

2014

The Film & Entertainment Temporary Foreign Worker Process:

From WRAPA to LMO and Beyond



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The following are the basic steps put in place to be adhered to when Manitoban productions hire out-of-country Crew Member(s) or Cast Member(s). Every situation will be unique and government regulations will continuously be updated, so please do not consider this to be a one-size-fits-all document. The specifics in your case may not always be standard-issue – not to mention processing times may take longer depending on the time of year – so it is always better to telephone the provincial or federal department of the government when a query arises.

Contact information for these departments is provided in Appendix I.

Productions routinely bring in out-of-country Cast & Crew for several different reasons: from marketability when it's a popular performer to a crewmember having been with the film project since inception. Given the short period of pre-production before the shooting schedule must be implemented, being able to legally immigrate Cast & Crew is of paramount importance and a key concern of the Production. (It is usually the Production Coordinator's responsibility, working in tandem with the Production Manager.)

These steps must be handled reliably and expediently in order for the production to run smoothly. Consider obtaining a successfully approved **Labour Market Opinion (LMO)** for an individual after already gaining your **Worker Recruitment and Protection Act (WRAPA)** Certificate for the Production to be a highly important part of your job as a Coordinator.

Let's use a test example. A production is set to begin filming on January 20th. You have been informed on January 2nd that there will be one (1) U.S. Director, one (1) U.K. Cinematographer, and three (3) U.S. cast members.

You will fill out the **Worker Recruitment and Protection Act** (see below) with the production company's business number, standard company information (address, telephone number, contact information), with the job descriptions of the Cast & Crew that you will be seeking **Labour Market Opinions** and, eventually, the Work Permits.

The Worker Recruitment and Protection Act (WRAPA)

The following information can be obtained at: www.gov.mb.ca

Employer Registration Information

All employers wanting to recruit foreign workers in Manitoba will first be required to register with Employment Standards. This requirement results from *The Worker Recruitment and Protection Act*, which improves protections for foreign workers.

Foreign Worker Recruitment License Information

A license is required from Employment Standards for persons engaging in foreign worker recruitment in Manitoba, under the *Worker Recruitment and Protection Act*. This Act increases protections for foreign workers, and provides the criteria and obligations that recruiters must meet to be approved for a license in Manitoba.

What is the process for employer registration?

Registration forms can be downloaded from the Employment Standards website. Employers will be required to provide information about their company and the types of positions for which they are recruiting. They will also need to provide information about any third-party agencies and individuals that will be involved in the recruitment process. The immigration application of the foreign worker will not proceed until the employer hiring them is registered with Employment Standards.

How much does registration cost and when does an employer need to register?

There is no fee for employer registration. Employers must register before applying for a Labour Market Opinion or when they make a job offer as part of the Manitoba Provincial Nominee Program application process.

What factors will Employment Standards consider in reviewing the application?

Employment Standards will ensure that the applicant provides any information required as part of the application, and will review the applicant's past conduct to assess whether they will behave lawfully, honestly and in the public interest while carrying out the business of the license or registration.

What if I don't register before recruiting internationally?

Employers who submit a Labour Market Opinion application to the federal government without supplying a Certificate of Registration will be referred back to Employment Standards for registration. The offence of recruiting without registering is subject to fines as high as \$25,000 - \$50,000.

What is the process for recruiting foreign workers?

For more information about recruiting foreign workers, please visit the Immigration and Multiculturalism Division's website at www.immigratemanitoba.com or the Government of Canada's Temporary Foreign Worker Program website at http://www.esdc.gc.ca/eng/jobs/foreign_workers/index.shtml

When can recruitment of foreign workers start?

Recruiters may begin once their license is received. Employers may begin once they receive their notice of registration. However, there is a 15-day waiting period required for foreign actors and directors to work in Canada.

Can a third party be used to recruit foreign workers?

Foreign workers can only be recruited by a third party who is licensed by Employment Standards or falls under an exemption. The offence of recruiting without a license is subject to fines as high as \$25,000 - \$50,000. The employer hiring the worker will also be held liable, resulting in their recruitment registration being cancelled.

What information is an employer required to provide once a foreign worker is employed?

Employers are required to provide the following information Employment Standards:

- the foreign worker's name, address and telephone number
 - the foreign worker's job title
 - the location where the foreign worker performs the majority of their job duties
- Employers may also be required to provide additional information, as outlined in the regulations, if requested by the Director.

How do I know if someone is licensed?

The only way to know for sure is to check the website at www.manitoba.ca/labour/standards or by contacting Employment Standards. The names of all people or companies holding a valid license will be posted on our website. If they are not on the list, they are not licensed.

Can fees be charged to a worker?

No. Neither a recruiter nor an employer can ever charge or collect a fee (directly or indirectly) from the worker.

How are workers protected from being charged fees?

Employment Standards conducts inspections and investigations to ensure fees are not being charged to workers. If recruiters or employers are found to be charging fees to a worker, they will be ordered to repay the fees. Recruiters charging fees will also lose their license and be subject to fines as high as \$25,000 - \$50,000. Directors and officers of a corporation will also be subject to a \$25,000 fine. Employers involved in charging fees will have their recruitment registration cancelled.

Who pays the fees associated with recruiting foreign workers?

Employers are responsible for paying any recruitment fees. *The Worker Recruitment and Protection Act* strictly prohibits charging fees to workers.

Who pays the fees associated with immigration assistance?

Foreign workers coming to Manitoba under employer-directed recruitment are given all necessary application forms and help directly by either Citizenship and Immigration Canada or the Manitoba Provincial Nominee Program. If further help is required, the worker is responsible for choosing the services. Services cannot be provided by a person that is linked, either directly or indirectly, to the recruitment activity.

Can the terms and conditions of a foreign worker's job be changed?

Foreign workers, including workers with temporary status, have the same rights as all other workers in Manitoba.

Foreign workers are further protected by the conditions upon which they were allowed to work in Manitoba. This means employers cannot reduce the terms and conditions of the employment contract or Labour Market Opinion, even if the worker agrees. Employment Standards will enforce the negotiated rate of pay and benefits as the minimum standards.

If I hire a temporary foreign worker and need to lay them off, what happens?

If laying off a temporary foreign worker, it is necessary to contact Employment Standards to discuss what steps should be taken to inform and support the worker. Service Canada and Citizenship and Immigration Canada must also be notified.

What if there is no job when the foreign worker arrives?

Employers are required to immediately report any changes to Employment Standards. Employers are responsible for paying any benefits promised during the recruitment process such as transportation costs to and from Manitoba. Service Canada and Citizenship and Immigration Canada must also be notified.

What records must I keep as an employer recruiting a foreign worker?

Complete and accurate financial operations records must be kept for at least three years, as well as records that show:

- the worker's name, address and telephone number, job title and the location where they do most of their work
- expenses incurred (directly or indirectly) by the employer, or an employee of the employer, during a recruiting process
- a copy of the Labour Market Opinion and all contract/agreements entered into

with the foreign workers and recruiters
Can I appeal?

Applicants can appeal a refusal, cancelation or suspension related to a license or registration under the Worker Recruitment and Protection Act to the Court of Queen's Bench. Applicants who wish to appeal must file a Notice of Application (form 14B at the Statutory Publications Office) with the court within 14 days of receiving the decision.

Along with the decision, Employment Standards will provide the applicant with complete information about appealing a decision, and will answer any questions.

For more information contact the Employer Registration Unit:
 Phone: 204-945-3352; or toll free 1-800-821-4307
 Fax: 204-948-2882
 E-mail: Employmentstandards@gov.mb.ca
 Website: www.manitoba.ca/labour/standards

This is a general overview and the information used is subject to change. For detailed information, please refer to current legislation including The Worker Recruitment and Protection Act, or contact the Employment Standards Branch to ask for advice.

This concludes the **Worker Recruitment and Protection Act (WRAPA)** process. Once submitted and successfully approved, you will receive your license in the mail.

This license number will be needed before any LMO applications are looked at by Service Canada.

The Labour Market Opinion (LMO) Process

The following information can be found here:
http://www.esdc.gc.ca/eng/jobs/foreign_workers/higher_skilled/film/

What constitutes foreign worker recruitment?

Anyone who assists a foreign worker in seeking or finding a job in Manitoba, or assists an employer in seeking or finding a foreign worker for a job in Manitoba, is engaging in foreign worker recruitment. It does not matter whether or not a fee is charged.

Who needs a license to engage in foreign worker recruitment?

All foreign worker recruiters must have a license from Employment Standards unless they fall under an exemption. The offence of recruiting without a license is subject to fines as high as \$25,000 - \$50,000. The employer hiring the worker will also be held liable, resulting in their recruitment registration being cancelled.

The following do not need a license:

- an agency of the government or a municipality
- a person who finds employees for their employer
- a person who receives no fee to find employment for their family member

How do I apply for a Foreign Worker Recruitment License?

Download an application form from www.manitoba.ca/labour/standards/forms.html or contact Employment Standards. The application is designed to gather substantial business detail and character background. The completed form can be taken, mailed, or faxed to Employment Standards.

When can recruitment of foreign workers start?

Recruiters may begin once their license is received. Employers may begin once they receive their notice of registration. However, there is a 15-day waiting period required for foreign actors and directors to work in Canada.

What factors will Employment Standards consider in reviewing the application?

Employment Standards will ensure that the applicant provides any information required as part of the application, and will review the applicant's past conduct to assess whether they will behave lawfully, honestly and in the public interest while carrying out the business of the license or registration.

Can fees be charged to a worker?

No. Neither a recruiter nor an employer can ever charge or collect a fee (directly or indirectly) from the worker.

What fees can be charged by a lawyer, consultant, or other person offering immigration advice or assistance?

The Worker Recruitment and Protection Act regulates the business of employment agencies and foreign worker recruitment, and the associated fees, but does not regulate the business of immigration assistance. However, licensees cannot charge foreign workers for immigration assistance and be involved in the recruitment process. This would contravene the Act, which prohibits a licensee from charging fees, either directly or indirectly, from foreign workers.

Who pays the fees associated with immigration assistance?

Foreign workers coming to Manitoba under employer-directed recruitment are given all necessary application forms and help directly by either Citizenship and Immigration Canada or the Manitoba Provincial Nominee Program.

If further help is required, the worker is responsible for choosing the services. Services cannot be provided by a person that is linked, either directly or indirectly, to the recruitment activity.

How many people does the license cover?

A license to recruit foreign workers is not transferable and applies only to the applicant.

What records must I keep as a licensee engaged in foreign worker recruitment?

Complete and accurate financial records of operations must be kept for at least three years, as well as records that show:

- a list of each person the licensee assisted to find workers
- a list of each worker the licensee assisted with employment
- a copy of the Labour Market Opinion,
- a copy of any contracts/agreements entered into related to each foreign worker

Hiring Foreign Workers in Entertainment and Film-Related Occupations

Description:

Hiring foreign workers in film and entertainment can be an important part of making a production or holding a cultural or entertainment event in Canada. The entry of foreign workers in film and entertainment can also bring unique international talent to Canada and support cultural exchange.

In most cases, Canadian employers hiring foreign workers in film and entertainment must get an Employment and Skills Development Canada (ESDC)/Service Canada Labour Market Opinion (LMO). The foreign worker also requires a Citizenship and Immigration (CIC) work permit to work in Canada. These conditions are designed to take into account career development and employment opportunities for Canadians.

Please note that it is important to find out whether out-of-town Producers will need an **Employment and Skills Development Canada Labour Market Opinion (ESDC LMO)**.

Exemptions

Under the **Immigration and Refugee Protection Act (IRPA)**, there are specific cases where employers in the film and entertainment industries do not need an ESDC job offer confirmation, or the foreign workers do not need a Citizenship and Immigration Canada (CIC) work permit.

Positions Exempt from Work Permits and ESDC Labour Market Opinion

Foreign Workers who do not need a CIC work permit or an ESDC Labour Market Opinion include:

- Producers of film, television, video and documentary projects funded entirely from outside of Canada;
- Adjudicators at music and dance festivals;
- Performing artists, their support crew, and other workers essential to the artistic performance.

Examples of performing artists include:

- Musicians in a band performing several tour dates in Canada;
- Guest conductors and artists performing with Canadian productions or groups for a few performances;
- Actors in foreign touring theatrical productions;
- Professional wrestlers and circus performers in foreign touring productions;
- Musicians and buskers coming to Canada to perform in festivals;
- Support crew and other workers who are integral to a live production;
- Disc jockeys coming to Canada to work at private events, festivals, concerts and fairs.

Special Conditions

The performing artists listed above must not:

- Perform in bars or restaurants;
- Work on the production of a film, television, radio, or Internet broadcast;
- Enter into an employment relationship with the Canadian organization contracting for their services.

A work permit and a labour market opinion are required in these instances, and you need to follow the steps outlined in hiring Foreign Workers in film and entertainment in Canada.

Entry to Canada

Foreign workers exempted from a CIC work permit and ESDC labour market opinion can apply for a visitor visa directly at a CIC visa office or at a Canadian Port of Entry in the case of citizens of contiguous states including the United States, St. Pierre et Miquelon, and Greenland.

Positions that Require a CIC Work Permit but do not require an Individual ESDC Labour Market Opinion.

Foreign Workers who need CIC work permits, but who do not require an individual ESDC labour market opinion include:

- Actors and workers on a film co-production between Canada and a foreign country.

These Foreign Workers can apply for a work permit directly at a CIC visa office or at a Canadian Port of Entry in the case of citizens of contiguous states including the United States, St. Pierre et Miquelon, and Greenland.

Please note: There is a \$1,000.00 fee per LMO. That means, per application.

How to Apply:

Employers applying for a labour market opinion can use the:

Temporary Foreign Worker (TFW) Web Service (online); or

Paper application form (by mail or fax).

1. Temporary Foreign Worker Web Service (TFW)

The TFW Web Service reduces the paper burden and speeds the processing of LMO applications. In addition, employers using the Web Service will have the opportunity to:

- have an online account where they can update their profile information; complete and submit online LMO applications;
- create and assign secondary representatives, as needed, to assist with completing the applications;
- attach files instead of mailing the required documentation;
- receive electronic messages from Service Canada regarding their application (e.g. missing documentation);
- monitor the status of their LMO applications.

Employers and authorized third-party representatives can consult the Registration Guide and Form to complete the one-time only registration form, to set up their online account. Once the registration is approved, they can proceed to LOGIN to apply for their LMO.

2. Paper Application Form

Complete, sign (where applicable) and submit the following documents:

- LMO Application Form (EMP5517).
- Schedule A - Appointment of a Third Party Representative (EMP5575) (if applicable).
- Schedule B - Impact on the Canadian Labour Market (EMP5578) (if applicable).
- Proof of recruitment (e.g. copy of advertisement and information to support where, when and for how long the position was advertised).

For positions located in Manitoba – mail or fax applications to:

Temporary Foreign Worker Program
 Service Canada LMO Processing Centre
 PO Box 2270
 Station Main
 Vancouver BC V6B 3W2

Fax:
 604-666-7731 (Film and Entertainment)
 1-866-301-5603 (toll-free)

For assistance - phone:
 Within Canada and the United States: 1-800-367-5693 (toll-free)
 Outside Canada and the United States: 506-546-7569

Note:
 Employers using courier companies, to deliver a package to a post office (PO) box address, should be aware that:

Non-Canada Post courier companies may charge extra to deliver a package to a PO box address; and

Some courier companies will not deliver to a PO box.

Employers are responsible to verify with the courier company before sending an LMO application to ensure it can be delivered to a PO Box.

Labour Market Opinion (LMO) Statistics

Following an employer's application, a Labour Market Opinion (LMO) is issued by Employment and Skills Development Canada (ESDC)/Service Canada. This LMO is provided to Citizenship and Immigration Canada (CIC) and communicated to the employer.

An LMO assesses the likely impact that hiring a temporary foreign worker will have on the Canadian labour market and is required in some cases to complete a work permit application.

Not all TFWs require an LMO to obtain a work permit. A number of exemptions exist, including those provided for in the General Agreement on Trade in Services and the North American Free Trade Agreement.

The decision to issue a work permit rests with CIC. A work permit may not be issued for all TFWs named on an LMO confirmation (i.e., an application that received a positive or neutral LMO). In addition, there may be a delay between the date of confirmation and the date on which a TFW obtains a work permit and/or enters Canada.

ESDC's Labour Market Opinion (LMO) Statistics include annual and quarterly data on the number of temporary foreign worker (TFW) positions on LMO confirmations. Reporting is based on the number of positions rather than the number of LMOs since several positions can be requested on a single LMO.

Once your LMO is submitted, you will now be playing the waiting game.

As time is of the essence, you will need to contact Service Canada at the 1-800 number fairly regularly; once your application is given a case number, the helpful voice on the other side of the line will give this number to you. That way, when you need to check on the status, you can simply give them this number and they can pull up the file and inform you whether a decision has been made.

Once you receive your successful LMO (usually by fax), as acting Production Coordinator you will then need to get the successfully approved document to the applicant in the other country.

The individual will then need to present this approved LMO document at port of entry, pay the \$150.00 CIC Work Permit fee (usually payment can be arranged by the Production Coordinator via Credit Card).

The telephone number for Border Services at the Winnipeg James Armstrong Richardson International is: 204-983-6715.

This concludes our guidebook that spans the entire process of obtaining the **WRAPA**, **ESDC LMO** and, finally, the **CIC Work Permit**. Going through all three steps can be a lot of work, but once the process has been undertaken a number of times as Production Coordinator, it becomes a second nature.

It is once again crucial to impart that the process is always changing, and each body of government, from Service Canada to Border Services should be contacted individually for specific questions.

Appendix I

Note: Film Training Manitoba has referenced information in this document directly from the following websites:

WRAPA Forms can be found: <https://www.gov.mb.ca/labour/standards/forms.html>

WRAPA Employer Registration - Contact Information:

Phone: 204-945-3352; or toll free 1-800-821-4307

Fax: 204-948-2882

E-mail: Employmentstandards@gov.mb.ca

Website: www.manitoba.ca/labour/standards

LMO Forms can be found: www.manitoba.ca/labour/standards/forms.html

ESDC Labour Market Opinion – Contact Information

Temporary Foreign Worker Program

Service Canada LMO Processing Centre

PO Box 2270

Station Main

Vancouver BC V6B 3W2

Fax:

604-666-7731 (Film and Entertainment)

1-866-301-5603 (toll-free)

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