) imposes certain restrictions on what preemployment inquiries employers may ask job candidates. While, in general, employers may ask whether a candidate is legally entitled to work in Canada or for their organization, employers should avoid questions about nationality or specific immigration status unless legal advice confirms they are appropriate in the circumstance. While the Code doesn’t expressly list residency or citizenship as a protected characteristic, the protected characteristic of “nationality or national origin” has been interpreted broadly to capture questions about Canadian citizenship or Canadian work experience. Therefore, legal advice should be sought regarding preemployment inquiries, including questions during the application process specifically related to the candidate’s ability to work in Canada and for the organization/employer.

Best Practice Tip: Employers should review their planned interview questions to account for the prohibitions in the Code, including questions around authorization to work in Canada and for their organization.

Be Mindful When Using an External Recruiter to Recruit Foreign Workers on Your Behalf

Manitoba's *The Worker Recruitment and Protection Act* ("WRAPA") regulates the recruitment of foreign workers by both requiring recruiters to be licenced and prohibiting them from charging fees to foreign workers for finding jobs. Employers must register with the province of Manitoba before hiring foreign workers and must use only licenced recruiters, ensuring fair treatment and compliance with employment standards. WRAPA aims to prevent exploitation, promote transparency and protect vulnerable workers through strict enforcement and penalties for violations. While there are exceptions in WRAPA where an employer does not have to use a licenced recruiter to recruit foreign workers, for example, a person who directly finds workers on behalf of their own employer does not need a recruiter licence, care should be taken to ensure compliance.

Best Practice Tip: Consider how the foreign workers are being recruited and ensure the external recruiter is a licenced recruiter under WRAPA.

The Foreign Worker's Offer of Employment/Employment Agreement Should Be Conditional on the Foreign Worker Obtaining and Maintaining Immigration Status

Any offer of employment should be clearly conditional on the candidate obtaining and maintaining work authorization (both in Canada and for the specific organization/employer) throughout the employment period. If the employee loses their immigration status during the employment period, the employer cannot legally continue to employ them and legal advice should be sought regarding the conclusion of the employment relationship.

Best Practice Tip: Consider incorporating language into the employment agreement such as the employment being conditional on the foreign worker having obtained authorization to work for the employer in the occupation and work location in Canada and outlining the requirements for the employee to maintain valid immigration status and work authorization. The appropriate language to include in the employment agreement varies depending on the foreign worker's immigration status.

Understand the Legal Implications of Hiring a Foreign Worker Without Authorization

Hiring a foreign worker without proper authorization (such as required permits, employer registration or use of licenced recruiters) can result in significant legal penalties, including fines, suspension or cancellation of the employer's ability to recruit foreign workers, possible repayment of any improper fees charged to the worker or even imprisonment in certain cases under section 125 of the *Immigration and Refugee Protection Act* and section 28(2) of WRAPA.

Employers may also face liability for violations committed by unlicensed recruiters or third parties, even if they were unaware of the misconduct. In addition, noncompliance can lead to immigration consequences for the worker and reputational and operational risks for the employer, including restrictions on future participation in the **Temporary Foreign Worker Program**.

Best Practice Tip: Establish a robust due diligence system when reviewing a foreign worker's immigration documents to ensure they have valid work authorization and to track or diarize their temporary status end date.

When an Employee Will Be Working Under a Closed Work Permit, Employers Should Be Mindful That the Position, Duties and Terms of Employment May Have Limited Flexibility After Hiring

A closed work permit, also known as an employer-specific work permit, authorizes a foreign worker to work (i) for a specific employer, (ii) in a specific occupation and (iii) only at the work location specified on the work permit.

Given that a closed work permit is tied to a specific **Labour Market Impact Assessment** ("LMIA") or an LMIA-exempt offer of employment, certain changes, such as changes in wage, occupation, duties and work location, etc. will require a new work permit and updated employment documentation. Accordingly, legal advice should be sought regarding whether a new work permit is required before initiating any changes to the foreign worker's terms of employment.

Employers that hire temporary foreign workers could be subject to random or targeted

inspections under the Temporary Foreign Worker Program or International Mobility Program. Noncompliance can result in monetary penalties or restrictions on future hiring and public listing on a Government of Canada website. For that reason, employers should ensure their hiring practices and employment documents are reviewed carefully before the foreign worker starts work and before any changes are made to the foreign worker's terms of employment.

Best Practice Tip: If the terms of employment, such as job duties, salary or location, of a foreign worker who is on a closed work permit are changing, it is best to contact an immigration lawyer to confirm that the change is permissible. If not, a voluntary disclosure or new application may be required.

Thompson Dorfman Sweatman LLP is a full-service law firm. We have a team of lawyers with experience in both **employment** and **immigration law** to guide you and your company in ensuring appropriate steps and safeguards are in place when hiring foreign workers.

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