What Happens If An Employee's Work Permit Expires?

For the next few months, I will be answering some common questions that we get from clients related to immigration and employment matters. This one is a frequent source of confusion:

"What happens if an employee's work permit expires—do I need to provide notice?"

Well, here comes the classic lawyerly answer: *it depends!!*

1. **No Extension = Likely No Notice Required**

If an employee's work permit expires and the employee did not apply for an extension before the expiry date, the employment relationship may be considered *frustrated*. That means the contract cannot be fulfilled due to unforeseeable circumstances – namely, the employee is no longer legally authorized to work in Canada.

In Manitoba, section 62(1)(f) of *The Employment Standards Code* supports this approach. It states that notice or pay in lieu is not required when:

"… the employee is employed under an agreement or contract of employment that is impossible to perform or has been frustrated by a fortuitous or unforeseeable circumstance."

So, if an employee fails to take proper steps to maintain or restore their work permit, the employer will generally not be required to provide notice or pay in lieu.

2. **If the Employee Has Applied for an Extension – It's a Different Story**

If the employee *has* applied to extend their work permit ***before*** it expires, then they benefit from what is now called "maintained status" (formerly "implied status").

Under sections 186(u) and 201(1) of the *Immigration and Refugee Protection Regulations*:

- The employee *can* continue working legally while the IRCC processes the application, provided they remain in Canada and continue to comply with the conditions of their expired permit:

186(u) "A foreign national may work in Canada without a work permit… (u) until a

decision is made on an application made by them under subsection 201(1), if they have remained in Canada after the expiry of their work permit and they have continued to comply with the conditions set out on the expired work permit, other than the expiry date."

201(1) "A foreign national may apply for the renewal of their work permit if (a) the application is made before their work permit expires; and (b) they have complied with all conditions imposed on their entry into Canada.

Takeaway: An employer cannot terminate employment just because the permit has expired, as the employee remains authorized to work. Doing so could lead to claims of wrongful dismissal or even human rights complaints.

3. **What Employers Should Do**

Before taking any action, employers should:

- Ask the employee whether they applied for an extension before the expiry date;
- Request proof (e.g. IRCC acknowledgment of receipt);
- Document all communications and due diligence efforts to verify status; and
- Contact us!

⚠ *Don't rely on verbal assurances alone.* Under section 124(c) of the Immigration and Refugee Protection Act, it is an offence to employ a foreign worker without valid work authorization.

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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