Nature of Our Business

University of Waterloo is an Academic Institution. We are also an employer to whom we hire employees to provide services and support as an Academic Institution, thus, the nature of our business is to teach and do research as well as support these services.

Anyone invited here to teach, lecture or give a talk that they are subject matter experts on or do research collaboratively or individually, they are working because that is the nature of our business.
The University’s Obligation

ANY invitations, offers or appointments made on behalf of the University by any employee member of Waterloo may legally bind Waterloo under the Employment Standards Act & Income Tax Act and their associated Regulations

If the invitee is a non-Cdn/non-CPR, it can further legally bind Waterloo under the Immigration & Refugee Protection Act & Regulations

What is deemed “work”

Under the Canadian Immigration & Refugee Protection Act & Regulations (IRPA & IRPR), there is a distinct difference between who is here to visit as a “tourist” (aka “visitor”), “student” or as a “worker.”

The definition of a “worker” is NOT dependent on whether the Foreign National will be remunerated/compensated or not. It is based on what the Foreign National will be doing here on campus and whether those activities/tasks/duties have traditionally, historically or potentially been done by a Cdn/CPR and/or may be of benefit to the employer.
What is deemed “work” – cont’d

Scenario 1:
Foreign National invited to visit and tour the facilities of the QNC. While on the tour, the FN is asked to participate in an experiment.

Scenario 2:
Foreign National is invited to visit the TQT lab and provide a talk to faculty, staff and students about the research the FN is currently conducting in collaboration with TQT.

Analysis:
FN in Scenario 1 is not deemed a “worker” whereas the FN in Scenario 2 is deemed a “worker.”
FN in Scenario 1 is asked to participate in an experiment – traditionally this is part of the tour and has never been considered as an activity that can be performed for the benefit of the University.
FN in Scenario 2 is specifically invited to provide a talk on research that they are subject matter experts on, thus performing a duty that is part of the nature of our business – a duty that historically can be done by a Cdn/CPR.
Work Permit Exemptions

Foreign Nationals deemed as workers that do not affect the Canadian labour market may enter Canada without the need for a work permit (conditions apply):

• Self-funded Researcher exempt under R186(a) (Professors on sabbatical may fall under this exemption)
• Academic Business Visitor exempt under R186(a) (Professors on sabbatical may fall under this exemption)
• Academic Guest Speaker exempt under R186(j)
• Member of the executive of a committee/Board of Directors exempt under R186(k)
• Academic Conference Attendee exempt under R186(k)
• Academic Examiner/Evaluator exempt under R186(n)
• Academic Researcher exempt under A25.2 & R200 under the Global Skills Strategy program

Work Permit Required, LMIA Exempt

Foreign Nationals here that do affect the Canadian labour market but their affect is limited or of benefit to the Canadian global economy (aka International Mobility Program - IMP) (conditions apply):

• Post-doctoral Research Fellows
• Award or scholarship recipients here to conduct work or research of a benefit to Waterloo
• Visiting Professors here conducting collaborative research of mutual benefit for Waterloo and their home institution
• Guest Lecturers teaching for a period of less than a term
Work Permit & LMIA Required

All other positions not listed above will require a work permit but also a confirmed LMIA in order to support the work permit application (aka Temporary Foreign Worker Program – TFWP).

There are 4 categories of LMIA:

1. Academic – professorial positions
2. High Wage – positions with an annual wage ≥$42,000
3. Low Wage – positions with an annual wage ≤$41,999
4. Skilled Worker to support PR under FSW

LMIA Process

The LMIA process must have started before a candidate is identified. If a candidate has already been identified, a LMIA will not be done.

“Exceptional Hires” of foreign nationals are not exempt from the LMIA process. (This is a term/process internal to Waterloo only and not recognized by IRCC/ESDC.)

LMIA are required for all new appts., re-appts., renewals and/or extensions until PR status is confirmed

Re-appts. of definite term contracts are not deemed “re-appt.” by IRCC/ESDC but as a new contract. Advertising is required for the new contract if not explicitly stated in the original contract that a renewal/re-appt./extension may be offered.
**LMIA Process – cont’d**

Most commonly applied for positions for LMIA:

- Faculty – all ranks including definite term Research Asst./Assoc. Professor
- Senior Administrative Staff (most with cross appts. as faculty)
- Highly specialized positions with extremely unique qualifications (may be appt’d as Research Associate, Sr. Lab Technician, et al)

The University will not apply for LMIA for a visitor/visiting student nor for any position that falls within category 3 of the LMIA or simply to support the applicant’s PR application.

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**LMIA Advertising**

Advertising minimum requirements:

- Full job description must be posted and the job posting advertised on a Waterloo site
- External advertising must be done in at least 3 Canadian national posting sites for a minimum of 30 days
- At least 1 Cdn national posting site ad must be through JobBank.gc.ca
- At least 1 Cdn national posting site ad must be posted on a site for under-represented groups (i.e. Aboriginals/Indigenous, Persons with Disabilities)
LMIA Advertising – cont’d

- At least 1 Cdn national posting site ad must remain live throughout the period of any internationally posted ads
- At least 1 Cdn national posted ad was live no more than 3 months prior to submission of the LMIA*
- At least 1 Cdn national posted ad remains live until the LMIA decision is made*

* Applicable to High Wage positions only

LMIA Advertising – cont’d

Job Posting Ads must contain the follow to be considered for the LMIA:
- Exact number of positions to be hired for
- Job title or specific rank as requested through UARC
- Job duties and responsibilities
- Salary range
- Benefits package to be offered (if applicable)
LMIA Advertising – cont’d

- Expected start date
- Closing date for applications to be accepted by
- Qualifications and experience required for the position advertised
- Full name and address of the employer and where the employment will take place
- Equity/Accessibility statement along with the following:
  - “All qualified candidates are encouraged to apply; however, Canadians and permanent residents will be given priority.”

LMIA – Job Match

Job Match is a tool within JobBank.gc.ca that matches any Job Bank user profiles to the advertised posting. Things to know:

- Mandatory requirement for any JobBank.gc.ca ads to use Job Match.
- Any Professorial or High Wage positions that are advertised through JobBank.gc.ca will be matched to any user profiles through Job Match.
- Additional mandatory requirement to the LMIA process requires any matched user profiles to the advertisement of 4 stars or higher within the first 30 days of posted ad must be invited to apply - user profiles can be Cdn/CPR or foreign national.
LMIA – Recruitment Process

- Any Cdn/CPR applicant must be reviewed regardless if they applied after closing date
- Rationale for each of the Cdn/CPR applicants must be provided with the LMIA outlining why they were not invited to interview and/or not offered the position
- Signed accepted start date of the appt. must not be more than 6 months from date of last Cdn national posting was live (applicable to High Wage positions only)
- Signed accepted start date of the appt. must be within a year of the last advertised posting (applicable to Academic positions only)
  - Exception can be made if the start date will be within the same term from the year of the posting – i.e. Ad posted Feb. 2019; start date can be no later than Apr. 2020 – otherwise, LMIA to support PR must be done

<table>
<thead>
<tr>
<th>UARC</th>
<th>LMIA</th>
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<tbody>
<tr>
<td>60 days minimum advertised posting</td>
<td>30 days minimum advertised posting</td>
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<tr>
<td>Special efforts to recruit under-represented gender</td>
<td>Special efforts to recruit under-represented groups</td>
</tr>
<tr>
<td>Closing date for receipt of applications</td>
<td>Closing date irrelevant as all Cdn/CPR applicants must be reviewed</td>
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<tr>
<td>Advertising required only for appts. of 2 years or greater</td>
<td>Advertising required for any regardless of appt. period</td>
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LMIA Submission Package

Every LMIA submission must include:

• Signed accepted offer of employment
• Copies of all job ad postings w/ invoices (or other proof) noting duration of the posting
• Rationale for each Cdn/CPR who applied (names redacted)
• Attestation of the last 12 months' ROEs of NOC for position applied for
• Negotiated salary range for position applied for
• Attestation for Reporting to Universities Canada (UC) (for Academic positions only)
• Transition Plan describing the activities you are agreeing to undertake to recruit, retain and train Cdns/CPRs and to reduce reliance on the TFWP (for High Wage positions only)

LMIA Processing

Processing Fee of $1000 is non-recoverable & payable by hiring area

Current processing times for ESDC for LMIA:

• Academic = 25 business days
• High Wage = 85 business days
• Low Wage = 128 business days
• Skilled Worker to support PR = 40 business days

Processing cannot be expedited as ESDC will not entertain any requests for “urgent processing”

LMIA confirmation is NOT guaranteed
LMIA Negative Decision

Reasons for Denial:
• Rationale for Cdn/CPR applicants and candidates not legitimate/bona fide
• Cdn/CPR interview candidate to be offered position only if FN declines
• Previous Transition Plan not followed through
• Current Transition Plan not reasonable
• Did not advertise enough nationally (# of ads or duration)
• All ads did not contain the required statement or information

LMIA Negative Decision – cont’d

If a new LMIA is to be applied for, new advertising, new recruitment and new submission must be made.

Any previous Cdn/CPR candidates that were interviewed must be given the opportunity to apply again and be interviewed.

Any new Cdn/CPR applicants must be reviewed and rationale must be provided along with any previous Cdn/CPR applicants.

Advertised closing date for accepting applications must be extended – i.e. if original ads posted a closing date of 30 days from first day advertised, new ads must post a closing date of 45 days from first day advertised.
**LMIA Positive Decision**

LMIA confirmation will be provided back to the hiring area to forward onto the FN to apply for their work permit.

FN has until expiry date of LMIA to submit their work permit application. If not able to, new LMIA submission must be made for a new LMIA – LMIA extensions are never granted.

If the LMIA was to support a PR application, PR must be applied for using the LMIA. If start date of appt. will occur before PR is finalized, work permit can be applied for with the LMIA but proof of PR submission must be provided with WP application.

**Compliance with IRCC and/or ESDC**

IRCC & ESDC has the legal ability to:

- Review for compliance up to 6 years back
- Conduct on-site inspections without warning
- On-site inspections can include reviews of ALL possible areas of non-compliance including WSIB, CRA, Health & Safety
- Inspect 1 of every 4 employers each year who use the TFWP, including the IMP (Waterloo has been audited by IRCC/ESDC 4 times in the last 4 years)
- Interview any foreign nationals, employees, students, including Cdn/CPR employees and students
Compliance with IRCC and/or ESDC – cont’d

Any instance that is deemed non-compliant under the TFWP or IMP can lead to:

• 1 to 10 year ban from using the TFWP and IMP, which includes:
  • Hiring any new non-Cdn/non-CPR
  • Re-appt/re-hire of any current non-Cdn/non-CPR
• Up to $100,000 fine per non-compliance issue
• Revocation of associated LMIA’s and WPs supported by the LMIA’s
• Revocation of associated Offer of Employments (IMM5802 submissions) and WPs supported by those submissions
• Loss of Designated Learning Institution number – which means any current study permit holders will be required to transfer
• Employer’s name is published as a banned user of the TFWP on the IRCC and ESDC websites

Websites of Interest

On-campus Immigration Information:

https://uwaterloo.ca/office-of-general-counsel/visa-and-immigration-support
(Template letters and forms can be downloaded from here along with the Guidelines document on Inviting Foreign Nationals)

Information for Foreign Visitors – including visiting students:


IRCC Processing Times:


IRCC TFWP Manual:

Questions?

Where to find me:

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