



The Legal 500 Country Comparative Guides

Canada

CORPORATE IMMIGRATION

Contributor

Farrell LLP



Kristine Anne Dela Cruz

Director, Immigration Lawyer | kridelacruz@dgilaw.com

Alexander Toope

Senior Associate, Immigration Lawyer | atoope@dgilaw.com

Maria Parau

Senior Associate, Immigration Lawyer | mparau@dgilaw.com

Marvah Farooqi

Associate, Immigration Lawyer | mafarooqi@dgilaw.com

This country-specific Q&A provides an overview of corporate immigration laws and regulations applicable in Canada.

For a full list of jurisdictional Q&As visit legal500.com/guides

CANADA

CORPORATE IMMIGRATION



1. What are the relevant government entities relating to immigration in your jurisdiction?

The *Immigration and Refugee Protection Act* (IRPA) governs immigration in Canada and outlines two ministers responsible for immigration and refugee matters: the minister of Citizenship and Immigration Canada (CIC), and the minister of Public Safety and Emergency Preparedness (PSEP).¹ Immigration Refugees and Citizenship Canada (IRCC) is generally responsible for immigration policy development and the processes for facilitating the arrival of immigrants, providing protection to refugees, and granting citizenship. The minister of PSEP is generally responsible for immigration enforcement matters, such as those carried out by the Canada Border Services Agency (CBSA). Those functions include the management and operation of Canada's borders and port of entry responsibilities.

Under Canada's Constitution, jurisdiction over immigration is shared between the federal, provincial, and territorial governments. While provincial and territorial legislatures currently play a substantial role in the selection of persons immigrating to their province or territory, the federal government assumes paramount jurisdiction for determining the category and number of immigrants that are ultimately admitted to Canada per year. To apply under a provincial program, a foreign national is first nominated by a province or territory and then apply to the federal government to become a permanent resident.

The province of Quebec has its own specific requirements in terms of immigration, due to the *Canada-Quebec Accord Relating to Immigration and Temporary Admission of Aliens* signed in February 1991. This agreement was created following the failure of the Meech Lake Accord. The agreement allows the province of Quebec to legislate on the selection of applicants coming permanently or temporarily to the province, their admission into Canada, their integration into Quebec society and the determination of levels of immigration for Quebec.

This agreement has the purpose of preserving Quebec's demographic influence within Canada and to integrate applicants to the province in a manner that respects the distinct society of the province, which is mainly francophone.

Footnotes: ¹ The minister of Citizenship and Immigration Canada's title is Minister of Immigration, Refugees and Citizenship. The Department of Citizenship and Immigration Canada is now called Immigration, Refugees and Citizenship Canada. The Department of Public Safety and Emergency Preparedness is now called Public Safety Canada. The previous titles are used in this chapter because this is the way they are referenced in the Immigration and Refugee Protection Act of Canada.

2. What are the options available for sponsor-based employment in your jurisdiction and timelines involved in securing a work permit?

Foreign nationals who want to work in Canada on a temporary basis are generally required to have a genuine job offer to obtain a work permit, unless exempt. Foreign nationals may obtain employer-based work authorization through one of two streams:

The Temporary Foreign Worker Program (requires a Labour Market Impact Assessment Application); or

The International Mobility Program (exempt from the requirement to obtain a Labour Market Impact Assessment)² **Temporary Foreign Worker Program (TFWP)**

This stream is led by Employment and Social Development Canada (ESDC) and administered in partnership with IRCC and CBSA. It is meant to be leveraged by employers as a last and limited resort to bring foreign workers to Canada temporarily when qualified Canadians are not available. ESDC is the department of the Government of Canada responsible for the labour market at the federal level.

To hire a foreign worker, employers must first apply to ESDC for a Labour Market Impact Assessment (LMIA) to determine the probable effect these workers may have on the Canadian labour market. The factors that are generally examined are an employer's recruitment and advertisement efforts, labour shortages, wages and working conditions by region and occupation, and the potential for the transfer of skills and knowledge to Canadian citizens.

If approved, employers can proceed to hire a foreign worker for a limited duration. The foreign worker must then submit a work permit application to IRCC.

Common scenarios of foreign nationals that obtain work authorization under the TFWP include new hires, low-wage positions, academics, on-farm workers in primary agriculture, caregivers, and in demand STEM workers under the specialized Global Talent Stream program.

Workers sponsored by an employer through an LMIA for Quebec-based employment must also obtain a Quebec Acceptance Certificate (CAQ) to work in the province of Quebec. Generally, the CAQ will need to be submitted with the work permit application made to IRCC.

The Ministry of Immigration, Francisation and Inclusion (MIFI) is the department of the Government of Quebec responsible for the issuance of CAQ. Since immigration is a shared competence between federal, provincial, and territorial governments, MIFI also examines an employer's recruitment and advertisements efforts, labour shortages, wages and working conditions, occupation, and the potential for the transfer of skills and knowledge to Canadian citizens. MIFI also examines the worker's qualifications and ability to perform the employment.

The MIFI introduced LMIA streams specific to the province such as the Quebec Facilitated Process to support Quebec employers with their labour needs. The Quebec Facilitated Process is based on a list of priority occupations issued by the MIFI, for which the authorities determined a labour shortage in Quebec.

International Mobility Program (IMP)

This stream is managed by IRCC and is meant to promote Canada's economic and labour market interests. Situations of foreign nationals that obtain work authorization under the IMP predominantly include skilled workers covered under International Free Trade Agreements, intra-company transfers, youth participating in global exchange programs, and other "open work permit" candidates. A summary description is below.

Canada-International Non-Trade Agreements:

Canada has over 20 international agreements for specific and niche occupations.

CUSMA (formerly NAFTA) Professionals: a list of over 60 occupations that can enter to provide professional services (Citizens of USA and Mexico).

Canadian interests: Intra-Company Transferees ("ICT"): Executive, Senior and Functional Managers and Specialized Knowledge workers transferred to Parent, Subsidiary, Branch or Affiliate in Canada.

GATS Professional: Workers who will be engaged in short-term service in Canada at a professional level in a designated occupation. Must be a citizen of a member nation (164 members).

International Free Trade Agreements (FTAs):

Canada has FTAs with various other countries, including Columbia, Peru, Chile, Panama, and Korea. Other multinational free trade agreements include The Comprehensive and Progressive Agreement for Trans-Pacific Partnership, The Canada-European Comprehensive Economic Trade Agreement (CETA) and The Agreement on Trade Continuity between Canada and the United Kingdom of Great Britain and Northern Ireland (traders, investors, graduate trainees, professionals, technicians, and ICTs).

Emergency Repairs: Personnel required for emergency repairs to industrial or commercial equipment to prevent labour disruption

Reciprocal Employment: pertinent to organizations that can demonstrate they provide employment opportunities for Canadian citizens or Permanent Residents abroad. (Ratios where the outgoing is higher than the incoming is favorable); and

Spouses (including common law partners): Spouses of skilled workers;

International Students and Postgraduates:

categories include co-op or internship, off-campus work, and post-graduate work permits where, following the graduation from a Canadian post-secondary institution, international students may receive a maximum 3-year work permit.

General processing times for work permits ³

The timeline for securing a work permit depends on the category of work permit and the associated process and procedure designated for the occupation and the foreign national. The table below represents the time it generally takes the government to render a decision

following the submission on an application.

Work permit (filed outside of Canada)	4-50 weeks (minimum)
Work permit (filed inside Canada)	60 days - 165 days (minimum)
Work permit (International Experience Canada)	8-14 weeks (minimum)
LMIA (high wage)	40 business days (average)
LMIA (Global Talent Stream)	13 business days (average)
LMIA (low wage)	50 business days (average)

Despite the above average processing times, employers that are striving to attract top skilled talent from outside of Canada can benefit from priority two-week processing times under the Global Skills Strategy. International Experience Canada applicants, however, are not eligible for this enhanced processing time.

It should be noted that both Global Skills Strategy **two-week processing** and regular processing times are subject to fluctuation and can be impacted by world events. For instance, the combined impact of the COVID-19 pandemic and the events in Afghanistan and Ukraine continue to result in considerable processing delays and backlogs.

Footnotes:

² LMIA exempt work permits are also exempt from the CAQ requirements in Quebec.

³ As of August 2023, subject to fluctuation without prior notice

3. What are the primary options available for unsponsored work and investment in your jurisdiction?

The options to work in Canada on a temporary basis without first having a job offer are very limited. "Open work permit" options are generally permitted for reasons of public policy and for individuals that are already in Canada on valid temporary status. They predominantly include:

- International students that have graduated from a Canadian designated learning institution.
- Family members of foreign skilled workers including spouses, common-law partners and in some situations, children
- Spouses and common-law partners of international students

- Youth participating in special programs
- Certain Individuals that have applied for permanent residence in Canada.
- H-1B Visa Holder Work Permits that were introduced to keep highly skilled workers in North America - this program has currently met the cap of 10,000 applicants as of July 17, 2023.

On the other hand, outside of work permits there are a multitude of options to apply for permanent residence independently under the Economic Classes outlined in the *Immigration and Refugee Protection Regulations*. There are two primary groupings under the Economic Class: Skilled Workers and Business Immigrants.

As the totality of the options are beyond the scope of this chapter, only the primary unsponsored work, entrepreneur, and investment streams are summarized below. As the Federal Skilled Trades Program and the prevalent Canadian Experience Class generally require job offers from Canadian employers and/or qualifying Canadian work experience, they are not described.

Skilled Workers

The Express Entry application management system serves as a gateway to permanent residence for skilled workers overseas or in Canada and manages applications under the Federal Skilled Worker Program, the Federal Skilled Trades Program, and the Canadian Experience Class. Provinces and territories can also recruit candidates from Express Entry through their respective programs to help meet regional labour market objectives.

Before a foreign national can create a profile in the Express Entry system they must:

- Take an approved language test
- Determine the National Occupational Classification (NOC) code⁴ for past work experience

From there, foreign nationals that meet the criteria for at least one of the immigration classes will be placed into a pool of candidates and ranked according to the Comprehensive Ranking System⁵ (CRS), which is generally based on a candidate's education, work experience, age, and language ability in English and/or French. The highest scoring individuals will receive an Invitation to Apply (ITA) for permanent residence in Canada either through a federal, provincial, or territorial program. They will have 60 days to submit their application or the ITA will lapse. Complete applications are generally processed within six months or less. The relevant permanent residence categories under which a

foreign national may be drawn from the Express Entry pool are described as follows.

Express Entry rounds of invitations: Category-based selection

Category-based rounds invite candidates in the Express Entry pool eligible for a specific category established by the Minister of Immigration Refugees and Citizenship to meet specific economic goals. Criteria for category-based selection may include ability to communicate in a specific official language, work experience in a specific occupation, education etc.

The categories chosen for 2023 include:

- French-language proficiency
- Healthcare occupations
- Science, Technology, Engineering and Math (STEM) occupations
- Trade occupations
- Transport occupations
- Agriculture and agri-food occupations

Federal Skilled Workers

This program is for skilled workers with foreign work experience who want to live outside the province of Quebec and immigrate to Canada permanently. The following minimum criteria must be met:

- At least one year of continuous full-time (or equivalent part-time) work experience in a NOC (TEER 0,1, 2 or 3) within the last ten years
- Minimum language score in all four abilities
- Completed educational credential assessment showing the education is equal to a completed certificate, diploma or degree from a Canadian secondary institution or a post-secondary institution
- Proof of sufficient settlement funds, unless exempt

If all the minimum criteria have been met, the application is then assessed against six selection factors (age, education, work experience, arranged employment, language, and adaptability) that form part of a 100-point grid. The current pass mark is 67 points.

Provincial Nominees

As mentioned in question 1, provincial and territorial programs (PNP's) have their own unique immigration categories intended explicitly to meet regional labour market needs. There are more than 50 distinctive immigration streams that span Canada's provinces and

territories, providing ample immigration options for foreign nationals that wish to immigrate or start a business in Canada, depending on individual circumstances.

Foreign nationals that want to permanently settle in a particular province must first apply to the province to determine if the province's eligibility requirements are met and, if successful, the application is then forwarded to the federal government for final admissibility determination and decision.

Provinces and territories can also recruit candidates from Express Entry (described above) through their respective programs to help meet local labour market needs. In this scenario, once a province selects a candidate from the pool and issues a certificate of nomination, the individual's points score in Express Entry is increased significantly, virtually guaranteeing the issuance of an ITA on the federal government's next round of invitations.

Of further note, when a province or territory selects an applicant, a nomination certificate is issued in the name of the foreign national. Under the IMP, this certificate can then be used to apply for a temporary work permit while the permanent residence application continues to process. Spouses of the principal applicant can also apply for a work permit and children can commence attending school.

Most PNPs have entrepreneur or investor streams with various requirements and selection criteria. General requirements are minimum net worth and investment requirements, business ownership or active management experience minimum net worth, and language abilities. A summary of the available options per province or territory is provided in the chart below.

Alberta	Self-employed Farmer Stream	International Graduate Entrepreneur Stream	Foreign Graduate Start-up Visa Stream
British Columbia	Entrepreneur stream	Regional Pilot Stream	
Manitoba	Entrepreneur Pathway	Farm Investor Pathway	
New Brunswick	Business Stream (Entrepreneur)		
Newfoundland & Labrador	International Entrepreneur	International Graduate Entrepreneur	
Northwest Territories	Business Stream (currently paused)		
Prince Edward Island	Work Permit Stream		
Yukon	Business Program		
Nova-Scotia	Entrepreneur Stream	International Graduate Entrepreneur	
Ontario	Entrepreneur Stream	Human Capital Priorities Stream (job offer not required)	
Saskatchewan	International Skilled Worker (job offer not required)	International Skilled Worker: Occupation-In-Demand (job offer not required)	Entrepreneur International Graduate Entrepreneur Farm Owner/Operator

Quebec Permanent Residence

The Arrima application management system serves as a gateway to permanent residence for skilled workers overseas or in Quebec and manages applications under the Quebec Skilled Worker Program, the Quebec Experience Program, as well as several other permanent residence pilot programs, amongst others.

Before a foreign national can create a profile in Arrima, they should:

- Take an approved language test
- Determine the National Occupational Classification (NOC) code for past work experience

From there, foreign nationals that meet the criteria for at least one of the immigration classes can create a declaration of interest in Arrima and will be placed in a pool of candidates.

Upon receipt of an invitation to apply, foreign nationals must provide their documents and further information to MIFI for review. Upon approval of their application, foreign nationals will receive a Certificate of Selection of Quebec (CSQ). Using the CSQ, foreign nationals will be able to apply for permanent residence with the Federal authorities.

Quebec Skilled Workers

This program is for skilled workers who want to live and work in Quebec permanently. The program has a specific points grid under which several factors are taken into consideration such as: age, work experience, education, language, etc. Although points are given for English, additional points are given for French, as Quebec is primarily a French speaking province.

Upon entering the Arrima system, declarations of interest are ranked against a second points grid. The MIFI makes draws in Arrima using several different selection factors, per example: a validated employment offer in Quebec, the NOC code of their employment, their Arrima score, etc.

Quebec Experience Program

This program is for temporary foreign workers and Quebec graduates wishing to stay permanently in Quebec.

This program has two streams with specific qualification requirements:

- **Temporary foreign workers**
- Under this stream, foreign nationals must reside in Quebec on eligible temporary worker

status, prove intermediate French skills in speaking and listening and must have at least two years of Quebec-based full-time skilled work in the three years preceding submission.

- **Quebec graduates**
- Under this stream, foreign nationals must be working in Quebec, have graduated in Quebec and obtained an eligible education credential, prove intermediate French skills in speaking and listening and must have full-time skilled work experience in Quebec of at least 12 months.

Permanent Immigration Pilot Program for workers in the artificial intelligence, information technologies and visual effects sector

This pilot program has come into effect on April 22, 2021 and will close on January 1, 2026. It allows foreign nationals to settle in Quebec permanently if they are:

- A foreign worker or a Quebec graduate in artificial intelligence or,
- A foreign worker in information technologies and visual effects

This program allows for the selection of 600 candidates per year: 300 Quebec graduates and temporary workers in artificial intelligence and 300 foreign workers in information technologies and visual effects.

It is important to note that this program allows a limited number of applicants to qualify without French knowledge, as each stream has two profiles: Francophone and Francization.

As of February 16, 2023, the maximum applicant quota in the Francization profile for the Information technologies and visual effects stream has been reached.

Business Immigrants:

Federal Start-up visa program:

Initially introduced as a pilot program, this program was made permanent in 2018 and is touted as the most prolific and fastest investor pathways to Canadian permanent residence. It is intended to attract immigrant entrepreneurs to open innovative businesses that will create employment opportunities for Canadians and compete on a global scale.

To qualify under this program, a foreign national must develop a feasible business plan that will ultimately secure a commitment from a designated Canadian angel investor group, venture capital fund, or incubator to

jointly launch the venture in Canada. As the entrepreneur, the foreign national must be actively involved in the management of the Canadian enterprise and own at least 10 per cent of the voting shares. Note that the program allows for the consideration of up to five (5) applicants under a single start-up business proposal. Each applicant can be classified as either “essential” or “non-essential” in the business proposal at the discretion of the applicants and the designated organization.

If these requirements are satisfied, a letter of support or commitment certificate is issued by the sponsoring group which will then trigger the immigration process. Although processing of the permanent residence application typically took 12 to 18 months, recent processing times are at 37 months. However, it is possible to apply for a temporary work permit to enter Canada and start building the business as soon as the letter of support or commitment certificate is issued. Accompanying spouses can also obtain a temporary open work permit and dependent children can commence attending school in Canada.

In addition to the business requirements, foreign nationals must score at least a Canadian Language Benchmark (CLB) of 5 in all four categories (reading, writing, listening, and speaking) for either English or French and have a minimum threshold of money to support themselves and the number of family members accompanying them to Canada.

Quebec Investor Program:

The federal immigration investor program was made redundant several years ago, however, in the French-speaking province of Quebec, separate and distinct rules apply to foreign nationals who intend to permanently settle in the province. As a result of the Canada-Quebec Accord, Quebec enjoys the sole responsibility for setting its own immigration policies with minimal input at the federal level.

Consequently, a desirable passive Immigrant Investor Program continues to exist in Quebec, although the program is currently suspended. The Government of Quebec is revising and updating the program to strengthen its objectives around the integration and francization of immigrants.

Quebec Entrepreneur Program:

This program has two streams enabling foreign nationals to immigration to Quebec to start and operate an innovative business with help from a support organization or start or acquire a business in Quebec.

Entrepreneur using the help of a support organization

- Applications under this stream can be submitted until December 31, 2023. There is no quota on the number of applications for this stream since all applicants must be able to show intermediate French skills in speaking and listening.
- Applicants under this stream must have obtained a service offer from a support organization such as a business accelerator, incubator, or a university entrepreneurship centre. A business plan must also be submitted, and applicants must qualify under the program’s selection grid, among other requirements.

Entrepreneur acquiring or starting a business

- Applications under this stream are currently on hold and it is not possible to apply under this stream now.

Quebec Self-Employed Worker Program:

This program currently only allows foreign nationals with intermediate French skills in speaking and listening to apply, until December 31, 2023.

This program has several conditions, such as proof of a minimal net worth of at least CAD\$100,000, proof of at least two years of self-employment experience, a start-up deposit with a financial institution and qualification under the program’s points grid.

Federal Self-employed Persons

This federal program is more limited than it may sound. It allows foreign nationals to immigrate to Canada if they have at least two years of “relevant experience” in cultural activities or athletics within the last five years before the date of application and ending on the day IRCC renders a decision. “Relevant experience” for a self-employed person under this program means that the individual has taken part in cultural or athletic activities at a world-class level or has been self-employed in the cultural or athletic activities. The applicant is further assessed against five selection factors (experience, education, age, language ability, and adaptability) that form part of a 100-point grid. The current pass mark is 35 points. Current processing times are 50 months.

Footnotes:

⁴ The NOC is developed by ESDC in partnership with Statistics Canada and is Canada’s national system for

describing occupations. For the complete matrix, go to <https://noc.esdc.gc.ca/Structure/Matrix/000e9b8170d945b7a7b6e0ecd4625357>

⁵ For the CRS Criteria under Express Entry, go to <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/eligibility/criteria-comprehensive-ranking-system/grid.html>

4. What are the requirements for becoming a sponsor of employment-based migrants and what are the role and reporting duties of sponsors?

Both the Temporary Foreign Worker Program (TFWP) and the International Mobility Program (IMP) enable Canadian employers to hire foreign workers. Participating employers leveraging either program face a myriad of compliance-related obligations for employing foreign nationals on Canadian soil and must abide by the terms set out in an Offer of Employment submitted through an Employer Portal account with IRCC or in an approved Labour Market Impact Assessment (LMIA).

Employers are also obligated to directly provide temporary foreign workers with the most recent worker's rights information in their official language of choosing (English or French) on or before their first day of work and this information must be posted in an accessible location for all Temporary Foreign Workers for the duration of their employment in an accessible location (such as a break room or company website/intranet).

The cornerstone of upholding immigration compliance in Canada is employer compliance inspections which serve to protect temporary foreign workers from abuse and exploitation and to protect the integrity of the Canadian labour market. An employer may be inspected at any time within six years of a work permit being issued, including any mandatory isolation or quarantine period.

There are three ways an employer can be selected for inspection:

- there is a reason to suspect non-compliance
- previous history of non-compliance
- random selection
- a worker is or was subject to an order or rule under the Emergencies Act or the Quarantine Act
- a communicable disease is found at a worksite

Inspections can occur on-site or virtually at any time

during a period of six years beginning on the first day of a foreign worker's employment. For new employers, inspections can only occur once the foreign worker has arrived in Canada and a work permit has been issued. During an inspection, employers are required to submit documents to demonstrate their compliance with program conditions.

Generally, both TFWP and IMP employers are required to:

remain actively engaged in the business in respect of which the offer of employment was made

- make reasonable efforts to provide a workplace that is free of abuse, including physical, sexual, psychological, or financial abuse.
- comply with all applicable federal and provincial laws that regulate employment, including the recruitment of employees in the province that the foreign national works
- provide the foreign worker with employment in the same occupation as set out in the offer of employment and with wages and working conditions that are substantially the same as, but not less favourable than, those set out in that offer
- retain all relevant records that demonstrate compliance for a period of six years
- inform authorities of any changes in TFW conditions, unless exempt

TFWP specific obligations

As discussed, the TFWP is concentrated around the Canadian labour market and ensuring that the approval to fill the position with a temporary foreign worker result in a positive or neutral impact on the Canadian labour market. Consequently, employers that applied for and obtained a positive LMIA application must:

- retain all documents used to support the application for a minimum of six years beginning on the foreign worker's first day of work.
- fulfill the commitments made in the LMIA application, decision, and Annex, as agreed, such as:
 - create or retain jobs for Canadians
 - hire or train Canadians
 - develop skills and knowledge for the benefit of Canadians
 - transfer skills and knowledge to Canadians
- demonstrate efforts to hire and/or train Canadians or permanent residents if this was mentioned in the initial LMIA application.

- verify and validate that the information provided in the LMIA application is accurate.
- provide adequate housing, if applicable; and
- review and adjust (if necessary) the foreign worker's wage after 12 months of employment to ensure the worker continues to receive the prevailing wage rate of the occupation and work location where the foreign worker is employed.

Transition Plan for high-wage temporary foreign workers

If employers are applying for a LMIA for a high wage position, they must also prepare and submit a well-thought-out and clear transition plan, unless exempt, to demarcate various commitments to reduce reliance on foreign workers and transition to a Canadian workforce over time. The Transition Plan requirement asks the employer to provide either:

- three distinct activities to recruit, retain, or train Canadians and one additional activity to target underrepresented groups: or
- one activity to facilitate the permanent residence of the foreign worker

The contents of the Transition Plan are subject to verification should the employer submit future LMIA applications for the same occupation in the same location or upon inspection to verify compliance. An employer must therefore always be able to furnish proof that it has conducted the activities it specifically agreed to.

Labour Market Benefit Plan under the Global Talent Stream

The Global Talent Stream ("GTS") is a specialized and prolific LMIA under the TFWP that provides employers with priority access to the highest specialized and skilled global talent and in-demand STEM occupations. Employers benefit from this stream because there is no requirement to test the Canadian labour market prior to submitting the application, as is required under the regular LMIA process. Like the Transition Plan, employers that apply to hire foreign workers under the GTS must submit a Labour Market Benefit Plan (LMBP) that details the employer's commitment to create activities that will positively impact the labour market through the creation of jobs, skills investments and training for the benefit of Canadians. The commitments made in the LMBP are divided into mandatory and complementary benefits and must be dissimilar. Complementary benefits may also include enhanced company performance or implementing best practices or policies for the Canadian workforce. Commitments to increase diversity in the

workplace are encouraged.

By using the GTS, employers agree to monitor and track the benefits and activities that they have committed to. Annual progress reviews with the ESDC LMBP Review Team are required to evaluate the company's performance against the commitments made. The annual progress review is separate and apart from all compliance-related requirements that exist generally in law and under the TFWP. In the event an employer fails to make "reasonable efforts" to satisfy its LMBP commitments within the timeframe, the employer may receive a negative decision on future applications to the GTS for a period of two years. Like regular LMIAs under the TFWP, GTS employers must retain all documents to satisfy the "reasonable efforts" standard of review.

5. Are applications filed electronically, or paper base? Is a physical visa/work permit document issued or is an electronic approval issued?

Applications can either be applied for electronically or by paper. Consular applications are typically required to be sent through online submission, unless they meet one of the exemptions to be filed via paper/mail. Temporary status documents, including work permits, are issued, and printed on paper at a port of entry or through an inland Case Processing Centre. At the time of writing, temporary status documents are not electronic.

Since the coronavirus pandemic, IRCC digitized citizenship tests and moved citizenship ceremonies online. IRCC's Confirmation of Permanent Residence process was also transferred online, eliminating the former in-person interview procedure.

In early 2021, IRCC further launched an online permanent residence application portal for select "non-Express Entry" applications with plans to integrate and phase more paper-based programs over time.

6. Is an in-person attendance/interview required as part of the visa/work permit application process? Is an individual required to enrol their biometrics (digital photo, fingerprint scan) as part of the visa/work permit process?

While IRCC has the discretionary authority to interview an applicant for any type of application to enter or remain in Canada, most visa and work permit applications are decided in writing or in person following an examination at the port of entry.

Biometrics

The collection of biometrics, including fingerprints and photographs, is mandatory for all foreign nationals between the ages of 14 and 79 who are applying for temporary or permanent residence, unless exempt. A biometric fee must be paid at the time an application is submitted and biometrics must be provided before the application is processed. They are only required once every 10 years.

Biometrics are not required for:

- US nationals that are applying for work or study permit, or a temporary resident permit.
- diplomats and officials traveling on official business.
- US visa holders transiting through Canada.
- Visa-exempt foreign nationals who require an electronic travel authorization and seek to enter or remain in Canada as visitors.
- Green card holders only seeking to enter Canada as visitors.
- refugee claimants or protected persons that have already provided biometrics and are applying for a study or work permit; and
- temporary resident applicants who have a valid biometric enrolment on file.

7. What persons qualify as dependants? Can dependants work based on their dependant visa status? Are there any restrictions?

A foreign worker may be accompanied in Canada by a spouse or common-law partner and dependent children. Family members that are not included as dependents in this instance are parents, grandparents, siblings, and other relatives.

Both opposite and same-sex spouses and common-law partners are included in Canadian immigration law. Common-law partners are defined as those that have been living in a conjugal relationship for a period of at least one year. Under the IMP's public policy provisions, spouses, or common-law partners of skilled foreign workers in Canada can apply for and obtain an open work permit without first having an offer of employment in Canada. This public policy does not extend to working age dependent children.

Children, biological and adopted, qualify as dependants if they are under 22 years of age and do not have a spouse or partner. Children aged 22 or older also qualify as dependants if they have depended on their parents for financial support since before they were 22 **and**

cannot financially support themselves because of a mental or physical condition.

Minor dependent children of a parent that possesses a skilled temporary work or study permit are authorized to attend preschool, primary, or secondary school without a study permit. Age of majority dependent children, while still considered a dependent under Canadian immigration law, must apply for a study permits on their own merit and satisfy the eligibility requirements at the post-secondary education levels. Working age dependent children must similarly apply for and obtain a work permit on their own merit.

8. What is the general time frame and processes for obtaining permanent residence and citizenship for sponsored and unsponsored business-related immigration?

See question 3 for unsponsored immigration, Express Entry, and question 1 for federal, provincial, and territorial shared jurisdiction process for immigration in Canada.

Citizenship

Generally, for those wanting to obtain Canadian citizenship by naturalization, foreign nationals must first apply for and obtain permanent resident status in Canada. To be eligible to apply for a citizenship grant, the individual must be a permanent resident that has physically resided in Canada for three out of the last five years preceding the date of the citizenship application. Time spent in temporary status (i.e. work permit) can also be counted as one half day, up to a maximum of 365 days. This means that an individual that worked in Canada on a temporary work permit for at least two years, who subsequently acquired permanent resident status, can generally qualify to apply for citizenship two years after becoming a permanent resident of Canada, assuming the individual has not left Canada during the timeframe. Individuals must have also filed taxes with Canada Revenue Agency, pass a citizenship test, and demonstrate language skills. General processing times for a citizenship grant are currently 26 months.

The current average processing times for permanent residence applications are:

Canadian Experience Class (Express Entry)	4 months
Federal Skilled Workers (Express Entry)	7 months
Federal Skilled Trades (Express Entry)	46 months
Provincial Nominees	9-18 month
Skilled Workers (Quebec)	20 months
Atlantic Immigration Program	5 months

LMIA for permanent residence

In addition to LMIA for temporary work permit purposes, employers can equally apply for an LMIA for permanent higher-skilled positions to support an individual's permanent residence application. Having an LMIA will improve a candidate's rank in the Express Entry pool by providing an additional 50 to 200 points, thereby increasing the chance of being invited to apply for permanent residence.

Employment-based permanent residence (primary)

Canadian Experience Class

This category is one of three federal programs that are managed through Express Entry. To be eligible to apply under this category, foreign nationals must satisfy the following eligibility requirements:

- at least one year of skilled work experience (Training, Education, Experience and Responsibility – TEER level 0,1, 2 or 3), or part-time equivalent, in Canada in the last three years preceding the date of application.
- work experience in Canada was gained while working under lawful temporary resident status (i.e., work permit).
- minimum language proficiency in all four abilities (reading, writing, speaking, listening); and
- plan to live outside the province of Quebec.

Federal Skilled Trades Program

This category is one of three federal programs that are managed through Express Entry. A job offer is not required; however, a foreign national candidate can increase his or her rank profile in the Express Entry pool by having one. To be eligible to apply under this program, foreign nationals must:

- meet minimum language proficiency in all four abilities (reading, writing, speaking, listening);
- have at least two years of full-time paid work

experience in a skilled trade, as designated by IRCC, in the last five years preceding the date of application.

- have a valid job offer for at least one year of full-time employment or have a certificate of qualification issued by a provincial, territorial, or federal authority, as applicable to the trade regulatory body in Canada.
- satisfy the job requirements and duties for that skilled trade in the NOC.
- show proof of sufficient funds to settle in Canada, unless exempt; and
- plan to live outside the province of Quebec.

9. What productive type activities can a business visitor undertake and for how long?

business activities in Canada, without directly entering the labour market. Therefore, to be eligible to enter Canada as a business visitor, a foreign national's source of remuneration must be outside of Canada, together with the principal place of business and accrual of profits.

All business visitors must undergo examination either at a port-of-entry or a consular visa office, if applying for a temporary resident visa.

Permissible activities generally include:

- attending business meetings, such as to discuss operations at an international level.
- attending meetings as a member of a board of directors
- participating in intra-company training
- supervising the installation of specialized machinery purchased or leased outside Canada.
- observing and gathering information regarding site operations.
- buying Canadian goods or services for a foreign business or government.
- taking orders for goods or services.
- attending meetings, conferences, conventions, or trade fairs; and
- attending training by a Canadian company that has sold you equipment or services.

Global Skills Strategy – Short term work

Under Canada's Global Skills Strategy and based on public policy considerations, highly skilled foreign nationals seeking to work in Canada for short periods of time are permitted to do so without the need to apply for work authorization. This work permit exemption can be

granted under the following parameters:

- work to be performed is in an occupation listed in skill type 0 (management) or 1 in the National Occupational Classification (NOC)
- the exemption is granted for 15 consecutive days if the foreign national was not granted an exemption in the last six months
- the exemption is granted for 30 consecutive days if the foreign national was not granted an exemption in the last 12 months

This policy also extends to highly specialized foreign researchers coming to produce world class research for a period of up to 120 consecutive days, after having received an offer from a publicly funded Canadian degree granting institution or its affiliate research institution.

10. Can remote work be carried out from your country?

“Work” is defined under the Immigration and Refugee Protection Regulations as “an activity for which wages are paid or commissions earned, or that is in direct competition with the activities of Canadian citizens or permanent residents in the Canadian labour market.”

Typically, a foreign national requires a work permit to undertake “work” however certain activities, such as long-distance work (by telephone or internet) by a temporary resident whose employer is outside of Canada and who is remunerated from outside Canada, do not require work authorization.

If remote work is generally incidental to the reason that a foreign national seeks entry to Canada, and the work does not compete directly with Canadians in the Canadian labour market, remote work is permissible. The foreign national must not be supporting any operation, function, or project in Canada. If the primary purpose is to enter Canada for full-time remote work for an extended period, authorization to work remotely should be sought from immigration authorities.

11. Are there any productive work / revenue generating activities that can be carried out as a visitor and without the need for a work permit? If so, what activities and for how long?

Visitors are generally not allowed to partake in work/revenue generating activities while in Canada on visitor status. Per question 9, business visitors can

partake in some productive work/revenue generating activities as noted in the list above, but they must provide their main source of income and their primary place of business is outside of Canada.

12. Is there a remote work or nomad visa category in your jurisdiction? If not, how likely is it that this will be implemented in future?

Per government guidance, a digital nomad is defined as a person who can perform their job remotely from anywhere in the world. Under current Canadian immigration rules, a digital nomad only needs visitor status to relocate to Canada for up to six months at a time while they perform their job remotely for a foreign employer (see question 10). IRCC has announced that it will collaborate with public and private stakeholders in the months ahead to determine whether additional policies to attract digital nomads to Canada would be beneficial.

13. How easy is it to switch visa categories/jobs/employer from within country? And/or if made redundant, can the individual regularise their stay in another capacity and what is the timeframe allowable?

It is legally permissible for a foreign national to apply to change the conditions of their temporary stay from within Canada, including for a change in employer, if the general terms and conditions of their stay have generally been respected and maintained. Working or studying without authorization, for example, could result in enforcement action and would prohibit the issuance of a new work permit.

As there is no legal onus on an individual or an employer to cancel a work permit should employment cease, a temporary foreign worker is permitted to lawfully remain in Canada for the validity period of the work permit, despite the preceding date of their layoff or termination. The work permit, although still valid, may not be used to engage in employment with any other employer. The foreign national must first apply for and obtain the new work permit before employment can commence.

As a COVID-19 measure, a temporary public policy was introduced to allow temporary foreign workers in Canada to change jobs before a final decision is made on a new work permit application (once they received interim approval under the public policy).

If new employment with a new employer is not forthcoming before the work permit expires, it is possible to apply to change temporary status from worker to student or visitor as long as there are sufficient funds to support the individual's stay in Canada and the individual continues to demonstrate that they will leave Canada at the end of the period authorized for their stay. Depending on the nationality of the individual, it may not be possible to change temporary status from visitor back to a worker without departing Canada. During the COVID-19 pandemic, another temporary public policy was issued to allow visitors to apply for a work permit without having to leave Canada and this temporary measure remains in effect until February 28, 2025.

14. What common issues or concerns may arise for employers under business immigration in your jurisdiction?

See question 21 regarding employer immigration compliance.

15. Is there a fast track process / certification that business can obtain to expedite visa / permit processing?

Generally, there is no certification process or trusted employer status that can be applied for and obtained by Canadian employers who wish to hire temporary foreign workers through either the IMP or the TFWP.

However, Canada's Global Skills Strategy (GSS) allows for two-week processing for skilled workers applying under LMIA exempt work permit categories. For certain high skilled positions that require an LMIA, the Global Talent Stream (GTS) allows for priority and fast track processing for employers wanting to hire unique and specialized global talent to scale up and grow the business in Canada (Category A), as well as highly skilled individuals for in-demand occupations (Category B). At the time of writing, the list currently includes 26 occupations primarily in Science, Technology, Engineering, and Mathematics. Under GTS, ESDC commits to processing LMIAs submitted in 10 business days 80 percent of the time. In addition, IRCC commits to processing work permits for highly skilled workers within two weeks or less 80 percent of the time. Open work permits for spouses and study permits for children are also processed in two weeks' time, when applicable. It should be noted these processing times are not always adhered to.

16. What are the recent trends, both political and social (including COVID-19 pandemic), that have impacted your jurisdiction with regard to immigration policy and law? How will this shape the immigration landscape moving forward?

In Budget 2023: A Made-in-Canada Plan: Strong Middle Class, Affordable Economy, Healthy Future⁶ the Government of Canada recognized that immigration is a significant driver of economic growth and helps to build a stronger economy. Budget 2023 commits to a stronger immigration system through:

- Safe and Efficient Citizenship Applications
- Supporting Travel to Canada
- Supporting Legal Aid for Asylum Seekers

Underpinning these commitments, Budget 2023 proposes to provide \$10 million over five years, starting in 2023-24, with \$14.6 million in remaining amortization for Immigration, Refugees and Citizenship Canada and the Royal Canadian Mounted Police to implement biometrics, which will help expedite the processing of citizenship applications.

Temporary Resident to Permanent Resident Pathway

To support its 465,000 new immigrant targets for 2023.⁷ In 2021, IRCC launched a new temporary to permanent residence pathway for up to 90,000 essential workers and international graduates already in Canada. The time-limited temporary resident to permanent resident pathway, which targeted recent international graduates and essential workers in areas such as healthcare, received over 106,000 applications. Dedicated streams for French-speaking and bilingual temporary residents were included, whereby an unlimited number of applications were accepted. Through this pathway, approximately 24,000 new permanent residents were admitted in 2021 and an additional 18,000 were admitted by the end of March 2022. A further 32,000 admissions are planned for 2023.

Canada's Response to the Situation in Afghanistan

The Government of Canada exceeded goals to resettle at least 40,000 Afghan refugees in Canada. Through this special program approximately 5,000 Afghans will be resettled through the permanent residence pathway for extended family members or former interpreters and 18,000 Afghans will be resettled via the special immigration program for Afghan nationals who closely assisted Canadian efforts in Afghanistan. Both Economic Mobility Pathways and humanitarian programs are being

explored to support Afghans coming to Canada.

Canada's Response to the Russian Invasion of Ukraine

Canada had implemented measures to support those affected by the Russian invasion of Ukraine in numerous ways including the priority processing of Canada-Ukraine Authorization for Emergency Travel (CUAET) applications and increasing the newcomer services for Ukrainians arriving in Canada. CUAET Applications were open to Ukrainian nationals and family members of Ukrainian nationals including spouses, common law partners, dependent children etc until July 15, 2023.

More recently, the Canadian government has launched pathways focused on reuniting families and supporting Ukrainians. Starting October 2023, a new pathway will provide permanent residence to those who have fled Ukraine and want to stay in Canada. In order to qualify, Ukrainian nationals must be in Canada with temporary resident status and have one or more family members in Canada. Those who are eligible include Ukrainian spouses, common-law partners, parents, grandparents, siblings and children or grandchildren of a Canadian citizen or permanent resident.

Notes

The COVID-19 pandemic, situation in Afghanistan and invasion of Ukraine have all steered Canadian immigration policy towards focusing on how to leverage and add onto Canada's immigration options and to help provide support to individuals who have faced hardship.

Footnotes:

⁶ Retrieved from:
<https://www.budget.canada.ca/2023/pdf/budget-2023-en.pdf>

⁷ "Notice – Supplementary Information for the 2023-2025 Immigration Levels Plan". Government of Canada. Accessed August 25, 2023, from <https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/supplementary-immigration-levels-2023-2025.html>

17. How is the COVID-19 pandemic shaping the immigration landscape in your jurisdiction?

As of March 17, 2023: the Government of Canada announced the removal of COVID-19 entry restrictions, as well as testing, quarantine, and isolation requirements for anyone entering Canada.⁸ Travellers no

longer have to submit public health information through the ArriveCAN app or website, provide proof of vaccination, undergo pre-entry or on-arrival testing, or carry out COVID-19 related quarantine or isolation. Transport Canada also removed existing travel requirements. Travellers will no longer be required to undergo health checks for travel on air and rail, or wear masks on planes and trains.

The government guidance however remains that individuals should not travel if they have symptoms of COVID-19. If travellers become sick while travelling, and are still sick when they arrive in Canada, they should inform a flight attendant, cruise staff, or a border services officer upon arrival. They may then be referred to a quarantine officer who will decide whether the traveller needs further medical assessment as COVID-19 remains one of many communicable diseases listed in the Quarantine Act. Travellers must continue to follow any provincial or territorial COVID-19 requirements as applicable.

Footnotes: ⁸ COVID-19: Travel, testing and borders, online: <https://travel.gc.ca/travel-covid>

18. Are there any anticipated changes in the immigration laws of your jurisdiction?

One of the areas that has seen the most significant changes during the Covid-19 pandemic is the Temporary Foreign Worker (TFW) program. The TFW program allows foreign nationals to work in Canada on a temporary basis to fill jobs that Canadians are unavailable or unwilling to take. As a result of Covid-19 related challenges in the Canadian labour market and processing delays, Labour Market Impact Assessments (LMIAs) are now typically valid for 18 months, an increase from 9 months (Prior to COVID-19, LMIA's were valid for only 6 months). The maximum duration of employment for High-Wage and Global Talent Streams workers has also been extended from two years to three years.

In addition to changes in the TFW program, the Canadian government has committed to instituting policy changes and increasing investment in a number of other areas. Budget 2023 proposed to expand eligibility for the Electronic Travel Authorization Program to low-risk, trusted travellers from additional visa required countries, to facilitate easier travel to Canada for nationals of these countries. On 6 June 2023, the Canadian government announced the addition of 13 new countries to the electronic travel authorization (eTA) program.⁹

The government in Budget 2023 also announced additional funding to improve services at the border with

a \$137 million investment in the Canada Border Services Agency. The government also committed to speeding up immigration application processing by hiring 1,250 new staff and investing in more efficient technology. The government invested \$135 million in 2022-23 to address immigration application backlogs. This helped in the processing of 5.2 million applications for permanent residence, temporary residence, and citizenship in 2022—double the number of applications processed in 2021.¹⁰

In order to support the ongoing employer needs in the current labour market, the Canadian and Quebec governments have also come to an agreement to provide certain Quebec skilled workers who have a valid CSQ with an open work permit under the International Mobility Program Plus (IMP+).

This program allows applicants to obtain an open work permit for a maximum period of three years. Every year, a total of 7000 skilled workers may obtain this open work permit. In 2022, a cap of 14,700 work permits has been established under this stream.

Footnotes:

⁹ Eligible travellers from 13 more countries now qualify for visa-free travel to Canada, online:
<https://www.canada.ca/en/immigration-refugees-citizenship/news/2023/06/eligible-travellers-from-13more-countries-now-qualify-for-visa-free-travel-to-canada.html>

¹⁰ Budget 2023, online:
<https://www.budget.canada.ca/2023/pdf/budget-2023-en.pdf>

19. How do you see technology developing and evolving to support immigration process in the future?

See question 5 for recent technology development in immigration processes. As mentioned in question 16, Canada is committed to delivering a government-wide digital platform. This suggests using AI, cyber, and cloud to uplift the human experience, transforming service delivery and digitizing both front-end and back-end operations. It is hoped that IRCC will move to an immigrant-centric digital experience in the years ahead.

20. What are the Right to Work requirements in your jurisdiction?

Canada does not have a formal Right to Work process in place between foreign nationals, employers, and

immigration authorities. However, Canadian employers and their foreign workers have a legal obligation to ensure compliance with all terms and conditions of their stay and the respective offers of employment and LMIA's, if applicable. To this end, it is recommended that employers review and clear a foreign worker's IRCC status document prior to employment and monitor and track all terms and conditions of employment during employment to ensure compliance obligations are fulfilled.

21. What are the types of civil and criminal penalties employers may face for non-compliance with immigration rules i.e. employing an individual who does not have the Right to Work?

Employers of foreign workers in Canada face a myriad of penal, pecuniary, and reputational risks and consequences for immigration non-compliance. See question 4 for additional context.

Under section 91 of the Immigration and Refugee Protection Act, it is illegal for compensated business stakeholders, such as HR professionals or travel agencies, to directly or indirectly represent or advise a person with respect to immigration proceedings, unless the person is a lawyer in good standing with a Canadian province or territory or is a certified by the Immigration Consultants of Canada Regulatory Council as an immigration consultant.

Non-compliant employers and/or associated persons that contravene this federal law are liable on conviction on indictment to a fine of not more than \$100,000, or to imprisonment for a term of not more than two years, or to both; or on summary conviction, to a fine of not more than \$20,000 or to imprisonment for a term of not more than six months, or to both.

Compensated business stakeholders, such as HR professionals and travel agencies, may not:

- Complete application forms, such as work permits and visa applications on behalf of foreign workers
- Guide a foreign national on how to select the best method of entry to Canada
- Explain or advise on a foreign national's immigration options
- Represent a foreign national in an immigration application or proceeding
- Communicate with government officials on a foreign national's behalf
- Complete and/or submit immigration forms on

a foreign national's behalf.

Under section 124 of the Immigration and Refugee Protection Act, it is illegal for any person to employ a foreign national in a capacity in which the foreign national is not authorized.

Non-compliant employers and/or associated persons that contravene this federal law are liable on conviction on indictment to a fine of not more than \$50,000, or to imprisonment for a term of not more than two years, or to both; or on summary conviction, to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both.

Under section 126 of the Immigration and Refugee Protection Act, it is illegal for any person to assist with misrepresenting or withholding material facts that could induce an error in the administration of the Act. For example, if a business unit manager instructs a foreign national to seek entry to Canada as a tourist knowing that work activities will be performed on a project, the employer may be in contravention of this law.

Under section 127 of the Immigration and Refugee Protection Act, it is illegal to directly or indirectly misrepresent material facts that could induce an error in the Act, or to communicate false or misleading information or declarations with intent to induce or deter immigration to Canada. Non-compliant employers and/or associated persons that contravene these sections under federal law are liable on conviction on indictment to a fine of not more than \$100,000, or to imprisonment for a term of not more than five years, or to both; or on summary conviction, to a fine of not more than \$50,000 or to imprisonment for a term of not more than two years, or to both.

Under section 131 of the Immigration and Refugee Protection Act, it is illegal for any person to contravene section 124 by knowingly employing a foreign national in a position while not authorized. This means that the employer is responsible for the actions of its employees. If another person in the organization instructs another person to work in Canada while not specifically authorized, that individual may be personally liable to the same penalties.

Recent Regulatory Amendments- Inspections and Penalties for Violations

On September 26, 2022, regulatory amendments to the Immigration and Refugee Protection Regulations came into force which enhance employer responsibilities under both the Temporary Foreign Worker Program ("TFWP") and the International Mobility Program ("IMP"). The TFWP program includes Labour Market Impact

Assessment ("LMIA")-based work permit applications, while the IMP includes LMIA-exempt work permit applications. The primary objective of the amendments is to strengthen protections for temporary foreign workers ("TFWs") to prevent potential mistreatment or abuse during their period of employment in Canada.

Under these regulations, Employers may be inspected based on a reason to suspect non-compliance (e.g. a complaint or tip was received), if there is a history of non-compliance, and/or by random selection. IRCC and ESDC will inspect employers to verify compliance with regulatory conditions under the IMP and TFWP. Inspections can entail document review and verification, on-site visits, employer interviews, and temporary foreign worker or other interviews (with consent only).

Employers who are non-compliant with the regulatory conditions are subject to serious consequences, including: warning letters, administrative monetary penalties (ranging from \$500 to \$100 000 per violation up to a maximum of \$1 million), suspension of processing of LMIA applications when non-compliance is suspected, and temporary or permanent ineligibility to access the programs. Additionally, employers found to be non-compliant may have their names posted on a publicly available Government of Canada website. Investigators can take certain factors into consideration when assessing the consequences such as previous non-compliance, the size of the employer, and the severity of the violation. Violations are assessed based on three classifications: Type A, B, and C, with C being the most severe.

As such, it is important that employers consider these amendments and their impacts, in addition to ensuring compliance with all other provincial and territorial employment and recruitment laws.

22. Are there any quota and / or labour market testing requirements in your jurisdiction and if so, what do they involve?

Unless a foreign national is eligible and qualifies for a temporary work permit under the International Mobility Program (IMP) or other work permit types exempt from labour market testing, Canadian employers that want to employ a foreign worker must apply for and obtain a Labour Market Impact Assessment (LMIA) from Employment Social Development Canada (ESDC) before the foreign national can apply for a work permit from Immigration Refugees and Citizenship Canada (IRCC).

Unless exempt, ESDC considers a myriad of factors when assessing the employment offer, including an employer's

efforts to hire Canadians or permanent residents for the position. The onus lies on the employer to establish that there were no qualified and suitable Canadians for the role, or that Canadian applicants could not be trained for the position in the short term.

Recruitment and advertising requirements (TFWP)

Prior to applying for a LMIA, employers must advertise the job for a minimum of four consecutive weeks within the three-month period prior to applying for an LMIA, unless exempt. Employers are expected to undertake at least three methods of recruitment efforts to hire Canadians, with the National Job Bank being one of the mandatory methods. The other two methods must be consistent with the occupation, and one of the two must be national in scope. Further, at least one of the three recruitment activities must be ongoing, without a break in continuity, until the date a decision is rendered on the LMIA application.

During processing, Service Canada may reach out to ask clarifying questions or request more information on the company, role, and the recruitment before rendering a decision on the LMIA application.

23. Are there quota requirements, restrictions or a cap on the numbers of foreign nationals hired per company in your jurisdiction?

Until recently, there were caps for low wage and seasonal positions through the Temporary Foreign Worker Program that were causing serious issues for businesses seeking to fill labour shortages. On April 4, 2022, the government of Canada announced changes to the Temporary Foreign Worker Program to combat these shortages. To address seasonal peaks, there will no longer be a limit to the number of low-wage positions that employers in seasonal industries, including fish and seafood processing, can fill through the TFW Program. This change makes permanent the Seasonal Cap Exemption that has been in force since 2015.

For seven sectors with demonstrated labour shortages, including Accommodation and Food Services, employers will be allowed to hire up to 30% of their workforce through the TFW Program for low-wage positions for one year. All other employers will be allowed to hire up to 20% of their workforce through the TFW Program for low-wage positions, an increase from the former 10% cap for many employers.

The Government also announced that it will end the current policy that automatically refuses LMIA

applications for low-wage occupations in the Accommodation and Food Services and Retail Trade sectors in regions with an unemployment rate of 6% or higher.

24. Are there any exit procedures in your jurisdiction, if an individual is departing permanently?

At the time of writing, there is no legal requirement to cancel a work permit with immigration authorities (IRCC) when employment ends. Similarly, there are no exit procedures if an individual repatriates or departs Canada permanently. However, if an employer obtained an LMIA as the basis for an individual's work permit, ESDC should be notified.

25. Are there any requirements for medical certificates or vaccinations for your jurisdiction?

Medical examination requirements:

Medical examination requirements vary depending on whether a foreign national seeks to enter Canada for a temporary or a permanent basis. A foreign national generally does not need a medical examination if the plan is to stay in the country for six months or less, however a medical examination is always required if the individual plans to work in certain jobs such as jobs that bring them into close contact with people such as:

- workers in health-care settings
- clinical laboratory workers
- patient attendants in nursing and geriatric homes
- medical students admitted to Canada to attend university
- medical electives and physicians on short-term locums
- workers in primary or secondary school settings, or workers in child-care settings
- domestics
- workers who give in-home care to children, the elderly and the disabled
- day nursery employees and
- other similar jobs; and
- agricultural workers that have visited or lived in a designated country for more than six months during the past year.

If the plan is to stay in Canada for longer than six months, a medical examination is required if the individual has resided or sojourned in a medically

designated country or territory for at least six months in a row within the year immediately preceding the date of prospective entry to Canada.

In addition, all foreign nationals that have a physical or mental disorder that would require social and/or health services, other than medication, during the proposed stay in Canada are required to disclose this to immigration authorities on their application to enter Canada. Depending on the situation, a medical examination may be required.

For permanent residence, medical examination requirements are mandatory for all foreign nationals and their family members, whether accompanying the principal applicant to Canada or not.

26. Are there any language requirements for your jurisdiction?

TFW's in certain occupations (NOCs) are required to demonstrate language ability, while applicants applying for work permits from certain countries also need to demonstrate language ability (in English and/or French) to meet their country-specific requirements. Under Canada's Express Entry System (Permanent Residence), individuals need to meet a language test threshold called the Canadian Language Benchmark (CLB) to qualify under the Canadian Experience Class. Many Provincial Nominee Program (PNP) applicants also are required to undergo mandatory language testing and meet a minimum standard of Canadian Language Benchmark before obtaining a provincial nomination certificate. For permanent residence in Quebec, intermediate knowledge of French may be required to qualify for some programs.

27. What are the government costs associated with a typical employment based visa?

GOVERNMENT PROCESSING FEES: EMPLOYER-SPECIFIC WORK PERMITS

LMIA-EXEMPT		LMIA-BASED	
TYPE	FEE (CAD)	TYPE	FEE (CAD)
Offer of Employment	\$230	LMIA Processing	\$1,000 (per position)
Work Permit Processing	\$155	Work Permit Processing	\$155
Biometrics	\$85	Biometrics	\$85

28. Is a local contract of employment required in order to obtain a work based visa or work permit? Are there salary or other thresholds to be met?

A genuine offer of employment for work to be performed in Canada is generally required to support all work permit applications, with limited exceptions. For work permits under both the TFWP and IMP, on or before the first day of employment, Employers are required to provide TFWs with an employment agreement signed by both employer and foreign national that outlines the occupation, wages, and working conditions in their chosen official language of Canada (English or French).

For employers using the IMP, they must attest (via the Employer Portal) that they have already provided the temporary foreign worker with a formal employment agreement under the same terms as the offer of employment. Employers must secure the signature of the worker on the employment agreement before providing the offer of employment to IRCC.

TFWP employers, in their LMIA submission, must commit to conclude an employment agreement with the temporary foreign worker and to provide them with a signed copy on or before the first day of work. ESDC will also now assess as stand-alone requirements whether a worker has been offered the prevailing wage for the occupation and whether the worker's employment is likely to adversely affect the settlement of any labour dispute in progress. Failure to pass either of these criteria may result in an LMIA application refusal.

29. What are the maximum periods of stay for individuals on an employment based visa / work permit?

Temporary work permits are typically issued for an initial one to three-year period, with renewals in one to three-year increments, depending on the work permit category.

There are very few limitations or time caps on the length of time a skilled temporary foreign worker can remain working in Canada. There is generally no limit on the number of extensions, if the foreign worker continues to comply with the legal requirements and satisfy immigration authorities that they will leave Canada at the end of the period authorized for their stay.

For intra-company transferees, however, the total period of stay may not exceed five years for specialized knowledge workers and seven years for executives and senior managers. In these cases, a minimum period of

one year must pass following the time cap before the foreign national is eligible to apply for a new work permit under these categories.

30. Does your jurisdiction allow dual nationality?

Yes. Dual citizenship is legal in Canada. Canadians are allowed to take foreign citizenship while keeping their Canadian citizenship.

31. What are the most positive aspects of your immigration system compared to the rest of the world?

Canada's openness to immigration is one of our nation's greatest competitive advantages. In February 2022, Immigration, Refugees and Citizenship Canada released details of an "Immigration Levels Plan" for 2022-2024. Canada aims to welcome 431,645 new permanent residents in 2022, 447,055 in 2023 and 451,000 in 2024. In the 2023 budget, the government re-affirmed its commitment to welcome 500,000 new permanent residents each year by 2025.¹¹ Of note, the Federal High Skilled Economic category (comprised of the Federal Skilled Worker Program, Federal Skilled Trades Program, and Canadian Experience Class) will see the largest increases year over year, with a target of 75,750 planned permanent resident admissions in 2023, and 111,500 in 2024.¹²

The government of Canada also unveiled significant investments to facilitate the processing and settlement of new permanent residents to Canada, committing \$2.1 billion over five years and \$317.6 million ongoing in new funding. The budget laid out additional investments for temporary residence applications, announcing a \$385.7 million investment over five years, and \$86.5 million ongoing for Immigration, Refugees and Citizenship Canada, the Canada Border Services Agency, and the Canadian Security Intelligence Service to deal with the volume of applications. The government has also earmarked \$187.3 million over five years, and \$37.2 million ongoing, for Immigration, Refugees and Citizenship Canada to improve its technology and service offerings.¹³

The Canadian government also recently unveiled Canada's first-ever Tech Talent Strategy to help companies access top talent that will fuel innovation and push the development of emerging technologies in an increasingly competitive global marketplace. As part of Canada's first-ever Tech Talent Strategy, the government has announced the introduction of a new Innovation Stream by the end of 2023 to attract highly talented individuals to apply for work permits for up to five years. It also recently launched a streamlined work permit for H-1B specialty occupation visa holders in the U.S.¹⁴ The government has also committed to meeting its two-week processing standard for work permits under the existing Global Skills Strategy, a popular program for businesses across many tech and non-tech industries.¹⁵

The recent measures put forward by the government will enhance Canada's reputation of having a transparent, forward-thinking immigration system that can facilitate the hiring of foreign workers quickly and efficiently. With these bold initiatives and investments, we have the greatest opportunity to attract and retain global talent and simultaneously meet our humanitarian objectives.

Footnotes:

¹¹ Budget 2023, online: <https://www.budget.canada.ca/2023/pdf/budget-2023-en.pdf>

¹² "Notice - Supplementary Information for the 2022-2024 Immigration Levels Plan", online: <https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/supplementary-immigration-levels-2022-2024.html>

¹³ Budget 2022, online: <https://budget.gc.ca/2022/report-rapport/chap4-en.html>

¹⁴ This program was so popular that it hit the government's 10k quota in less than 48 hours, so there is likely to be an expansion of the program to meet demand.

¹⁵ Minister Fraser launches Canada's first-ever Tech Talent Strategy at Collision 2023, online: <https://www.canada.ca/en/immigration-refugees-citizenship/news/2023/06/minister-fraser-launches-canadas-first-ever-tech-talent-strategy-at-collision-2023.html>

Contributors

Kristine Anne Dela Cruz
Director, Immigration Lawyer

kridelacruz@dgilaw.com



Alexander Toope
Senior Associate, Immigration Lawyer

atoope@dgilaw.com



Maria Parau
Senior Associate, Immigration Lawyer

mparau@dgilaw.com



Marvah Farooqi
Associate, Immigration Lawyer

mafarooqi@dgilaw.com

