

## Before You Try to Get an LMIA— What You Need to Know



- There have been **significant** changes to the Temporary Foreign Worker Program. See here for details:  
[http://www.esdc.gc.ca/eng/jobs/foreign\\_workers/reform/highlights.shtml](http://www.esdc.gc.ca/eng/jobs/foreign_workers/reform/highlights.shtml)

There are new, **serious implications for employers re non-compliance**:  
<http://www.advocatedaily.com/tfwp-and-imp-changes-raise-the-risks-to-employers.html>

- **LMIA**s are extremely difficult to get. There are no guarantees. Keep in mind that your employer has to complete an onerous application.
- **Very Important:** Those on an LMIA can still be laid-off or let go. Just as Canadian employees can lose their jobs due to cutbacks, so too can temporary foreign workers. In fact, temporary workers will be laid-off or let go before Canadians. If you are coming to Canada on an LMIA you need to have a contingency plan in case a lay-off occurs. LMIA's are non-transferable—they lead to closed worker permits with specific employers—you cannot simply move to a new employer. It is not advisable to lay deep roots (IE purchase a house or move an entire family over) until you have your Permanent Residency.



### **What is an LMIA?**

A Labour Market Impact Assessment is:

- An approval from Employment and Skills Development Canada for an employer to hire a Foreign Worker

### **Types**

- Permanent Job Offer for an NOC 0, A or B position
  - No application fee
  - Does not lead to a work permit **BUT**

- Supports your Express Entry application
- Approx. 10 – 20 days to process
- Temporary Job Offer
  - \$1000 application fee
  - Leads to a work permit
  - Can be used to support your Express Entry application (must be an NOC 0, A or B position) when combined with an offer of permanent indefinite employment from your employer upon your becoming a permanent resident
  - Can take several months to process

**The major differences:**

- processing times
- fee
- work permit

If you are applying under for PR under Express Entry and your current work permit has lots of time on it, then the LMIA Permanent Job Offer *may* be the better route.



- There is also a Dual Intent LMIA, making it possible to apply for both a temporary and a permanent LMIA at the same time.
  - \$1000 application fee
  - Leads to a work permit
  - Can be used to support your Express Entry application (must be an NOC 0, A or B position) when combined with an offer of permanent indefinite employment from your employer upon your becoming a permanent resident.
- Owner/Operator LMIAs
 

No advertising/recruitment efforts are required for an LMIA application for an owner/operator. The owner/operator must be a minority shareholder of a Canadian business who requires a work permit. This type of LMIA is not available to majority shareholders. The application must demonstrate that the owner operator is integral to the day-to-day operation of the business and will be actively involved in business processes/service delivery in Canada. The owner/operator application should include evidence that his/her temporary entry to the Canadian labour market will result in the creation or retention of employment opportunities for Canadians and permanent residents and/or skills transfer to Canadians and permanent residents.

## **Who is in Charge of applying for an LMIA?**

LMIA applications are entirely employer-driven. All costs related to an LMIA (advertising costs, processing fee, assistance from an authorized third party representative) must be paid by the employer and cannot be recovered directly **or** indirectly from the temporary foreign worker. The employer must attest to this on the LMIA application form.

## **How Does My Employer Apply?**

*The information below is merely an introduction—employers must do their own research. The penalties re non-compliance are severe—employers may wish to work with an immigration lawyer or consultant.*

[http://www.esdc.gc.ca/eng/jobs/foreign\\_workers/reform/info\\_emp.shtml](http://www.esdc.gc.ca/eng/jobs/foreign_workers/reform/info_emp.shtml)

In general, the first step in the LMIA process is for the employer to post a minimum of 3 job ads for a period of 4 weeks (and one to remain active for the full LMIA duration) in order to show efforts to recruit domestically for the position. The job ads must be very detailed and it must be clear that through the sources of advertising used the employer is making extensive efforts to find a Canadian or permanent resident of Canada for the position. Where two of the websites used are considered too similar i.e. Craigslist and Kijiji or Monster and Workopolis, the two websites will only be counted as one source of advertising.

Once the 4 weeks of advertising have passed the employer must assess all Canadian citizen and permanent resident applicants who respond to the job postings. The assessment must compare the individual's qualifications to those that were listed in the posted job advertisements. Any Canadian citizen and permanent resident applicants cannot be excluded based on a job requirement that has not been listed in the job postings and the foreign worker must meet all requirements listed in the job ads.

If no qualified Canadians are found as a result of the job postings, the employer may proceed with preparing and submitting an LMIA application to Employment and Skills Development Canada (ESDC)/Service Canada. This will require LMIA application forms, support letter confirming the job offer, details of recruitment efforts, information about the business, number of employees both foreign and domestic, etc.

In essence, employers are applying for an opinion on the impact that hiring a TFW would have on Canada's job market. As a result, it is important that employers follow all the necessary steps and submit all of the required documentation.

### **Send all documentation:**

By Mail or Fax or through an online account.

Temporary LMIA applications must be submitted to the [Service Canada Centre](#) responsible for processing the LMIA applications in the region where the TFW will be employed. Permanent and Dual Intent LMIA's are processed Temporary Foreign Worker Program Service Canada – Centre of Specialization in Saint John, NB.

Processing Centre Contacts:

[http://www.hrsdc.gc.ca/eng/jobs/foreign\\_workers/scc.shtml](http://www.hrsdc.gc.ca/eng/jobs/foreign_workers/scc.shtml)

### **What Happens After the Employer Applies for an LMIA?**

- ESDC/Service Canada may follow up with the employer requesting further information.
- If the employer has applied for an LMO/LMIA in the past, an application for an LMIA may trigger an Employer Compliance Review. If this happens, the triggering LMIA application will be placed on hold until the Employer Compliance Review has completed.
- The employer will receive a decision letter (timing can vary and can be up to 4 months)
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- If the decision is positive, the employer gives the employee a copy of the LMIA approval letter *and* a letter of employment/contract
- If this is for **a temporary job offer**, the employee then applies for a work permit (either online/by post from within Canada, or at the border). If the employee also wishes to use the LMIA for an Express Entry application s/he adds the LMIA information and the LMIA-based work permit information to his/her Express Entry profile. **NB.** For the permanent residence application, a letter from the employer confirming that it will offer the temporary foreign worker full-time, permanent, non-seasonal, indeterminate employment upon him/her becoming a permanent resident
- If this is for **a permanent job offer**, the employee can then use the LMIA to support his/her Express Entry application

### **What Does the Employee Carry to the Border?**

- LMIA Approval Letter
- Letter of Employment/Contract that matches the LMIA approval letter
- Résumé
- Proof that you have the skills to do the job (certificates, diplomas, letters of reference)
- Passport
- Current status document – work permit or visitor record - to show proof of valid legal status in Canada

*Please confirm all of this with the appropriate government authority in case the rules have recently changed.*

**NB:** Prepared by the Irish Canadian Immigration Centre for the use of Irish workers liaising with employers. The Irish Canadian Immigration Centre is *not* staffed by immigration lawyers or specialists. Employers must consult Employment and Skills Development Canada. This document is an overview and cannot be relied upon from a legal perspective.

