

Immigration Solutions for Staffing Issues

Presented by: Michelle Bowlen
Selkirk Law Corporation

Overview

- ▶ Types of Work Permits
- ▶ Labour Market Impact Assessment (LMIA)
- ▶ Employer Sponsorship options to retain employees
 - ▶ Express Entry
 - ▶ BC Provincial Nominee Program
- ▶ Employment Law Considerations
- ▶ Implied Status
- ▶ How to make the programs work for you?

Work Permits

- ▶ Open Work Permits:
 - ▶ Holder can work for any employer in most positions
 - ▶ E.g. IEC Working Holiday, Bridging Open Work Permit, Spouses
- ▶ Closed/ Employer-Specific Work Permits
 - ▶ Holder can only work for the employer listed on the permit
 - ▶ LMIA
 - ▶ LMIA-exemptions (Employer Compliance Fee \$230)
 - ▶ BC PNP Work Permit Support Letter
 - ▶ IEC Young Professionals
 - ▶ Francophone Program
 - ▶ International Mobility Programs
 - ▶ NAFTA, Colombia, Chile, Peru, South Korea, European Union,

Labour Market Impact Assessment (LMIA)

- ▶ Application to Service Canada for permission to hire a temporary foreign worker
- ▶ Extensive advertising and proof of recruitment required
 - ▶ 3 different places: one must be the Canadian Job Bank, including Job Match
 - ▶ Low wage positions must target underrepresented groups
 - ▶ Must advertise the median wage as listed on the Canada Job Bank
- ▶ Application filing fee \$1,000; processing time up to 6 months
- ▶ **Employer-specific work permit for 1-2 years**
- ▶ High wage positions (top 10%) and identified tech occupations get priority processing
- ▶ Refusal To Process Policy: cashiers, clerks, food counter attendants, kitchen support staff, hotel attendants, porters, cleaners, janitors, construction and landscaping labourers

LMIA Employer Compliance Regime

- ▶ Employer must notify Service Canada of any changes in the employment conditions
- ▶ Employer must keep all proof of recruitment, including advertisements, resumes, interview notes, etc. for 6 years
- ▶ Employer must fulfill all the conditions of the LMIA, including working hours, wages etc.
- ▶ New legislation in BC to protect foreign workers, will require employers to register with the provincial government and will provide temporary foreign workers with additional protection from non-compliant employers
- ▶ Must comply with the Employment Standards Act of BC, WorkSafeBC
- ▶ 6 year requirement for compliance; can be audited at any time without notice

International Mobility Program

- ▶ Free trade agreements with a number of countries have provisions for the mobility of workers
- ▶ No advertising requirements
- ▶ Proof of job offer and proof that the applicant meets the requirements of the position
- ▶ Faster processing times, no processing fees
- ▶ **Employer-specific work permit**
- ▶ Hotel managers: NAFTA - US/Mexico, Chile, South Korea
- ▶ Chefs: Colombia, Peru

Permanent Residence: Express Entry

- ▶ A lottery program for economic immigration for individuals
- ▶ Candidate must meet the minimum requirements of one of the 3 immigration categories:
 - ▶ Federal Skilled Workers Program
 - ▶ Federal Skilled Trades Program
 - ▶ Canadian Experience Class
- ▶ 6 month processing time once application is submitted
- ▶ Employer assistance: LMIA based job offer (50 points), Skilled Trades workers can receive points for a job offer without an LMIA
- ▶ **Bridging Open Work Permit is available if application submitted before work permit expires**

BC Provincial Nominee Program (BC PNP)

- ▶ **Skilled Immigration:**
 - ▶ Employee needs a full time, indeterminate job offer from an eligible employer in a skilled occupation
 - ▶ Employee needs 2 years of directly related work experience
 - ▶ Meet minimum income requirements
 - ▶ If employee meets the requirements of Express Entry, can proceed with Express Entry BC - faster processing
- ▶ **Entry-Level, Semi-Skilled Workers:**
 - ▶ Tourism, hospitality, long-haul trucking industry
 - ▶ 9 consecutive months of full time work (30 hrs/wk)
 - ▶ Meet minimum income requirements
- ▶ **Nomination comes with a Work Permit Support Letter - Employer Specific work permit for the duration of processing**

Employer Eligibility

- ▶ Established and in good standing in BC with one of the following business structures:
 - ▶ incorporated in BC or extra-provincially incorporated,
 - ▶ registered limited liability partnership, or
 - ▶ eligible non-profit
- ▶ In operation for 1 year (2 for entry level, semi-skilled category)
- ▶ Have at least 3 full time (full-time equivalent) employees
- ▶ Have a history of good workplace and business practices
- ▶ Meet recruitment requirements* → not applicable if applicant is currently working in the position

Employment Law considerations

- ▶ Have a written contract with your employee
- ▶ Make sure there is a clause in the contract that makes it dependant on the employee obtaining/maintaining legal status to work in Canada
- ▶ Understand what your obligations are under the Employment Standards Act
 - ▶ Overtime, vacation pay, termination clauses
- ▶ Guaranteed hours of work

Authorization to Work and Implied Status

- ▶ Employers are required to verify the immigration status of workers
 - ▶ \$10,000-\$50,000 fines, and/or 6 months-2 years in prison for failing to do due diligence in ensuring employees have the proper work authorization
- ▶ If an applicant applies to extend their status, they are permitted to stay in Canada under the conditions of their expired permit until a decision is made on the new application.
- ▶ Request proof that the employee has applied to extend their status and request updates
- ▶ Keep a copy of employee's work permit for your records and keep track of when permits expire

How to make these programs work for you?

- ▶ Proactively seek candidates that may be interested in permanent residence, especially in the low-skilled hospitality and tourism positions
- ▶ Start early in the process and offer your employee financial assistance to go through the process
- ▶ If you are going to sponsor your employee, ensure you have a plan. If your employee wants to be sponsored, ensure they have a plan
- ▶ Be sure of who you are hiring and what their credentials are
 - ▶ Employees and representatives

Questions & Comments

Michelle Bowlen, Lawyer
Selkirk Law Corporation
mbowlen@selkirklaw.ca
(250) 814-7576