



No NAFTA? No problem — for temporary business travel, that is

Despite current uncertainty, visa program and other options provide paths into Canada.

Canada's most important trading relationship is — in all likelihood — about to change: The current United States administration has put the future of the North American Free Trade Agreement at risk. One of NAFTA's key benefits is its role in facilitating cross-border mobility between Canada and the U.S. But while NAFTA remains vital to immigration, the demise or drastic redrafting of NAFTA does not necessarily mean the end of fast and stress-free business travel from the U.S. to Canada.

Canada's "business visitor" visa was designed to grant people from the U.S. (and elsewhere) entry to Canada without the usual requirement for a work permit. This work permit exemption is valuable because obtaining one can be a complex process: There is a fee and, unless the individual meets one of the narrow exemptions for a labour market impact assessment, it's very difficult to get a work permit without one. A person coming to Canada for business may require a work permit to enter and carry out their intended activities, even if only in Canada for a few days. However, a person who does qualify as a "business visitor" for Canadian immigration law purposes is exempt from this work permit requirement and granted temporary entry to Canada for a stay of up to six months. Currently, NAFTA permits the nationals of member countries (the U.S. and Mexico) to travel to Canada as such a "business visitor" if they are engaging in qualifying activities, which include participating in business meetings, conventions, conferences, consultations and negotiations respecting them. Still, even if the NAFTA negotiations affect this work permit-exempt path into Canada from the U.S. for temporary business travel, there are two other options.

U.S. (and Mexican) nationals can still effectively enter Canada as business visitors under Immigration and Refugee Protection Regulations with little practical distinction vis-à-vis NAFTA. Under IRPA, any foreign national (including Americans) can enter Canada without a work permit as a "business visitor."

Defined broadly, for the purposes of IRPA, a business visitor is a foreign national who seeks to "engage in international business activities in Canada without directly entering the Canadian labour market," and whose principal place of business, primary source of remuneration and the place of accrual of profits remain outside Canada. Immigration, Refugees and Citizenship Canada developed and posted guidelines on its website for immigration officers on its interpretation and application of both NAFTA and IRPA, and the qualifying activities under each are largely parallel. The guidelines provide illustrative examples of permitted activities, including: after-sales service/warranty work, purchasing Canadian goods or services for a foreign business or receiving training in respect of such goods or services; receiving or giving training within a Canadian affiliate of the corporation that employs them outside of Canada, if production resulting from the training is incidental; and representing a foreign business for the purpose of selling goods but not making sales to the general public.

In June 2017, shortly after the U.S. introduced "hire American" immigration policies, Canada created its Global Skills Strategy. Intended to facilitate the ability of Canadian businesses to attract international talent (from the U.S. and beyond) to Canada, the strategy does not employ the "business visitor" visa, but its practical effect is similar: The strategy introduced two work permit exemptions. The first exemption is for highly skilled workers to enter Canada for short-term work assignments and short-term research. Individuals will qualify if their occupation is National Occupation Classification skill type 0 (executive, managerial) or skill level A (professional) and they are coming to Canada for a short-term work assignment of 15 days (once every six months) or 30 days (once every 12 months). The second exemption is for researchers coming to Canada for a 120-day stay in a period of 12 months where they are working on a research project at a publicly funded post-secondary institution or affiliated research institution. ■

*Sarah McInnes and
Meghan Felt are
immigration lawyers
with McInnes Cooper.*