

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 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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is not being imported into Canada. Generally, positions that require more training, education and experience command higher prevailing wages.

For lower skilled laborers, the employer may also be responsible for paying the transportation costs for the foreign worker to travel from his/her country and back.

How long does it take to get a LMO?

Processing times for LMOs opinions can vary depending on the where in Canada the job is located. In the last few years, processing times have varied from a number of weeks to a number of months depending on the location of the job.

Once a LMO is obtained, how long does it take to get a work permit?

Once a LMO is issued, a foreign worker must obtain a work permit before commencing work. Foreign workers who are U.S. citizens and permanent residents can typically apply for a work permit at a Cana-

dian border crossing or international airport upon arrival. Similarly, citizens of most western European countries, most Caribbean countries, Australia, New Zealand, Japan, Korea and other countries whose nationals do not require visas to visit Canada, can apply at ports of entry. However, if the individual is a citizen of a country whose nationals require visas to simply visit Canada, the employee will first have to obtain the visa. Depending on the individual's country of citizenship or residence, delays can range from a matter of days to months.

What penalties exist for employing unauthorized workers?

A worker who does not have the proper authorization to work in Canada can cause an employer to incur liabilities. In some cases, foreign contractors have requested project owners to be the "employer" for the LMO application. In these situations, it is important for the owner to exercise due

diligence to ensure that each worker is authorized under the law to work in Canada. If the worker turns out not to be authorized to work in Canada, the failure of the employer to exercise due diligence will result in the employer being deemed to know that the worker is working illegally.

Penalties for employing illegal workers can range from fines to jail terms and, beginning on April 1, 2011, a bar on hiring foreign workers in the future for a prescribed period of time.

Note: This summary is of a general nature only and is not exhaustive of all possible legal rights or remedies. Readers are encouraged to consult a legal professional for specific advice on the above.

All of the issues outlined above fall into the area of Immigration Law practised by R. Reis Pagtakhan, an Associate with the Winnipeg law firm, Aikins Law.

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360 Main Street, Winnipeg, Manitoba

AIKINS, MACAULAY & THORVALDSON LLP

Construction Law Department Contact:

Betty A. Johnstone

(204) 957.4650 | baj@aikins.com