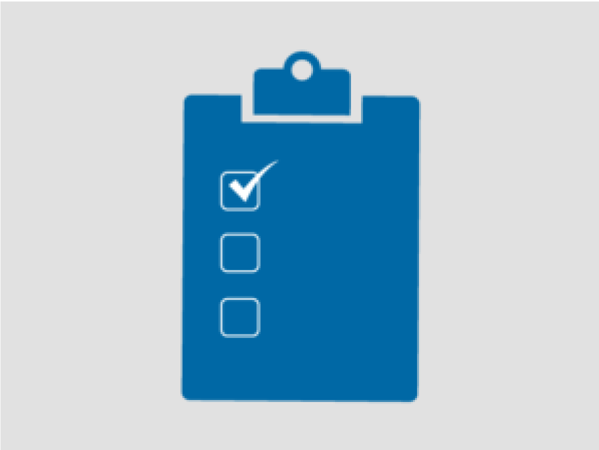
Is Your “Business Visitor” Really a Foreign Employee Who Needs a Work Permit?



Under immigration law, foreign nationals must obtain authorization before working in Canada. **Notable exception:** A limited category of “business visitors” may enter Canada without a work permit to attend meetings, attend conferences, negotiate contracts, and engage in other limited business activities, as opposed to filling an employment position in Canada, providing labour that a Canadian business has hired them to perform, or carrying out another business function for a Canadian company for which authorization is required.

Pitfall: The common assumption among companies and HR directors is that foreign employees qualify as business visitors who don’t need a permit if they’re only in Canada for a short time. This isn’t necessarily true. The distinction between business visit and work requiring a permit is based not simply on how long workers are in Canada but also on who pays their salary, whether they’ve made similar trips before, and other factors. Wrongfully assuming a foreign worker is a business visitor can result in border delays, fines, unexpected travel costs, project disruptions, and increased scrutiny during future cross-border travel.

Solution: HR directors of companies preparing to welcome foreign employee into Canada should carefully review the immigration law implications of their proposed cross-border travel arrangements. Here’s a Checklist of 10 things that review should cover.

1. Review Each Cross-Border Work Assignment Before Booking Travel

HR directors should review cross-border assignments involving foreign employees traveling to Canada before booking flights, hotel reservations, and other travel arrangements to avoid potential disruptions, cancellation fees, and other charges.

2. Clearly Define the Purpose of the Trip

Document exactly why the employee is entering Canada. Rather than vague descriptions such as “business meetings” or “project support,” focus on the actual objective of the trip. **Rule of Thumb:** A business visitor’s purpose is to represent and advance the business interests of a foreign employer in Canada; a person requiring work authorization comes to perform work or provide services that contribute directly to a Canadian organization’s operations or fulfill its contractual obligations in Canada.

3. Identify the Activities the Employee Will Perform in Canada

Immigration officers assess the work the individual intends to perform, not their title. Two employees with the same job title or position may require different immigration authorization depending on the duties they will perform during the trip. Activities that may be consistent with business visitor status include:

- Attending meetings with customers, suppliers, or affiliates.
- Negotiating or signing contracts.
- Participating in conferences or trade shows.
- Conducting site visits or inspections.
- Meeting with prospective customers.
- Receiving training from a Canadian affiliate.
- Discussing project requirements or future work.

4. Check for Red Flags Triggering Need for an Immigration Review

While they don't automatically mean a work permit is required, there are certain operations that when performed by a foreign employee in Canada should prompt HR to stop, gather more information, and determine whether the proposed activities qualify for business visitor status or require work authorization. Activities that may require work authorization and which should trigger immigration review include:

- Installing, testing, maintaining, or repairing company equipment.
- Providing on-site technical support or troubleshooting.
- Delivering consulting or engineering services.
- Training a customer's employees as part of a contract.
- Supervising construction, manufacturing, or installation work.
- Operating machinery or production equipment.
- Filling in for a Canadian employee.
- Performing work promised to a Canadian customer under a service agreement.

5. Determine Who Primarily Benefits from the Trip

Identify who will be the primary beneficiary of the activities the foreign employee will perform in Canada—the foreign employer or a Canadian business or customer. The greater the direct benefit to the latter, the more likely a permit will be required for the work.

6. Verify Whether a Work Permit Exemption Applies

Canadian permit requirements include limited exemptions for certain categories of business activity, including some short-term business visits, after-sales service obligations, certain intra-company activities, and activities covered by international agreements such as the Canada-United States-Mexico Agreement (CUSMA). These exemptions are narrowly defined. Never assume an exemption applies because a similar trip occurred without incident. Evaluate each assignment on its own facts. Before each trip, HR should:

- Identify the specific exemption it's relying upon.
- Confirm that the employee's duties meet the requirements of the particular exemption.

- Document the analysis before travel.

7. Prepare Supporting Documentation

Ensure that employees traveling to Canada for business carry documentation that clearly explains:

- The purpose of the visit.
- The planned activities.
- The expected duration of the trip.
- The employer information.
- The Canadian host or customer.
- The contact information for someone who can answer questions if requested by border officials.

Verify that the traveler's explanation of the trip to border, immigration, and other officials will be consistent with the supporting documents.

8. Monitor for Cross-Border Trip Changes with Potential Immigration Law Implications

Trips often evolve. A foreign employee who comes to Canada initially expecting only to attend meetings may later be asked to remain on-site to solve technical problems or assist with implementation. A change in duties may trigger a change in immigration status from business visitor to worker requiring authorization. So, HR must constantly monitor the situation for as long as the trip continues.

9. Train Managers to Recognize Immigration Issues

Immigration problems may arise when Canadian operational managers invite foreign employees to "come over for a few days to help out," without recognizing that immigration requirements may apply. That's why you need to train managers on the immigration law implications of working with foreign colleagues and the need for HR review of proposed cross-border travel arrangements.

10. Document Immigration Compliance Review

Maintain a record of how HR or other person at the organization determined that the individual qualified as a business visitor or that another form of work authorization was obtained. In addition to documenting due diligence, recordkeeping helps ensure consistency for future cross-border travel.

Below is a downloadable checklist of questions to ask before arranging cross-border business trips into Canada.