

# Immigration Red Flags: Five Organizational Issues That Open Employers To Risk



The Temporary Foreign Worker Program (“TFWP”) and International Mobility Program (“IMP”) provide Canadian employers the opportunity to hire foreign workers to address their labour needs, particularly when qualified Canadians are not available. However, immigration legislation is complex and the rules governing these programs are regularly reviewed and updated by government, making it challenging for organizations to stay up to date.

These rules and regulations are also accompanied by severe consequences for organizations that do not comply, including program bans, monetary penalties, and reputational risk. Employees who are offside can also jeopardize their status and ability to remain in Canada.

Lawyers from our Immigration Group and Strategy & Innovation Department have worked extensively with employers to understand and navigate these complex requirements and provide strategic recommendations to ensure a more compliant and organized approach to corporate immigration work. Drawing from that experience, this Thought Leadership piece identifies five, high-level organizational issues and related risks that employers of foreign national employees should be attuned to.

## **1. Decentralized immigration work**

It is rare for employers to have dedicated immigration teams. Typically, corporate immigration work falls to the desks of already busy HR departments and managers who are forced to navigate the complex immigration system in a silo alongside their principal job duties. In many cases, the larger the organization, the more severe this problem tends to be, and this can be a significant source of stress for those who appreciate the importance of the work, but who do not have the capacity to give it the attention it deserves. In addition, businesses also often do not have a dedicated individual who owns and oversees the portfolio of immigration work to ensure consistency and compliance.

Given the complex subject matter and necessity for ongoing monitoring of immigration paperwork and requirements, it is risky for organizations to be without a subject matter expert and clear team of individuals whose roles are defined to include immigration employment work. Those supporting work permit and permanent residence applications for employees may be required to submit paperwork and sign off on declarations on behalf of the company. It is crucial to have a handle on who has

responsibility for this job function, and this also allows for better tracking and monitoring.

## **2. Inadequate training**

As a byproduct of having decentralized responsibilities, those who stumble into immigration employment work often lack a strong knowledge base given they typically have had no formal training; they are frequently left to navigate the steep learning curve that is the Canadian immigration system on their own.

Immigration applications can be rejected if there is missing or inaccurate information, which can affect an employee's ability to obtain or maintain authorization to work in Canada. Additionally, the rules on employer compliance can be complex and are subject to change. If requirements are not regularly monitored, understood, and easily assessable, it can expose the organization to risk.

Appropriate and adequate training is recommended for those team members regularly working in immigration roles. This is not just limited to staff who complete immigration paperwork on behalf of the business, but also includes those with oversight roles in other areas including:

- immigration recruitment, including external recruiter engagement, applicant screening, interviewing, and onboarding; and
- managers and HR personnel who are involved in promotions, role changes, and termination discussions.

Adequate and regular training helps to mitigate knowledge gaps and ensure a strong understanding of the nuances of compliance that can lead to severe consequences for the organization. Not only is it an offence to employ an individual without proper status, but the employer has a legal obligation to exercise due diligence when validating if an employee is properly authorized to work in their role. A lack of knowledge and training does not protect the employer from this duty.

Businesses can also benefit from knowing when to engage legal counsel on more complex issues to ensure compliance, and, no matter how knowledgeable HR team members are on immigration topics, they should be mindful that their support is limited in scope and will not be misconstrued as legal advice.

## **3. Unclear policy**

Organizations must make decisions when it comes to corporate immigration work, including the types of applications they will support; any conditions for support; the escalation process for soon-to-expire work permits; and the individuals in the organization who can draft, sign, and submit applications on behalf of the business. Without a clear policy, employers may take an inconsistent approach to the following:

- Does the employer support employer-specific work permits? If so, which types?
- What specific permanent residence programs will an employer support?
- Does an employee have to be in a particular type of role, at a certain level of seniority, or pass a probationary period in order to receive support?

These inconsistencies can contribute to a sense of confusion, stress, and feelings of unequal treatment and even resentment among employees.

## **4. A lack of tracking and monitoring**

If an organization realizes an employee has continued working after their work permit

has expired without being renewed, both parties are in violation. A failure to properly monitor and track work permit expiration dates, alongside other important requirements and deadlines can cause anxiety for both the employees who need to maintain their work status and the employer who may be left scrambling to assist with last minute renewal applications. This can result in lost productivity for the organization should an employee be unable to continue working due to a lack of proper planning.

As mentioned, compliance is a significant concern for employers of foreign national employees. Ideally, with a well-trained, centralized team and a clear policy, instances of errors, inconsistencies, and non-compliance are minimized. However, inadequate monitoring means any issues that do occur may slide under the radar, instead of being identified and addressed immediately, leaving the employer more vulnerable to consequences.

## **5. Mismanagement of data**

As with immigration responsibilities, the handling of immigration-related paperwork and data is often decentralized and inconsistent. Organizations supporting various immigration applications will have a host of sensitive information on hand, including work permits, birth certificates, passports, marriage certificates, and more. It is common for this information to be stored across multiple unsecured locations, despite that the secure storage of data is crucial both from a data management and security perspective.

When information on key business units required to complete immigration paperwork (such as CRA business numbers and dates of establishment) is difficult to locate, it contributes to an inefficient immigration support process. Organizations can be subject to immigration audits where they are required to produce various records pertaining to foreign national employees. Improper data management can make it more difficult for a business to readily respond to audit requests and demonstrate compliance.

## **Conclusion**

There is a lot to get “right” when dealing with immigration recruitment and employment – the rules are intricate, regularly updated, and require a specific skill set to effectively track and monitor. Being offside poses significant risks to organizations.

Stewart McKelvey’s Immigration and Strategy & Innovation Groups have worked and collaborated with client organizations to conduct risk assessments on their immigration work, provide them with detailed training and information on requirements and compliance issues, and consult on strategic plans to support the implementation of innovative solutions to address those risks.

To help businesses and organizations, our [Immigration](#) and [Strategy & Innovation](#) teams will be hosting a webinar in the fall of 2024, addressing these five issues in more detail. To express an interest in attending, contact [events@stewartmckelvey.com](mailto:events@stewartmckelvey.com).

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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