Hiring Temporary Residents – Ask The Expert

Hiring temporary residents or temporary foreign workers (TFWs) can be a complicated process – but it doesn't have to be.

Below is an in-depth look at legal obligations in place to assist temporary residents with their employment applications and work permits, best hiring practices, and how to avoid human rights violations

QUESTION

1. If you hire a temporary resident with an open work permit, as an Employer are you legally obligated to assist these employees with their permanent resident application or extensions of work permits?
2. If you are hiring, and you have assisted past employees with PR applications through a nominee program but you have maxed out your capacity (as there is an employee compliance fee with work permit extensions during this process), are you obligated to assist any future employees with open work permits?
3. During the hiring process, is an employer able to choose a Canadian Citizen or a Permanent Resident, over a temporary resident when hiring for permanent positions? Is this a violation of human rights or discrimination?

ANSWER

1. **Obligation to assist temporary residents with PR or work permit extensions.**

Employers are not legally obligated to assist employees with their permanent resident (PR) applications or work permit extensions if the employee already has an open work permit.

An open work permit allows the employee to work for any employer in Canada, so the onus is on the worker to maintain their immigration status.

That said, some immigration programs (e.g., certain provincial nominee programs) require employer involvement (letters of support, job offers, etc.). In those cases, assistance is voluntary, but declining may affect retention.

Unless your employment contract, a collective agreement, or company policy explicitly promises support, you are not legally required to provide it.

2. **Past practice of assisting with nominee applications or equivalent**

If you have previously assisted employees under your jurisdiction's nominee program, that doesn't create a permanent legal obligation to assist all future employees.

However, consistency matters: if you provide this support selectively, you must be careful not to base your decision on protected grounds (race, religion, nationality, etc.). Otherwise, a rejected employee could allege discrimination.

You can set a neutral business policy (e.g., "The company will support up to X nominee applications per year due to compliance fees") as long as it is applied fairly and transparently.

3. **Choosing Canadians/PRs over temporary residents in hiring**

This is not discrimination under Canadian human rights law.

Human rights legislation prohibits discrimination based on protected grounds (race, sex, age, disability, religion, etc.), but immigration status is not a protected ground.

In fact, Canadian immigration and employment law explicitly allows (and in some contexts, encourages) employers to prefer hiring Canadian citizens and permanent residents over temporary foreign workers. Job postings often say: "Canadian citizens and permanent residents will be given priority."

EXPLANATION

The key is that the decision must genuinely be about status (citizen/PR vs. temporary resident), not a proxy for national origin or ethnicity. For example:

- Permissible: "We are giving preference to Canadian citizens and permanent residents due to long-term workforce stability."
- Risky: "We don't hire foreign workers because they are from X country."

In summary:

- You're not legally obligated to help open work permit holders with PR or extensions.
- You can cap or stop PR support through nominee programs, provided the rule is applied fairly and not selectively in a way that disadvantages protected groups.
- It's lawful (and common) to give preference to Canadian citizens and PRs over temporary residents when hiring for permanent roles.