



MCKERCHER LLP BARRISTERS & SOLICITORS

MARCH 21, 2020

**Immigration laws and policies are changing rapidly during the COVID-19 outbreak, and this information, prepared on March 21st, 2020, will become outdated quickly. This blog provides time-sensitive information and commentary, not legal advice.**

The rules regarding Canada's land and air borders experienced seismic shifts this week. The Government issued an Interim Order<sup>[i]</sup> that came into force at noon on Wednesday, March 18th that restricted foreign nationals from travelling to Canada by air, with a foreign national being defined as a person who is not a Canadian citizen or a permanent resident. The land border with the United States was then closed to non-essential travel as of 12:01 AM on Saturday, March 21st.<sup>[ii]</sup>

Here are some employer-specific takeaways from a week that was previously unimaginable:

1. The restrictions on foreign nationals travelling to Canada by air were initially met with shock, as workers and students on valid work and study permits were not exempted. These restrictions meant that many individuals who make Canada their home were effectively stranded abroad. That the air travel restrictions fell during some provincial Spring Breaks compounded the problem. Fortunately, the government clarified the travel restrictions on March 20th.<sup>[iii]</sup> Foreign nationals who have already committed to working, studying, or making Canada their home, including all temporary foreign workers (i.e., already on valid work permits), will be exempted and able to travel to Canada by air.
2. These same individuals will also be able to enter Canada via the US land border, as their travel will be considered "essential travel."
3. Despite these exemptions, the immigration bar has seen wildly inconsistent treatment at ports of entry. **Suffice it to say that travel is not currently recommended**, an exempt individual may be unable to book or board a commercial carrier and may be turned around at the discretion of border officers, despite the availability of exemptions. If risking travel, the border package the individual travels with should be carefully considered.
4. Other than the border restrictions, immigration processing is largely business as (un)usual. In initial COVID hotspots such as China, Iran, and South Korea, IRCC implemented special measures on account of office closures and travel restrictions.<sup>[iv]</sup> However, as of writing, these special measures had not been rolled out globally, and applications are being processed. IRCC has been responsive to application enquiries, Provincial Nominee Programs are open, and the Express Entry PR system did its regularly scheduled draw.



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5. **It is therefore advisable to prepare and submit applications for incoming foreign nationals in the ordinary course, if not on an expedited basis.** Work authorization is separate from entry, and application processing times are expected to increase significantly as office closures spread around the globe. When the border situation changes and the economy returns to normal, there will be significant immigration backlogs. Having an approval in hand will ensure your incoming employees arrive as fast as possible. For those in Canada, put your mind to work permit extension applications well in advance, to maintain the work authorization and health care coverage of your employees.
6. In terms of scheduling start dates, individuals entering Canada from abroad must isolate for 14 days upon their arrival in Canada. Start dates should be flexible to account for immigration approval. Generally, though, especially now, employment offers should be conditional on obtaining and maintaining immigration authorization and entry to Canada, and now, observing isolation periods.
7. If you employ a student off-campus, or a spouse of a full-time student, know that the same entry exemptions will apply to international students who held a valid study permit, or had been approved for a study permit on or prior to noon on March 18th, 2020.
8. If you have supported the permanent residency application of a prospective employee abroad, there are entry exemptions for those whose applications who had been approved for permanent residence before the travel restrictions were announced on March 16th, 2020, but who had not yet travelled to Canada. This may also be a family reunification issue for your employees, as it is not uncommon for a worker to be in Canada temporarily with their dependent family members following once a PR application is approved. Families are given several months to land/finalize their approved PR application, so there will be many individuals in this circumstance.

We stand ready to assist through this crisis. All the best to your companies, employees and families.

[i] <https://www.tc.gc.ca/eng/mediaroom/interim-order-prevent-certain-persons-boarding-flights-canada-covid-19.html>

[ii] <https://www.dhs.gov/news/2020/03/20/joint-statement-us-canada-joint-initiative-temporary-restriction-travelers-crossing>

[iii] <https://www.canada.ca/en/immigration-refugees-citizenship/news/2020/03/canada-provides-update-on-exemptions-to-travel-restrictions-to-protect-canadians-and-support-the-economy.html>

[iv] <https://www.canada.ca/en/immigration-refugees-citizenship/services/coronavirus-special-measures.html>

#### About the Author:

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#### About McKercher LLP:

McKercher LLP is one of Saskatchewan's largest, most established law firms, with offices in Saskatoon and Regina. Our deep roots and client-first philosophy have helped our firm to rank in the top 5 in Saskatchewan by Canadian Lawyer magazine (2019/20). Integrity, experience, and capacity provide innovative solutions for our clients' diverse legal issues and complex business transactions.



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