

Use of Foreign Workers to Address Labour Shortages in Canada

Increasingly, businesses in British Columbia are facing significant labour shortages. Many of the industries most affected by these labour shortages have been the subject of recent news reports, specifically the construction and the information technology industries. However, it is fair to say that by and large there is a province-wide labour shortage in most industries. The use of foreign workers has the potential to provide both short and long term relief to businesses experiencing labour shortages. Below is a brief overview of the process for using foreign workers in Canada.

The use of foreign workers by Canadian employers is limited by the requirement that foreign workers obtain Canadian work authorization (Work Permits) prior to undertaking any form of "work" in Canada. Under the *Immigration and Refugee Protection Act* (the "IRPA"), the issuance of work permits is subject to a "Canada First" policy, whereby an employer is required to prove that hiring a foreign worker will result in either a positive or neutral effect on the labour market in the employer's industry and geographical area. Typically this is achieved by showing that the company has advertised for the open position,

has found no qualified applicants and therefore is required to look outside of Canada to fill the position. This procedure is referred to as the Human Resources and Skills Development Canada ("HRSDC") confirmation. Unfortunately this can be a time consuming process and may prevent filling a critical and time-sensitive opening.

In order to avoid the HRSDC confirmation process, employers can use a number of exemptions provided for under International Treaties, Provincial/Federal Immigration Programs and the IRPA itself. A brief overview of these exemptions can be found below. Please note that by using these exemptions, many foreign nationals (depending upon their country of citizenship) are able to obtain their work permit directly at the border, which is especially helpful for time-sensitive applications.

International Treaties

Treaties such as NAFTA, the Canada Chile Free Trade Agreement (the "CCFTA") and the General Agreement on Trade in Services ("GATS") allow work permits to be issued to certain foreign nationals who are citizens of signatory nations without the need to first obtain HRSDC confirmation.

May, 2006

*Farris, Vaughan, Wills & Murphy LLP
Barristers and Solicitors
PO Box 10026,
Pacific Centre South
25th Floor, 700 West Georgia St.
Vancouver, BC V7Y 1B3
Telephone: (604) 684-9151
Facsimile: (604) 661-9349
Email: info@farris.com*

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This summary is necessarily of a general nature and should not be construed as the giving of legal advice. Should you have any questions with respect to any of the above, or should you wish to confer with someone at the firm with respect to immigration law, please contact:

*Marylee Davies 604.661.1707
Craig Munroe 604.661.9311
Ryan Neely 604.661.9359*

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work in that office. The length of the work permit will depend upon which treaty the foreign national is subject to.

- **Professionals** – Canadian employers may hire foreign nationals to fill a number of positions which fall under the category of “Professionals”. Each treaty determines who is considered a “professional” and what minimum qualifications the applicant must have.
- **Business Visitor** – The business visitor exemption allows foreign nationals to travel to Canada to undertake a number of activities that are not considered “work” and therefore do not require a work permit (e.g. Board of Director meetings).
- **Traders & Investors** – Available under NAFTA, “Traders” are Mexican or American foreign nationals who occupy executive, supervisory or special skills positions with a US or Mexican enterprise and who come to Canada to work for a Canadian enterprise which engages in substantial trade with the US or Mexico and which is at least 50% owned by the US or Mexican enterprise.

“Investors” are US or Mexican citizens who occupy ownership, executive, supervisory or special skill positions with a US or Mexican enterprise and who come to Canada to develop and direct a Canadian enterprise in which a substantial investment has been made or is being made.

Provincial/Federal Immigration Programs

There are a number of programs administered by both the Federal and Provincial governments that suspend the requirement for an applicant to undergo the HRSDC confirmation process.

- **Graduate Work Program** - This program allows employers to apply for a work permit to employ a foreign national within 60 days of their graduation from a Canadian University or college. Depending upon a variety of factors, the work permit can be issued for either one or two years.

- **Provincial Nominee Programs (“PNP’s”)** – PNP’s are designed to fast-track the Permanent Residence applications of certain skilled workers. Preliminary approval in the BC PNP may allow an applicant to receive a Federal work permit during the processing of their application for permanent residence.
- **IT Workers Program** - The Information Technology Workers Program is intended to fast-track the entry into Canada of individuals who have specific IT skills that are in high demand in Canada. Under the IT Workers Program, Canadian employers who are seeking staff to fill specified types of IT jobs within their organizations can employ eligible foreign nationals without the need to obtain HRSDC confirmation, provided that both the job position in Canada and the foreign worker meet the requirements of the program.

IRPA Provisions

The IRPA itself allows for a number of exemptions to the HRSDC confirmation process. These are useful for foreign nationals who do not fit into one of the above categories. However, priority should always be given to the above categories when considering which exemption is most appropriate.

- **Rule 205 (The Canadian Benefits Rule)** - Under the IRPA, work permits are available to Intra-company Transferees and Entrepreneurs so long as the employer is able to show a direct Canadian benefit.
- **Rule 186 (Work without a permit)** – This section of the IRPA allows specific individuals to work in Canada without a work permit; including, among other things, expert witnesses, judges and referees, public speakers, news reporters and performing artists.