

Immigration

Corporate immigration compliance: Employee support as a benefit

By **Melissa Babel**



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(March 12, 2020, 1:03 PM EDT) -- Our global marketplace means that more and more companies are seeking talent beyond the borders of their own business entity and without regard to nationality. The need to source talent across the world brings with it complexities for employers regarding compliance with local immigration and employment laws, as well as domestic organizations whose priority is the protection of the local labour market. In Canada, that concern principally lies with Employment and Social Development Canada (ESDC or Service Canada). In the U.S., those responsibilities are shared with the Department of Labor.

Does your company pay for immigration support services?

Moving workers around the world can be a very costly venture for employers. Although some focus on possible job losses for local workers, the reality of recruitment of highly skilled foreign talent is very different. The complexity and costs associated with foreign worker movements, at all skill levels, will generally only be undertaken after an employer has exhausted reasonable efforts to hire local and has concluded that foreign workers are critical to its business operation. Government regulations in both Canada and the U.S. highly discourage or prohibit the hiring of foreign workers when doing so would impact a labour dispute or create a detriment to a local labour market.

When an employer decides it's necessary to its operation to rely on foreign talent, what does it need to consider?

Industry standards

In both Canada and the U.S., there are requirements for employers to provide financial support for foreign workers in certain categories — for the cost of their immigration support as well as transportation to and from the place of work. In Canada, the requirements placed on employers bringing semi- or low-skilled workers to Canada are heightened beyond other categories. Generally, employers who are stakeholders in the work permit application (employer-petitioned applications such as the H-1B or L visa in the U.S. or the Labour Market Impact Assessment work permit or intracompany transfer work permit in Canada) are paying for the total cost of immigration support to the employee. Some may also support the transfer and settlement of dependent family members (spouse and children).

Once the short-term need for labour, skilled or otherwise, is met — what do employers do to support the long-term establishment of their foreign employees? In some cases — nothing. If the need for the worker is truly temporary, there may be no desire by the employer or the employee to transition from a temporary status (work permit) to permanent status in the country of work (green card holder or permanent resident of Canada). However, where employers are hiring workers with a dual intent (the intent to enter the country temporarily to work and also the intent to remain permanently through another process) there is room for employers to consider providing additional immigration support to the employee.

One way to approach this transition of status is a part of an employee retention/bonus structure.

Immigration support as employee 'benefit'

A well-thought out foreign worker program should include consideration of long-term retention of key talent. One way to build this into your strategy is to consider permanent residence support as part of a benefit plan. The employee and their family get the benefit of some degree of financial support for their longer journey to permanent status, while simultaneously having some of the emotional or personal burden of managing their own counsel or self-represented process.

Also, by engaging with employees on the permanent residence side of the equation, employers may create additional years of work authorization for the worker. In the case of H1B workers in the U.S. from countries such as India and China, having a plan for permanent residence can mean the difference between retaining key talent beyond the limits of the H1B cap and losing the talent due to visa restrictions.

In Canada, supporting an application for permanent residence through the Express Entry process, Provincial Nominee programs or other economic or family based streams, can have the same impact as in the U.S. — the extension of temporary status where it is otherwise unavailable, while also giving the employer visibility into a key aspect of the retention of the worker. In situations where companies don't engage on the issue of permanent residence but rely on individuals to manage their own transition, the lack of visibility into the process can lead to very challenging situations where the worker may lose temporary status in Canada, impacting both the individual and family, and the employer.

Considering in advance the worker's desire for permanent residence, if aligned with the employer's need for continuity in the work force, can get everyone on the same page with respect to permanent residence early in the tenure of the foreign worker. Where processes are lengthy, advance planning can be key to a successful outcome and continuity of employment. Even where the process doesn't require employer involvement (such as a family class application) it may still be to everyone's advantage to consider offering immigration support to the foreign worker, taking pressure off of the individual and the business to allow everyone to stay focused on business needs.

This is the third of a three-part series. Read part one: Corporate immigration compliance: What in-house counsel should know; part two: Corporate immigration compliance: Managing risk.

Melissa Babel, Babel Immigration Law, is a certified specialist in citizenship and immigration law, and a licensed attorney in Massachusetts. She is a strategic adviser to Canadian employers and their employees, on all temporary and permanent residence issues, as well as complex immigration compliance matters.

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