



Canada: Temporary Foreign Worker Program

Tracey Ford
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Summary

U.S. Companies wanting to bid on Canadian contracts, establish partnerships with Canadian companies, or to perform installation or after-sales-service for a Canadian customer may need to send a worker temporarily to Canada. Knowledge of the laws and regulations governing this process is mandatory. This report provides a brief overview of the process of entering Canada to work temporarily.

This document is only meant to act as a guide to sending temporary workers to Canada. This is a complex subject and each situation is dealt with on its own merits. The U.S. Commercial Service recommends reviewing the information on the [Immigration Refugee and Citizenship Canada](#) webpage or contacting an immigration lawyer for more information. The U.S. Commercial Service in Canada can provide a list of immigration law firms upon request.

Background

There are three government departments that work together to manage and deliver the Temporary Foreign Worker Program (TFWP) and the International Mobility Program (IMP); Employment and Skills Development Canada (ESDC)/Service Canada, Immigration Refugees and Citizenship Canada (IRCC) and Canada Border Services Agency (CBSA).

Employment and Skills Development Canada (ESDC) is responsible for processing applications from employers for Labour Market Impact Assessments (LMIA). An LMIA is an opinion provided by Service Canada to Immigration, Refugees and Citizenship Canada, which assesses the likely impact that hiring the requested foreign worker(s) may have on the Canadian labor market. [Service Canada Centres](#) process foreign worker requests (LMIA applications) in each province.

Immigration, Refugees and Citizenship Canada (IRCC) and its [visa offices](#) at the Canadian Embassies, High Commissions and Consulates outside of Canada process applications for work permits to determine who may be eligible to work in Canada. IRCC is the first point of contact for foreign workers who wish to work temporarily in Canada, although under certain circumstances, they may apply for a work permit at a port of entry.

Canada Border Services Agency (CBSA) employs the Border Services officers that screen foreign workers at Canadian border crossings and airports to ensure that they meet admissibility requirements before issuing work permits and allowing entry into Canada. A Border Services officer has the final say on who may enter Canada. Officers can deny entry to a foreign worker if they believe the foreign worker does not meet the requirements of the *Immigration and Refugee Protection Act*. Employees who have criminal convictions will automatically be denied entry to Canada. This includes those people charged with Driving Under the Influence (DUI).

U.S. employees who wish to enter Canada as temporary workers must do so in one of three ways:

1. Temporary Entry of People to Canada Under NAFTA: Requiring neither a work permit nor a Labour Market Impact Assessment (LMIA)
2. Requiring a Work Permit and a Labour Market Impact Assessment (LMIA); or
3. Requiring a Work Permit, but is exempt from an LMIA.

Temporary Entry of People to Canada Under NAFTA

The Temporary Entry commitments in the NAFTA provide the United States with preferential access to Canada for four different categories of business persons: Business Visitors, Professionals, Intra-Company Transferees, and Traders & Investors. Entry to Canada is facilitated by the removal of the LMIA requirement, and, for Business Visitors only, the removal of the work permit requirement.

Business Visitors

The intent of the Business Visitor provision is to facilitate the entry to Canada of the short-term business visitor who has no intention of entering the Canadian labor market. NAFTA describes a business visitor as "...a business person seeking to engage in a business activity as set out in [Appendix 1603.A.1](#)". A business visitor may be engaged in activities that include:

- Research and Development
- Growth, Manufacture and Production
- Marketing
- Sales
- Distribution
- After-Sales Service
- General Service

Business visitors do not require an LMIA or a work permit to enter Canada as their activities are not considered to be competing with domestic labor. Under this category, the primary place of employment for the employee and the source of remuneration must be outside of Canada.

The maximum length of entry for Business Visitors is one year, although this is at the officer's discretion and is very rarely granted. Generally, the length of stay permitted for a Business Visitor is up to six months. For after-sales service personnel the duration of the stay granted is generally equivalent to the amount of time required to carry out the service obligation. Business visitors apply at the Port of Entry.

Business visitors must be able to provide the following to the Border Services Officer:

- Proof (e.g. a letter from the employer) that the employee plans to engage in an approved business activity (those set out in Appendix 1603.A.1 of NAFTA). The letter must describe the purpose of the employee's entry into Canada.
- Proof (e.g. a letter from the employer) explaining that the proposed business activity is international in scope and that the employee is not planning on entering the Canadian labor market. The employee should be prepared to show evidence that (i) the primary source of remuneration for the proposed business activity is outside of Canada;

and (ii) that the principal place of business and the actual place of accrual of profits, at least predominantly, remain outside of Canada.

- If the employee is seeking entry as an after-sales service person, they must provide copies of the original sales, warranty, or service agreement and any extension to this agreement.

Business visitors that travel to Canada frequently over an extended period of time and always enter for the same reason, can request at the Canadian point of entry that a visitor record be issued to them. The document will facilitate subsequent visits to Canada. There is no cost to obtain a visitor record, but whether or not to issue one is at the discretion of the immigration officer.

Notes for After-Sales Service

Companies that sell goods to Canadian customers should be aware that they may only send workers to Canada as a business visitor if the original agreement states aftersales service as a separate line item. Once the warranty period expires, in most cases the service persons will have to apply for an LMIA and a work permit. However, the initial warranty or service agreement may be extended if the sales agreement, or the initial warranty or service agreement provides for such an extension. In this case, the after-sales service continues to be part of the sale of equipment, machinery or computer software.

In May 2015, the LMIA-exempt category C-13, Repair Personnel for out-of-warranty equipment was expanded to include individuals who are coming to Canada to repair industrial or commercial equipment that is no longer under warranty or covered by an after-sales or lease agreement. This amendment is necessary to allow for preventative work where failure to repair industrial equipment immediately would have a negative impact on productivity. The admission of repair personnel and service technicians will be permitted for a short duration (i.e. less than 30 calendar days). Service personnel will be permitted under this category when:

- There is a need for specific knowledge
- There is no commercial presence by the company that manufactured the equipment being serviced (also known as the Original Equipment Manufacturer [OEM]) and
- Canadian jobs would be greatly affected if the equipment is not repaired in a timely fashion.

Professionals

Under NAFTA, a professional is "...a business person seeking to engage in a business activity at a professional level in a profession set out in [Appendix 1603.D.1.](#)" Under NAFTA, there is a list of 63 professions that receive preferential treatment for entry into Canada. This includes engineers, computer system analysts, most scientists, most medical professions, accountants, economists and management consultants.

The arrangement to provide professional services can be as a result of an employee-employer relationship with a Canadian enterprise, a signed contract between the business person and a Canadian enterprise or a signed contract between the business person's U.S. employer and a Canadian enterprise.

If the Temporary Worker qualifies under this category, the worker will be required to provide information proving the following to the Border Services Officer at the port of entry:

- Who the proposed employer is in Canada
- What the profession is (including title and duties) under which entry is being sought
- What are the professional-level duties to be performed
- How long the anticipated length of stay will be
- What the arrangements for remuneration of services to be rendered.

Generally, a letter from the U.S. employer, a letter from the contracting Canadian enterprise and a copy of all relevant educational qualifications should be presented.

The length of stay for professionals is not limited. However, the situation must continue to be 'temporary.' For example, the individual should plan to return to the United States and not remain in Canada indefinitely. Professionals that qualify for temporary entry under NAFTA can be issued a work permit for durations of up to three years. Extension can also be issued in increments of up to three years with no limit on the number of extensions providing the individual continues to comply with the requirements for professional. Officers must be satisfied that the employment is still 'temporary' and that the applicant is not using NAFTA entry as a means of circumventing normal immigration procedures.

Intra-Company Transferees

An intra-company transferee is a person who is sent to work for the same company in a different country. Intra-company transferees:

- have worked on an ongoing basis for the company for at least one year in the last three years for the same or a related employer in the United States,
- be transferred to Canada to work short term for the same or related employer,
- work as a manager, an executive or in a job that uses specialized knowledge.

An intra-company transferee employed with specialized knowledge may remain for up to 5 years while an executive or managerial person may remain in Canada for up to 7 years. The Intra-Company Transferee will require a work permit.

Traders & Investors

To work in Canada as a trader or investor, one must:

- Be involved in planning, as a supervisor or executive, or in a role that involves essential skills, or activities that involve a large amount of trade in goods and services, mainly between Canada and the U.S. or a large investment in Canada by the investor or their company,
- Meet any other rules of [NAFTA](#)

This category requires a work permit.

Compliance Fees and the Employer Portal

As of February 21, 2015, the Canadian employer must pay a CDN \$230 compliance fee when hiring foreign nationals exempt from the LMIA requirement. Employers will also be required to provide an offer of employment and other relevant information electronically, directly to the IRCC via the online [Employer Portal](#). This information facilitates the assessment of the work permit application, and forms the basis of future assessments of compliance when employers are inspected. The CDN \$230 fee (payable by credit card) and employment information must

be submitted by the employer through the Employer Portal prior to a foreign national applying for an employer-specific work permit. Otherwise, officers may refuse the work permit application. These requirements will also apply to all work permit renewals.

Work Permits for Temporary Entry of Workers to Canada

A work permit is required for any foreign national who is seeking entry to Canada to engage in any activity for which wages are paid, for which commission is earned, or whose activity directly competes with the Canadian labor market.

IRCC does recognize certain job categories where a person may not need work permits to work temporarily in Canada. *If the U.S. worker does not qualify to enter under NAFTA and does not fit into one of the categories below, they require a work permit.* For a full description of the jobs that do not need a work permit, visit the [IRCC website](#).

- Athletes and coaches
- Aviation accident or incident investigators
- Business visitors
- Civil aviation inspectors
- Clergy
- Convention organizers
- Crew members
- Emergency service providers
- Examiners and evaluators
- Expert witnesses or investigators
- Family members of foreign representatives
- Foreign government officers
- Foreign representatives
- Health care students
- Judges, referees or similar officials
- Military personnel
- News reporters, film and media crews
- Performing artists
- Public speakers
- Students working on-campus

Note: it is the responsibility of the applicant to provide appropriate documentation to prove their categorical status. For example, to obtain exemption for the work permit as a public speaker, the applicant must provide relevant documentation verifying status as a public speaker, duration of stay, intended location of speech, ticket sales, and event flyer information.

If the employee determines that they do not qualify under NAFTA and they do not fit into the categories above, then the following process should be followed. A more detailed Guidebook on this process can be found on the [IRCC website](#).

1. Determine if the Worker requires a Labour Market Impact Assessment (LMIA)

Some categories of work do not require an LMIA. A full list of these categories can be found on [IRCC's website](#). If it is unclear as to whether the employee is LMIA exempt, seek verification of the LMIA exemption from IRCC by contacting an [International Mobility Worker Unit \(IMWU\)](#) for an opinion. This is a written opinion from IRCC that the border services officer at the point of entry will consider when the temporary worker applies for their work permit. The opinion does not guarantee entry to Canada, but guides the border services officer when he makes his determination of whether to grant entry with an LMIA exemption.

2. **Apply for an LMIA.** If an LMIA exemption does not apply, then the employer must apply for an LMIA. This requires the employer to complete an Application for a Labour Market Opinion. This can be completed online on [IRCC's website](#). If the LMIA is positive, Service Canada will issue an employment confirmation and the employer will receive a response in writing that should be forwarded to the foreign worker along with a copy of a signed job offer and an employment contract (if applicable). The foreign worker can then proceed to apply for a work permit either at a visa office abroad or at a port of entry. As of April 8, 2016, there is an application fee of CDN \$1,000 for an LMIA.

If the LMIA is negative, Service Canada will inform the employer in writing. If the employer disagrees with the Service Canada decision, and they have new information that may affect the decision, they may submit this information to the Service Canada Centre indicated on the refusal letter. The request will then be re-assessed taking into account any new information they have submitted.

Compliance Fee and Employers Portal:

As of February 21, 2015, employers must pay a CDN \$230 compliance fee when hiring foreign nationals exempt from the LMIA requirement. Employers will also be required to provide offer of employment and other relevant information electronically, directly to the IRCC via the online [Employer Portal](#). This information facilitates the assessment of the work permit application, and forms the basis of future assessments of compliance when employers are inspected. The CDN \$230 fee (payable by credit card) and employment information must be submitted by the employer through the Employer Portal prior to a foreign national applying for an employer-specific work permit. Otherwise, officers may refuse the work permit application.

3. **Apply for a Work Permit at either the port of entry or from outside Canada**
 - a. Persons who may apply for a work permit at a port of entry include:
 - i. All nationals or permanent residents of the United States
 - ii. Persons whose work does not require an LMIA
 - iii. Persons who require an LMIA, as long as the positive opinion has been issued before entering Canada
 - b. Persons who must apply for a work permit outside of Canada include:
 - i. All persons who require a Temporary Resident Visa
 - ii. All persons who require a medical examination
 - iii. International youth exchange program participants other than US citizens and permanent resident
 - iv. Seasonal agricultural workers
 - v. Live-in caregivers

When applying outside of Canada, each [visa office](#) abroad may have different procedures that will be listed on their individual website. A visa officer has the right to ask for any of the following information:

- Proof of identity
- A valid passport or travel document that guarantees re-entry in the United States
- Two photos of the foreign worker
- A copy of the job offer or signed employment contract
- A copy of the positive LMIA issued by Service Canada
- Payment for the work permit (CDN \$155 as of April 8, 2016)

If applying for a work permit at the port of entry, foreign workers must have the following documents on their person to present to a Border Services Officer:

- A passport or travel document that is valid for the period of the authorized stay
- A signed job offer and/or employment contract
- An authorization letter approving a work permit application by CIC (if applicable)
- A copy of Service Canada's positive LMIA (if applicable)
- A copy of the confirmation by a IRCC Temporary Foreign Worker Unit that the job offer is exempt from a work permit or LMIA (if applicable)
- Evidence of credentials: education, professional and work experience (if applicable)
- A temporary resident visa (if applicable)

Applicants can apply at the Canadian Port of Entry, but it is recommended that if time allows (4-6 months), an application should be submitted to the Canadian Embassy or Consulate in advance.

For More Information

The U.S. Commercial Service in Ottawa, Canada can be contacted via e-mail at: Tracey.Ford@trade.gov; Phone: 613-688-5406; Fax: 613-238-5999; or visit our website: www.export.gov/canada.