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**Immigration 101 – 2016 Edition**

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# Electronic Travel Authorization ("eTA")

- Electronic application for visa-exempt foreign nationals to fly or transit through Canada;
- Exceptions include U.S. citizens and travellers with a valid Canadian visa;
- Permanent residents cannot apply for an eTA;
- Supposed to be mandatory as of March 15, 2016, but it has been pushed back until September 29, 2016

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## Electronic Travel Authorization cont.

- Many technical glitches with the system;
- Costs \$7 and must be completed online, usually issued immediately so long as there are no admissibility issues;
- Application includes questions regarding prior entries, refusals, medical and criminal history, etc. – potential admissibility issues – be aware!

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# PR Card & eTA

- As of “fall 2016” eTAs or MEVs (Multiple Entry Visas) will be required for all foreign nationals flying into or transiting through Canada;
- Only U.S. citizens, valid PR card holders, or Canadian citizens with a valid Canadian passport will be exempt (dual citizens need CND passport);
- After “fall 2016” PRs whose PR cards have expired, will not be able to fly back into Canada, as they are not eligible for eTA or MEV, unless they apply for and receive a Travel Document issued by a Visa office overseas

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# Types of Applications

- Labour Market Impact Assessment
- Intra-Company Transfers
- NAFTA Professionals
- Francophone LMIA Exemption
- International Experience Class

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# Working In Canada

- “Work” - an activity for which remuneration is earned or that competes directly with activities of Canadian citizens or permanent residents in the Canadian labor market.
- Any foreign national who is “working” in Canada requires the proper immigration authorization ie work permit

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# Labour Market Impact Assessment (LMIA)

- Previously known as LMO (Labour Market Opinion)
- LMIA – Testing of the Canadian Labour Market to prove that there is no qualified Canadian to fill the position and that the hiring of the foreign worker will have a positive or neutral effect on the Canadian Labour Market
- A positive LMIA decision may be needed to support a work permit
- A positive LMIA decision may be needed to support permanent residence under Express Entry

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# Labour Market Impact Assessment (LMIA)

- \$1000 processing fee
- Determine the correct National Occupational Classification
- Foreign worker's salary must meet the prevailing wage
- Advertising required per EDSC's requirements (EDSC compliant ad, posted for min 30 days within 90 days before LMIA submitted, on Job Bank and at least 2 other venues)
- Processing times can range from 3 weeks – 3 months (10 day speed of service if paid more than \$45.19)
- Temporary vs. Permanent LMIA
- Strict Compliance Regime

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# Temporary v. Permanent LMIA

- Temporary LMIA
  - Max 2 year work permit
  - Must have Employer Transition Plan
  - Slightly less CRA documents (No T4 or 12 PD7As)
  - Ontario region processed in Toronto
  - Currently can give 600 points towards Express Entry when combined with a letter confirming permanent, indeterminate, full-time offer

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# Temporary v. Permanent LMIA

- Permanent LMIA
  - Can be used to support either a work permit + permanent residence or just permanent residence
  - Just permanent residence = no \$1000 fee
  - Must include 12 months of PD7As + T4 Summary
  - No Employer Transition Plan
  - 600 points for Express Entry

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# Labour Market Impact Assessment Employer Transition Plan Exemption

- Not required for Permanent LMIA
- Transition Plan – distinct activities to recruit/retain and/or train Canadians/PR + underrepresented groups (ie constant advertising, recruitment fairs, increase salary, training program, etc)
- Permanent, Indeterminate Full-Time Offer
- Limited Duration position
  - 1 – 120 days; or 120 days to max of 2 years (non recurring project-based position)
  - Time limited and where could not be expected to transition to Canadian employer

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# EDSC Compliant Advertising

- The advertisement must include the following information:
  - Company operating name
  - Business address
  - Title of position
  - Job duties Terms of employment (e.g. project based, permanent position)
  - Wage
  - Benefits package being offered (if applicable)
  - Location of work (local area, city or town)
  - Contact information
  - Skills requirements:
    - Education
    - Work experience

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# Labour Market Impact Assessment Advertising Exemption

- No advertising required for :
  - Digital Entertainment Software Engineer (NOC 2173)
  - Digital Artist (NOC 5241)
  - Positions must be within video gaming and digital animation/  
visual effects industries
  - Salary must be \$85,000+

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# Intra-Company Transfer (NAFTA or GATS)

- The intra-company transfer category permits international companies to temporarily transfer qualified employees to Canada for the purpose of improving management effectiveness, expanding Canadian exports, and enhancing competitiveness in overseas markets.
- Employed continuously in similar full-time position for at least 1 year in previous 3 years
  - Executives & Senior Managers (max 7 year work permit)
  - Functional Managers
  - Specialized Knowledge Workers (max 5 year work permit)
    - Proprietary and advanced knowledge
    - Prevailing wage

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# NAFTA Professionals

- NAFTA Professionals listed at Appendix 1603.D.1
- citizenship of the U.S. or Mexico;
- qualification to work in that profession (degree or certification in a related educational program);
- pre-arranged employment with a Canadian employer;
- provision of professional level services in the field of qualification as indicated in the Appendix; and
- compliance with existing immigration requirements for temporary entry.

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# International Experience Canada

- Program requirements vary by country of origin – random selection
- No guarantee of selection
  - Working Holiday
  - Young Professionals
    - Requires signed Offer of Employment + Employer must complete *Offer of Employment* through Employer Portal and pay \$230 fee
  - Co-Op to fulfill academic curriculum

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# LMIA Exemption – Francophone Workers Outside Quebec

- New as of June 1, 2016
- No details as of yet

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# Applying for a Work Permit

- Positive LMIA; or
- Proof of *Offer of Employment through Employer Portal (all LMIA exempt work permits except Open Work Permits)*

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# Employer Portal 101

## February – November 2015

### Forget What you Knew Then

- Feb 2015 – IRCC instituted a new \$230 Employer Compliance fee & “Offer of Employment” (IMM5802) application form for employers hiring foreign workers who are exempt from the LMIA process (ICT, NAFTA, IEC International Co-Op and Young Professionals, GATs)
- From Feb 2015 until Nov 2015, the fee was paid through IRCC’s Online Fee Payment Portal and the IMM5802 application form was submitted via email generating a receipt notification email
- Foreign worker would then present the \$230 fee payment receipt + the signed IMM5802 + the email confirming the application had been sent along with their work permit or work permit extension application

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# Employer Portal 101

## November 2015 - Present

- In November 2015, IRCC created the online Employer Portal – since that time the compliance fee and the “Offer of Employment” must be submitted directly through the Employer Portal

<http://www.cic.gc.ca/english/e-services/employer-portal.asp>

- Foreign workers must now present a copy of the \$230 fee payment receipt + a screenshot of the A# generated in the employment queue in the Employer Portal along with their work permit or work permit extension application, ideally, the foreign worker would have screenshots of each page of the application in case the system is down

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# Employer Portal

- Since its inception the Employer Portal is a system mired in technical glitches which can prevent users from creating an Employer Portal account or from submitting an Offer of Employment
- CBSA won't issue an LMI exempt work permit without proof of the submission of the Offer of Employment and payment of the \$230 compliance fee
- IRCC's solution = if you have technical difficulties, email them and they will give you special dispensation to submit the application using system used from Feb – Nov 2015 (emailing form + receipt for payment of \$230) – this can take 5+ days

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# Employer Portal

- If you are unable to submit the Offer of Employment and pay the fee through the Employer Portal and have not yet received IRCC approval and you have an urgent need for proof of the Employer Compliance fee payment, you may have no choice but to submit the application using the previously used IMM5802 form, paying the \$230 fee through the Online Fee Portal and submitting the application by email – CBSA is aware of the problems with the Employer Portal
- A copy of the Offer of Employment IMM5802 form can be found here:

<https://www.concordia.ca/content/dam/concordia/offices/sgs/docs/postdoc/Sample-Foreign-National-Exempt-from-a-Labour-Market-Impact-Assessment-Form.pdf>

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# Employer Portal More Tips & Tricks

- If you make a mistake on the Offer of Employment form or if any information changes, you must withdraw the Offer of Employment and submit a new Offer of Employment application along with a new payment of the \$230 Employer Compliance fee, this will generate a new A#
  - This must be done before a work permit is issued or if the work permit is refused
  - Withdrawn offers result in an automatic refund of the Employer Compliance fee

<http://www.cic.gc.ca/english/information/applications/guides/5802ETOC.asp>

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# Employer Compliance Regime

- Ontario Employment of Foreign Nationals Act
  - Provide workers with links to Ontario Ministry of Labour pamphlets
- CIC – Employer Compliance Inspections under the International Mobility Program (LMIA exempt)  
<http://www.cic.gc.ca/english/resources/tools/temp/work/permit/compliance.asp>
- EDSC – TFWP Compliance Regime  
<http://www.cic.gc.ca/english/resources/tools/temp/work/permit/compliance.asp>

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# Compliance Conditions - 1

- The employer must remain actively engaged in the business in respect of which the offer of employment was made [R209.2(1)(a)(i)].
- The employer must comply with the federal and provincial laws that regulate employment and the recruiting of employees in the province in which the foreign national works [R209.2(1)(a)(ii)].
- The employer must provide the foreign worker with employment in the same occupation as that 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 in the same offer [R209.2(1)(a)(iii)].

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# Compliance Conditions - 2

- The employer must make reasonable efforts to provide temporary foreign workers with a workplace that is free of abuse [R209.2(1)(a)(iv)] and, more specifically, free of
  - physical abuse, including assault and forcible confinement;
  - sexual abuse, including sexual contact without consent;
  - psychological abuse, including threats and intimidation; and
  - financial abuse, including fraud and extortion.
- The employer must be able to demonstrate that any information they provided in relation to an offer of employment under section R209.11 or on request of an officer during the associated work permit application [R200(1)(c)(ii.1)] was accurate [R209.2(1)(b)(i)].

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# Compliance Conditions - 3

- The employer must retain any document that relates to compliance with the imposed conditions [R209.2(1)(b)(ii)].

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# New Administrative Penalties

- Employers found non-compliant as a result of an inspection from a violation that occurred on or after December 1, 2015, could be subject to:
  - warnings;
  - administrative monetary penalties ranging from \$500 to \$100,000 per violation, up to a maximum of \$1 million over one year, per employer;
  - a ban of one, two, five or ten years, or permanent bans for the most serious violations;
  - the publication of their name and address on a public website with details of the violation(s) and/or consequence(s); and/or
  - the revocation of previously-issued LMIA's.

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# Start-Up Visa

- In 3 years - only 100 people including dependents
- Minimum investment of \$200,000 from designated Canadian venture-capital fund or \$75,000 from a designated angel investor
- CLB 5 in French or English
- Must hold at least 10% of voting rights and with designated organization must hold more than 50% of voting rights

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