

employment and labour relations bulletin

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Government Announces New Stream for Foreign Workers to Immigrate to Canada

With the demands on Canada's labour market increasing, Canadian employers are frequently turning to the foreign labour pool to find experienced and qualified candidates to take up positions in Canada. While there can be challenges in obtaining an initial work permit for a foreign worker, it is often more difficult to keep a foreign worker in Canada as work permits cannot be renewed indefinitely. Unless the employee plays out a scene from the movie "Green Card" (which is not recommended) or legitimately marries a Canadian, the employee may struggle to obtain permanent residence in Canada before the expiry of a work permit. As a result, the employer loses the investment it made in training and developing the employee.

Currently, a foreign worker who wishes to apply for permanent residence in Canada has to apply outside Canada. Applicants are assessed based on a points system that takes into account the individual's age, experience, language facility and education. The emphasis under the points system on formal education, language and the individual's age means that it is difficult for older, skilled workers to qualify for permanent residence. In addition, processing times for approval can be lengthy depending on where the application is filed.

To respond to the challenges foreign workers face in obtaining permanent residence, the Federal Government recently announced proposed amendments to the Immigration and Refugee Protection Act Regulations that will create a new mechanism for temporary foreign workers and students with post-graduate work permits to obtain permanent residence in Canada. The Canadian Experience Class ("CEC") is designed to attract more foreign workers to Canada and improve retention rates by speeding the transition from temporary foreign worker to permanent resident.

I. Eligibility and Selection

The CEC stream recognizes that an individual who is working in Canada has already demonstrated an ability to enter the Canadian labour market. In order to qualify, the person must be working in a management, professional or skilled trade occupation (as determined under the National Occupation Classifications).

There are two types of foreign workers who can apply under the CEC. The first is an individual who has worked in Canada for at least twenty-four months in a thirty-six month period. The second is a student who has: (a) studied in Canada for at least two

years and has graduated from a Canadian educational institution and, (b) worked for at least twelve months post-graduation (a foreign student will not be able to apply based on work experience gained during school). In addition, both students and foreign workers must demonstrate language proficiency (as determined by the occupation skill level) in either English or French.

The CEC will not apply in the province of Quebec, which retains responsibility for selecting its own economic immigrants.

Immigration Canada has announced that the stream will approve an initial 12,000 to 18,000 immigrants once the CEC is formally put in place. At the time of this writing, it is not known when applications will be accepted under the CEC.

II. What This Means for Employers

Attracting and retaining qualified foreign workers is an increasing challenge for Canadian employers. Obviously, an employer looks to retain someone who has become integrated into its organization and has demonstrated

an ability to perform and adapt to a company's culture. In addition, employers invest significant costs in training employees and may have made organizational decisions based on an employee's continued employment. Because work permits cannot be renewed indefinitely, an employer and its foreign worker can be faced with the loss of the worker's services through no fault of the employee. It is therefore important for an employer to plan for an employee's transition from foreign worker to permanent resident.

The CEC stream will assist employers in retaining foreign workers who wish to continue in their employment but who cannot renew their work permits. It is anticipated that the CEC will provide a more streamlined approach to immigration that will assist qualified immigrants to stay in Canada.

We will monitor the proposed Regulations and advise once the new law is in effect.

Written by Dave J.G. McKechnie

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

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The members of the Employment and Labour Relations Group have the expertise and experience to deal efficiently and effectively with all matters rising out of employment and labour law, as well as planning for legislative changes, structuring of business activities, and any other related matters.

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