

Foreign Worker Compliance**Corporate immigration compliance: What in-house counsel should know**By **Melissa Babel**

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(February 26, 2020, 1:09 PM EST) -- Canadian companies are increasingly reliant on skilled foreign talent to support business strategies, to be first to market and to stay competitive in a global economy. The need for foreign workers in Canada has resulted in an increase in activity for in-house counsel as they manage internal processes and engage with outside specialty counsel. With innovation and technology underpinning the growth in many sectors of the Canadian market, it is likely that the need for foreign talent in Canada will continue to increase, making corporate immigration compliance a "must-know" topic for in-house counsel.

What goes into a successful corporate immigration strategy? The short answer is that it takes more than getting someone a work permit. Employers who rely on foreign talent in Canada need to have robust policies and strategies to manage their corporate immigration compliance, or risk being fined (up to a maximum of \$1 million), or banned from the ability to source foreign talent through the International Mobility Program (IMP) and/or the Temporary Foreign Worker Program (TFWP). These consequences carry the significant risk of reputational damage and business interruption, as well as monetary loss.

Immigration compliance for employers

On Dec. 1, 2015, Immigration Refugees and Citizenship Canada (IRCC) secured the regulatory authority to enforce compliance obligations on employers of foreign workers in Canada. This included the ability to conduct inspections, issue warning letters, apply administrative monetary penalties and institute bans of various lengths from the use of the IMP and the TFWP on employers who had failed to comply with their obligations without reasonable justification. An Employer Compliance Portal was also created, which records key elements of every offer of employment for a work permit and holds the data against which employers' compliance is assessed.

What is required of employers

The compliance regime in Canada is managed by IRCC: IMP work permits; and Service Canada: TFWP, or Labour Market Impact Assessment (LMIA) work permits. The common focus of these two organizations when it comes to compliance is the responsibility of the employer to provide safe and fair working conditions for foreign workers, while also meeting their employment commitments to the foreign national and protecting the Canadian labour market.

Employers may have to comply with upwards of 20 conditions, or risk being offside on compliance. This includes ensuring that wages, working conditions and benefits are paid as agreed upon and changes to any condition of employment is carefully assessed for its compliance impact before it is implemented.

Becoming an ineligible employer

In the case where an employer who is added to the public list of employers who have been found non-compliant, existing foreign employees in Canada may have their work permits revoked, and the employer can lose access to bring more foreign nationals into Canada on work permits for a specified

period of time (one, two, five years or indefinitely). In addition to affecting the flow of business and loss of competitiveness due to the impact on the ability to hire foreign talent, the risk to the reputation of the business from inclusion in this public list can result in far greater damage than the imposition of any fine.

Balancing business expediency with risk

In-house counsel can have a particularly important role to play when business urgency is added to the mix. Having approval processes in place and direct lines of communication across the organization are key to the success of a corporate foreign worker strategy. This can make the difference between a key worker being stuck at a border or refused entry to Canada, and successfully meeting urgent business needs. In short, poor execution of an immigration strategy can put both the business and the foreign worker at risk.

The work permit legal strategy also comes into play when there are urgent business needs that can only be met by a foreign worker. Some popular options are the After-Sales Service exemption, the Global Skills Strategy – Short Term Work Permit Exemption (15 or 30 days), Emergency Repairs and Significant Benefit categories. The use of short-term work authorization exemptions, or urgency-based requests for work permits, can and should be considered in order to meet business needs.

Compliance, compliance, compliance

Balancing internal stakeholders' needs for talent with the company's need to ensure compliance can be a complex area for in-house counsel to navigate alone. A successful corporate immigration policy includes a co-ordinated approach to hiring and onboarding new foreign national employees, good communication across business lines (including local managers, payroll and the HR team) and strong relationships with outside specialty counsel. In-house counsel have a critical leadership role to play in raising awareness and establishing procedures ahead of time so the business can act quickly when necessary.

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