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Canada – New Employer Portal and the International Mobility Program

by Howard Greenberg, KPMG Law LLP – Tax + Immigration, Canada (KPMG Law LLP in Canada is a KPMG International member firm)

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Immigration, Refugees and Citizenship Canada ("IRCC")¹ recently implemented a new, **mandatory** Employer Portal under the International Mobility Program ("IMP"). Prior to submitting an application for a Labour Market Impact Assessment ("LMIA")-exempt work permit for a foreign national, the employer is required to submit information relating to the foreign national's offer of employment and a fee through the Portal. This information was previously collected from the electronic *Offer of Employment to a Foreign National Exempt from a Labour Market Impact Assessment* ("IMM5802 Form").

Why This Matters

Employers should enroll in the Employer Portal immediately to foster timely and uninterrupted processing of work permit applications under the IMP. Moreover, Canadian employers and companies contracting for services with foreign employers must also ascertain the accuracy of all information provided in the Employer Portal as the data provided will be reviewed by Immigration officials in the Employer Compliance Inspection process.

Background

Since February 21, 2015, employers have been required to submit via e-mail employment-related information to IRCC using the IMM5802 Form for each foreign national they wish to hire under the IMP, as well as to pay a C\$230 compliance fee. On October 26, 2015, the Employer Portal was introduced to replace the IMM5802 Form for collecting information and compliance fees. However, employers may continue to submit information with the IMM5802 Form via e-mail, when authorized to do so by IRCC in emergency situations.²

Immediate Action Items for Employers

- Employers must sign up for the new Employer Portal immediately as all work permit applications under the IMP must be verified through the Portal prior to submission at a Visa Office or Port of Entry. Please see below for the employer enrollment link and a step-by-step guide:

[The Employer Portal log-in](#)

[Enrollment guide](#)

- Employers have the ability to designate third parties to submit the required information on their behalf. Employers must first create an Employer Portal account; upon approval by IRCC, employers can then designate a KPMG Law representative – or their current immigration services provider – to manage the Portal on their behalf.

Considerations for Canadian Companies Contracting with Foreign Employers

Where a Canadian company contracts with a foreign company for services to be performed by foreign nationals in Canada, IRCC Guidelines provide that the Canadian company may be required to complete and submit the employment information and compliance fee in its Employer Portal.

For the purposes of the Immigration and Refugee Protection Act and Regulations, CIC requires that the Canadian company that has contracted the services of a foreign company complete and submit the IMM5802. Although the foreign national may often be – and remain – a direct-hire employee of the foreign company, and the foreign company may pay the wages of the foreign national, it is the Canadian company that is creating the need for the foreign national to enter Canada. The contract with the foreign company is the reason why the foreign national is seeking entry into Canada.³

Further, the Employer Portal (and the previous IMM5802 Form) is intended to collect information on foreign workers' terms and conditions of employment so that employers can meet their compliance obligations under Canadian immigration law and regulations.

[T]he employer should be the organization who will ensure compliance with the regulatory conditions imposed on the employer. In general, the regulatory conditions imposed are:

- *providing a workplace that is free of abuse,*
- *complying with Canadian federal and provincial labour standards,*
- *remaining active during the work permit period, and*
- *ensuring that working conditions and occupation comply with the offer of employment.*

The employer will have a role in supervising the foreign employee (setting the time and place of work, removing unsuitable workers, reviewing work completed, etc.).⁴

Notwithstanding the above guidelines, under current practices, foreign employers may be able to complete and submit the required information in the Employer Portal; for instance, a U.S. company may provide its IRS Number to demonstrate employer status in the United States.⁵ However, companies should obtain advice from their immigration advisers in this regard to determine compliance with the proper procedures and requirements.

Canadian companies engaged in service contracts with foreign companies that rely on foreign workers must be careful in completing the Employer Portal, in order to limit potential liabilities as well as to accurately characterize their relationship with the foreign company and its employees.

KPMG Note

Employers must enroll with the Employer Portal immediately. In addition, employers must have the third party representatives listed as secondary users.

Employers should be aware that anyone with access to the Employer Portal is able to see all completed applications. This is important if there are pending confidential applications and junior employees have access to the account.

Canadian companies contracting with foreign employers for services to be performed by foreign workers must implement appropriate processes and procedures to mitigate liabilities prior to completing the Employer Portal.

Footnotes:

- 1 Previously known as Citizenship and Immigration Canada or "CIC".
- 2 See "International Mobility Program: Employer-specific work permits with Labour Market Impact Assessment exemptions," Government of Canada,
<http://www.cic.gc.ca/english/resources/tools/temp/work/admissibility/specific.asp> .
- 3 IMM 5802 Form Aid, Citizenship and Immigration Canada,
<http://www.cic.gc.ca/english/information/applications/guides/5802ETOC.asp> .
- 4 See above.
- 5 See above.

This article is excerpted, with permission, from "[New Employer Portal: Filing Work Permit Applications under the International Mobility Program \(i.e., Intra-Company Transfers\)](#)," in *e-Alert* (2015/10), a publication of the KPMG Law LLP, a KPMG International member firm in Canada.

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