

# Navigating Canada's COVID-19 travel restrictions and its 14-day self-quarantine requirement

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# Overview – Relevant Orders-in-Council

The Orders-in-Council, which establish the COVID-19 travel restrictions and the self-quarantine requirement are as follows:

- *OIC 32 - Minimizing the Risk of Exposure to COVID-19 in Canada Order (Prohibition of Entry into Canada from any Country other than the United States)* (the “International Order”)
- *OIC 31 - Minimizing the Risk of Exposure to COVID-19 in Canada Order (Prohibition of Entry into Canada from the United States)* (the “Canada-U.S. Order”)
- *OIC 33 - Minimizing the Risk of Exposure to COVID-19 in Canada Order (Mandatory Isolation) No. 7* (the “Self-Quarantine Order”)

# The International Order - Application

The International Order does not apply to Canadian citizens, permanent residents of Canada (“PRs”), a person registered as an Indian under the *Indian Act* (i.e., registered Indians), or a protected person (i.e., a person who has received refugee status in Canada).

A two-stage analysis is performed in order to determine if an exemption will be granted:

- The traveller must fall within one of 25 enumerated exemptions (they will be denied boarding otherwise); **and**
- The travellers must not be seeking entry to Canada for an optional or discretionary purpose (e.g., tourism, recreation, entertainment). In practice, CBSA interprets this to mean that only “essential travel” is allowed.

# The International Order – Family-Based Exemptions

- An *immediate family member* of a Canadian citizen, permanent resident or person registered as an Indian under the *Indian Act* (must be seeking entry for at least 15 days).
- An *extended family member* of a Canadian citizen, permanent resident or person registered as an Indian under the *Indian Act* (must be seeking entry for at least 15 days; requires advance written authorization from IRCC).
- Entering to reunite with an *immediate family member* temporarily in Canada (applies to immediate family members of *foreign nationals*, such as workers and students, who are coming to Canada to live with the immediate family member; requires advance written authorization from IRCC).
- The terms “immediate family member” and “extended family member” are broader than the term “family member” used in the IRPR.

# The International Order – Family-Based Exemptions

The term “immediate family member,” in respect of a person, means:

- a) The spouse or common-law partner of the person;
- b) A dependent child of the person or their spouse/common-law partner;
- c) A dependent child of the dependent child referred to in paragraph (b);
- d) The parent or step-parent of the person or their spouse/common-law partner; or
- e) The guardian or tutor of the person.

This definition is still restrictive because it does not include (for example):

- 1) An adult child of a Canadian citizen or PR; or
- 2) Someone in a relationship with a Canadian citizen or PR but who is not a considered a spouse or common law partner.

Immediate family members of Canadian citizens, PRs, or registered Indians do not require advance written authorization from IRCC but must intend to remain in Canada for at least 15 days in order for their travel to not be optional or discretionary.

# The International Order – Family-Based Exemptions

An “extended family member,” in respect of a person, means

- a) An individual who is in an exclusive dating relationship with the person, has been in such a relationship for at least one year, and has spent time in the physical presence of the person during the course of the relationship;
- b) A dependent child of the person referred to in paragraph (a);
- c) A child of the person or their spouse/common-law partner or the person referred to in paragraph (a) other than a dependent child (i.e., adult children);
- d) A dependent child of the child referred to in paragraph (c);
- e) A sibling, half-sibling or step-sibling of the person or their spouse/common-law partner;  
or
- f) A grandparent of the person or their spouse/common-law partner.

Extended family members require advance written authorization from IRCC and must be entering for at least 15 days in order for their travel to not be optional or discretionary.

# The International Order – Family-Based Exemptions

Immediate family members of *foreign nationals* temporarily in Canada (i.e. work permit holders and study permit holders) may seek written authorization to travel to Canada (through a Canadian consular post) for a purpose that is not optional or discretionary (e.g., to live in Canada with their immediate family member).

There is no requirement that the principal applicant travel to Canada in advance of the other family members. The immediate family members may request written authorization at the same time that the principal applicant applies for his/her work permit/TRV.

Advance written authorization is essential when travelling from any country other than the United States. If travelling from the United States, advance written authorization is not required.

# The International Order – Work Permit Exemptions

A valid work permit holder or a foreign national who has been approved for a work permit that has not yet been issued is exempt if he/she is travelling for a purpose that is not optional or discretionary:

Without a work permit or a letter of invitation/approval notice from a Canadian consular post, foreign nationals travelling from any country other than the United States will not be permitted to board a flight to Canada.

This has created considerable issues for visa-exempt individuals (i.e. EU citizens, UK citizens, etc.) would normally be permitted to apply for their work permits at the time of entry. They must now apply at a Canadian consular post and cannot travel to Canada until it has approved their work permit application.

Unfortunately, processing at Canadian consular posts is extremely backlogged as a result of the COVID-19 pandemic.

# The International Order – PHAC Group Exemptions

The Chief Public Health Officer may exempt a person or class of persons from the COVID-19 travel restrictions. Several Group Exemptions have been designated by the Public Health Agency of Canada (“PHAC”), including the following:

- Technicians or specialists specified by a government, manufacturer, or company, as required to install, inspect, maintain or repair equipment necessary to support critical infrastructure (Energy and Utilities, Information and Communication Technologies, Finance, Health, Food, Water, Transportation, Safety, Government and Manufacturing)

This travel exemption is often utilized in connection with a similar PHAC Group Exemption that appears in the Self-Quarantine Order (discussed later).

# The International Order – Student Exemptions

A person who seeks to enter Canada for the purpose of attending a Designated Learning Institution (“DLI”), and the immediate family members of that person, may be exempt if:

- The person holds a valid study permit;
- The person may apply for a study permit when entering Canada (U.S. citizens and permanent residents; residents of Greenland, residents of St. Pierre and Miquelon); or
- The person’s application for a study permit was approved and they received written notice of the approval but have not yet been issued the permit.

As of October 20, 2020, only DLIs with a COVID-19 readiness plan approved by their province or territory are able to reopen to international students who are currently outside Canada. This applies to all international students, whether they are travelling from the United States or from any other country.

A student already in Canada may continue studying at any DLI. However, if they leave Canada, they may not be able to return if their DLI does not have a COVID-19 readiness plan approved by the province or territory in which they live.

# The International Order – Compassionate Grounds Exemption

The travel restrictions will not apply to a foreign national who, as determined by the Minister of Health, intends to enter Canada to:

- Attend to the death of or provide support to a Canadian citizen, permanent resident, temporary resident, protected person, or registered Indian who is residing in Canada and who is deemed by a licensed health care practitioner to be critically ill;
- Provide care for a Canadian citizen, permanent resident, temporary resident, protected person, or registered Indian who is residing in Canada and who is deemed by a licensed health care practitioner to have a medical reason that they require support; or
- Attend a funeral or end of life ceremony.

Foreign nationals seeking an exemption based on compassionate grounds must request written authorization from the PHAC in advance of their travel to Canada. The service standard for such requests is seven business days.

# The International Order – National Interest Exemptions

The Minister of Foreign Affairs, the Minister of Citizenship and Immigration, or the Minister of Public Safety and Emergency Preparedness may exempt a person or a class of persons whose presence in Canada is determined to be in the national interest.

National interest exemptions are intended to be granted in exceptional circumstances (at least in theory). For example, business visitors travelling to contribute to Canada's critical infrastructure might be considered to be in the national interest.

Unfortunately, there is no published guidance regarding what criteria will be applied when adjudicating a national interest exemption.

It is also uncertain how many national interest exemptions have been granted, since this information is not made public.

# The International Order – Miscellaneous Exemptions

Additional examples include the following:

- Crew members;
- A member of the Canadian Forces (or a visiting force);
- A person who is permitted to work in Canada as a student in a health field under IRPR 186(p);
- A person who is permitted to work in Canada as a provider of emergency services under IRPR 186(t);
- A person entering Canada as a diplomat, consular officer, or representative or official of a country other than Canada; and
- A person who is transiting through Canada to another country and remains in a sterile transit area until their departure.

# The Canada-U.S. Order - Application

The Canada-U.S. Order does not apply to Canadian citizens, PRs, a person registered as an Indian under the *Indian Act* (i.e., registered Indians), or a protected person (i.e., a person who has received refugee status in Canada).

There is no finite list of enumerated exemptions in the Canada-U.S. Order. Foreign nationals must only demonstrate that the purpose for their entry is not “optional or discretionary.” Of course, the enumerated exemptions described in the International Order should not be considered “optional or discretionary” under the Canada-US Order either.

Foreign nationals travelling from the United States will not be denied boarding as long as they represent that they are exempt from the Canada-U.S. Order.

Upon arrival, if CBSA determines that the foreign national is not exempt from the Canada-U.S. Order, they are required to issue a “direct back” order. If directed back to the U.S., the foreign national will be unable to seek entry to Canada again until the emergency orders have been lifted.

# The International Order and Canada-U.S. Order - Meaning of “Optional or Discretionary”

The “optional or discretionary” threshold was likely intended to be a low threshold when the Orders-in-Council were initially drafted.

Nevertheless, CBSA has generally been applying a higher standard of “essential” travel (i.e., performing essential services in support of critical infrastructure in Canada).

Over time, the threshold has been lowered in specific cases (i.e. work permit holders, immediate family members and extended family members who are entering for at least 15 days, etc.). Otherwise, CBSA still appears to be applying the essential travel standard, although not consistently (for example, business visitor entries).

In order to determine whether entry is essential, refer to Public Safety Canada’s *Guidance on Essential Services and Functions in Canada During the COVID-19 Pandemic [Discussed Later]*.

# The International Order and Canada-U.S. Order - CBSA's Position Regarding Foreign Workers

CBSA has confirmed that a foreign worker's proposed purpose for entry is not considered "optional or discretionary if:

- Their place of habitual residence is in Canada and they hold a valid work permit; or
- They are coming to Canada for the first time to begin employment and are in possession of a valid work permit or a work permit approval letter, and have proof of employment at a Canadian business which is operating; or
- They do not have a work permit but they are eligible to apply for a work permit at port of entry (TRV-exempt) and have proof of employment at a Canadian business which is operating. Of course, port of entry work permit applications are still only permitted under the Canada-U.S. Order.

# The Self-Quarantine Order - Application

The Self-Quarantine Order applies to **everyone** who enters Canada, including Canadian citizens, PRs, registered Indians, and protected persons.

Unless exempt, an international traveler who is asymptomatic must quarantine themselves for a period of 14 days and monitor for signs and symptoms of COVID-19 during this period. If, during the 14-day period, the person develops any signs and symptoms of COVID-19 or is exposed to another person who exhibits signs and symptoms of COVID-19 or tests positive for COVID-19, the 14-day period will begin again.

Unless exempt, an international traveler who has reasonable grounds to suspect that they have COVID-19, has signs and symptoms of COVID-19, or knows that they have COVID-19 must isolate themselves for a period of 14 days and undergo any health assessments that a quarantine officer requires, monitor their signs and symptoms of COVID-19, and report to the public health authority if they require additional medical care.

# The Self-Quarantine Order - Application

International travelers must wear an acceptable face covering while: (1) entering Canada, and (2) in transit to a place of quarantine or isolation, a health care facility, or their place of departure from Canada (unless they are alone in a private vehicle).

Unless exempt, an international traveller must present a self-quarantine plan upon arrival. If they do not, or if the plan is considered insufficient, the international traveller could be sent to a quarantine facility for 14 days.

Asymptomatic international travelers may use public means of transportation (including aircraft [i.e. connecting domestic flights], bus, train, subway, taxi or ride-sharing service) to travel from the place where they enter Canada to the place where they will self-quarantine. The Self-Quarantine Order only prohibits this in the case of symptomatic persons.

Persons subject to the self-quarantine requirement may leave Canada before the expiry of the 14-day period, if they quarantine themselves while in Canada and wear a face covering when departing the country.

# The Self-Quarantine Order - Exemptions

The Self-Quarantine Order lists several exemptions, but most do not apply to business persons. Some examples include the following:

- Crew members;
- A member of the Canadian Forces (or a visiting force);
- A person who is permitted to work in Canada as a provider of emergency services under IRPR 186(t);
- A person permitted to work in Canada as a student in a health field under IRPR 186(p); and
- A person who enters Canada for the purpose of receiving essential medical services or treatments within 36 hours of entering Canada, other than services or treatments related to COVID-19.

# The Self-Quarantine Order - Exemptions

- A person who enters Canada at a land border crossing in the following circumstances, as long as the person remained in the conveyance while outside Canada:
  - The person was denied entry to the United States at the land border crossing, or
  - The person entered the territory of the U.S. but did not seek legal entry to the U.S. at the land border crossing.
- A habitual resident of an integrated trans-border community that exists on both sides of the Canada-United States border who enters Canada within the boundaries of that community, if entering Canada is necessary for carrying out an everyday function within that community.
- A person who enters Canada to return to their habitual place of residence in Canada after carrying out an everyday function that, due to geographical constraints, necessarily involves entering the United States.

# The Self-Quarantine Order – Student Exemptions

The following exemptions have recently been added for cross-border students:

- A student who is enrolled at a listed institution, who attends the institution regularly and who enters Canada to go to that institution;
- A driver who enters Canada to drop off or pick up a student enrolled at a listed institution (driver cannot leave vehicle except to escort student to or from the institution and must wear a mask or face covering if they do);
- A student enrolled at an educational institution in the U.S., who attends that educational institution regularly, and who enters Canada to return to their habitual place of residence after attending that educational institution; and
- A driver who enters Canada after dropping off or picking up a student who is enrolled at an educational institution in the U.S. (driver cannot have left vehicle in the U.S. other than to escort student to or from the institution and must have worn a mask or face covering).

# The Self-Quarantine Order – Compassionate Grounds Exemption

The Self-Quarantine Order does not apply if the Minister of Health determines that the person will only leave quarantine in order to:

- Attend to the death of or provide support to a Canadian citizen, PR, temporary resident, protected person, or registered Indian who is residing in Canada and who is deemed to be critically ill by a licensed health care practitioner;
- Provide care for a Canadian citizen, PR, temporary resident, protected person, or registered Indian who is residing in Canada and who is deemed by a licensed health care practitioner to have a medical reason that they require support; or
- Attend a funeral or end of life ceremony.

In order to request limited release from self-quarantine, applicants must apply to the PHAC for written authorization. The service standard for such requests is seven business days.

# The Self-Quarantine Order – National Interest Exemption

The Minister of Foreign Affairs, the Minister of Citizenship and Immigration, or the Minister of Public Safety and Emergency Preparedness may also exempt a person or a class of persons from the self-quarantine requirement if their presence in Canada is determined to be in the national interest.

National interest exemptions can apply to business persons but they are intended to be granted in exceptional circumstances (at least in theory). For example, business visitors travelling to contribute to Canada's critical infrastructure might be considered to be in the national interest.

Unfortunately, there is no published guidance regarding what criteria will be applied when adjudicating a national interest exemption.

It is also uncertain how many national interest exemptions have been granted, since this information is not made public.

# The Self-Quarantine Order – PHAC Group Exemptions

Several Group Exemptions have been established by the PHAC under Subsection 6(e) of the Self-Quarantine Order:

- A person or a class of persons who, as determined by the Chief Public Health Officer, will provide an essential service, as long as the person complies with any conditions imposed on them by the Chief Public Health Officer to minimize the risk of introduction or spread of COVID-19

There are currently eight PHAC Group Exemptions, two of which might potentially apply to business persons:

- Regular border crossers; and
- Technicians and specialists.

# The Self-Quarantine Order – Regular Border Crossers

This PHAC Group Exemption applies to:

- Persons who must cross the border regularly to go to their normal place of employment, including critical infrastructure workers (Energy and Utilities, Information and Communication Technologies, Finance, Health, Food, Water, Transportation, Safety, Government and Manufacturing), provided they do not directly care for persons 65 years of age or older within the first 14 days after their entry to Canada

Must be crossing the border “regularly,” although this term is not defined. Monthly may be sufficient but CBSA officers have considerable discretion. In addition, there may now be a CBSA Internal Directive, which requires daily or weekly travel (although, if it does exist, it is not being applied consistently).

Applicants must be providing an “essential” service. Refer to Public Safety Canada’s *Guidance on Essential Services and Functions in Canada During the COVID-19 Pandemic*.

# The Self-Quarantine Order – Technicians and Specialists

This PHAC Group Exemption applies to:

- Technicians or specialists specified by a government, manufacturer, or company, who enter Canada as required for the purpose of maintaining, repairing, installing or inspecting equipment necessary to support critical infrastructure (Energy and Utilities, Information and Communication Technologies, Finance, Health, Food, Water, Transportation, Safety, Government and Manufacturing) **and** are required to provide their services within 14 days of their entry to Canada and have reasonable rationales for the immediacy of the work and the inability to plan for a 14 day quarantine

Must be entering to maintain, repair, install, or inspect equipment. This would not easily apply to an executive or a senior manager who does not perform any “hands on” work on equipment.

Must be necessary to support critical infrastructure in Canada. Refer to Public Safety Canada’s *Guidance on Essential Services and Functions in Canada During the COVID-19 Pandemic*.

The need for the technician/specialist must also be sufficiently urgent that it is not possible for the person to self-quarantine for 14 days before commencing the work.

# The Self-Quarantine Order – Meaning of Essential Service/Critical Infrastructure

Public Safety Canada's *Guidance on Essential Services and Functions in Canada During the COVID-19 Pandemic* contains a non-exhaustive list of workers that provide “essential” services, most of which support critical infrastructure sectors.

It also lists ten critical infrastructure sectors for Canada: (1) Energy and Utilities, (2) Information and Communication Technologies, (3) Finance, (4) Health, (5) Food, (6) Water, (7) Transportation, (8) Safety, (9) Government, and (10) Manufacturing.

Examples of specific functions/services that fall under these critical infrastructure sectors are also provided. The list is not intended to be exhaustive but claiming essentiality when the proposed activity does not appear on this list is risky.

# The Self-Quarantine Order – Meaning of Essential Service/Critical Infrastructure

Examples of essential services include:

- Manufacturing: Workers from the upstream supply chain for essential services needed to support critical infrastructure.
- Finance: Workers who are needed to support financial transactions, advice, and services.
- Information Technology: Client service centres, field engineers, and other technicians supporting critical infrastructure.
- Health: Manufacturers and distributors of medical equipment, medical devices, personal protective equipment, pharmaceuticals and other health products.

# The Self-Quarantine Order – Meaning of Essential Service/Critical Infrastructure

- Food: Employees engaged in the manufacture and maintenance of equipment and other infrastructure necessary to agricultural, aquaculture, and fishery production and distribution
- Communications: Maintenance of communications infrastructure (wireline, wireless, internet, broadcast, satellite, news), including privately owned and maintained communication systems and/or networks.
- Energy and utilities: Workers who maintain, ensure, or restore the generation, transmission, and distribution of electric power.

# The Self-Quarantine Order – Alberta International Border Testing Pilot Program

On November 2, 2020, Alberta began testing a pilot program, which will allow persons to reduce their self-quarantine period.

The pilot program is currently only available at Calgary Airport and the Coutts land port of entry.

The following individuals may participate:

- Returning Canadian citizens or permanent residents;
- Foreign nationals currently permitted entry into Canada (i.e., exempt from the travel restrictions); and
- Travelers exempt from 14-day quarantine, including essential service workers (in Alberta, even exempt travelers are still subject to restrictions during the first 14 days).

# The Self-Quarantine Order - Alberta International Border Testing Pilot Program

The following travelers are not eligible:

- Those arriving on domestic flights into Calgary International Airport (i.e., an international traveler who arrives in Vancouver and takes a connecting flight to Calgary).
- Unless exempt, travelers proceeding to other provinces (participants must stay in Alberta for 14 days after entering Canada, unless they are departing the country directly from Alberta prior to the end of 14 days).
- Travelers who: (1) are symptomatic at the time of entry to Canada, (2) have been in contact with a confirmed COVID-19 case in the last 14 days, or (3) do not have an acceptable quarantine plan (unless exempt).

# The Self-Quarantine Order - Alberta International Border Testing Pilot Program

Travelers who are interested in participating must do the following:

- Complete the online registration form prior to arrival.
- Proceed to CBSA upon arrival to clear customs and determine eligibility. If eligible, proceed to the enrollment booth.
- Take a COVID-19 test on-site (testing is only available to individuals 4 years old and older).
- Remain in self-quarantine until the test results received by email (approximately 48 hours).
- If the result is negative, they may leave quarantine but must follow all required preventative measures, including daily check-ins.
- Take a second COVID-19 test at a participating pharmacy on the sixth or seventh day.

# The Self-Quarantine Order - Alberta International Border Testing Pilot Program

Participants are prohibited from certain settings, including:

- Child care programs, K-12 schools, and post-secondary institutions (until they have their second test and have received a negative result);
- Working or visiting any setting where health care services are provided and there are vulnerable people at risk for severe disease for 14 days;
- Workplaces except with the permission of the employer and COVID-19 measures have been implemented;
- High risk workplaces;
- Events where there are more than 10 people (including the participant) during the first 14 days; and
- Group living settings (such as group homes or student dormitories) for the first 14 days.

# Thank you



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