



Recruiting and Retaining Foreign Workers

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Working in Canada

Foreign nationals will generally require a work permit to “work” in Canada, with some exceptions (e.g., student workers, religious workers, diplomats, business visitors, etc.).

Definition of “work” [R2]

“Work” is defined in the Regulations as an activity for which wages are paid or commission is earned, or that competes directly with activities of Canadian citizens or permanent residents in the Canadian labour market.

“Wages or commission”

This includes salary or wages paid by an employer to an employee, remuneration or commission received for fulfilling a service contract, or any other situation where a foreign national receives payment for performing a service.

What is an activity that “competes directly”?

Officers should consider whether there is entry into the labour market. Questions to consider:

- Will they be doing an activity that a Canadian or permanent resident should really have an opportunity to do?
- Will they be engaging in a business activity that is competitive in the marketplace?

If the answer to either of these questions is ‘yes’, the foreign national intends to engage in a competitive activity, which would be considered “work”.

National Occupation Classification (NOC) System



- The NOC system is used by the government to classify occupations based on sector and skill level.
- Immigration programs will utilize NOCs to determine program requirements and assess applications.
- You can search the NOC system here: <https://noc.esdc.gc.ca>
- Each occupation gets a 5-digit code and associated TEER skill level
- High skilled: TEER 0, 1, 2, and 3
- Low skilled: TEER 4 and 5

National Occupation Classification (NOC) System



42201 – Social and community service workers

Social and community service workers administer and implement a variety of social assistance programs and community services, and assist clients to deal with personal and social problems. They are employed by social service and government agencies, mental health agencies, group homes, shelters, substance abuse centres, school boards, correctional facilities and other establishments.

Profile

Example titles

[Index of titles](#)

- Aboriginal outreach worker
- Addictions worker
- Child and youth worker
- Community development worker
- Community service worker
- Crisis intervention worker
- Developmental service worker
- Drop-in centre worker
- Family service worker
- Group home worker
- Income maintenance officer - social services
- Life skills instructor
- Mental health worker
- Rehabilitation worker - social services
- Social services worker
- Veteran services officer
- Welfare and compensation officer
- Women's shelter supervisor
- Youth worker

Inclusions

- Residential counsellor - group home

Breakdown summary

Broad occupational category

[4 - Occupations in education, law and social, community and government services](#)

TEER

2 - Occupations usually require a college diploma or apprenticeship training of two or more years; or supervisory occupations

Major group

[42 - Front-line public protection services and paraprofessional occupations in legal, social, community, education services](#)

Sub-major group

[422 - Paraprofessional occupations in legal, social, community and education services](#)

Minor group

[4220 - Paraprofessional occupations in legal, social, community and education services](#)

Version

NOC 2021 Version 1.0

National Occupation Classification (NOC) System



Main duties

This group performs some or all of the following duties:

- Review client background information, interview clients to obtain case history and prepare intake reports
- Assess clients' relevant skill strengths and needs
- Assist clients to sort out options and develop plans of action while providing necessary support and assistance
- Assess and investigate eligibility for social benefits
- Refer clients to other social services or assist clients in locating and utilizing community resources including legal, medical and financial assistance, housing, employment, transportation, day care and other services
- Counsel clients living in group homes and halfway houses, supervise their activities and assist in pre-release and release planning
- Participate in the selection and admission of clients to appropriate programs
- Implement life skills workshops, substance abuse treatment programs, behaviour management programs, youth services programs and other community and social service programs under the supervision of social services or health care professionals
- Meet with clients to assess their progress, give support and discuss any difficulties or problems
- Assist in evaluating the effectiveness of treatment programs by tracking clients' behavioural changes and responses to interventions
- Advise and aid recipients of social assistance and pensions
- Provide crisis intervention and emergency shelter services
- Implement and organize the delivery of specific services within the community
- Maintain contact with other social service agencies and health care providers involved with clients to provide information and obtain feedback on clients' overall progress
- Mobilise and coordinate volunteer resources and activities for a range of organizations such as human service agencies, health care facilities, arts and sports, etc.
- May maintain program statistics for purposes of evaluation and research
- May supervise social service support workers and volunteers.

National Occupation Classification (NOC) System



Employment requirements

- Completion of a college or university program in social work, child and youth care, psychology or other social science or health-related discipline is usually required.
- Previous work experience in a social service environment as a volunteer or in a support capacity may replace formal education requirements for some occupations in this unit group.
- Social service workers may be required to be a member of a provincial regulatory body in some provinces.

Additional information

- Progression to professional occupations in social services, such as family and marriage counsellors, social workers, and probation and parole officers, is possible with additional training and experience.

Exclusions

- Activities leader - seniors (in [54100 Program leaders and instructors in recreation, sport and fitness](#))
- Educational counsellors ([41320](#))
- Instructors of persons with disabilities ([42203](#))
- Managers in social, community and correctional services ([40030](#))
- Social workers ([41300](#))
- Therapists in counselling and related specialized therapies ([41301](#))

Types of Work Permits

1) **Open work permits:**

- Authorize holder to work for any employer in any occupation
- Don't list an employer, location, or occupation
- Individuals apply for open work permits directly
- No regulatory filing or application is required from an employer
- Only issued under International Mobility Program
- Examples include:
 - Post-graduation work permits
 - International experience / working holiday work permits
 - Spousal open work permits
 - Bridging open work permits
- Provide foreign workers & employers the most flexibility

Types of Work Permits

2) **Employer-specific work permits:**

- Only authorize holder to work for the specific employer, work location(s), and occupation listed
- Issued under the Temporary Foreign Worker Program and International Mobility Program
- “Employer sponsored” – Employer needs to submit LMIA application or regulatory filing (online offer of employment, or OOE) before individual can apply for work permit
- Employers will be subject to compliance obligations
- Most restricted form of work authorization

Types of Work Permits

3) **Occupation-specific work permits:**

- Authorize holder to work for any employer and in any location, but only in the occupation listed
- Currently only available for certain in-home childcare providers and in-home support workers (not very common)

Maintained Status

- With maintained status (formerly called “implied status”), a temporary resident can remain in Canada under the terms authorized by their previous permit, while awaiting processing of their new permit.
- Application for new permit must have been submitted before expiry of previous permit.
- For workers, applicant must remain physically in Canada while awaiting the processing of their new permit to maintain work authorization.
- “Maintained status” letters often issued by IRCC – language can be confusing: <https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/permit/temporary/extend/after-apply.html>



Maintained Status

- Best practice for employees on maintained status: Ask employee for proof every 1-2 weeks that they continue to have maintained status.
- Initially, they can show their old work permit, the acknowledgment of receipt letter from IRCC for their new work permit application (which will show the date they applied), and the fee receipt.
- Then, you can ask for a screenshot with a time and date stamp from their or their representative's IRCC account showing the application status so you can see if it's still pending processing.

Co-Op Work Permits

- Some international students who are here on study permits will also be issued a co-op work permit.
- These will list the name of the student's school, and specify that any work done pursuant to the co-op work permit must be authorized by the student's program of study, and cannot comprise more than 50% of their overall program.
- Importantly, these do NOT authorize all work. Ask the student for confirmation that their school has authorized the work they are seeking to do as part of their co-op program.

Work Permit Restrictions

- Work permits will list restrictions at the bottom.
- Common ones include:
 - “Not valid for employment in businesses related to the sex trade such as strip clubs, massage parlours, or escort services.” (blanket prohibition)
 - “Unless authorized, prohibited from attending any educational institution, or taking any academic, professional, or vocational training course.” (for workers who can’t study)
 - “Not authorized to work in any occupation/for any employer other than stated.” (for employer or occupation restricted work permits)
 - “Not authorized to work in Childcare, Primary/Secondary School teaching, Health Service Field occupations”
 - Requires medical exam and new work permit application to remove restriction

Work Permit Programs in Canada

Immigration, Refugees & Citizenship Canada facilitates foreign nationals seeking to work in Canada through the following programs:

- ***The Temporary Foreign Worker Program*** - Administered in partnership with Service Canada. Work authorization for foreign workers under the TFWP requires that employers first apply for Labour Market Impact Assessments, which generally require labour market testing to demonstrate that there is insufficient local labour.
- ***The International Mobility Program*** - Allows employers to hire foreign workers without an LMIA if their circumstances fit into one of the exemptions on the [LMIA exemption list](#).



Immigration, Refugees
and Citizenship Canada

Service
Canada

Temporary Foreign Worker Program

- Various LMIA categories:
 - High wage / low wage
 - PR LMIAs
 - Global Talent Stream
 - Seasonal Agricultural Worker Program
 - Agricultural Stream

- Employer must demonstrate that hiring foreign worker will result in neutral or positive effect on labour market.

- Can be demonstrated in various ways: Advertising, acknowledgment from Service Canada that there are shortages in certain occupations, referral from designated referral partner who can attest to unique and specialized nature of role, etc.

- Worker needs LMIA before they can obtain a work permit. There is a high level of employer involvement required, and a lot of compliance considerations for employers.

Temporary Foreign Worker Program

- New restrictions in place since Sept 26, 2024 for “low wage LMIA’s”
 - Certain LMIA applications for low-wage positions in census metropolitan areas with an unemployment rate of 6% or higher won't be processed
 - In most sectors, the current 20% cap on the proportion of low-wage positions is being reduced to 10%
 - In the construction and healthcare sectors, the cap on the proportion of low-wage positions is being reduced to 20%
 - The maximum employment duration for low-wage positions is being reduced from 2 years to 1 year

International Mobility Program

- Employer can skip the LMIA process if circumstances fit into one of the specified exemptions.
- Examples include: Intracompany transferees, professionals relocating pursuant to international agreements (i.e., CUSMA, CPTPP, CETA), programs based on public policies (i.e., Hong Kong recent graduates), international youth exchange programs, provincial nominees, significant benefit exemptions, spouses of some workers, spouses of some students, vulnerable workers, permanent residence applicants, etc.
- Instead of LMIA, employers must file online regulatory submission called Online Offer of Employment (“OOE”) through Employer Portal and pay \$230 regulatory filing fee before individual can apply for work permit.
- For employer-specific work permits issued under the IMP, employer involvement is still needed and there are similar employer compliance considerations.

Differences between TFWP & IMP



TEMPORARY FOREIGN WORKER PROGRAM

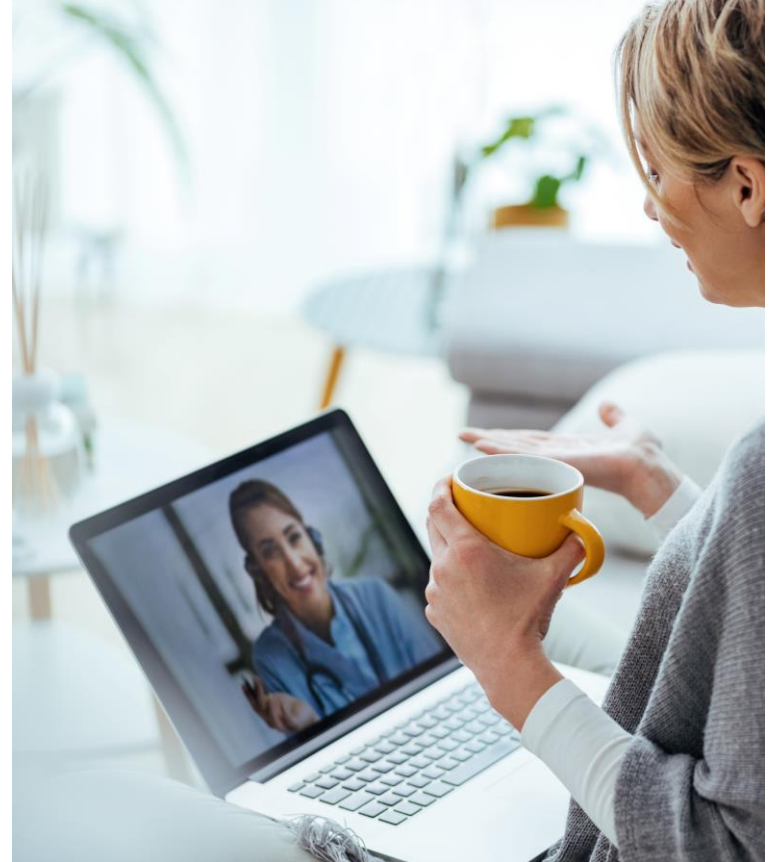
- Fills temporary labour needs that cannot be met locally. All streams subject to a labour market test to ensure Canadians have first chance for jobs, and that job offers are consistent with Canadian wages & working conditions.
- Two-step process: the employer must first obtain a positive LMIA from Service Canada before the foreign worker can apply for a work permit.
- Low-skilled workers represent majority of workers under the program, largely due to the high numbers of agricultural workers.
- Can only obtain employer-specific work permits through TFWP.
- Program requirements vary by stream.

INTERNATIONAL MOBILITY PROGRAM

- Advances Canada's broader economic, social, and cultural interests. All streams exempt from any labour market test due to the broader benefits they provide.
- Two step process: the employer must first submit their offer of employment and pay the employer compliance fee through the employer portal (except where an open work permit is required) before the foreign worker can apply for a work permit.
- Mix of high-skilled and low-skilled workers, depending on IMP stream.
- Can obtain employer-specific work permit or open work permit, depending on stream, in IMP.
- Program requirements vary by stream.

Work Without a Work Permit

- Some individuals can work without a work permit:
 - Remote workers
 - International students on study permits
 - Some visitors who have authorization



Work without a Work Permit

- Remote workers: “Digital Nomads” who are paid outside Canada and are working for employers based outside Canada.
 - They are not entering the Canadian labour market.

Work Without a Work Permit

- International students: Must be studying in a full-time program at a designated learning institutions at the post-secondary level, in a program that is at least 6 months long and leads to a degree, diploma, or certificate.
 - Can work up to 20 hours per week while class is in session, and full time during scheduled breaks (i.e., winter holiday, spring break, reading break, etc.). Is supposed to increase to 24 hours per week at some point this Fall.

Work Without a Work Permit

- Visitors with Work Authorization: Many different categories, but typically you will see:
 - Business visitors (aren't ordinarily working in Canada, are here for meetings, conferences, trade shows, training, etc.)
 - Religious workers
 - Some diplomats and their family
 - Some military personnel
 - News reporters, media crews
 - Public speakers
 - Athletes and performers
 - Study permit holders who are transitioning to work permits

Provincial Nomination Programs

- These operate at the provincial level. Requirements will vary by province.
- In BC, the process primarily targets high skilled workers with permanent job offers in BC.
- Employers must meet certain requirements, and applicants are typically selected based on a competitive scoring system.
- If approved, candidate receives provincial nomination certificate, which can be used to apply for an employer-specific work permit under the IMP, and apply for PR.
- <https://www.welcomebc.ca/immigrate-to-b-c/about-the-bc-provincial-nominee-program>



Introduction to the Compliance Regime



- Employers hiring foreign workers under both the Temporary Foreign Worker Program and International Mobility Program must adhere to certain compliance standards.
- Employer obligations are in addition to compliance requirements that workers themselves must meet, such as adhering to the terms of their work permits (e.g., hours, role, location).

Immigration Offences for Employers



Contravention of Act

124 (1) Every person commits an offence who

- (a)** contravenes a provision of this Act for which a penalty is not specifically provided or fails to comply with a condition or obligation imposed under this Act;
- (b)** escapes or attempts to escape from lawful custody or detention under this Act; or
- (c)** employs a foreign national in a capacity in which the foreign national is not authorized under this Act to be employed.

Deemed knowledge

(2) For the purposes of paragraph (1)(c), a person who fails to exercise due diligence to determine whether employment is authorized under this Act is deemed to know that it is not authorized.

Penalties

125 A person who commits an offence under subsection 124(1) is liable

- (a)** 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
- (b)** 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.

Employer Obligations

- **Active Engagement:** Employers must remain actively engaged in the business related to the offer (except private household employers, e.g. employers of caregivers).
- **Compliance with Employment Laws:** Employer must follow federal or provincial laws regarding employment and recruitment of employees, including foreign nationals.
- **Employment Terms:** Foreign workers must receive substantially the same wages, working conditions, and benefits as outlined in their work permit applications, and perform work in substantially the same occupation as approved in the permit.
- **Abuse-Free Workplace:** Employer must make reasonable efforts to ensure a workplace free of abuse.
- **Access to Health Care:** Employer must provide reasonable access to healthcare services if foreign nationals are injured or fall ill at work.

Employer Obligations

- **No Recruitment Fees:** Employers and recruiters must not charge or recover recruitment fees from the foreign national.
- **Rights Information:** On or before the first day of work, the employer must provide foreign nationals with information about their rights in Canada. The Employer must also make this information available at the location of work in both English and French
- **Signed Employment Contract:** Employers must provide a written employment contract to a temporary foreign worker before they begin their employment in Canada
- **Documentation and Retention:** Employers must maintain documents proving compliance for 6 years and ensure the accuracy of information provided during the work permit process.

Employer Compliance Assessments

- Compliance is assessed by **Service Canada** (TFWP) or **IRCC** (IMP) through inspections, which can occur **up to 6 years** after a foreign worker starts working.
- Inspections may be triggered by:
 - **Suspicion of non-compliance** (e.g., a former employee applying for a vulnerable worker permit)
 - **Third-party reports** of violations
 - **Employer's history** of non-compliance
 - **Random selection** for routine audits
- Compliance assessments can involve document review, on-site and virtual inspections, interviews, taking photographs, recording audio and video, examining computers and electronic devices, and do not require a warrant (unless entry into a private dwelling is needed)

Justifications for Non-Compliance

If an employer fails to demonstrate compliance, they are given an opportunity to provide justifications and evidence of corrective actions. Under the **IRPR**, potential justifications include:

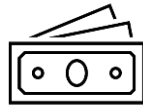
- **Change in Law or Collective Agreement**
 - A change in federal/provincial law or to a collective agreement (e.g., an increase in minimum wage or a reclassification of unionized foreign workers).
- **Economic Conditions**
 - Economic circumstances that affect all employees equally (e.g., pay cuts during a major recession).
- **Good Faith Errors**
 - A good faith error in interpretation or an unintentional administrative/accounting error, corrected by appropriate compensation (e.g., payroll errors leading to missed vacation pay).
- **Force Majeure**
 - Non-compliance due to force majeure events (e.g., a natural disaster destroying records).
- **Other Similar Circumstances**
 - Circumstances analogous to those listed above.



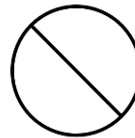
Consequences for Non-Compliance Findings



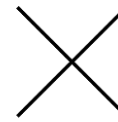
Warnings



Fines up to \$100,000 per violation up to a maximum of \$1 million per year



Temporary or permanent ban from the TFWP and/or IMP programs



Suspension or revocation of previously issued LMIA's



Publication of the employer on a federal government website with details regarding the violation

Best Practices for Employers



Centralizing responsibility for foreign workers, such that those responsible for overseeing foreign worker requirements (i.e., Human Resource departments) are always aware of and responsible for tracking enforceable commitments made to foreign workers.



Assessing compliance **before** a foreign worker's employment terms are changed, because breaches can arise from many different sources, including promotions that would result in a change of job code and salary raises.



Completing internal audits to review compensation and paystubs, which can lead to employers discovering and addressing non-compliance early, and setting up systems to avoid similar errors in the future.

Best Practices for Employers



Implementing document retention policies to keep relevant foreign worker records, such as copies of LMIA applications, proof of recruitment, employment agreements, and paystubs.



Developing and enforcing bullying and harassment policies and which can be used to show that an employer has taken steps to provide an abuse-free workplace.



Ensuring that **work permit conditions** for foreign workers are **reviewed, understood, and recorded**, as work permits often have restrictions regarding factors like the location of employment, which can impact the ability to transfer workers to different worksites.



Questions?

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