

# Labour Shortages and Foreign Workers

By Nadine Landry

*Difficulties in recruiting skilled employees and the labour shortage in some sectors are currently a source of headaches for many businesses.*

*In this context, one solution may be to consider hiring foreign workers.*

*In a press release published in September 2007, the Fédération des chambres de commerce du Québec noted that migrant workers are an indispensable asset to the competitiveness of Quebec businesses. Unlike Canadian citizens and permanent residents, foreign persons are only authorized to work in Canada under certain conditions.*



## **Basic requirements: Canadian work permit and Quebec Certificate of Acceptance**

*The Canadian Immigration and Refugee Protection Regulations define “work” as an “activity for which wages are paid or commission is earned, or that is in direct competition with the activities of Canadian citizens or permanent residents in the Canadian labour market.”*

This definition of work seems to be broader in scope than what would be encompassed by a labour or employment contract alone. As a result, a foreign person wishing to act as a consultant or contractor (self-employed worker) is not, by virtue of that fact, relieved of the obligation to obtain a work permit.

Similarly, the payment outside Canada of compensation payable to a foreign person, or keeping such person’s name on a foreign subsidiary’s payroll, does not result in an exemption from the obligation to comply with the provisions on work permits where this person is performing his or her work in Canada.

The legislation does not only require the foreign person to hold a work permit, but also prohibits the employer from hiring a foreigner without one. In case of a violation, both are liable to a fine or prison sentence.



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As immigration falls under both federal and provincial jurisdiction, foreign workers must not only obtain a federal work permit, but also a Certificate of Acceptance from Quebec (CAQ).

### **Preliminary stage in obtaining a Canadian work permit**

The purpose of the federal immigration legislation is essentially to protect the Canadian employment market by giving priority to domestic workforce, i.e. citizens and permanent residents.

Accordingly, at the first stage of the process for obtaining a work permit, the onus is on the employer to supply the necessary information enabling the competent authorities to render an opinion on the relevant labour market.

When issuing a work permit, the Canadian immigration agent relies on the opinion given by Human Resources and Social Development Canada (HRSDC) concerning the impact of the hiring of a foreign person in Canada. The task of this federal department is to determine whether the hiring of the foreign worker will have a positive, neutral or negative effect (in the latter case, no permit is issued) on the local employment market.

It is then up to the employer to show that the proposed hiring will have no negative impact. For example, by submitting a record of its recruitment efforts, the employer can show that it was impossible to recruit a Canadian citizen or permanent resident. It might also argue that the worker's arrival will have a positive impact through a knowledge transfer or the creation of new jobs.

However, there is a simplified process. In October 2007, the authorities published a list of professions in which there is a clear and well-known shortage, including a number of professions in the fields of finance, engineering (engineers and technicians) and health. Thus, where an employer wishes to hire a foreign person for a position appearing on this list, it is not required to undertake a long and exhaustive process of publishing job offers before submitting a foreign worker application.

Where an application is for a foreign person to work in Quebec, HRSDC's decision is made jointly with the provincial authorities. Then, following the review of the requisite documents showing his or her qualifications and payment of the required fee, the provincial authorities will issue a CAQ to the worker

### **Exemptions from Canadian work permit**

A work permit is not mandatory for certain categories of persons. However, these exemptions must be interpreted narrowly.

We are referring in particular to business persons visiting Canada to participate in activities relating to international trade, who do not enter the Canadian labour market directly. Other such categories include diplomats, certain performing artists, athletes and coaches coming to Canada to participate in competitions, and some journalists and speakers at conferences (provided the activity does not last more than five days), etc.

### **Exemptions from HRSDC confirmation**

In some situations, both HRSDC's process for confirming the job offer and the obtaining of the CAQ can be bypassed. Fortunately, the terms and conditions for the exemptions from the CAQ are modeled on those applying to work permits and HRSDC confirmations. One of the most frequent exemptions is the intra-company transfer. This exemption covers cases in which an employee is transferred from a foreign company to a Canadian company. There are two categories: executives and managers, on the one hand, and employees with specialized knowledge, on the other. The transferred employee must however have been employed full-time for at least one year in the previous three years with a company that is related to the Canadian company, either as a parent, subsidiary, branch or affiliate.

Certain international agreements also facilitate the transfer of foreign workers. The North American Free Trade Agreement (NAFTA), for example, allows certain professionals who are citizens of the United States or Mexico to obtain a 12-month renewable work permit. There are some 63 professions on the list, including engineers, scientific technicians, accountants, management consultants, etc.

## Permanent workers

Quebec's economic immigration objectives give priority to skilled workers. This is reflected in the points system used to qualify for a Selection Certificate-the first stage of the application for permanent residency for a person wishing to settle in Quebec-which is based on such criteria as education, work experience, age, knowledge of languages and adaptability (including the spouse's profile).

Additional points are awarded according to the area of training. The list of these areas, which is to be updated about once a year to adjust to the needs of the labour market, thereby makes it easier for workers to qualify where they possess a diploma in the areas in which the labour shortage is most severe.

Applicants are also awarded additional points where they have received an offer of employment from a Quebec employer which has been validated by the provincial authorities. The criteria for the validation process in the context of an offer of permanent employment are similar to those applicable to the hiring of a temporary worker. However, only the provincial authorities are involved in the former, since this process assesses whether the worker qualifies for additional points under Quebec's selection grid.

## Processing times

Where employers must turn to foreign labour, they frequently have concerns about processing times. These times depend on several factors. In the case of a person who will be working in Quebec, the CAQ application and application for HRSDC approval are normally processed in a few weeks (approximately five to eight weeks in straightforward cases presenting no particular problem).

Furthermore, citizens from several countries are exempt from the visa requirement to enter Canada and may therefore submit their work permit application directly at a port of entry, i.e. at the airport or at the border station upon their arrival. For those requiring an entry visa, applications are processed by a Canadian embassy or a consulate abroad.

While a work permit application may entail processing delays of several weeks in countries such as Brazil or South Africa (where the worker and his or her family members must undergo a medical examination to obtain the entry visa and work permit), U.S. and Australian citizens, as well as citizens of most European Union countries, among others, can obtain a work permit in a very short time by going to the border or upon landing in Canada.

In addition, Citizenship and Immigration Canada has set up a specialized team which can grant a pre-approval for a work permit before the worker's arrival at the border in the categories exempted from HRSDC confirmation. This gives the worker a certain assurance of his or her eligibility and minimizes the waiting time at the border upon arrival.

Finally, given that the waiting period to obtain permanent residency ranges from a few weeks to several years, employers will often be interested in obtaining a temporary work permit covering the period during which the permanent residency application is being processed.

## Conclusion

Hiring a foreign worker involves certain procedures, but is not an excessively complex process. The authorities recognize that there is a shortage of skilled labour in certain fields and have created mechanisms to facilitate and accelerate the arrival of foreign workers. It is now up to businesses to use these tools to meet their needs.

Happy recruiting!

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