

## **COVID-19 IMMIGRATION UPDATE – AUGUST 5, 2020**

Due to the COVID-19 pandemic, there are various implications for those already in Canada, as well as those looking to travel to, or return to Canada, from abroad. Travel restrictions currently in place will particularly impact foreign nationals who may wish to enter Canada for work or similar purposes.

Below is an overview of current travel restrictions and other related immigration issues. Please note rules and restrictions are changing rapidly. Our Immigration Group would be pleased to field any questions on the below or similar issues, and to provide tailored and current advice as needed, given the information in this document is subject to change.

The following topics are discussed:

### **Contents**

Travel Restrictions .....	2
<i>LAND TRAVEL</i> .....	2
<i>AIR TRAVEL</i> .....	4
Post-Travel Isolation Requirements .....	9
Other Considerations .....	13
<i>Layoffs / temporary suspensions</i> .....	13
<i>Eligibility for Employment Insurance</i> .....	13
<i>Social Insurance Numbers</i> .....	14
<i>Health Coverage</i> .....	14

## TRAVEL RESTRICTIONS

Current travel restrictions depend on whether the traveller is coming to Canada by land or air, and, if by air, whether they are flying from the United States, or a country outside of the United States. Note that the following restrictions are focused on foreign nationals. Canadian citizens and landed permanent residents can continue to travel to Canada, but may have trouble boarding a flight with symptoms.

**Updated (June 10, 2020):** The below travel restrictions exist at the federal level. Foreign nationals must also consider provincial restrictions, however.

### **LAND TRAVEL**

#### Current Restrictions

Due to the ongoing pandemic and Canada's goal of limiting the spread of disease that could pose a severe public health risk for our Country, the Governor General in Council has made the *Minimizing the Risk of Exposure to COVID-19 in Canada Order (Prohibition of Entry into Canada from the United States)* pursuant to the *Quarantine Act*.

**Updated (August 5, 2020):** This order outlining the US-Canada border restrictions (as discussed below) is currently in place until August 21, 2020, subject to possible extension.

This order prohibits “foreign nationals” – namely, those who are not Canadian citizens or permanent residents – from entering Canada if:

- they exhibit certain COVID-19 related symptoms (or have reasonable grounds to suspect they have such symptoms);
- they are seeking to enter Canada for an optional or discretionary purpose (i.e. tourism, recreation, or entertainment); or
- based on the purpose of entry and length of their stay, the requirement to quarantine cannot be complied with.

**Updated (June 10, 2020):** Note, the prohibition that entry cannot be for an optional or discretionary purpose does not apply to foreign nationals who are immediate family members of a Canadian citizen or permanent resident if they are entering Canada to be with their immediate family member who is a Canadian citizen or permanent resident **and** if they can demonstrate their intent to stay in Canada for a period of at least 15 days. If they will stay for less than 15 days, they will still need to demonstrate that their purpose for entry is not optional or discretionary. We can assist in confirming if a given family member meets the definition of an “immediate family member”.

Note that the current order only specifies that entry cannot be for an optional or discretionary purpose and does not explicitly state entry must be for an “essential” purpose. In practice, there are accounts of “non-essential” land travel being restricted at the Canada-US border, which in most cases will mean optional and discretionary travel. That said, some border officers may apply a heightened “essential” test.

Travellers should be aware that they may face a higher threshold of needing to demonstrate an “essential” purpose of entry, despite what the order may say. Assessment by a border officer will involve a great deal of discretion - see below information on how this pertains to workers specifically.

Finally, there are a few narrow scenarios where the order does not apply, including for persons registered as an Indian under the *Indian Act*.

#### Temporary Foreign Workers

Based on the current order, foreign nationals intending to work in Canada may be able to enter Canada from the US by land and apply for a work permit at the port of entry (if needed) if they can successfully argue that their purpose of entering Canada for work is not optional or discretionary, if they are asymptomatic, and if they can comply with quarantine requirements.

It should be recognized that the ability to obtain a work permit before entering Canada may be impacted given the delays and barriers applicants can face in meeting all application requirements at this time, including to provide biometrics. Most biometrics collection centres in the United States are now open. If there is not an available collection centre, there is possibly an opportunity for a processing officer to waive biometrics requirements when processing a work permit application, though this would be highly discretionary and likely only exercised in very urgent and unique circumstances. Additionally, it is possible some individuals will already have valid biometrics if they have provided them in relation to a prior application for a work permit or study permit, for example.

**Updated (June 10, 2020):** With respect to those applying for a work permit before entering Canada, certain workers in the agricultural and agri-food sectors, health-care sector, and truck drivers are temporarily exempt from having to provide their biometrics before coming to Canada if the biometrics collection site closest to them is closed.

Individuals who are able to work without a work permit (i.e. individuals who are work permit exempt) may also be able to come to Canada from the US for work, if their purpose for entry is not optional or discretionary and they are not otherwise prohibited from entry.

Therefore, the following foreign nationals will likely have the best chance of admission to Canada from the US by land border at this time for work, assuming they otherwise meet the above requirements:

- those already holding a work permit or already officially approved in writing for a work permit; or
- visa-exempt foreign nationals who can apply for their work permit on entry to Canada (or who are exempt from requiring a work permit).

In all cases of foreign workers, it is recommended they travel with evidence (like an employer letter) that confirms the employer is still operating, not subject to any mandatory closure for non-essential businesses, and that the worker's job will still be available to them on arrival to Canada (and after they complete the relevant quarantine period, as applicable). Otherwise, the worker may be found to be entering for an optional or discretionary purpose.

**Updated (June 10, 2020):** Workers should also be prepared to answer questions about whether they need to be physically present in Canada for their work. If not, there is a risk their entry to Canada could be found optional or discretionary.

### CBSA Response

Current measures aside, it must be appreciated that Canada Border Services Agency ("CBSA") officers are receiving new information at a rapid pace, and that things are changing quickly. Due to confusion, misinterpretation of the rules, reliance on guidance they are receiving that may not be available to the public, or their own discretion, they may refuse to admit someone who otherwise is eligible to enter Canada by land. It therefore should be recognized that, while there is never a guarantee of entry to Canada for a foreign national, things are particularly uncertain at present.

### **AIR TRAVEL**

Pursuant to the *Aeronautics Act*, the Minister of Transport has made the *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 4*.

**Updated (August 5, 2020):** Note, the prior *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19 No. 2 and No. 3* have been repealed.

This Interim Order applies to certain private operators and air carriers operating aircrafts and outlines air travel restrictions for flights entering Canada based on whether the traveller is flying from the United States, or a country outside the United States. In general, these operators and carriers cannot permit foreign nationals to board a flight to Canada unless they meet a relevant travel exemption.

**Updated (August 5, 2020):** This section has been re-organized to better align with the current *Interim Order*.

### From outside the US

Private operators and air carriers departing from any country other than the United States must notify foreign nationals that they may be prohibited from entering Canada under the emergency order made by the Governor General in Council, pursuant to the *Quarantine Act*, entitled *Minimizing the Risk of Exposure to COVID-19 in Canada Order (Prohibition of Entry into Canada from any country other than the United States)*. However, certain foreign nationals are permitted to enter Canada from outside the US under this order if they meet a listed travel exemption.

Similarly, the foreign national will need to confirm that (to the best of their knowledge) they aren't prohibited from entering Canada under this order. Otherwise, they will not be permitted to board the flight. They also cannot provide knowingly false or misleading confirmation to this question.

In other words, foreign nationals need to fit into one of the available exemptions (discussed below) in the above named order to be permitted to board an aircraft for flight to Canada from a country outside the US at this time.

Additionally, even if one of the exemptions are met, the foreign national is still not eligible to board a flight if they are seeking to enter Canada for an optional or discretionary purpose, like tourism, recreation, or entertainment. Therefore, a worker with a work permit in hand (which meets an exemption, as noted below) may still not be eligible to board a flight to Canada if their particular purpose for entry is not actually to work, but rather to visit a friend in Canada.

**Updated (June 10, 2020):** There is again an exemption from the requirement that the purpose of entry not be for an optional or discretionary purpose in the case of a foreign national who is an immediate family member of a Canadian citizen or permanent resident in certain circumstances discussed on page 2 of this guide.

Anyone exhibiting COVID-related symptoms (or who has reasonable grounds to suspect they have such signs and symptoms) will also be prohibited from entering Canada by air from outside the US, and therefore will not be permitted to board a flight, even if they meet an exemption and are looking to enter for a non-optional and non-discretionary reason.

### Current Exemptions

As suggested by the above, foreign nationals who are not entering for an optional or discretionary purpose (or foreign nationals who are immediate family members of a Canadian citizen or permanent resident in the circumstances discussed on page 2 of this guide) may be eligible to travel to Canada by air from outside the US. However, anyone travelling to Canada by air from outside the US will also need to meet one of the narrow available travel exemptions.

These exemptions include, but are not limited to:

- immediate family members of Canadian citizens and permanent residents;
- persons authorized in writing for the purpose of reuniting with immediate family members;
- crew members under the *Canadian Aviation Regulations* or members of a crew as defined in the *Immigration and Refugee Protection Regulations*;
- French citizens who reside in Saint-Pierre-et-Miquelon who have only been there, the United States, or Canada in the past 14 days;
- those who, in the opinion of the Chief Public Health Officer:
  - do not pose a risk of significant harm to public health, or
  - will provide an essential service while in Canada;
- those whose presence in Canada, in the opinion of the Minister of Foreign Affairs, the Minister of Citizenship and Immigration, or the Minister of Public Safety and Emergency Preparedness, is in the national interest;
- those who already hold a work permit or study permit, or who already have an official, written approval letter for a work permit or study permit (if written approval of the study permit was received before noon EDT on March 18, 2020);
- those who are coming to work in Canada but who are exempt from requiring a work permit in some narrow, but critical fields (including providers of emergency medical services);
- licensed health care professionals with proof of employment in Canada;
- those seeking to enter Canada to deliver, maintain, or repair medically-necessary equipment or devices;
- those who had a permanent residency application approved, and received written notice of the same, before noon EDT on March 18, 2020, who still need to land as a permanent resident;
- workers in the marine transportation sector who are essential for the movement of goods by vessel as defined in the *Canada Shipping Act, 2001*; and

- those arriving at a Canadian airport aboard a commercial passenger conveyance who are transiting to a country other than Canada and who will remain in a sterile transit area.

### ***Temporary foreign workers by air from outside the US***

For clarity, those with a valid work permit or official work permit approval letter are eligible to board a flight to Canada from outside the US. That said, ability to obtain a work permit prior to entering Canada at this time may be limited as already discussed above. The same above noted biometrics exemptions for certain workers may apply, and certain biometrics collection centres have now reopened.

In the regular course, certain visa-exempt foreign nationals can travel to Canada and apply for a work permit on entry. While the current emergency order does not explicitly prohibit this in the case of individuals who otherwise meet an exemption to travel to Canada from outside the US, recent Government directives and Ministerial Instructions pursuant to the *Immigration and Refugees Protection Act* suggest that individuals coming to Canada from outside the US who require a work permit must apply for their work permit online before travelling to Canada and therefore cannot apply at the port of entry.

**Updated (July 9, 2020):** The above mentioned Ministerial Instructions preventing border applications for those travelling from outside the US have recently been extended such that they now expire on September 30, 2020. It is unclear if an additional extension will occur.

Additionally, workers who are work permit exempt may still be eligible to enter Canada by air from outside the US if they fall into an exemption from the travel restrictions.

Again, in nearly all cases the purpose for entry must not be optional or discretionary and the individual cannot be symptomatic, regardless of whether an exemption is met. As discussed, some border officers may impose a higher “essential” threshold.

As noted, it is recommended that all foreign workers travel with evidence (like an employer letter) that confirms the employer is still operating, not subject to any mandatory closure for non-essential businesses, and that the worker’s job will still be available to them on arrival to Canada (and after they complete the relevant quarantine period, as applicable). Otherwise, the worker may be found to be entering for an optional or discretionary purpose.

**Updated (June 10, 2020):** As also noted, workers should be prepared to answer questions about whether they need to be physically present in Canada for the work. If they do not, they could be found to be entering for an optional or discretionary purpose.

### From the US

Private operators and air carriers must notify every foreign national that they might be prohibited from entering Canada under the *Minimizing the Risk of Exposure to COVID-19 in Canada Order (Prohibition of Entry into Canada from the United States)* – this is the same order that is discussed above in the land travel section.

Before boarding, the foreign national has to confirm that (to the best of their knowledge) they are not prohibited from entering Canada under this order. If someone refuses to provide this confirmation, they will be denied boarding. Foreign nationals also cannot provide knowingly false or misleading confirmation to this question.

As in the land travel section, the foreign nationals who would be prohibited from entering Canada from the US are those who:

- exhibit certain COVID-19 related symptoms (or have reasonable grounds to suspect they have such symptoms);
- are seeking to enter Canada for an optional or discretionary purpose (i.e. tourism, recreation, or entertainment); or
- based on the purpose of entry and length of their stay cannot comply with the requirement to quarantine.

**Updated (June 10, 2020):** There is again the same exemption from the requirement that the purpose of entry not be optional or discretionary in the case of a foreign national who is an immediate family member of a Canadian citizen or permanent resident in the circumstances discussed on page 2 of this guide.

Finally, as also mentioned in the case of land travel border officers may nevertheless apply a heightened “essential” standard.

### ***Temporary foreign workers by air from the US***

The rules would be essentially the same as those under the “Temporary Foreign Workers” heading in the land travel section above.

**Updated (June 10, 2020):** Additional government guidance specifically mentions the ability to apply for a work permit at the border when travelling from the US (where eligible).

### Health Check

Air carriers also have to conduct a health check before boarding anyone on an aircraft. This will verify if the traveller is exhibiting any symptoms and if they have been refused boarding in the past 14 days for a medical reason related to COVID-19. Passengers can be denied boarding based on the health check outcome, and they are obligated to answer all health check questions and not provide answers they know to be false or misleading.

### Face Masks & Temperature Checks

**Updated (July 9, 2020):** Anyone planning to travel to Canada by air should have a face mask available for travel as they may be required to wear their mask throughout the travel process as directed. They will also be subject to temperature checks.

Note that the face mask must meet certain requirements. In particular, a “face mask” refers to any non-medical mask or face covering that is made of at least two layers of tightly woven material such as cotton or linen, is large enough to completely and comfortably cover a person’s nose and mouth without gaping and can be secured to a person’s head with ties or ear loops. Travellers must therefore ensure they have an appropriate face mask or covering available for air travel to Canada.

### Airline Response

Because air carriers and private operators can face consequences of improperly boarding passengers, there are accounts of them taking restrictive views of who is actually allowed to board a flight to Canada out of caution, particularly with respect to foreign nationals. Travellers therefore may face pushback even where they technically meet an exemption. That said, Transport Canada has issued guidance documents for airlines to help them assess whether individuals can board a flight from the US, and from outside the US, respectively, which will hopefully force airlines to properly consider available exemptions in the case of foreign nationals.

### CBSA Response

Even if a foreign national successfully boards a plane to Canada, they will still be examined by CBSA at their port of entry to Canada. As noted above in the land travel section, there are no guarantees of admission, even where the traveller may be technically eligible for entry.

## **POST-TRAVEL ISOLATION REQUIREMENTS**

There is a mandatory requirement for all persons entering Canada (even if they are asymptomatic) to self-isolate for 14-days, per the *Minimizing the Risk of Exposure to COVID-19 in Canada Order (Mandatory Isolation)*, No. 3 made pursuant to the *Quarantine Act*. This order is in effect from June 29, 2020 and will end on August 31, 2020.

This order first confirms that all persons entering Canada must answer relevant questions asked by a screening officer, quarantine officer, or other designated public health official, and provide any information or record in their possession that is requested. Additionally, all persons must wear a non-medical mask or face covering that the screening officer or quarantine officer considers appropriate upon entry, as well as while in transit to isolation or quarantine (unless the mask or face covering must be removed for security or safety reasons).

Further requirements are outlined depending on whether the person entering Canada is asymptomatic, or symptomatic:

- **Asymptomatic** travellers must quarantine themselves without delay for a 14-day period beginning on the day they enter Canada, and they must monitor for signs and symptoms of COVID-19 during this period. Note the following:
  - The 14-day quarantine period will restart if, during the 14-day period, the person develops any signs and symptoms of COVID-19 or if they are exposed to another person subject to the order who exhibits signs and symptoms of COVID-19.
  - Asymptomatic travellers cannot quarantine themselves in a location where they will be in contact with a vulnerable person, unless the vulnerable person is a consenting adult or is the parent or minor in a parent-minor relationship. “Vulnerable person” includes a person who:
    - has an underlying medical condition that makes them susceptible to complications relating to COVID-19;
    - has a compromised immune system from a medical condition or treatment; or
    - is 65 years of age or older.
  - Asymptomatic travellers also cannot quarantine in a place where they will not have access to the necessities of life, like food and medicine, and all quarantine plans must ultimately be considered suitable by the Chief Public Health Officer.
  - If an asymptomatic traveller is found to be unable to suitably quarantine as required for a 14-day period, they must board any means of transportation provided by the Government of Canada to transport to a quarantine facility, remain in quarantine at the facility until the end of the 14-day period, and undergo any health assessments as required by the quarantine officer.
  - For clarity, asymptomatic travellers should be able to proceed with a connecting flight/transportation, so long as they go straight to their final destination location where they will quarantine for the 14-day period.

- **Symptomatic** travellers must isolate themselves without delay in accordance with any instructions provided to them by a screening officer or quarantine officer, and they must remain in isolation for a 14-day period from their date of entry to Canada. They must undergo any health assessments a quarantine officer requires, monitor their signs and symptoms, and report to the public health authority if they require additional medical care. Note the following:
  - Symptomatic travellers are those exhibiting signs and symptoms of COVID-19, including a fever and a cough or a fever and difficulty breathing. Travellers will be considered symptomatic if they have these signs and symptoms or have reasonable grounds to suspect they have such signs and symptoms.
  - Symptomatic travellers also cannot isolate themselves in a place where they will be in contact with vulnerable persons (again, unless the vulnerable person is a consenting adult or the parent or minor in a parent-minor relationship), and cannot isolate themselves in a place where they will not have access to the necessities of life. As with asymptomatic travellers, the isolation plan for the symptomatic traveller has to be considered suitable by the Chief Public Health Officer.
  - Additionally, symptomatic travellers cannot use public transportation from the place they enter Canada to the place where they will isolate themselves – a need to use public transportation is considered an inability to properly isolate.
  - If a symptomatic traveller is found to be unable to suitably isolate as required for a 14-day period, they must board any means of transportation provided by the Government of Canada to transport to a quarantine facility, remain in isolation at the facility until the end of the 14-day period, and undergo any health assessments as required by the quarantine officer.
  - A symptomatic person who has to isolate in a quarantine facility may be able to leave the facility before the end of the 14-day period to isolate in accordance with requirements if they have authorization from a quarantine officer and if the new place of isolation is suitable in the opinion of the Chief Public Health Officer.

The isolation and quarantine requirements for symptomatic and asymptomatic travellers do not apply if the Chief Public Health Officer determines that the person does not pose a risk of significant harm to public health and in limited other circumstances.

Anyone travelling to Canada, including foreign nationals, and even those who do not have symptoms of COVID-19 must ensure they have a pre-determined and credible quarantine plan and location on arrival to Canada that meets requirements. Otherwise, they may have to quarantine in a designated location, like a hotel.

### Exemptions to quarantine requirement

There are only narrow exemptions from the quarantine requirements for asymptomatic persons. Some examples include certain members of crew; those entering Canada at the invitation of the Minister of Health for the purpose of assisting in the COVID-19 response; those providing an essential service in the opinion of the Chief Public Health Officer; those entering for the purpose of providing medical care or transporting essential medical equipment, supplies, or means of treatment; those supporting commercial or research fishing-related activities in certain circumstances, and some other individuals.

### Consequences of non-compliance

Failure to comply with this order is an offence under the *Quarantine Act* and can be met with a maximum penalty of up to \$750,000 or imprisonment of up to six months, or both. Additionally, if a person causes a risk of imminent death or serious bodily harm to another person while willfully or recklessly contravening the *Act* or regulations, fines could be up to \$1,000,000 or could face imprisonment of up to three years, or to both.

Spot checks will be conducted by the Government of Canada to verify compliance.

There may also be additional consequences at the provincial level for not complying with local isolation requirements.

Finally, employers should not in any way impede an employee's compliance with a quarantine/isolation obligation imposed upon them.

**Updated (April 15, 2020):** New regulatory amendments under the *Contraventions Act* came into force to further facilitate enforcement of the Federal *Quarantine Act*. The changes give additional flexibility to law enforcement agencies, including local and provincial police forces, to ticket individuals who have not complied with orders under the Federal *Quarantine Act*. This regime allows the individual to pay the ticket voluntarily and avoid trial and a criminal record. It is intended to save court and enforcement agency resources. The amendments do not however prevent law enforcement from pursuing matters through the summary conviction procedures set out in the *Criminal Code*, and are in addition to provincial and municipal orders already enacted in certain jurisdictions. They merely provide an additional tool.

### Employer Obligations

Employers of temporary foreign workers cannot prevent their foreign workers from complying with orders and regulations made under the *Quarantine Act* or the *Emergencies Act*. Employers may have various obligations to provide their foreign workers with certain wages and accommodations meeting certain standards during periods of isolation or quarantine on arrival to Canada and beyond.

## **OTHER CONSIDERATIONS**

### ***Impact to Immigration Applications***

There have been various impacts to the processing of work permit, study permit, permanent residency, citizenship, and other applications regardless of whether they are submitted inside or outside of Canada, though Immigration, Refugees and Citizenship Canada is generally continuing to accept and process applications. Delays can be expected, although certain applications for work in certain industries may also receive priority during this time.

Our Immigration Group can provide up-to-date information regarding any applications your workers may have ongoing, or that they plan to make, as necessary.

### ***Layoffs / temporary suspensions***

Businesses may have to make difficult decisions regarding their employees, including any temporary foreign workers in their employment, at this time. Our group can advise on how a layoff might impact a foreign national's current status in Canada, or impact any ongoing applications they may have, such as for permanent residency. This advice would need to be provided on a case-by-case basis.

### ***Eligibility for Employment Insurance***

Work permits can either be “employer-restricted” (i.e. specifying a particular employer and job) or “open” (i.e. no particular employer or role listed). Eligibility for Employment Insurance (“EI”) depends on proving availability to work.

#### *Open work permit holders*

Open work permit holders can accept employment and work for essentially any employer while their work permit remains valid, and they are therefore likely considered “available to work” and not disentitled from EI due to holding a work permit.

#### *Employer-restricted work permit holders*

Those with employer-specific work permits can only work for one employer and therefore are not normally considered available for work. That said, the fact of holding an employer-restricted work permit is not the only factor considered, and all relevant factors will be taken into consideration before a decision on eligibility is made.

Most guidance on this issue pre-dates the pandemic, and therefore it is unclear if the pandemic will be considered another circumstance that will work in favour of the individual. It is likely worth at least attempting to apply, but this may not be successful. If applying, the claimant should be clear that they will apply to Immigration, Refugees and Citizenship Canada for proper authorization for any new job offer they receive, or return to their current job as soon as it is offered.

### ***Social Insurance Numbers***

This is relevant to foreign workers and others: Service Canada is not accepting SIN applications in person at Service Canada centres, but is still accepting applications. It is possible to apply by mail or online, and it is recommended to include a note explaining why the request is urgent. See information [here](#).

### ***Health Coverage***

Foreign workers are generally eligible for health coverage on the basis of holding a work permit. They *may* also be eligible for health coverage if their work permit is expired, but they already have a new work permit application in processing that was submitted before their work permit expired – aka if they are on “implied status”. We can provide advice on this issue as needed.

### **Immigration Group Contact Information**

Our Immigration Team is pleased to advise on any COVID-19 related immigration questions you may have. Our team members may be reached as follows and can advise on these issues regardless of their location:

- **Kathleen Leighton** (Halifax) – [kleighton@stewartmckelvey.com](mailto:kleighton@stewartmckelvey.com)
- **Brendan Sheridan** (Halifax) – [bsheridan@stewartmckelvey.com](mailto:bsheridan@stewartmckelvey.com)
- **Sara Espinal** (Halifax) – [sespinalhenao@stewartmckelvey.com](mailto:sespinalhenao@stewartmckelvey.com)
- **Brittany Trafford** (Fredericton) – [btrafford@stewartmckelvey.com](mailto:btrafford@stewartmckelvey.com)
- **Josie Marks** (Moncton) – [jmarks@stewartmckelvey.com](mailto:jmarks@stewartmckelvey.com)