

Hiring Foreign Nationals

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Nature of Our Business

University of Waterloo is an Academic Institution. We are also an employer who hires employees to provide services as an Academic Institution, thus, the nature of our business is to teach and do research and provide support services in line with this type of business.

Anyone invited here to teach, lecture, give a talk that they are subject matter experts on, or do research collaboratively or individually, provide training to students, staff or faculty, 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 & its Regulations.

If the invitee is a non-Cdn/non-CPR, it can further legally bind Waterloo under the Immigration & Refugee Protection Act & its 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”), as a “student” or as a “worker.”

The definition of a “worker” is NOT dependent on whether the Foreign National will be remunerated 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.

What is deemed “work” – cont’d

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 a subject matter expert on, thus performing a duty that is part of the nature of our business – a duty that historically or potentially can be done by a Cdn/CPR.

Visiting Int'l Students

A “student” is a temporary resident who is legally authorized to study in Canada on a temporary basis (s.2 & s.220.1(1) of IRPR).

Visiting International Students here to do research as part of their home institution’s degree program:

- **Are not** considered students as defined under s.2 of IRPR as they are not registered and enrolled in a degree granting program in a Canadian DLI
- **Are not** authorized to study in Canada – they are here to work
- Cannot be considered as a Self-funded Researcher due to the fact that as a student, they are not earning an income or conducting research as an employee for another employer (see Visitors definition of Self-funded Researcher)

Therefore, visiting international students **are not considered “students” and a Work Permit is required - a LMIA or Employer Compliance may be needed in order to apply for the Work Permit

Visiting Int'l Students – cont'd

International Visiting Graduate Student Program (IVGS): A Grad student here to do research as part of their home institution’s graduate degree program

- Must be registered as a student with home institution and visit to Waterloo must be approved
- Will receive a Letter of Admittance to a **non-degree program** at Waterloo
- Must have funding to visit (funding can be provided by third party award, scholarship, or possibly GRS/GRA from Wlooo)

**Therefore, does not meet the s.2 IRPR definition of a student and will require a Work Permit

Int'l Students, Cdn DLI

International students registered and enrolled in a Canadian DLI for full-time studies are eligible to work on or off campus up to 20 hrs/wk during study terms and 40 hrs/wk during scheduled break terms.

PDI March 2018 – work eligibility with Study Permit:

- Full-time on/off campus with confirmed DRC for 1 program and formal acceptance to next program (up to 150 days)
- Full-time on/off campus with confirmed DRC and confirmed application submission for work permit
- Part-time on/off campus during co-op placement term on top of co-op work hours
- Part-time on/off campus during entire program with no scheduled break terms
- Part-time on/off campus after completion of program of studies but have not yet received formal notice of program completion
- Not eligible to work until program of studies have commenced

Int'l Students, Cdn DLI – cont'd

Case Scenario 1:

Int'l student wants to volunteer full-time with their new program supervisor after completing their Cdn Bachelor's and before beginning their Master's program.

Case Scenario 2:

Int'l student arrived in Canada 2 months' prior to the start of their Master's program and would like to get a head start on their research program by volunteering in their new supervisor's lab.

Int'l students, Cdn DLI – cont'd

Analysis:

Both Int'l students are considered to be working but scenario 2, a work permit is required.

Int'l student in scenario 1 is eligible to volunteer his/her time to work full-time providing they have proof of registration to their next degree program and will start that degree program within 150 days of DRC but a valid SP or proof of application to extend SP is required.

Int'l student in scenario 2 has not yet begun their program of studies in Canada, thus does not yet meet R186(f) of IRPR thus cannot work with simply a Study Permit.

Inviting a Worker to the University

Every non-Cdn/non-CPR requires some kind of immigration documentation* and permissions^ in order to legally enter Canada.

***Immigration documentation** can also mean a counterfoil visa adhered to a blank page of a passport or an entry stamp received from a Canada Border Services Officer on any page of a passport or both

^**Permissions** to enter Canada is a determination made by a Canada Border Services Officer as to whether the visitor will be a criminal, security or health risk to the Canadian society – this has nothing to do with the documentation required to enter Canada

eTA = Electronic Travel Authorization: most travelers by air from visa-exempt countries are required to apply for an eTA prior to arrival to Canada – if applying for a study or work permit, the eTA is automatically granted with the permit

Immigration documents



June 30, 1993

Visa Entry Stamps

- one with entry date = means automatically given 6 months visit
- one with entry and exit dates = can only stay up to the date indicated

Counterfoil Temporary Resident Visa (aka visitor visa; student visa; work visa) – NOT considered a permit)
- Validity dates indicate when the visa must be used by

Inviting a Worker to the University – cont'd

Invitations must be formalized* in order for your invitee to obtain the appropriate immigration documentation to enter Canada.

*For Health & Safety, UHIP & Safety Training issues – formalized invitations allow Waterloo to stay compliant with not only Immigration Regulations but the Employment Standards Act, Employment Regulations, Workplace Safety and Insurance Board, and Ontario Ministry of Labour's Health & Safety Regulations

*Without a formal appointment/offer, your visitor will not have any identity on campus – i.e. no WatIAM ID to use any facilities/services on campus

Hiring process flow for non-faculty/staff appts

The following needs to be done for all invitees to UW:

- Gather all relevant documents needed to invite and email to LIS/Fran
 - Non-Faculty Appointment Form (NFAF) or Temporary Employment Authorization Form (TEA)
 - Email/Memo/Letter authorizing the visit
 - Funding information for the foreign national (i.e. Award Letter from funding agency, salary information)
 - Current immigration documentation for visitor if already here in Canada

Hiring process flow for non-faculty/staff appts – cont'd

- “Checklist for Foreign Visitors*” will be reviewed and completed by LIS for evaluation of Immigration requirements and emailed back to dept.
- Formalized “Foreign Visitor Appointment Letter*” stating start & end dates, remuneration, purpose of visit (i.e. work as a “Research Assistant”), all duties to be performed during stay and immigration remarks from Checklist sent to visitor from Dean’s Office (or as practice norm for your dept./Faculty).

* Template for these letters/forms can be found here:
<https://uwaterloo.ca/office-of-general-counsel/visa-and-immigration-support/visa-and-immigration-support-services/immigration-employer>

Hiring process flow for non-faculty/staff appts – cont'd

*Comments will be included in the Foreign Visitor Checklist to indicate when the Employer Compliance Fee needs to be paid.

Once the Ltr of Appt/Invitation is signed back as accepted, the Employer Compliance will be completed by LIS (additional info about the visitor must be provided along with budget info in order for LIS to complete the submission).

An e-receipt will be sent to the dept. to pass along to the FN to include with their immigration documentation application.

Hiring process flow for faculty/staff appts

Faculty positions that must be advertised according to Policy 76, include:

- Full Professor
- Associate Professor
- Assistant Professor
- DT Lecturer (*duration of two years or more*)

Note: For any other positions such as Research Assistants/Associates, DT Lecturer (duration of less than 2 years) – aka High Wage positions – advertising is still required under IRCC Regulations, not University Policy, if there is any intention or possibility of hiring a foreign national.

Hiring process flow for faculty/staff appts – cont'd

All staff positions follow Policy 18 regarding advertising and hiring.

In many, if not all staff hires, a LMIA will NOT be confirmed/approved even if all advertising requirements are met for a foreign national.

If the FN holds an open work permit – or has confirmed the potential to hold an OWP – then the hire can be made but the contract/hire is limited to, and conditional to the duration of the OWP.

Advertising – Faculty vs. High Wage

Professorial & High Wage Advertising minimum requirements:

- 30 day advertising period
- 3 Canadian National venues
- Job Match through Job Bank with ranking of 4 stars or higher must be invited to apply through Job Bank – candidates can be Cdn/CPR or foreign
- Foreign ad must run concurrently with at least one Cdn ad
- Any Cdn/CPR applicant must be reviewed regardless if applied after closing date

High Wage Advertising additional requirement:

At least one Canadian ad must remain live throughout period of LMIA process until LMIA is determined.

LMIA Application Package

Once an offer is made:

- Entire UARC file is required as any part of the file can be requested for by ESDC as back-up for why a non-Canadian candidate has been offered the position
- UARC is the University's regulatory body that reviews all appointments to meet the requirements of our Policy 76
- All ads must be posted for a minimum of 30 days, proof of this must be provided if there is no paid invoice showing length of advertising

Once the candidate signs back accepting the offer:

- Signed acceptance of the Appointment must be provided to ensure all conditions are acceptable to the foreign national

UARC vs. LMIA Requirements

UARC	LMIA
60 days recommended advertising; 30 days per UARC policy	30 days minimum advertised posting
Special efforts to recruit under-represented gender	Special efforts to recruit under-represented groups
Closing date for receipt of applications	Closing date irrelevant as all Cdn/CPR applicants must be reviewed
Advertising required only for appts. of 2 years or greater	Advertising required for any regardless of appt. period

What happens next

Once your new hire arrives on campus:

- Be sure to ask for a copy of their immigration documentation to add to their file
- If the FN requires health insurance or is here for 3 weeks or more, send to HR to sign up for UHIP
- If reimbursements to be made through a Travel Settlement, receipts must accompany the reimbursement
- If living allowance is to be made, must be paid out at the end of the month or on last day of visit

Compliance with IRCC and/or ESDC

IRCC & ESDC as of 2016, has the 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 6 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 any or all of the following actions:

- 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 any issued work permits
- Loss of Designated Learning Institution (DLI) 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/legal-and-immigration-services/visa-and-immigration-support/visa-and-immigration-support-services/immigration-employer>

(Template letters and forms can be downloaded from here along with the Guidelines document on Inviting Foreign Nationals)

Information for Foreign Visitors:

<https://uwaterloo.ca/legal-and-immigration-services/sites/ca.legal-and-immigration-services/files/uploads/files/infoforforeignvisitors.pdf>

IRCC Processing Times:

<http://www.cic.gc.ca/english/information/times/index.asp>

IRCC TFWP Manual:

<http://www.cic.gc.ca/english/hire/worker.asp>

Questions?

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