FOREIGN NATIONALS: HIRING & INVITING

Frances Hannigan
Office of General Counsel – Visa & Immigration Support
ANY invitations, offers or appointments made by any employee member of UW may legally bind UW under the Employment Standards Act & Regulations.

If the invitee is a non-Cdn/non-CPR, it can further legally bind UW under the Immigration & Refugee Protection Act & Regulations.
University of Waterloo is an Academic Institution. We are also an employer to whom we hire employees to provide services as an Academic Institution, thus, the nature of our business is to teach and do research.

Anyone invited here to teach/lecture/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.
VISITORS

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.”

Academic Business Visitors:
• A visitor here to discuss research matters of mutual interest or conducts research purely for his/her own project and only uses the facilities of a Canadian university (library, computer,...) but is in no way contributing to research projects of the Canadian host institute
• The visitor’s principal place of business is located outside of Canada
• Primary (and ONLY) source of remuneration is outside of Canada
• Visits cannot be longer than 6 months in length (i.e., professor here on sabbatical) as they will no longer be considered as Academic Business Visitors, regardless if they are still self-funded
VISITORS, CONT’D

Self-funded Researchers:

• An invited researcher with autonomous funding arrangements other than an award
• UW cannot be the beneficiary of research or receive remuneration for the research.
• Must meet the definition of an Academic Business Visitor and that of the requirements of being self-funded:
  » conducts research purely for his/her own project and uses the facilities of a Canadian university (library, computer,...) but is in no way contributing to research projects of the host institute
  » does not receive any official funding / scholarship / academic grant from either Canadian or non-Canadian sources
CASE SCENARIO: TOURIST VS. ACADEMIC BUSINESS VISITOR

Foreign National is invited by a faculty member as a friend to visit for **personal reasons** and is asked to give a “talk” to his/her class while in town visiting.

- Foreign National entered as a tourist/visitor, this status in Canada does not allow for the visitor to give such a talk to a class or any other work-related event

  - Academic Business Visitor requires a formal invitation from the University in order to conduct such a talk
STUDENTS

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

Visiting Students here to do research as part of their home institution’s degree program
• As these students 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, a Work Permit is required and LMIA or Employer Compliance may be needed in order to apply for the Work Permit**
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 UW must be approved
- Will receive a Letter of Admittance to a non-degree program at UW
- Must have funding to visit (funding can be provided by third party award, scholarship, or GRS/GRA from UW)

**Therefore, will require a Study Permit, especially if receiving funding from UW (length of visit does not matter)**
CASE SCENARIO: INT’L STUDENT

Int’l student wants to work / volunteer after degree completion and before beginning next degree program

- Once Int’l student is Degree Requirements Completed (DRC = date noted on unofficial transcripts as meeting all degree requirements for their degree program – NOT convocation date), no longer a student, therefore no longer eligible to work/volunteer with just a SP

- Registration to next degree program does not give continued status as student – must be registered and taking courses to be considered as a student to be eligible to work with just a SP (R186(u))

- Once DRC, only eligible to work full-time to max of 40 hrs/wk for 90 days or to expiry of SP, whichever date is earliest, if applied for a WP (R186(w))
WORKERS

“Work” is defined in the Immigration Regulations (s.2) as an activity for which wages are paid or commission is earned, or that competes directly with activities of Canadian citizens or permanent residents in the Canadian labour market.

- Any activity which might be considered ‘competitive’ within the Canadian labour market, even if unpaid is not volunteer work. Example:
  » Work might be a valuable work experience for a Canadian student such as an internship with a high-profile NGO, even if unpaid.

- The work is “normal” work in the labour market, it competes with other jobs in the Canadian labour market. Example:
  » Foreign student is doing a research internship that is part of their home (non-Cdn) institution’s academic program, where the research done contributes to the benefit of our institution, whether paid or unpaid, is considered “normal” work in the labour market.
CASE SCENARIO: WORKER

Foreign National arrives prior to receipt of WP and expects to begin working immediately

- Not legally allowed to work or perceived to be working without proof of WP – should not be on campus until such proof is provided
- Not legally eligible to receive any form of remuneration for period without WP – appt. cannot begin upon date of arrival, must show on HR records to be date of issuance and validity of the WP
- Must inform HR of official start date – if appt. form indicates date of arrival but WP not yet obtained, must notify HR to ensure no remuneration is made for this period

Secretariat & Office of General Counsel – Visa & Immigration Support
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.
Counterfoil Temporary Resident Visa
- Validity dates indicate when the visa must be used by
- one with entry date = means automatically given 6 months visit
- one with entry and exit dates = can only stay up to the date indicated

Visa Entry Stamps
INVITING A VISITOR, STUDENT OR WORKER TO THE UNIVERSITY

Invitations must be formalized* – especially if your visitor will be here for more than 5 days – in order for your invitee to obtain the appropriate immigration documentation to enter Canada

*For Health & Safety, UHIP & Safety Training issues – formalized invitations allow UW to stay compliant with not only Immigration Regulations but the Employment Standards Act, Employment Regulations, WSIB, Ontario Ministry of Labour’s Health & Safety Regulations

Secretariat & Office of General Counsel – Visa & Immigration Support
PAID VS. UNPAID

PAID = ANY form of remuneration – i.e. salary, honorarium, award, scholarship, travel reimbursement, living allowance

REMUNERATION = reward for employment or work in the form of pay, salary or wage, including allowances such as living, benefits, bonuses, monetary and non-monetary incentives.

Depending on whether any kind of remuneration is offered to an invitee, it may determine what immigration documentation is needed for them to enter Canada.
PAID VS UNPAID & VISIT VS WORK

Simply because there may or may not be any kind of remuneration being offered, the purpose for which the invitee is here will also determine what kind of immigration documentation is required for them to enter Canada.

- What will the invitee be doing for UW?
- Will the collaboration be for the benefit of UW?
- What will the outcomes of the collaboration be?
- If what is being offered is made to a Cdn/CPR, would this Cdn/CPR likely take up the offer?
WHO NEEDS A WORK PERMIT

All foreign nationals require a valid work permit before they can legally work.

Most common cases are regular full-time faculty who do not hold a Canadian passport.

However, any worker that do not hold a Canadian passport/PR Card requires a work permit, this includes:

- PDFs,
- Research/Teaching Assistants,
- Research Professors,
- Lab Assistants/Technicians,
- visiting students here doing an “internship/co-op placement”

Work permits maybe issued for part-time work if LMIA exempt.
WORK PERMIT EXEMPTIONS

Visitors here that do not affect the Canadian labour market may enter Canada without the need for a work permit:

• Self-funded Researcher exempt under R186(a)
• Academic Examiner/Evaluator exempt under R186(n)
• Academic Business Visitor exempt under R186(a) (Professors on sabbatical falls 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)
LMIA EXEMPTIONS

There are some instances where a work permit is required but an LMIA is not:

- Fullbright Program Exchange exempt under T11
- Reciprocal Agreement exempt under C20*
- International Experience Canada/SWAP program exempt under C21
- Guest Lecturer exempt under C22*
- Visiting Professor exempt under C22 (not a Professor here on sabbatical)*
- Canada Research Chair/Canada Excellence Research Chair exempt under C30
- Post-graduate worker exempt under C43
- Post-doctoral Fellow exempt under C44*
- Research Award Recipient exempt under C44*
- NAFTA/CCFTA/GATS agreement exempt under C22*

*Will require the Employer Compliance Fee to be paid
LMIA

- IRPR s.203(1) requires that all work permit applications must be accompanied by a neutral or positive opinion – the LMIA – from ESDC
- ESDC does not report to IRCC – their mandate is the labour market in Canada

What does this mean when hiring a foreign national?

The LMIA is not a guarantee!
EMPLOYER COMPLIANCE FEE

• IRPR s.209.11 requires all employers who make an offer of employment to a foreign national under the International Mobility Program (IMP) to report to IRCC about such offer and pay an Employer Compliance Fee of $230

• IRCC aims to improve the integrity of the IMP and support a more robust employer compliance scheme

What does this mean when hiring a foreign national?
We as the employer must provide a double-check to IRCC that there is bona fide work for the foreign national.
LMIA (FACULTY POSITIONS ONLY): ADVERTISING REQUIREMENTS

Job Ad Requirements:
• Wage range
• Rank required
• Required Equity Statement
• Cdn ads MUST run concurrently with any non-Cdn ad or beyond
  » If posting to non-Cdn site/paper, must be posted concurrently with at least one other Cdn ad during entire period of non-Cdn ad
LMIA (FACULTY POSITIONS ONLY): ADVERTISING REQUIREMENTS

• All ads must be posted minimally to the following:
  » CAUT – 30 days minimally (currently done for all Faculties)
  » AUCC – 30 days minimally (some depts./Faculty are currently doing but need to be done by all)
  » JobBank.gc.ca – 30 days minimally (currently done by all Faculties)
  » Optional:
    • AboriginalLink.ca (through Communications Coordinator at St. Paul’s Aboriginal Education Centre)
HIRING PROCESS FLOW:
LMIA APPLICATION

• Once a candidate is chosen and identified as non-Cdn/non-CPR, contact Visa & Immigration Support (VIS)
• VIS will work with the dept. on an individual basis to complete the LMIA application – ALL LMIAAs are centralized to Visa & Immigration Support Office
• When Offer is signed back as accepted, dept. is to notify VIS and LMIA application process begins
HIRING PROCESS FLOW: LMIA APPLICATION

• The LMIA application will be completed and brought to the Provost’s Office for signature.
• VIS will submit the LMIA application to ESDC – all contact about the application with ESDC will be handled by VIS (Fran to be named as “contact person”).
• Once LMIA determination is received, will forward e-copies to dept. to forward to the new faculty hire (all originals including application will be filed within VIS).
LMIA APPLICATION: DOCUMENTATION

After the Letter of Offer/Appointment is signed back as accepted by the candidate, scan/email the following to VIS:

- Complete UARC file
- Letter of Offer/Appointment along with the sign-back page
- Copies of ALL ads* for the position, including the dept.’s and/or Faculty’s, website postings, paper ads
- Payment information for the LMIA application – 31-digit AFF Budget number to charge the fee back to

* Ads – MUST have a screen print with url and date showing on the page of ALL websites the ad was posted to and whether the website ad is “members only viewable.” If it was a print ad, MUST have a photocopy of the page the ad appears on but should have additional page showing where the print ad appeared and the date. Invoices must be provided to show length of posting.
LMIA DETERMINATIONS

- Normal turn-around time for faculty positions: 20 to 45 working days
- Normal turn-around time for all non-faculty appts: 3 to 5 months
- Original application and LMIA determination will be kept centrally by VIS and an e-copy will be sent to the dept. to keep in the employee’s file in either the Dean’s and/or Chair’s office
- E-copy of the LMIA Confirmation must be given to the new faculty hire for them to include with their work permit application
WHAT HAPPENS NEXT

Once your foreign new hire arrives on campus:

• Be sure to ask for a copy of their work permit to add to their employee file (this will help you to remember to start the process for a new LMIA when it comes time for the re-appointment)

• Scan a copy of the work permit and send to VIS to complete the LMIA file created for the new hire

• Call VIS/Fran when it comes time to renew the appointment for the new hire and the LMIA must be applied again
VISITOR PROCESS FLOW: FORMAL INVITATION

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

• Gather all relevant documents needed to invite and email to VIS/Fran
  o Non-Faculty Appointment Form (NFAF) or Temporary Employment Authorization Form
  o Email/Memo/Letter authorizing the visit
  o Funding information for the visitor (i.e. Award Letter from funding agency)
  o Current immigration documentation for visitor if already here in Canada
VISITOR PROCESS FLOW: FORMAL INVITATION

• “Checklist for Foreign Visitors*” will be completed by VIS 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”) 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/secretariat-general-counsel/immigration-employer
VISITOR PROCESS FLOW: FORMAL INVITATION

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

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

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

Once your visitor arrives on campus:

- Be sure to ask for a copy of their immigration documentation to add to their visitor file.
- If visitor 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 now have 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 (UW 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 LMIAAs and any issued work permits

• 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/secretariat-general-counsel/immigration-employer (Template letters and forms can be downloaded from here along with the Guidelines document on Inviting Foreign Nationals)


QUESTIONS?

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Secretariat & Office of General Counsel – Visa & Immigration Support