

Hiring Foreign Contractors in Canada



By R. Reis Pagtakhan

In this increasingly global world, the number of non-Canadian companies bidding on Canadian construction projects has increased. While the foreign contractor may win the bid, the question is: can the contractor's foreign employees work in Canada?

Generally, persons who are not Canadian citizens or permanent residents require work permits to work in Canada. For most hands-on construction workers, the employer must first obtain Labour Market

Opinion or LMO from Service Canada, the service delivery arm of Human Resources and Skills Development Canada.

What is a Labour Market Opinion?

A LMO is a written opinion from Service Canada that indicates that the job being offered is genuine and the employment of a foreign worker will likely to have a neutral or positive effect on the Canadian labour market.

In other words, a LMO will be granted when an employer is able to convince Service Canada that there are no Canadians or Canadian Permanent Residents willing and able to do the job in Canada.

What is the first thing that must be determined before applying for a LMO?

The first thing to be determined is the job description for the position to be filled. Service Canada classifies all jobs in Canada by a National Occupational Classification or NOC Code. A worker's NOC code determines the skill level and education required for the position. This, in turn, determines the advertising that Service Canada will require the employer to run and the wage that will have to be paid.

If the job will be performed in Manitoba, employer registration with Employment Standards under the provincial Worker Recruitment and Protection Act is needed before applying for a LMO.

What are the advertising requirements?

For most building trades, employers are required to conduct recruitment activities consistent with the practice within the oc-

cupation. These activities must be carried on for a minimum of fourteen calendar days prior applying for a LMO. The activities can include: advertising in recognized Internet job sites, journals, newsletters or national newspapers or by consulting unions or professional associations.

In addition, Manitoba employers are required to advertise on Service Canada's internet Job Bank for Manitoba projects for a minimum of fourteen calendar days during the three months prior to applying for a LMO.

If the foreign worker will be a general labourer, greater challenges can exist. For these types of workers, additional prescribed recruitment efforts must be carried out.

It is important to note that all advertising must include the company's operating name, the job duties for each position, the wage range of the salary being offered, the specific city or town or local area where the work will be conducted, and whether the position is project based, temporary or permanent. If any of these elements are left out, Service Canada may require that a company re-advertise the position with the correct information.

Can foreign workers be paid less than Canadian workers?

In order to obtain a LMO, a company must advertise the position at the "prevailing wage". The prevailing wage is the average hourly wage for the occupation in the specified geographical area where the job will be carried out. The prevailing wage test is designed to ensure that low cost labour

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