

CPD Bootcamp 2019

Exemptions from the Canadian Work Permit Requirement



Exemptions from the Canadian Work Permit Requirement - Overview

- A work permit is normally required when the proposed activity in Canada is considered “work.” But what does the term “work” really mean?
- R2 defines “work” as an activity for which wages are paid or commission is earned or competes directly with activities of Canadian citizens or permanent residents in the Canadian labour market.
- “Wages or commission” includes salary or wages paid by an employer to an employee, remuneration or commission received for fulfilling a service contract, or any other situation where a foreign national receives payment for performing a service.
- When considering whether the proposed activity competes with Canadian citizens or permanent residents, ask: (1) Should a Canadian or permanent resident should have an opportunity to do it? (2) Will they be engaging in a business activity that is competitive in the marketplace?

Exemptions from the Canadian Work Permit Requirement - Examples of Work and Non-Work

- Examples of work include:
 - A foreign technician coming to repair a machine even when they will not be paid directly by the Canadian company.
 - Self-employment, such as opening a dry- cleaning shop or fast-food franchise.
 - Unpaid employment for the purpose of obtaining work experience, such as an internship normally done by a student.
- Examples of non-work activities include:
 - Volunteer work for which a person would not normally be remunerated, such as sitting on the board of a charity, volunteering to be a “big brother/big sister” to a child, or volunteering to answer phones at a rape crisis centre.

Exemptions from the Canadian Work Permit Requirement - Examples of Work and Non-Work

- Unpaid help provided by a friend or family member during a visit, such as a mother assisting a daughter with childcare or an uncle helping his nephew build his own cottage.
- Remote work (by telephone or Internet) done by a temporary resident whose employer is outside Canada and who is remunerated from outside Canada.
- Self-employment where the work to be done will have no real impact on the labour market and will not provide any opportunity for Canadians (i.e., a miner coming to work on his own claim).
- There may be other types of short-term work activities that are incidental to the main reason that a person is visiting Canada and that are not a competitive activity, even though non-monetary valuable consideration is received. (i.e., a tourist stays on a family farm and works part time for room and board only, for a short period (1-4 wks)).

Exemptions from the Canadian Work Permit Requirement – Specific Activities that Do Not to Require a Work Permit

- Certain activities are specifically permitted without a work permit, even though they may otherwise appear to be “work” in Canada:
 - R186(a)—Business visitor
 - R186(b)—Foreign representatives and R186(c)—Family members of foreign representatives
 - R186(d)—Military personnel
 - R186(e)—Foreign government officers
 - R186(f)—On-campus employment
 - R186(g)—Performing artists
 - R186(h)—Athletes and team members
 - R186(i)—News reporters, media crews
 - R186(j)—Public speakers

Exemptions from the Canadian Work Permit Requirement – Specific Activities that Do Not to Require a Work Permit

- R186(k)—Convention organizers
- R186(l)—Clergy
- R186(m)—Judges, referees and similar officials
- R186(n)—Examiners and evaluators
- R186(o)—Expert witnesses or investigators
- R186(p)—Health care students
- R186(q)—Civil aviation inspector
- R186(r)—Aviation accident or incident inspector
- R186(s)—Crew
- R186(t)—Emergency service providers
- R186(u)—Implied status

Exemptions from the Canadian Work Permit Requirement – Specific Activities that Do Not to Require a Work Permit

- R186(v)—Off-campus work
- R186(w)—Off-campus work (transition to post-graduation status)
- R186(x)—Registered Indians
- Public Policy: Short-term work permit exemption
- Public Policy: 120-day work permit exemption for researchers

Exemptions from the Canadian Work Permit Requirement – Overview of Business Visitors

- R187(1) states that a business visitor is a foreign national described in R187(2) or who seeks to engage in international business activities in Canada without directly entering the Canadian labour market.
- R187(2) includes:
 - Foreign nationals purchasing Canadian goods or services for a foreign business or government, or receiving training or familiarization relating to such goods or services.
 - Foreign nationals receiving or giving training within a Canadian parent or subsidiary of the corporation that employs them outside Canada, if any production of goods or services that results from the training is incidental.
 - Foreign nationals representing a foreign business or government for the purpose of selling goods on its behalf, if not making sales to the general public in Canada.

Exemptions from the Canadian Work Permit Requirement – General Criteria for Business Visitors

- General criteria for business visitors:
 - There must be no intent to enter the Canadian labour market (i.e., no gainful employment from an employer in Canada).
 - The activity of the foreign worker must be international in scope (i.e., there is the presumption of an underlying cross-border business activity, such as after-sales service).
 - There is the presumption of a foreign employer:
 - The primary source of the worker's remuneration remains outside Canada
 - The principal place of business of the worker's employer is located outside Canada
 - The accrual of profits of the worker's employer is located outside Canada

Exemptions from the Canadian Work Permit Requirement – General Criteria for Business Visitors

- Example of foreign workers who are considered business visitors under the general criteria:
 - A U.S.-based company (with no presence in Canada) needs to send two employees (and their equipment) to take readings and then return to the U.S. with their findings, which will be used to produce marine maps. Since there is no Canadian employer contracting the U.S. company's services, and since the U.S. company will be the direct beneficiary of the foreign workers' efforts, they are business visitors.
- Example of foreign workers who are not considered business visitors under the general criteria:
 - A Canadian company engages the services of a U.S. architectural firm located in the U.S., which sends architects to Canada to work "on site." Since they are working in Canada, and since their U.S. employer is receiving payment for the services, they are not business visitors.

Exemptions from the Canadian Work Permit Requirement – Business Visitors (After-Sales and After-Lease Services)

- Foreign nationals entering to repair, service, set up, test, or supervise work on specialized commercial or industrial equipment (including computer software and subsequent upgrades) purchased or leased outside Canada are business visitors, performed as part of the original contract or extended sales agreement, lease or rental agreement, warranty, or service contract.
- Service contracts must have been negotiated as part of the original sales, lease, or rental agreement, or be an extension of the original agreement. If the original sales agreement indicates that a third company has been or will be contracted to service the equipment, those workers are covered as well.
- Normally does not include hands-on activities performed by construction or building tradespeople (i.e., electricians, pipe fitters) unless equipment requires proprietary or product-specific knowledge to install or assemble.

Exemptions from the Canadian Work Permit Requirement – Business Visitors (Other Recognized Activities)

- A person attending a meeting as a member of a board of directors, even if they are remunerated for advice and expertise.
- Personal servants (i.e., personal assistants, nannies, etc.) who are employed on a full-time basis by short-term temporary residents. However, not eligible if the visiting employer extends their stay in Canada so the employee is no longer working predominantly outside Canada or the employee's primary source of remuneration is not outside Canada.
- Where a foreign company contracts with a Canadian company to provide services for them, it may send an employee to Canada to ensure that the Canadian company is doing the job properly (for up to two years).
- Film producers employed by foreign companies for commercial shoots and essential personnel (i.e., actors, directors, technicians) entering Canada for short durations (i.e., up to 2 weeks) for a foreign-financed commercial (advertising) shoot for television, a magazine or other media.

Exemptions from the Canadian Work Permit Requirement – Performing Artists

- Examples of activities that do not require a work permit as a performing artist:
 - Foreign-based musical and theatrical individuals and groups and their essential crew;
 - Street performers (buskers), DJs;
 - A foreign or traveling circus;
 - Guest artists (not employed) within a Canadian performance group for a time-limited engagement (usually up to two weeks);
 - Wrestlers from the World Wrestling Entertainment, Inc. (WWE) (and similar groups);
 - Persons performing at a private event for a time-limited engagement, such as a wedding;
 - Air show performers;

Exemptions from the Canadian Work Permit Requirement – Performing Artists

- Artists working at or attending a showcase or workshop (i.e., competing, judging, demonstrating their skills, visual artists creating or displaying their own work (normally no more than five days)).
- Rodeo contestants (e.g., bronco-riders, steer-ropers, barrel racers).

Exemptions from the Canadian Work Permit Requirement – Athletes and Team Members

- Foreign professional or amateur athletes may participate in sports activities or events in Canada either as an individual participant or as members of a foreign-based team or a Canadian amateur team.
- This exemption also allows foreign coaches and trainers of foreign amateur or professional athletes, and other essential members of the team, to participate at sports activities or events held in Canada.
- Occupations essential to the team's participation are those that provide a service benefiting only the foreign-based team or team members, or the Canadian amateur team (on a seasonal basis), and do not compete directly with, or enter, the Canadian labour market.

Exemptions from the Canadian Work Permit Requirement – News Reporters and Media Crews

- News reporters and their crews coming to Canada for the purpose of reporting on events in Canada may enter without work permits.
- Journalists working for print, broadcast or Internet news service providers (journals, newspapers, magazines, TV shows, etc.) are eligible, provided the company is not Canadian.
- Employees of a foreign news company who are resident correspondents are included but this does not include managerial or clerical personnel. However, managerial and clerical personnel are included for special events that are six months or less in duration.
- Companies sometimes bring in blimps (i.e., the “Goodyear Blimp”) to assist in the media coverage of major sporting events. The landing crew enters by land in order to set up the specialized equipment necessary for the safe operation of the blimp while it is in Canada - they should be treated as part of the broadcast crew.

Exemptions from the Canadian Work Permit Requirement – Public Speakers

- Guest speakers for specific events (such as an academic speaker at a university or college function) may enter without work permits.
- Commercial speakers or seminar leaders may enter provided the seminar to be given by the foreign speaker does not last longer than five days.
- A seminar is defined as a small class at a university, etc., for discussion and research, or a short intensive course of study, or a conference of specialists.
- Commercial speakers are people who sell tickets or registrations to people who come to hear them speak on a particular topic.
- Commercial speakers who are hired by a Canadian entity to provide training services, or guest instructors of a particular sport coming to teach weekend seminars are not included.

Exemptions from the Canadian Work Permit Requirement – Convention Organizers

- This exemption applies to persons organizing a convention or conference, and to administrative support staff of the organizing committee.
- Covered events include association/corporate meetings, trade shows or exhibitions and consumer exhibitions/shows.
- The exemption does not apply to “hands-on” service providers such as those who provide audio-visual services, installation and dismantling, show decorating or services, or exhibit builders.
- Foreign convention organizers working for a Canadian event are not eligible for a work permit exemption. If an event is conducted by a Canadian branch or a subsidiary of a foreign based organization, then it is a Canadian event

Exemptions from the Canadian Work Permit Requirement – Expert Witnesses or Investigators

- This exemption includes experts who are entering Canada in order to conduct surveys or analyses to be used as evidence, or persons who will be expert witnesses before a regulatory body, tribunal or court of law.

Exemptions from the Canadian Work Permit Requirement – Emergency Service Providers

- This exemption facilitates the admission of persons who come to Canada for the purpose of rendering services in times of emergency.
- These emergency services should be aimed at preserving life and property.
- The emergency may be:
 - The result of natural disasters such as floods, tornadoes, earthquakes, and fires.
 - The result of industrial or commercial accidents threatening the environment.
 - A medical emergency where the admission of the foreign national should be facilitated to preserve life, regardless of whether it involves one or more persons.

Exemptions from the Canadian Work Permit Requirement – Short-Term Work Permit Exemption

- This exemption applies to foreign nationals coming to Canada to perform work that complies with the following conditions:
 - It must be of a short duration (15 consecutive calendar days or 30 consecutive calendar days); and
 - It must be in an occupation that is listed in Skill Type 0 (managerial) or Skill Level A (professional) in the NOC.
- A foreign national who enters under this exemption will be limited to a single entry of:
 - 15 consecutive days every 6 months; or
 - 30 consecutive days every 12 months.
- May exit and re-enter Canada but this will not extend the length of the exemption period.

Exemptions from the Canadian Work Permit Requirement – Short-Term Work Permit Exemption for Researchers

- A foreign national may receive a work permit exemption for up to 120 consecutive calendar days once every 12 months if he/she:
 - Intends to perform work as a researcher;
 - Has an offer from a publicly funded degree-granting institution (at the college or university level) or its affiliated research institution;
 - Has a significant role to play in or value to add to the research project;
 - Produces written confirmation from the receiving institution attesting to the details of the work as being primarily research and outlining the duration of the work (at the time of entry).
- Universities usually work with research institutions to produce reports and studies. Because the relationship is at arm's length, they are considered affiliates, though sometimes research bodies may operate inside universities.

Exemptions from the Canadian Work Permit Requirement – Short-Term Work Permit Exemption for Researchers

- In assessing whether the foreign national has a significant role to play in or value to add to the research project, officers may consider whether:
 - The applicant demonstrates academic excellence or expertise in a field related to the particular work to be undertaken; and
 - The position reflects the experience and expertise of the applicant and the role they will play in the project.

Thank you

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