

FAQS: COVID AND TEMPORARY FOREIGN WORKERS (TFWS) IN CANADA

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COVID-19 has created a number of challenges for temporary foreign workers (TFWs) and their employers in Canada. In addition to the effect COVID-19 has had on immigration programs, applications and cross-border travel, the economic impact has also created potential challenges regarding the employment of TFWs.

Employers and TFWs may have questions regarding some of the implications of these developments. This FAQ is intended to provide very general information regarding some of the considerations. Please note that this is not intended to be legal advice. Anyone reviewing this should not rely on this but should obtain legal advice regarding their particular situation.

Please also note that government policies and rules continue to evolve, so it is important to ensure that you obtain the most up to date information, as new developments may supersede or change the information set out below.

1. [How is COVID affecting Canada's immigration programs?](#)
2. [Will an application be refused if an applicant cannot provide a requested document due to the COVID situation?](#)
3. [Are there special COVID related measures for TFW Work Permit Extensions?](#)
4. [Are there special COVID related measures for TFWs in Canada to Change Employers or Occupations?](#)
5. [Can a TFW in Canada obtain a new work permit or finalize PR status by "flagpoling" at a Canada/U.S. Port of Entry?](#)

6. Can a foreign national visitor in Canada apply for a Work Permit?
7. Are there Travel Restrictions placed on Foreign Nationals (FN) / TFWS seeking to travel to Canada?
8. Are there additional COVID related requirements placed on TFWS regarding entry to Canada?
9. Are there additional COVID related requirements placed on Employers regarding the entry of TFWS to Canada?
10. Can terms of employment of a TFW in Canada be changed for COVID related reasons?
11. Do changes, due to the impact of COVID, to the employment conditions of a TFW need to be reported to immigration authorities?
12. Can a TFW be terminated during the COVID pandemic?
13. Does termination of a TFW negatively affect an application for Permanent Residence?
14. Does a terminated TFW have to leave Canada right away?
15. Does the employer need to report the termination of a foreign worker to immigration authorities?
16. Does the TFW need to report if they have been laid off or terminated?
17. Can a terminated TFW still work in Canada?
18. Will a laid-off or terminated TFW qualify for government assistance?
19. More information

How is COVID affecting Canada's immigration programs?

COVID is affecting and delaying some of Canada's immigration programs and processes. [This webpage from IRCC has links to various types of applications and how COVID is affecting IRCC services.](#)

For example, the impact includes:

- Processing delays on temporary (visitor visa and work permit), permanent residence and citizenship applications.
- Inability to obtain biometrics as many VAC centers are closed globally, and in-Canada biometrics centers are closed. Biometrics are required for most work permit or permanent resident processes, and so the unavailability of biometrics will delay the processing of applications. The deadline to provide biometrics has been increased from 30 to 90 days.
- [Travel restrictions on travel to Canada](#) (with some potential exemptions for TFWs).

Note that IRCC continues to take in new applications for work permits, permanent residence and citizenship, so applications can continue to be filed. Service Canada continues to take in and process LMIA applications as well as GTS LMIA applications for tech occupations.

Will an application be refused if an applicant cannot provide a requested document due to the COVID situation?

No. [According to IRCC's temporary COVID-19 program delivery instructions](#), new and pending temporary residence, permanent residence and citizenship applications in Canada and abroad "will not be refused for non-compliance."

Are there special COVID related measures for TFW Work Permit Extensions?

Yes. IRCC has introduced some temporary policies to assist TFWs who are in Canada and require work permit extensions or changes. See the next section regarding fast track processing for some TFWs who are seeking to change jobs or employers.

IRCC has also temporarily waived the biometrics requirements for foreign nationals who are in Canada and who are applying for a work permit. This recognizes that biometrics

centers in Canada are shut down. See [Waiver of biometrics requirement for those inside Canada](#).

IRCC also introduced a temporary policy that allows foreign nationals whose status in Canada expired after January 30, 2020 to apply to restore their status before December 31, 2020, provided they meet the requirements for the type of status and authorization they are applying to restore. The policy allows former work permit holders applying for an employer-specific work permit to work while the work permit restoration application is pending.

TFWs who are already in Canada and are seeking to extend a work permit with the same employer and in the same occupation need to monitor the end date of their work permit and should apply for a work permit extension/renewal well in advance of the end date of their current work permit. Processing times for renewals have increased quite substantially during the pandemic.

To obtain a work permit renewal, a TFW must demonstrate that they have a work permit category under which they can apply. If a TFW does not have a category to apply for another work permit, the TFW may need to consider applying to change their status to visitor before the expiry of their current work permit.

If a TFW in Canada applies online for a work permit extension before the expiry of their work permit, they will have implied status to continue to work when the original work permit expires, until IRCC makes the extension decision. The TFW must stay in Canada and meet the conditions of the original work permit to continue to work during the implied status period.

Are there special COVID related measures for TFWs in Canada to Change Employers or Occupations?

Yes. On May 12, 2020 IRCC announced a temporary public policy to allow TFWs in Canada to quickly change jobs or employers, with the aim of processing changes in 10 days or less. Details are here: [Public Policy on Changing Employment within Canada](#).

To be eligible, the TFW must:

- Be in Canada with valid temporary status (including implied status);
- Have held a valid work permit when the application for a new work permit for an

employer-specific work permit (under the TFWP or the IMP) was submitted, or be authorized to work under paragraphs 186(b) to (x) of the IRPA regulations;

- Intend to work for a new employer and/or a new occupation; and
- Have requested the public policy exemption using the procedure set out by IRCC.

The TFW must also demonstrate that they have a work permit category under which they can apply and that they meet the requirements of that category.

IRCC may issue an e-mail authorizing the TFW to begin work, or may proceed to approve and issue the work permit within the 10 day time frame.

Can a TFW in Canada obtain a new work permit or finalize PR status by "flagpoling" at a Canada/U.S. Port of Entry?

No. CBSA and IRCC have taken the position that flagpoling at the border is not currently an option because traveling to the border for immigration purposes is viewed as non-essential travel, which is prohibited under the COVID travel restrictions. Therefore, TFWs in Canada who need to renew their work permit should do so by filing an online work permit extension application as they cannot attend at the border to try to get a work permit.

For TFWs who are in Canada with pending PR applications, IRCC has been finalizing PR applications without the need for the TFW to go to the border or to attend an interview.

Can a foreign national visitor in Canada apply for a Work Permit?

Yes, in some situations. On August 24, 2020 a special temporary policy was introduced. Foreign visitors who were in Canada on August 24 and who thereafter remained in Canada, and who have a valid job offer, may apply for an employer-specific work permit and, if approved, receive the permit without having to leave Canada.

Applicants who have had a valid Canadian work permit in the past 12 months can request fast track authorization to begin working while the work permit application is processed.

Further details are here: [Temporary Public Policy to Allow Some Visitors to apply for a work permit.](#)

Are there Travel Restrictions placed on Foreign Nationals (FN) / TFWs seeking to travel to Canada?

Yes. Canada has placed temporary travel restrictions on the entry of foreign nationals, but there are exemptions to the restrictions for TFWs. The rules are quite complex so legal advice should be sought to review specific situations.

IRCC has set out program delivery guidelines regarding the travel restrictions: [Travel restriction measures: COVID-19 program delivery](#).

For those seeking to enter Canada from the United States, the entry must be non-optional/non-discretionary.

For those seeking to enter Canada from any other country (other than the USA), the FN/TFW must already have a work permit or have a work permit approval letter issued by IRCC to be able to board a plane to Canada. The TFW/FN must also demonstrate that the entry is for a non-optional/non-discretionary purpose.

New TFWs seeking entry to Canada will also usually have to demonstrate that the employer is still operating and that the position they have been offered is still available and is awaiting them.

There is a 14 day mandatory self-isolation requirement placed on travelers entering Canada.

Are there additional COVID related requirements placed on TFWs regarding entry to Canada?

Yes. TFWs (and all travelers) who arrive in Canada are required to enter mandatory quarantine for 14 days, unless they qualify for one of the very few exemptions to the quarantine requirement. Significant penalties can be levied against a TFW who violates the mandatory quarantine requirement. A TFW may also be removed from Canada if they violate the quarantine rules.

TFWs should develop a quarantine plan prior to their arrival in Canada.

Canadian authorities may follow up with the TFW soon after entry to Canada to check to see if the TFW is complying with the mandatory quarantine obligation.

Some provinces also have additional public health rules and requirements, in addition to the federal government requirements.

More information on mandatory self-isolation and isolation plans may be found here: [Traveller Isolation and Isolation Plans](#).

Are there additional COVID related requirements placed on Employers regarding the entry of TFWs to Canada?

Yes. Canada's IRPA legislation has been amended to add a number of additional employer conditions which employers must follow to avoid non-compliance.

- [The additional requirements are outlined here](#).
- There is also [an FAQ from ESDC here](#) regarding employer compliance requirements.

Highlights include:

- An employer must not do anything that may prevent a TFW who is entering Canada from complying with the 14 day mandatory quarantine obligation
- An employer cannot authorize a TFW to work during the quarantine period
- An employer must pay the TFW a minimum of 30 hours per week during the quarantine period
- An employer must monitor the health of TFWs in quarantine

Employers may face severe penalties for non-compliance.

Inspections are taking place to ensure that employers comply with the new COVID related conditions and rules.

Can terms of employment of a TFW in Canada be changed for COVID related reasons?

Changing terms of employment for a TFW may have both employment law and immigration law implications and should be reviewed prior to any changes being implemented.

Generally, where a TFW is working under an employer-specific work permit, IRPA places a condition on employers that the employer continue to provide substantially the same

terms and conditions of employment as were set out in the LMIA or in the Employer Portal upload. However, there can be justification for changes in some circumstances, including due to “changes in economic conditions impacting all employees equally (for example, an economic downturn causing layoffs)” or due to a force majeure. This justification might apply to some of the changes done in response to the COVID situation.

For example, TFWs usually work at the location of the employer. However, many employees due to the COVID situation have been required to work from home if employer premises have been temporarily closed. Although this is a change in work location, it might be considered temporary and necessary due to government restrictions and therefore might be justified under the IRPA's employer compliance regime.

However, any change that will fundamentally change the employment terms of a TFW who holds an employer-specific work permit (such as a new position or reduction in salary) will still usually require a new LMIA and/or new work permit before the change is implemented in addition to a consideration of the potential employment law implications.

If a TFW holds an open work permit, such as a post-grad work permit, the employer conditions under IRPA do not apply. However, there may still be employment law implications if terms of employment are changed.

Employers should obtain legal advice before any changes are implemented.

Do changes, due to the impact of COVID, to the employment conditions of a TFW need to be reported to immigration authorities?

This will depend on the nature of the contemplated change.

For employer-specific work permits, minor changes that are a result of COVID restrictions will not usually need to be reported to IRCC, CBSA or ESDC/Service Canada.

For LMIA-based work permit situations, other changes to the employment conditions will usually need to be reported to ESDC/Service Canada and may result in the need to obtain a new LMIA and/or work permit before changes are implemented. For LMIA-exempt employer specific work permits, changes that negatively affect the terms of employment of a TFW may need to be disclosed to IRCC and may in some cases require a new work permit.

Unfortunately, the line between minor administrative changes that may not need to be

reported, and changes that do need to be reported is not well defined.

Employers should also consider whether they may need to file voluntary disclosure with ESDC or IRCC regarding changes to the terms of employment of a TFW.

Legal advice should be sought prior to implementing any potential changes to employment terms of TFWs.

Can a TFW be terminated during the COVID pandemic?

There are new job-protected leaves resulting from the COVID situation, but they operate in the same manner that non-COVID statutory leaves operate i.e. the reason for termination of employment cannot be related to an employee exercising his/her right to the leave. Termination of employment would be governed by the usual employment law considerations, taking into consideration that there are new job-protected leaves and revisions to employment standards legislation resulting from COVID-19.

However, the termination of a TFW may have implications for a TFW that a Canadian worker may not face. The potential effect on any particular TFW will depend on their work permit situation (such as whether or not they have an employer specific work permit or an open work permit, and the end date of their current work permit) and on whether they have started a permanent resident (PR) application and if so, the PR category under which they have applied.

For example, if a TFW has an employer-specific work permit, then it may be more difficult to mitigate the loss of employment by finding another position, as a new employer-specific work permit would first have to be obtained by a new employer.

Legal advice should be sought from one of Gowling WLG's employment law lawyers if an employer is contemplating a potential termination.

Does termination of a TFW negatively affect an application for Permanent Residence?

It depends. A termination and the timing of the termination may sometimes negatively affect a TFW's opportunity to become a permanent resident of Canada. That would depend on the category under which the PR application was filed, and the stage of the PR

application. This may be a factor to take into account when considering the timing of a potential termination.

Does a terminated TFW have to leave Canada right away?

No. A TFW who holds a valid work permit at the time of termination does not have to immediately leave Canada. The work permit document is a temporary resident document. It allows the holder to stay in Canada to its end date. Depending on the end date of the work permit, a TFW may need to consider filing an online extension or change of status application.

In addition, as a practical matter, due to COVID travel restrictions, a TFW may not be able to travel to their home country due to home country restrictions and/or lack of flights.

Does the employer need to report the termination of a foreign worker to immigration authorities?

As a general rule, there is no obligation on an employer to report the termination of employment to IRCC or to Canada Border Services Agency (CBSA).

If the foreign worker holds an LMIA-based work permit under the TFWP, ESDC/Service Canada takes the position that an employer should advise ESDC's TFWP that the employment has been terminated. This position appears to be based on ESDC's policies and not on any direct statutory obligation. We recommend that employers seek legal advice from corporate immigration counsel regarding this issue.

If an employer has nominated the foreign worker for PR status under a provincial nominee program (PNP), the PNPs usually require an employer to advise the applicable PNP of the loss of employment where the TFW's permanent resident applicant based on the PNP has not yet been finalized. This may cause the provincial nomination to be cancelled, which would lead to the cancellation of the TFW's PR application if it is still pending.

Does the TFW need to report if they have been laid off or terminated?

Regarding their work permit status, a TFW in Canada does not need to report a lay off or termination to IRCC. The TFW is allowed to remain in Canada until the end date of their work permit.

However, a TFW who has a PR application in progress usually has an obligation to advise IRCC if their employment ends, or where there are material changes in circumstances regarding employment status. This obligation is set out in the declaration that all applicants agree to when they apply for PR status.

Under an Express Entry PR application, loss of employment may sometimes negatively affect the PR process depending on the stage of the application, and depending on whether the TFW's PR application is under the Canada Experience Class or the Federal Skilled Worker category.

A TFW who has a PR application based on a provincial nomination will usually have an obligation to report a change in employment status to the provincial program, which could lead to the withdrawal of the PNP nomination.

Legal advice should be sought as disclosing a change in employment status may affect the PR process and in some cases may lead to the cancellation of a PR application.

Can a terminated TFW still work in Canada?

It depends on the type of work permit the TFW holds.

If the TFW holds an open work permit, such as a post-graduate work permit, they may use that to continue to work for a new employer until the end date of the work permit.

However, if the TFW holds an employer-specific work permit, they would not be able to work in Canada unless they were able to obtain a new employer-specific work permit through another employer. That can be an impediment to mitigating the loss of employment.

A copy of the work permit should be reviewed to confirm whether it is an employer-specific or an open work permit.

Will a laid-off or terminated TFW qualify for government assistance?

A TFW may be eligible for government assistance programs, such as EI and the CERB.

That would be decided by government authorities based on the eligibility rules of such programs.

Conclusion

This FAQ is meant to provide only general information. Legal advice should be sought for any specific situation.

The hiring and ongoing management of Temporary Foreign Workers (TFWs) in Canada has been affected by the COVID-19 situation and by some of the economic realities facing employers as they deal with the economic fallout of the situation.

A complex array of new rules, procedures and program directives has been introduced, which affect processing options and affect whether a TFW can travel to Canada under one of the exemptions to the travel restrictions. Canada's approach has been to continue to provide exemptions to allow for the entry of TFWs. LMIA's and work permits applications continue to be accepted and processed, albeit with processing delays.

Employers need to be aware of the new rules and of the increased compliance requirements placed on them. Given the complexity and the evolving nature of the rules and policies, employers are strongly advised to obtain legal advice regarding these matters. Policies and procedures are expected to continue to change and evolve.

Please contact a member of the [Gowling WLG Immigration Group](#) or a member of the [Gowling WLG Employment & Labour Law Group](#) if you require specific legal advice.

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