

Beyond the Border

Immigration Update
July 2022

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INTRODUCTION

Hiring international talent? The Stewart McKelvey Immigration team has the experience necessary to help get your talent on the ground in a timely and compliant manner. Team members have the experience needed to counsel and assist clients who bring international business travelers, professionals or skilled workers to Canada through the necessary employment-based immigration processes.

We are pleased to present the ninth installment of *Beyond the Border*, a publication for employers aiming to provide the latest information and analysis on new immigration programs and immigration-related issues.

In this issue, insight is provided into the growing labour shortages in Atlantic Canada and the region's focus on international talent; the launch of a new recruitment platform for Ukrainians; best practices for employers hiring international talent; and an update on the economic mobility program for refugees.

Should you have any questions, or would like to learn more about the topics discussed, please contact a member of our [Immigration Group](#).

ATLANTIC CANADA OFFERS IMMIGRATION PATHWAYS FOR WORKERS IN TRUCKING, HEALTH, CONSTRUCTION AND FOOD SERVICE INDUSTRIES

[Sara Espinal Henao](#); Halifax

It is a well-known fact that Atlantic Canada needs workers. In the aftermath of COVID-19, regional employers in the trucking, health, construction, and food service industries in particular have faced challenges filling their growing labour shortages with local talent. Demand across provinces for workers in these sectors has skyrocketed over the past years.

In light of this high demand, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador have turned their attention to international talent to help employers address their labour needs. Enter the Provincial Nominee Program (PNP) occupations in demand streams. Across Atlantic Canada, PNPs have been modified to target the most in-demand professions. While eligible occupations are subject to change in response to labour shortages, these three provinces are currently facilitating work permits and permanent residence processes for those with job offers in the above-mentioned industries.

Nova Scotia's PNP: Occupations in Demand Stream

In Nova Scotia, the *Provincial Nominee Program: Occupations in Demand Stream* is currently targeting foreign nationals with a full-time job offer from a Nova Scotia employer in occupations that fall under the following National Occupational Classification (NOC) codes:

- NOC 3413 (Nurse aides, orderlies and patient service associates)
- NOC 6513 (Food and beverage servers)
- NOC 6711 (Food counter attendants, kitchen helpers and related support occupations)
- NOC 6731 (Light duty cleaners)
- NOC 7511 (Transport truck drivers)
- NOC 7521 (Heavy equipment operators (except crane))
- NOC 7611 (Construction trades helpers and labourers)

In addition to having a full-time job offer from a Nova Scotian employer in any of the above occupations, successful candidates must be 21 to 55 years old, have one year of relevant work experience, have a high school level education, and prove English or French language ability equal to Canadian Language Benchmark (CLB) Level 4.

The application process involves first applying for a provincial nomination to the Nova Scotia Nominee Program (NSNP) Occupations in Demand Stream. Once the nomination is approved, applicants must submit their application for permanent residence at the federal level within six months of receiving their nomination certificate. If the applicant needs to extend their worker

status pending processing of the permanent residence application, a provincial work permit referral letter can be requested to that end.

Prince Edward Island's PNP: Occupations in Demand Stream

Like Nova Scotia, PEI has also tailored its Provincial Nominee Program to address ongoing labor shortages. To be eligible to apply under the *PEI Occupations in Demand Stream*, applicants must have a full-time, non-seasonal, permanent job offer from a PEI employer in one of the following occupations:

- NOC 3413 (Nurse aides, orderlies and patient service associates)
- NOC 7511 (Transport truck drivers)
- NOC 7611 (Construction trades helpers and labourers)
- NOC 6731 (Light duty cleaners)

Additionally, they must be 18 to 59 years old, have at least one year of work experience directly related to the job, have a secondary level education, and provide a valid language test result with a minimum score of CLB level 4.

Individuals who meet program criteria must submit a profile in the province's Expression of Interest (EOI) system. If their profile is selected, they will receive an Invitation to Apply (ITA) for a provincial nomination. Upon being invited to apply, applicants can submit a nomination request and then apply for Permanent Residence at the federal level within three months of receiving their nomination certificate. If the applicant needs to extend their worker status pending processing of the permanent residence application, a provincial work permit referral letter can be requested to that end.

New Brunswick's PNP: Skilled Worker Stream

Similarly, the New Brunswick Skilled Worker Stream is now open to foreign nationals who have an offer of employment for a full-time, permanent position from an employer based in New Brunswick. This PNP Skilled Worker Stream currently prioritizes foreign nationals whose intended occupation is in a priority sector. This includes those being offered employment in health care.

To be eligible, applicants must have a valid job offer, be between 19 and 55 years of age, provide a valid language test result with a minimum score of CLB level 4, and have a secondary level education or above. They also must have 12 months of recent experience relevant to their offered job.

Furthermore, effective March 1, 2022, the province launched its new PNP Skilled Worker Stream for Transport Truck Drivers (NOC 7511). This pathway is available to foreign workers with a full-time, non-seasonal truck driving offer of employment from a New Brunswick employer

at a wage that meets or exceeds wage levels for the occupation in the region where they will be working.

In addition to meeting the job offer, age, language, and education requirements that would be applicable under the general PNP: Skilled Worker pathway, this truck driver specific stream requires that applicants have 24 months of relevant experience as a Transport Truck Driver within the past five years, including at least six months of continuous employment in New Brunswick while on a valid work permit and with a New Brunswick Driver's License.

The PNP: Skilled Worker Stream, including its truck driver specific pathway, operates with a points-based system. If all eligibility requirements are met, the applicant will create an online candidate profile with the province. Applicants with valid offers of employment from a New Brunswick company will receive an Invitation to Apply (ITA) for a provincial nomination. Once the application for provincial nomination is received, the applicant will be assessed using a points-based system according to their age, language, education, previous work experience and adaptability. A minimum of 60 points is required to obtain a nomination. Applicants whose intended occupation in the province is in health care will receive 10 additional points, maximizing their chances of receiving a nomination.

Nominated applicants will then submit their application for permanent residence at the federal level prior to the expiry date indicated in their issued Certificate of Nomination. If the applicant needs to extend their worker status pending processing of the permanent residence application, a provincial work permit referral letter can be requested to that end.

Newfoundland's Priority Skills NL Pathway

In Newfoundland, the Priority Skills NL process seeks to facilitate the settlement of foreign nationals with in-demand occupations. Individuals with relevant experience in select technical, aquaculture, IT and, importantly, health care sector jobs, may benefit from the program.

At present, this pathway is open to the following health care workers:

- Physicians
- Nurse Practitioners (NP)
- Licensed Practical Nurses (LPN)
- Personal Care Attendants (PCA)
- Clinical Psychologists
- Medical Physicists
- Radiation Therapists
- Dosimetrists

Eligible applicants must be at least 21 years of age, have at least one year of work experience in the past 10 years directly related to the job, intend to live permanently in the province, and provide a valid language test result with a minimum score of CLB level 5.

Eligible applicants can complete a scored Expression of Interest questionnaire with the province. Those who exceed a minimum score of 60 points will be assessed by the province as well as by provincial employers who may vote on whether they feel the applicant would be able to successfully settle in Newfoundland and Labrador. During this voting process, employers may wish to contact applicants to make offers of employment. Successful applicants will receive an invitation to apply to the Newfoundland and Labrador Provincial Nominee Program and will be asked to submit an official Expression of Interest through the province's online portal. Those who meet the eligibility criteria for either the PNP Skilled Worker or PNP Express Entry Skilled Worker categories will then be issued a provincial nomination certificate, which can be used to apply for permanent residence at the federal level. Applicants who need to extend their worker status pending processing of the permanent residence application can request a provincial work permit referral letter to that end.

Why we like these programs

1. Lower Education and Language Proficiency Requirements

One of the attractions of these PNPs is their lower language and education requirements compared to most other immigration pathways at federal and provincial levels. Secondary level education and a language proficiency equivalent to Canadian Language Benchmark 4 are sufficient to satisfy the education and language criteria for the NS, PEI, and NB programs. For the NL program, a CLB 5 is required for language ability. These requirements facilitate the process for a wider range of applicants and allow employers to fill their labour demands with ease.

2. A built-in pathway for temporary residence

Further, applicants under these provincial programs have the option of asking for a Provincial letter of support after they have been nominated by their Province. They can use this letter to apply for a temporary work permit or to renew their existing permit. This temporary residence pathway lets them work in the province while the government processes their application for permanent residence, and helps employers to fill in their labour needs early on in their immigration process.

3. Option to use the programs from outside Canada

Lastly, while New Brunswick's PNP option presently requires truck driver applicants to have work experience in the province, applicants using the PNP streams in PEI, Newfoundland and Labrador, and Nova Scotia do not have this requirement. As such, Employers may utilize the programs for talent recruitment outside of Canada. This expands the pool of potential international talent that employers can access to address their shortages.

SPECIAL RECRUITMENT PLATFORM FOR UKRAINIANS

[Brittany Trafford](#); Fredericton

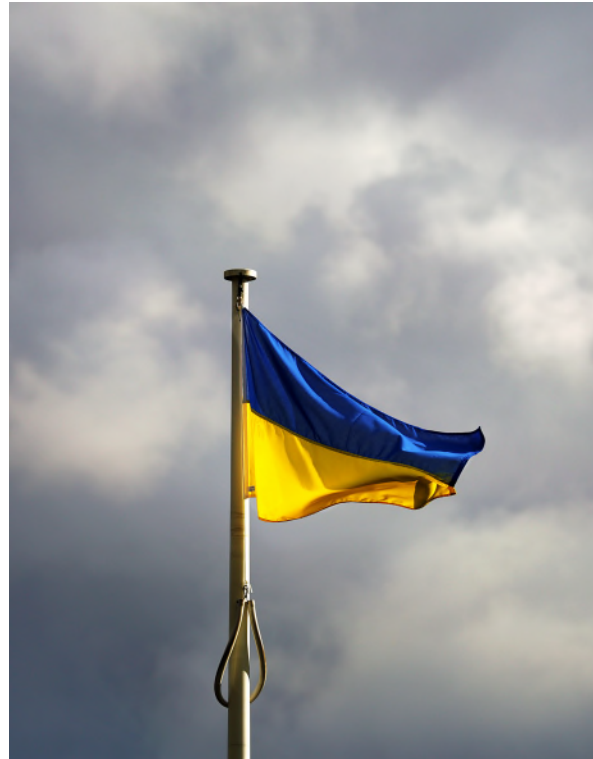
In March 2022, Canada's Minister of Immigration, Refugees, and Citizenship, Sean Fraser, announced the launch of the Canada-Ukraine Authorization for Emergency Travel ("CUAET"). With CUAET, Ukrainians and their immediate family members can come to Canada and stay as temporary residents for up to three years.

Ukrainian nationals are eligible to apply for open work permits, valid for three years, which would allow them to work for almost any Canadian employer.

To assist employers who are interested in employing Ukrainians and to help those individuals find jobs, the Canadian Government has set up a special Job Bank portal for posting positions.

Employers can advertise on Job Bank by creating an account and a draft job posting.

Employers will then submit a [form](#) to let Job Bank know they are seeking Ukrainian workers. When the job is posted all job seekers will be able to see the posting, but Ukrainian job seekers will be able to filter to find the jobs Employers have identified as being for Ukrainians.



HR BEST PRACTICES WHEN EMPLOYING FOREIGN WORKERS

[Brendan Sheridan](#); Halifax

Canadian employers are increasingly relying on foreign workers to fill gaps in the labour market and to provide specialized skills. In 2020, there were a total of 84,609 work permit holders under the Temporary Foreign Worker Program and an additional 242,130 work permit holders under the International Mobility Program.¹ While this was a slight decrease over prior years, this decrease can be attributed to COVID-19 and the related travel restrictions and business closures. Prior to 2020, the number of foreign workers had been steadily increasing.

As there are a significant number of Canadian employers relying on foreign talent, it is important they understand related best practices and obligations that are unique to the employment of foreign workers. Below are some recommendations, though this is not a complete list and there may be other actions employers should take to ensure compliance.

1. Know the Obligations when Employing Foreign Workers

As noted, employers have additional immigration-specific compliance requirements when employing foreign nationals in Canada when compared to the usual rules governing the employment of Canadian citizens and permanent residents. Prior to recruiting and hiring foreign nationals, it is important to understand each obligation an employer is agreeing to undertake.

Employers who recruit and hire foreign workers must be aware of and comply with the following obligations:

- The employer must remain actively engaged in the business in which the job offer to the foreign worker was made.
- The employer must comply with the federal and provincial laws that regulate employment and the recruiting of employees.
- The employer must provide the foreign worker with employment in the same occupation as that set out in the offer of employment and with wages and working conditions that are substantially the same as, but not less favourable than, those in the same offer.
- The employer must make reasonable efforts to provide temporary foreign workers with a workplace that is free of abuse.
- The employer must be able to demonstrate that any information they provided in relation to an offer of employment was accurate.
- The employer must retain any document that relates to compliance with the imposed conditions for a period of at least six years.

¹<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/annual-report-parliament-immigration-2021.html>

While many of these obligations are common sense, it is important to note that workers on employer-specific work permits do not have the same flexibility as Canadian or permanent resident workers. Specifically, foreign workers on closed work permits cannot, in most circumstances, change their employment location, wage, position or company without seeking a new work permit. As such, it is important for employers to seek legal advice prior to making any changes to a foreign worker's employment with the company.

The Government of Canada has also implemented employer compliance obligations for foreign workers in response to the COVID-19 pandemic. These additional compliance obligations include:

- The employer must not do anything that prevents a foreign national from complying with orders, regulations or laws related to COVID-19.
- The employer must provide a foreign national with wages that are substantially the same as those set out in the offer of employment during an isolation period required on entry to Canada.

2. Keep a Tracking Chart of Foreign Workers Employed with the Company in Canada

When employing foreign nationals, it can be useful to keep a tracking chart of all foreign worker employees that confirms their authorization to work in Canada. This chart can be relatively brief, but should confirm that the employee does have authorization to work for the company in the position they are currently filling. As an example, the tracking chart can include the following information:

- The foreign worker's name
- The foreign worker's position listed on their work permit
- The type of work permit currently held by the foreign worker (ex: Post-Graduation work permit, spousal open work permit, employer-specific work permit)
- The issue and expiry dates of the foreign worker's work permit
- A copy of the foreign worker's work permit (or other authorization to work in Canada)

While it is not essential that employers maintain tracking charts for their foreign national employees, it does provide a convenient means to confirm that the foreign worker does have authorization to continue to work for the company. It also allows the company to ensure that they are aware when the worker will no longer be able to continue working for the company or when the foreign national must apply to extend their work permit.

3. Keep a Detailed Employment File for Each Foreign Worker for Six Years

Immigration, Refugees and Citizenship Canada (IRCC) and Service Canada have the authority to conduct employer compliance reviews and inspections in relation to foreign workers. These inspections can simply be based on random selection, due to previous non-compliance with obligations, or because of suspected non-compliance. These compliance reviews or inspections

will review whether the company was compliant with their obligations when employing the foreign worker including, but not limited to, whether the worker was provided the wages and benefits specified in their offer of employment; the position the worker was working in and the duties completed; and the hours worked by the foreign worker.

As it is possible to be selected for a compliance inspection for any number of reasons, it is important that employers are prepared to demonstrate that the company has been compliant with all obligations. As such, it is advisable to keep a detailed employment file for each foreign worker. These files can include copies of employment contracts; work permits held during the employment period; Labour Market Impact Assessment Applications and approvals or Employer Compliance Submissions; pay stubs; and time sheets, among other documents.

These compliance reviews or inspections can be conducted up to six years after an individual was issued a work permit, and therefore records should be kept at least for this period of time.

4. Prepare a Corporate Immigration Policy

Employers may want to prepare a clearly defined policy on what assistance the company will be providing to employees, particularly when employing more than one foreign national. This would allow the company to present and communicate a consistent message to all foreign workers.

This policy can outline such things as the employee's responsibilities relating to the ongoing maintenance of their status to work in Canada; company expectations around work permit renewals and timelines for same; the eligibility and process to request employer support for temporary and permanent residence applications; the level of support the employer is willing to provide for said applications; and any settlement support the employer will provide to the worker.

A copy of this immigration policy can be provided along with the contract or offer of employment so that the employee understands at the outset both their obligations and the company's responsibilities to them. This practice helps manage expectations and ensure consistent messaging to all workers.

5. Plan Ahead and Set Reasonable Expectations for the Start of Employment

When it comes to hiring or extending a foreign worker's employment, it is essential that employers plan ahead. The immigration process can be complex and lengthy. It can take several months before a foreign worker is given authorization to work in Canada once the required steps are completed and applications are submitted. If the company is expecting to hire a foreign worker or extend a foreign worker's employment, it is essential they begin looking into the necessary steps as soon as possible to fully understand the obligations required and timeline to get the foreign worker into and/or authorized to work in Canada.

Planning ahead also allows the company to set reasonable expectations within the organization and with the foreign national themselves. In most cases, it is unlikely a foreign worker will be able to join the company immediately as may be the case with a Canadian citizen or permanent

resident. As such, understanding the timing of when the worker can start is helpful for planning and scheduling purposes.

Conclusion

As Canadian companies are turning more and more to foreign workers to help fill labour gaps and provide specialized skills, it is essential that companies begin taking steps to understand the added obligations of employing foreign workers and prepare for the same.

The above article contains some tips to help employers prepare to hire and employ foreign workers in a compliant manner, but it is important to seek advice to ensure any unique circumstances are accounted for. You can read more about [Employer Immigration Compliance Obligations](#) and [Five Compliance Tips \(for employers of foreign workers\)](#) in our previous Thought Leadership articles. The immigration process can be complex and time consuming, so it is crucial to seek support at the outset.

UPDATE ON THE ECONOMIC MOBILITY PROGRAM FOR REFUGEES (PHASE 2)

The Economic Mobility Pathways Project (“EMPP”)

[Brittany Trafford](#); Fredericton

Brief Overview

In an attempt to address the Canadian labour market shortages, the Economic Mobility Pathways Pilot (“EMPP”), was introduced in 2018. The EMPP started out as a small research project to see whether there were refugees with the skills and qualifications to access existing economic immigration pathways. Now, with some administrative measures to offset the circumstances of their displacement, the EMPP is working to provide long lasting solutions for skilled refugees who are needed by Canadian employers. The EMPP was implemented in two phases with the goal of immigrating skilled refugees to Canada through existing economic programs. A [previous article](#) in our publication reviewed Phase 1. We are now currently in Phase 2 of the EMPP.

Lessons from Phase 1

Phase 1 of the EMPP facilitated the immigration of six skilled refugees and nine of their family members. The initial findings of Phase 1 demonstrated that there are skilled refugees who are able to meet the program requirements, but that they faced a number of challenges when applying as economic immigrants:

- **Regulatory and Legislative Obstacles** – As it stands, there are regulatory requirements that prohibit the issuance of work permits to those who are unable to meet the requirements set out in the law. Examples are found under the *Immigration and Refugee Protection Act* and the *Immigration and Refugee Protection Regulations*.
- **Operational Accommodations** – There is a need for further examination as to how to make the process, as a whole, smoother for the incoming refugees.
- **Identification of Refugee Skills** – The current program is not collecting enough data regarding the incoming refugees’ skills and employment experience, which impacts the determining of eligibility for job opportunities.
- **Access to Information and Awareness** – Many refugees are not aware of their options falling under the newer pathways.
- **Job-Matching with Employers in Destination Countries** – Refugees are often limited in their ability to make connections with prospective employers (ex: no

stable internet connection, etc.) and employers are unaware of the talent that is present in the overseas populations.

- **Financial Requirements** – Refugees may not have the funds required to cover the costs associated with economic immigration.

Phase 2

Phase 2 of the EMPP will incorporate lessons learned from Phase 1 and will involve implementation of public policy intended to support the program. The public policy introduces facilitation measures that will remove major displacement-related barriers, thus making it easier for skilled refugees to access economic immigration. This public policy is intended to address the unique challenges that are faced by skilled refugees due to the circumstances of their displacement when applying for the economic immigration pathways to Canada.

The public policy will exempt EMPP clients overseas from some applicable requirements of the Provincial Nominee Class, the Atlantic Immigration Pilot Program, the Atlantic Immigration Class and the Rural and Northern Immigration Pilot economic immigration pathways.

Some of the exemptions include: allowing candidates to apply for the Immigration Loan Program and to show financial resources such as grants or loans for which access is not yet in place as part of their financial admissibility; exempting the time-bound requirements for work experience selection criteria (allowing significant gaps in the work history); considering exemptions to some of the documentation requirements and assessment of other evidentiary proof in substitution (for example for proof of work history, but not for any required language or educational requirements).

EMPP candidates must still meet the class membership and the selection criteria of one of the above mentioned existing economic classes, in addition to satisfying a processing officer that they can be established economically in Canada. EMPP candidates will immigrate to Canada under one of the existing permanent residence economic classes and will be eligible for settlement and integrative services and supports.

Phase 2 of the EMPP is being implemented in two stages. Stage 1 capped processing at 150 applications from principal applicants and ended June 30, 2022. Stage 2 will cap processing at 350 applications from principal applicants and began July 1, 2022.

FURTHER INFORMATION

This publication is intended to provide brief informational summaries only of legal developments and topics of general interest, and does not constitute legal advice or create a solicitor-client relationship. This publication should not be relied upon as a substitute for consultation with a lawyer with respect to the reader's specific circumstances. Each legal or regulatory situation is different and requires review of the relevant facts and applicable law. If you have specific questions related to this publication or its application to you, please contact our [immigration group](#). Due to the rapidly changing nature of the law, Stewart McKelvey is not responsible for informing you of future legal developments.