

Member's Quarterly

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Feature

The Top 5 Immigration Law Facts Every HR Professional Should Know

Stay up-to-date on the rules

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Immigration is one of the key solutions to the looming (or in some cases, current) worker shortage in Canada. Here are five immigration law facts that every HR professional should know — before embarking on the recruitment of foreign workers.

- 1. It's tough to stay up to speed on immigration rules.** Immigration is a moving target. Governments, both federal and provincial, are constantly changing and updating policies and programs. For example, in 2017 alone, the federal government introduced the Global Skills Strategy and, in collaboration, the federal and Atlantic provincial governments introduced the Atlantic Immigration Pilot Program. And this year or next, NAFTA and its immigration-related rules could be drastically changed — or eliminated.
- 2. New might not be best.** It's important to find the right immigration path to fit the circumstances. Most new immigration programs create additional paths that operate alongside, not replace, existing immigration paths. While a new program can be enticing, the "old" program might still be the best option to recruit a foreign worker in the circumstances. For example, the Atlantic Immigration Pilot and the Global Talent Skills programs offer new paths to hire foreign workers. But the "old" existing Provincial Nominee Programs (PNP) and federal programs, such as the Canadian Experience Class, the Federal Skilled Worker and Trades Classes, the Temporary Foreign Worker (TFWP) and the International Mobility Programs, remain available to employers — and could be a better fit in the particular circumstances.
- 3. You must prove there are no qualified Canadians.** For most occupations, the employer requires permission from the federal government (via Employment and Social Development Canada or ESDC), normally in the form of a Labour Market Impact Assessment (LMIA), to hire a foreign worker. To obtain an LMIA, the employer must be prepared to demonstrate to ESDC's satisfaction that there are **no qualified Canadians available to do the job**. There are thus very specific requirements the employer must meet to obtain an LMIA (such as advertising on the Government of Canada job bank) and many LMIA application questions focus on the employer's recruitment efforts (such as: how many Canadians did you interview? To how many did you offer the job? How were the Canadians who applied not qualified?). The employer must carry out the recruitment required for an LMIA in good faith. If you believe you might not find a Canadian candidate, be aware of the LMIA requirements and complete good faith recruitment of Canadians first. If you fully screen and consider your Canadian candidates, and only then consider foreign candidates, you'll be ready to move forward with a credible LMIA application. If you don't, it could lead to an unsuccessful LMIA application or an unnecessary LMIA application — and since the LMIA application process can be time-consuming and expensive, both are costly outcomes.
- 4. There are "occupation-specific" rules.** There are "special" rules (both specific immigration rules and issues with recognition of foreign credentials) that apply to hiring a foreign national for some occupations. It's important the employer fully understand any that apply to the relevant occupation: if you think you may need to look at foreign candidates, the applicable rules affect your entire recruitment process, such as whether you need to do LMIA-compliant advertising. Remember that it's usually the occupation, not the employer, that matters. Many international immigration-related agreements set specific rules for specific occupations. For example, the North American Free Trade Agreement (NAFTA)

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removes the need for an LMIA for certain professionals covered by the Agreement, and sets out certain criteria that must be met for specific occupations. There are also specific programs designed to ease entry to Canada for certain specialized occupations. For example, the Global Talent Stream sets new rules (expedited processing) for employers hiring certain high-skilled occupations.

- 5. It's dangerous to assume.** If you're hiring a non-Canadian employee or service provider, know whether they need a work permit, and know what they need to say and do at the point of entry into Canada. Don't assume they're aware of, and will be compliant with, Canadian immigration rules. For example, some contractors might qualify for a work permit exemption as a "business visitor"; they need to know they don't need a work permit, but also need to know they should not state at the border they are coming to work in Canada, and what paperwork to have with them. If they are unprepared, and there's an issue at the airport in the middle of the night... you might have a hard time reaching your lawyer to negotiate with the Canada Border Services Agency.

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