Terminating Foreign Workers In Canada: 5 Key Post-Employment Considerations

Authors: Jennifer Ervick McRae, **Katie Leung**,, **Scott J. Hoeppner**, **Kali Faingold**
Minseo Kim (Summer Student)

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Terminating a foreign worker involves more than simply complying with applicable **employment-related legislation** (such as employment standards and human rights legislation) and the common law. Employers must also consider their obligations under **Canada's immigration laws**. Failure to comply can result in significant financial penalties, inspections and restrictions on hiring foreign workers in the future. Below are five key considerations for employers when terminating a foreign worker.

1. Be Prepared for a Compliance Inspection

Ending the employment relationship does not end an employer's immigration compliance obligations. Under the ***Immigration and Refugee Protection Regulations*** ("IRPR"), employers may be selected for a compliance inspection for up to six years following the first day of the period of employment for which the work permit was issued.

Inspections can be triggered in three ways:

- Random selection
- If there is a reason to suspect non-compliance, such as a complaint from an individual or a report in the media
- If an employer has been non-compliant in the past

Inspections may be conducted virtually or on-site, may be announced or unannounced and (except for private dwellings) can generally be conducted without a warrant.

During an inspection, an inspector may review whether the employer complied with the conditions set out in the offer of employment, the **Labour Market Impact Assessment** ("LMIA") approval (where applicable) and the IRPR. This includes confirming that the employer:

  - Remained actively engaged in the approved business;

    - Employed the foreign worker in the approved occupation;
    - Paid the approved wages and provided substantially the same working conditions as those in the employment offer;
    - Complied with applicable employment legislation;

- Maintained an abuse-free workplace; and
- Fulfilled any commitments made through the LMIA process, such as recruitment or training commitments.

Best Practice Tip: Familiarize yourself with the employer compliance inspection process **before** an inspection occurs. Consider designating a member of your HR or management team to oversee immigration compliance and coordinate your organization's response to any inspection. Having a clear process in place, understanding what inspectors may request and identifying who is responsible for responding can significantly reduce disruption and compliance risk. If your organization is selected for an inspection, seeking legal advice early can help ensure the process proceeds smoothly and that your rights and obligations are properly addressed.

2. Maintain Records for at Least Six Years

As noted above (and in addition to any applicable employment standards obligations to maintain records), employers are required to retain documents demonstrating compliance with the conditions of the IRPR for a period of six years, beginning on the first day of the period of employment for which the work permit is issued to the foreign national.

Examples of records employers should retain for immigration purposes include the following:

- The LMIA decision letter and supporting documents
- Employment agreements and job descriptions
- Payroll records demonstrating the approved wages were paid
- Records confirming the employee performed the approved duties at the approved work location
- Documents relating to any commitments made in the LMIA application (such as High Wage Transition Plan or Labour Market Benefits Plan)
- Records relating to employer-provided housing, where applicable

Maintaining thorough documentation not only assists during a compliance inspection but also helps defend against employment standards complaints or other disputes.

Best Practice Tip: Retain records demonstrating compliance for at least six years following the first day of a foreign worker's employment pursuant to a work permit, even after the employment relationship has ended.

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3. Understand Financial Obligations Upon Termination

Foreign workers have the same **employment rights** as all other workers in Canada. Employers must therefore comply with all applicable employment-related legislation and common law obligations, including providing appropriate notice of termination or pay in lieu of notice where required.

Employers should also consider whether any immigration-specific obligations continue after the employment relationship ends. These obligations will largely depend on the type of work permit held by the foreign worker.

This is particularly relevant for foreign workers employed through the **LMIA low-wage stream**. Employers hiring workers under said program are required to pay the temporary foreign worker's round-trip transportation costs, including the cost of travelling to Canada at the beginning of the employment period (if they are not in Canada) and returning to their country of residence at the end of the work period. Although an employer cannot require a foreign worker to leave Canada, it must fulfill its obligation to provide the worker with the means to return home following termination. If the worker subsequently obtains employment with another employer supported by a positive LMIA, responsibility for the return transportation shifts to the new employer.

By contrast, this transportation obligation generally does not apply to workers employed through the high-wage stream, unless the employer has agreed to provide it under the **employment contract** or another agreement.

Best Practice Tip: Before terminating a foreign worker, review with legal counsel the applicable work permit program, employment agreement, employment-related legislation, common law obligations and any LMIA commitments (if applicable) to ensure all financial obligations have been satisfied.

4. Understand Potential Liability in a Wrongful Dismissal Claim

Wrongful dismissal claims involving **temporary foreign workers** can present unique risks.

Many foreign workers hold employer-specific (closed) work permits that only authorize them to work for a single employer. If their employment ends, they generally cannot begin working for another employer until a new work permit has been approved – a process that may take several months.

As a result, temporary foreign workers may have limited opportunities to mitigate their damages following a wrongful dismissal. This can increase an employer's potential liability, particularly where the employment agreement does not contain a properly drafted and enforceable termination provision.

Best Practice Tip: Ensure employment agreements for foreign workers contain carefully drafted termination provisions that comply with applicable employment standards legislation and common law obligations. Properly prepared contracts can significantly reduce an employer's exposure in the event of a termination.

5. Understand the Consequences of Non-Compliance

Employers that fail to comply with Canada's immigration requirements can face significant legal, financial and reputational consequences.

Under the IRPR, employers may face administrative monetary penalties ranging from $500 to $100,000 per violation, up to a maximum of $1 million in a one-year period. Depending on the circumstances, employers may also be banned from hiring foreign workers through the Temporary Foreign Worker Program or International Mobility Program for one, two, five or ten years, or permanently in cases involving serious violations.

Additional consequences may include:

- Refusal of pending work permit applications associated with the employer;
- Revocation of existing work permits connected to the employer;
- Public listing on the Government of Canada's non-compliant employer registry; and
- Penalties under provincial legislation, including Manitoba's *Worker Recruitment and Protection Act* where applicable.

In the most serious cases, employers may also commit a **criminal** offence under the ***Immigration and Refugee Protection Act*** for employing a foreign national who is not authorized to work in Canada. Conviction can result in fines of up to $50,000, imprisonment for up to two years or both.

Best Practice Tip: Immigration compliance does not end when the employment relationship does. Regularly review your organization's foreign worker practices and seek legal advice whenever questions arise regarding work authorization or program compliance.

Related Resource

It is recommended that employers who employ temporary foreign workers seek legal assistance with completing an internal audit to determine any deficiencies and develop customized checklists and tracking systems to ensure compliance with immigration requirements.

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 both employment and immigration requirements throughout the employment relationship when employing a temporary foreign worker, we refer you to our article titled “**Employing Foreign Workers in Canada: 5 Key Employment Considerations | TDS Law**”.

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 terminating a foreign worker.

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

Need assistance with business immigration or employment matters?

Jennifer Ervick McRae, Scott Hoeppner, Katie Leung, and Kali Faingold are members of the TDS Business Law and Labour & Employment Practice Groups. To learn more about their respective practices, visit their biographies:
Business Immigration

- **Jennifer Ervick McRae**
- **Katie Leung**

Labour & Employment

- **Scott Hoeppner**
- **Kali Faingold**

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