

FOREIGN WORKERS AND CANADIAN LABOUR DISPUTES

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Temporary foreign workers (“TFWs”) are non-Canadians or non-Canadian permanent residents permitted to work in Canada for a temporary duration accompanied by a work permit. If a labour dispute exists at a workplace, immigration law prohibits issuing work permits if the TFW’s intended work could adversely affect the settlement of the labour dispute or the employment of any person involved in the dispute.

As a result, Citizenship and Immigration Canada will refuse new permits to new TFWs during a labour dispute. The one exception to this rule is where all, or almost all, of the individuals on strike are TFWs and issuing a work permit would not contravene existing provincial legislation.

While new TFWs cannot enter Canada to work during a labour dispute, TFWs already in Canada when a labour dispute commences have different rights.

Can a TFW in Canada take part in a strike?

TFWs already in Canada can take part in lawfully authorized strikes. These workers are entitled to strike pay at the same rate as other employees in the same situation.

If a TFW on strike leaves Canada, will he or she be allowed back into the country?

TFWs can leave and re-enter Canada during the validity of their work permit and any visas they may require. The existence of a strike or lockout will not result in a denial of entry to Canada.

However, if a TFW’s work permit expires while he or she is outside of Canada, a new work permit may be denied because of the labour dispute.

In all cases, TFWs must meet the regular immigration criteria any foreign nationals must meet when entering Canada to work.

If a TFW is in Canada and his/her work permit expires during a labour dispute, can the work permit be renewed?

TFWs in Canada during a labour dispute can submit an application to extend their stay in Canada as long as the application is filed prior to the expiry of their work permit. In labour disputes, Citizenship and Immigration Canada will place the application on hold for four months. During this time, the TFW will remain legally entitled to work for his/her current employer. Citizenship and Immigration Canada

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will monitor the strike situation before making a final decision on the application.

If a TFW wants to find other employment during a strike, is this permissible?

TFWs involved in labour disputes can look for a new employer or for secondary employment as long as they go through the regular procedures. The fact that a labour dispute exists at a TFW's employer should have no bearing on these types of applications.

This article is prepared for general information purposes only. The contents should not be viewed as legal advice or opinion. If you have specific questions concerning immigration law, you should discuss them with a legal advisor of your choice.

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