

Avoiding the Immigration Blacklist and WRAPA Enforcement Overview

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with information provided courtesy of

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AVOIDING THE IMMIGRATION BLACKLIST

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With new immigration regulations coming into force on April 1, 2011, the criteria for assessing work permits have become more stringent. Foreign workers and their employers will now have to pass four new tests before a work permit will be issued. This is in addition to existing work permit criteria that was in place prior to April 1, 2011.

Test #1: Is the employer on the Employer Ineligibility website (the “Immigration Blacklist”)?

Beginning April 1, a list of employers who have violated certain immigration regulations will appear on the Immigration Blacklist. This list will be made public and employers on this list will be prohibited from hiring foreign workers for two years.

Test #2: Does the employee pass the “cumulative duration” test?

The new immigration regulations now impose a limit on the amount of time a foreign national can work in Canada. In general, if a foreign worker reaches works in Canada for four years, he or she will not be eligible to for another work permit for an additional four years.

While the four year limit is calculated cumulatively, gaps in employment (such as periods of unemployment, extended unpaid leave, maternity/parental leave, and medical leave that is not covered by employment contracts or agreements) will not count toward the cumulative duration.

The four year limit does not apply to all foreign workers. Some of the major exempt categories include executives, managers, professionals, and persons employed pursuant to international agreements (such as NAFTA).

These regulations are not retroactive. The four year calculation period begins on April 1, 2011 which means that the earliest date a foreign worker can reach the limit is April 1, 2015.

Test #3: Does the employer pass the “genuineness” test?

Another feature of the new regulations is that employers will now have to prove their job offers are genuine. In assessing “genuineness”, the following

will be considered:

1. Whether the employer is actively engaged in the business;
2. Whether the job being offered is consistent with the employer's employment needs;
3. Whether the employer can fulfill the terms and conditions of the job offer; and
4. Whether the employer, or any representative acting on behalf of the employer, is compliant with relevant federal-provincial/territorial employment and recruitment legislation.

The genuineness test will require employers to provide additional evidence on their business and business activities. Amongst the documents Citizenship and Immigration Canada will consider are Canada Revenue Agency filings.

Test #4: Does the employer pass the “substantially the same” test?

In cases where an employer hired a foreign worker in the two years prior to a new application being filed, an assessment will be made as to whether the employer provided “substantially the same” wages, working conditions and employment to their past or existing foreign workers as set out in the offers of employment to these foreign workers.

If it does not appear that the employer can pass the “substantially the same” test, employers can provide a “reasonable justification”. If a “reasonable justification” is accepted, this test will be passed. Examples of “reasonable justification” include:

1. Changes to federal or provincial laws;
2. Changes to a collective agreement;
3. A dramatic change in economic conditions;
4. Good faith employer error; and
5. An administrative accounting error.

Employers who do not pass the “substantially the same” test may be entered onto the Immigration Blacklist.

WRAPA Overview

(as of March 1, 2011)

(This information provided courtesy of Lori Parker, Manager,
Special Investigations Unit, Employment Standards, Phone: 945-7406)

- From April 2009 to March 2011
 - The Special Investigation Unit conducted analysis of nearly 2,800 employers for potential non-compliance related to foreign workers, resulting in 382 targeted for formal investigation (includes failure to report).
- The Special Investigation Unit WRAPA is tasked with:
 - processing licences under WRAPA
 - 77 applications to recruit foreign workers to date
 - 14 approved
 - investigating Business Registration Certificate applicants to ensure they have a good history of compliance with labour legislation, a bona fide job offer, and that an illegitimate recruiter is not involved in the recruitment process
 - investigating fraudulent and counterfeit Business Registration Certificate and licence applications
 - educating employers about their liability for fees charged to workers, should they dishonestly engage an unlicensed recruiter
 - encouraging employers engage in the recruitment process to hire qualified workers, who will stay and work in Manitoba
 - tracking and monitoring the well-being of foreign workers as they arrive in Manitoba and ensuring compliance with WRAPA by inspecting workplaces with foreign workers
 - recovering wages, air fare and inappropriate recruitment fees on behalf of foreign workers
 - gathering information and evidence for possible future prosecutions or withdrawal of licences/ineligibility for future licence or Business Registration Certificate