

Employer Responsibilities re: Incoming Foreign Workers (PostDocs, etc) - Update

From: Dean of Arts & Science

Sent: February 17, 2021 11:40 AM

This UPDATE to an email sent on Feb 8 contains further clarification of the responsibilities for employers of foreign nationals entering under the LMIA exempt and LMIA programs.

The update summarizes learnings from the recent audits by the government of Canada regarding several foreign workers who came to Queen's under the International Mobility Program/IMP.

The IMP covers LMIA exempt foreign nationals, such as Post-Doctoral Fellows, NAFTA/CUSMA workers, Mobilité Francophone).

This update also includes information for employers of LMIA holders (generally full time faculty and clinicians)

The rules for employers can differ depending on the status of the foreign worker (LMIA exempt or LMIA holder)

Detailed information on entry to Canada is provided at

<https://www.queensu.ca/facultyrecruitment/covid-19-resources>. Please visit the site frequently as the situation is extremely fluid.

For **LMIA exempt** foreign nationals:

Requirements:

- The worker's period of employment begins upon their arrival to Canada, and includes the initial mandatory quarantine period. This means that the employer must comply with all laws and policies regarding the employer-employee relationship during the quarantine period
- The employer must pay the worker regular pay and benefits for the quarantine period. Retroactive pay is not permitted. In the Queen's context, this may mean paying the foreign worker through a One Time Payment, or paying the individual before a SIN has been obtained. Please refer to HR for further guidance. In case of an audit, we must be able to show proof of payment during the quarantine period. Specifically, the employer must pay the worker the same wage as the rate of pay specified on the offer of employment that was submitted through the IRCC portal.
- In most cases, the employer cannot authorize the worker to work during the quarantine period, even if requested by the worker. However, telework during quarantine is allowed if the all of the following applies:
 - the position and type of work are suitable for teleworking while respecting the Quarantine Act requirements
 - the work and tasks comply with what is stipulated in the employment contract or offer of employment for the International Mobility Program
 - the temporary foreign worker has the equipment to perform their work from their quarantine location

The above conditions are indicated in an IRCC operational bulletin (2020-12-18) related to the inspection process for COVID-19-related regulatory conditions for employers under the International Mobility

Program, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/service-delivery/coronavirus/compliance.html>

Guidance:

- The employer is asked to monitor the health of workers who are in quarantine, as well as any employee who becomes sick after the quarantine period. If a worker becomes symptomatic at any time, the employer should contact local public health officials.
- The employer is asked to provide information to the worker on COVID-19 (see www.canada.ca/coronavirus for resources) either on or before their first day of quarantine. Detailed information is also provided at <https://www.queensu.ca/facultyrecruitment/covid-19-resources>.
- The employer is asked to provide workers with the tools needed to practice good hygiene. This includes access to facilities that enable them to wash their hands often with soap and warm water, providing soap, and providing an alcohol-based sanitizer if soap and water are not available and hands are not visibly soiled. NOTE: it is unclear if this would apply to employees other than, for example, international farm workers.

For foreign workers arriving under an LMIA:

Information special Compliance Inspections for Employers of the Temporary Foreign Worker Program during the COVID-19 Pandemic were provided via a letter from Service Canada, most recently August, 2020:

Service Canada has the authority under the IRPR to conduct an inspection, with or without prior notice, in order to verify your compliance with the TFW Program. These inspections will be conducted remotely/virtually, and will look for specific conditions, listed below, and must be completed within 48 hours.

- Service Canada must immediately be informed when your employee arrives at your work location by sending an email message to:

ESDC.ISB.QUARANTINE-QUARANTAINE.DGSI.EDSC@servicecanada.gc.ca

NOTE: Communicate with the person who submitted the LMIA and your faculty's staffing office to ensure that the planned arrival date is known and to arrange that the email to Service Canada is sent.

The email message must include:

- Subject: TFW arrival to (name of Business)
- Body: Date and time of arrival of employee(s) to your work location, and their names.
- Contact information for the TFW(s), if available.
- Your contact information including mailing address. If applicable, please include a secondary contact information.

During the worker's initial 14-day quarantine or isolation period, you must ensure that:

- You do not do anything to prevent the worker's compliance with orders or regulations under the Quarantine Act/Emergencies Act; NOTE: there does not seem to be an exemption for Telework for workers entering under an LMIA.
- Workers are paid wages, at least 30 hours per week, based on the hourly wage indicated on their LMIA/offer of employment, starting on the day they arrive.
- If they become symptomatic following arrival at their Canadian residence, they must be isolated from others and local public health should be contacted immediately for direction. Your local public health authority will provide advice for the individual as well as any close contacts. This obligation continues following the end of the mandatory self-isolation period.

You will be asked to provide:

- Proof of wages paid (i.e. pay stubs). NOTE: as this may have to be provided within 48 hours, payments should be accelerated for the quarantine period. Given our experience with the IMP program inspection, retro pay will likely be unacceptable.

Please direct further questions to:

Monica Stewart

Co-ordinator, Faculty Recruitment and Support Program

www.queensu.ca/facultyrecruitment



Office of the Provost and Vice Principal (Academic)/Faculty Relations

Our on-campus office is currently closed. I am available during regular business hours Monday to Friday by email or, on request, via video call.