

Immigration**Corporate immigration compliance for COVID-19**By **Melissa Babel**

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(March 18, 2020, 8:35 AM EDT) -- These are challenging times for Canadian businesses who are managing through the COVID-19 pandemic. With official government instructions on social distancing, self-isolation and travel restrictions changing on a nearly daily basis, what additional considerations are there for Canadian employers of foreign nationals? How do employers stay compliant with immigration laws while managing the myriad issues that we are currently facing?

What should employers look at first?

Employer-specific work permits have up to 21 conditions attached to them, most of which can trigger compliance concerns for the employer. Some key elements to consider when managing a foreign workforce are the location of work, and the foreign worker's compensation (wages, working conditions and benefits). These are among the most likely to trigger compliance issues and may create the need for employers to rely

on "justifications," as defined in the *Immigration and Refugee Protection Act (IRPA)* and *Immigration and Refugee Protection Regulations (IRPR)*, in order to avoid findings of non-compliance and associated fines and bans from the use of the program.

Can foreign workers work from home?

The location of work is generally printed on the work permit itself and should reflect what was included by the employer in the Offer of Employment through the Employer Compliance Portal, or on the Labour Market Impact Assessment (LMIA) approval notice. An ounce of prevention may be worth more than a pound of cure on this issue if the Offer of Employment included multiple locations or "work at client" sites, then potentially an employee who was intended to work at the employer's location could remain in compliance when working from home. But what if the location on the work permit is very narrow — Toronto, for example — and the foreign worker is asked to work from home (not Toronto) or to self-isolate during the COVID-19 measures? Employers may want to consider whether to notify Immigration Refugees and Citizenship Canada (IRCC) and/or Service Canada of the change and the reason for the change in work location.

Wages, working conditions and benefits

Foreign workers on LMIA-based work permits will require special consideration and approvals from Service Canada before any changes can be made to the wages, working conditions or benefits paid to a foreign worker, even if the changes are a result of extenuating circumstances. In LMIA-exempt work permits (NAFTA, intracompany transfers etc.) changes to compensation that are a detriment to the foreign worker (fewer hours work, less pay, reduction in benefits, change from permanent employee to a contractor etc.) will be the areas of concern from a compliance perspective.

Immigration non-compliance and justifications

In these unprecedented times, how do we know where an employer could be offside on compliance as a result in changes to the conditions of work for foreign nationals? One thing to consider would be the list of justifications for non-compliance which include a change in federal or provincial law (from the IRPR: R203(1.1)(a) the implementation of measures by the employer in response to a dramatic change in economic conditions that directly affected the business of the employer, provided that the

measures were not directed disproportionately at foreign nationals employed by the employer (R203(1.1)(c) or *force majeure* (R203(1.1)(g))). It remains to be seen how the relevant agencies will assess these situations in the weeks ahead.

Plan ahead for inland extensions of work permits

Employers should take a careful look at the foreign national population and consider filing extension applications in Canada for workers whose status is expiring shortly. With the current travel restrictions for non-U.S. citizens, many foreign nationals who otherwise could apply for a new work permit on entry to Canada (at an airport or land border crossing) may not be able to travel to Canada and so will need to remain in the country. This can raise issues around implied status (working while the work permit application process is underway), and the temporary loss of public health coverage.

Foreign workers who are applying for permanent residence (PR) can expect to have their application process slowed down and for "landing" (the actual grant of status) delayed for some time. This in turn may necessitate the unplanned extension of work permits. Employers who may leave the PR process in the hands of the employee should consider engaging more closely with employees in the PR process to ensure continuity of lawful temporary status and increased visibility into the processing of the PR application to manage issues such as caps on valid status (for example with intracompany transfers).

Travel restrictions could change

Effective March 18, 2020, international flights will be permitted to land only at the international airports in Montreal, Toronto, Calgary and Vancouver in order to enhance screening for COVID-19. This can impact travel plans for workers entering Canada as well as the overall decrease in commercial air traffic that is expected.

Non-U.S. national foreign workers may not be permitted to travel to Canada for some time (unless they are considered "essential workers" or otherwise exempt from the travel restriction). Employers should carefully review their travel policies for any non-essential travel in line with the recommendations from the federal government and approach the travel of foreign nationals with special care to avoid foreign worker employees from being unable to travel to or return to Canada.

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