

## COVID-19 Immigration Update – November 3, 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 aimed to inform employers of current travel restrictions and other related immigration issues that pertain to foreign workers attempting to enter Canada.

Please note that 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. Please also note that this guide has been recently re-organized in light of the numerous changes that have occurred since its initial creation.

The following topics are discussed:

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## TRAVEL RESTRICTIONS

Current travel restrictions depend on whether the traveller is coming to Canada from the United States, or a country outside the United States, and particular requirements will depend on whether travel occurs by land or air. 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. Additionally, the below travel restrictions exist at the federal level. Foreign nationals must also consider provincial and territorial restrictions.

### ***Travel from the United States***

#### *Overview of 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)* (the "US Order") pursuant to the *Quarantine Act*.

**Updated (November 3, 2020):** The US Order outlining the US-Canada border restrictions (as discussed below) is currently in place until November 21, 2020, subject to possible extension.

The US 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, have reasonable grounds to suspect they have COVID-19, or know they have COVID-19;
- 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 they cannot comply with applicable quarantine requirements.

Note, there are some exceptions to the requirement that travel be non-optional and non-discretionary in the case of certain immediate and extended family members of Canadian citizens, permanent residents, or persons registered as an Indian under the *Indian Act*, as well as for foreign nationals entering Canada for certain compassionate grounds purposes.

Finally, there are a few narrow scenarios where the US Order does not apply, including for any person registered as an Indian under the *Indian Act*.

#### *Temporary Foreign Workers*

Based on the current US Order, foreign nationals intending to work in Canada may be able to enter Canada from the US by land or air 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 any applicable quarantine requirements.

Where an individual needs to apply for their work permit before entering Canada (for example, if they require a temporary resident visa to travel to Canada), employers should be aware that COVID-19 has had various impacts to the work permit application process and processing time that could result in delays. That said, workers in certain agriculture and agri-food occupations, certain health-care occupations, and film and television workers may be able to obtain priority processing.

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. Again, they must be asymptomatic and able to comply with any applicable quarantine requirements. One example of such work permit exempt individuals would be business visitors entering Canada from the US to provide after-sales services related to equipment.

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. Similarly, workers should 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 again be found optional or discretionary.

### ***Travel from Outside the United States***

#### *Overview of Current Restrictions*

The Governor in Council has made a second emergency order 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)* (the “**non-US Order**”).

**Updated (November 3, 2020):** The non-US Order outlining travel restrictions for those coming to Canada from a country other than the United States is currently in place until November 30, 2020, subject to possible extension.

Under the non-US Order, the general rule is that foreign nationals are prohibited from entering Canada if they arrive from a foreign country other than the United States. Like under the US Order, foreign nationals cannot enter Canada from a country other than the US if they have reasonable grounds to suspect they have COVID-19, if they have signs or symptoms of COVID-19, or if they know they have COVID-19.

Foreign nationals also cannot enter Canada from a foreign country other than the US if they seek to enter for an optional or discretionary purpose. Similar to the US Order, this means that travel for tourism, recreation, or entertainment is prohibited except in the case of certain immediate or extended family members of Canadian citizens, permanent residents, or persons registered as Indians under the *Indian Act*, as well as for foreign nationals entering Canada for certain compassionate grounds purposes.

As with the US Order, there are also situations in which the non-US Order as a whole does not apply, including for persons registered as an Indian under the *Indian Act*.

However, unlike the US Order, the non-US Order requires that foreign nationals fit into one of the enumerated travel exemptions in addition to the requirement to be travelling for an essential (or non-discretionary, non-optional) purpose. There are a number of travel exemptions, but only some apply to foreign workers, as further outlined below.

#### Temporary Foreign Workers

As noted above, foreign nationals, including foreign workers, who are not entering for an optional or discretionary purpose may be eligible to travel to Canada 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.

The exemptions that apply to foreign workers include, but are not limited to:

- *crew members* under the *Canadian Aviation Regulations* or members of a crew as defined in the *Immigration and Refugee Protection Regulations* who are entering Canada only to become such a crew member;
- a person who seeks to enter Canada at the invitation of the Minister of Health for the purpose of assisting in the COVID-19 response;
- a person who arrives by any means of a conveyance operated by the Canadian Forces or the Department of National Defence;
- 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 who already have an official, written approval letter for a work permit;
- 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;
- 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 who are entering Canada for the purpose of performing their duties in that sector; and
- those seeking to enter Canada on board a *vessel*, as defined in the *Canada Shipping Act, 2001*, that is engaged in research and operated by or under the authority of the Government of Canada or at its request or operated by a provincial government, a local authority or a government, council or other entity authorized to act on behalf of an Indigenous group.

For further clarity, even if one of the exemptions are met, the foreign national is still not eligible to board a flight to Canada from outside the US 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 above) 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.

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, 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 at present.

**Updated (October 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 January 31, 2021. It is unclear if an additional extension will occur.

As noted in the US section, COVID-19 has had various impacts to the processing of work permit applications made from overseas that could result in delays, but there is once again an opportunity for priority processing for certain agriculture and agri-food workers, certain health-care occupation workers, and film and television workers.

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. Note that the above mentioned travel exemption for those who will (in the opinion of the Chief Public Health Officer) provide an essential service while in Canada specifically includes technicians or specialists who are required to install, inspect, maintain or repair equipment necessary to support critical infrastructure (Energy and Utilities, Information and Communication Technologies, Finance, Health, Food, Water, Transportation, Safety, Government and Manufacturing), among a few other classes of persons. Therefore, if such a specialist or technician is also eligible to enter Canada as a work permit-exempt business visitor, they should be able to enter Canada for this work.

Like with travel from the US, it is again 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. The worker should again be prepared to answer questions about whether they need to be physically present in Canada for the work. If not, it is similarly possible they could be found to be entering for an optional or discretionary purpose.

### ***Airline Requirements***

#### ***Understanding the Basis for Travel***

Whether the foreign worker is travelling by air from the US or outside the US, private operators and air carriers are required to notify them when they are boarding the aircraft that they may be prohibited from entering Canada under the US Order or non-US Order respectively. The foreign worker will be required to confirm that (to the best of their knowledge) they are not prohibited from entering Canada under the applicable order. If the traveller refuses to provide this confirmation, they will be denied boarding. Foreign nationals also cannot provide false or misleading confirmation to this question. It is therefore vital that foreign workers understand the current travel restrictions and the basis upon which they are allowed to enter Canada before they attempt to board a flight to Canada.

#### ***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

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.

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.

Travellers coming to Canada by air will also be subject to temperature checks.

### 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**

Regardless of whether a foreign national is travelling to Canada by land or air, and whether they are coming from the US or outside the US, they will need to be examined by a Canada Border Services Agency (“CBSA”) officer on arrival.

Current measures aside, it must be appreciated that 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. For example, while most available guidance uses “essential” travel synonymously with travel that is “not optional or discretionary”, and even though both the US Order and non-US Order merely mention tourism, recreation, and entertainment as being examples of optional or discretionary travel that will be prohibited, there are some accounts of officers applying a heightened “essential” test when assessing a traveller’s purpose for travel.

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. This fact is important for employers to keep in mind, as of course this border confusion can impact plans for foreign workers to come to Canada for work, even where eligible, and this can disrupt work schedules and business operations more generally.

### ***Documentation for Travel***

Foreign workers seeking to come to Canada (and/or their employers) should seek advice about what documentation is required for their travel. Documentation will need to demonstrate their authorization to work in Canada, their ability to travel to Canada based on available travel exemptions, and their quarantine plan (discussed below), among other details. Exact documentation will vary depending on the situation, but immigration counsel will be able to assist in developing an appropriate package to facilitate entry to Canada.

## **POST-TRAVEL QUARANTINE / ISOLATION REQUIREMENTS**

### ***Overview of Quarantine / 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. 7 (the “**Isolation Order**”) made pursuant to the *Quarantine Act*. This order is in effect until November 30, 2020, unless extended.

The Isolation 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.

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 begin again if, during the 14-day period, the person develops any signs and symptoms of COVID-19, are exposed to another person subject to the Isolation Order who exhibits signs and symptoms of COVID-19, or tests positive for 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, without leaving quarantine, 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.
- Individuals who must quarantine themselves may leave Canada before the expiry of the 14-day period if they quarantine until they depart from Canada.
- **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, have reasonable grounds to suspect they have such signs and symptoms, or know they have COVID-19.
- 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 without leaving isolation. 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 (including an aircraft, bus, train, subway, taxi, or ride-sharing service) from the place they enter Canada to the place where they will isolate themselves – a need to use such 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.
- Individuals who must isolate may, at the discretion of and in accordance with instructions of a quarantine officer, leave Canada before the expiry of the 14-day isolation period if they isolate themselves until they depart from Canada in a private conveyance.

Regardless of whether an individual is required to quarantine or isolate under the Isolation Order, they must, during the 14-day period from the date of their entry to Canada, wear a non-medical mask or face covering that a screening officer or quarantine officer considers suitable while they are entering Canada, and while they are in transit to a place of quarantine or isolation, a health facility, or their place of departure from Canada, unless they are alone in a private vehicle.

Anyone travelling to Canada, including foreign nationals entering for work or otherwise, 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, or may risk refusal of entry.

### ***Exemptions to Quarantine Requirements***

There are only narrow exemptions from the quarantine requirements for asymptomatic persons, and only some of these exemptions will be relevant for foreign workers. The categories of exemptions from the quarantine requirements for asymptomatic persons largely mirror the travel exemptions mentioned above in the section for Travel from Outside the United States. For example, there are similarly exemptions for 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 whose presence is in the national interest as determined by the Minister of Foreign Affairs, the Minister of Citizenship and Immigration, or the Minister of Public Safety and Emergency Preparedness; 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 a few other categories of workers.

Additionally, asymptomatic individuals who, under an arrangement entered into between the Minister of Health and the minister responsible for health care in the province where the person enters Canada, are participating in a project to gather information to inform the development of quarantine requirements, are exempt from quarantine requirements so long as they comply with any conditions imposed on them by the Minister of Health. For example, Alberta recently announced a pilot that works to modify and reduce the quarantine requirements for those who are tested for COVID-19 at the border and who agree to subsequent follow-up testing during the 14-day period.

Finally, there are a few other scenarios in which the quarantine requirements for asymptomatic individuals do not apply, including where the Chief Public Health Officer determines that the person or class of persons does not pose a risk of significant harm to public health, and in certain compassionate grounds situations.

Those who are exempt from the quarantine requirement must, during the 14-day period from the date of their entry to Canada, wear a non-medical mask or face covering that a screening officer or quarantine officer considers suitable if they are in public settings where physical distancing cannot be maintained.

### ***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.

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*.

## **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*, and should in no way impede an employee's compliance with a quarantine/isolation obligation imposed upon them. Employers may have various obligations to provide their foreign workers with certain wages or even accommodations meeting certain standards during periods of isolation or quarantine on arrival to Canada and beyond.

Further, many workers coming into Canada may require some assistance in arranging to receive the necessities of life (food, medicine, basic supplies, etc.) while they are in quarantine. Employers should help facilitate this, but do not necessarily have to cover the related costs. Employers should not deny assistance that, if not provided, would result in the worker needing to leave quarantine to obtain food and other basic survival items.

Note that employers are subject to inspection, and could face significant penalties if they do not follow requirements, depending on the severity of the non-compliance and number of workers impacted. Employers should be sure to seek advice to clarify their obligations to temporary foreign workers during the pandemic.

## **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 some specific industries may also receive priority during this time as discussed.

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 centres are gradually reopening to help serve most Canadians within 100 km of where they live and to support clients who face barriers to accessing SIN online. Otherwise, it is possible to apply for a SIN by mail or online. 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, including how to obtain an exemption from travel restrictions and/or quarantine requirements. 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)
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