



Employment Update

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CIC ISSUES MINISTERIAL INSTRUCTIONS RELATING TO EXPRESS ENTRY

Henry J. Chang

Introduction

On December 1, 2014, Citizenship and Immigration Canada (“CIC”) published Ministerial Instructions relating to its proposed Express Entry System (“Express Entry”). Express Entry will come into effect on January 1, 2015, at 12:00 noon EST, and will apply to the following categories:

- a) The Federal Skilled Worker (“FSW”) Class;
- b) The Canadian Experience Class (“CEC”);
- c) The Federal Skilled Trades (“FST”) Class; and
- d) Members of the Provincial Nominee Class who fall within the Express Entry Stream of a Provincial Nominee Program (“PNP”).

Express Entry will not apply to any existing PNP streams. Instead, each province will have the option of establishing a new Express Entry Stream under its existing PNP.

Overview

Potential candidates will be permitted to submit an online Express Entry profile (i.e. an “Expression of Interest”). At this time, they will be asked to provide information about

their: (a) skills, (b) work experience, (c) language ability, (d) education, and (e) other relevant factors. However, if a candidate is unable to submit an Expression of Interest online, due to a physical or mental disability, it may be submitted by another means made available by CIC for that purpose.

Candidates who meet the applicable eligibility requirements of at least one of the classes described above (i.e. FSW, CEC, FST, or PNP Express Entry stream) will be accepted into a special pool of candidates (the “Express Entry Pool”). However, acceptance into the Express Entry Pool does not guarantee that a particular candidate will be issued an Invitation to Apply (“ITA”) for permanent residence. Instead, candidates in the Express Entry Pool will be ranked against each other using a point-based system called the Comprehensive Ranking System; these points will be awarded using the information contained in each candidate’s Expression of Interest. The candidates with the highest ranking will be periodically selected from the Express Entry Pool.

Candidates may not receive an ITA unless they satisfy the following requirements:

- a) They must satisfy the eligibility requirements of at least one of the classes described above (i.e. FSW, CEC, FST, or PNP Express Entry stream).

“Candidates accepted into the Express Entry Pool may remain in the pool for up to twelve months, starting on the date that their Expression of Interest was submitted.”



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- b) They must have a positive Labour Market Impact Assessment (“LMIA”), if they are working in Canada under a work permit issued pursuant to: (1) an international agreement between Canada and one or more foreign countries (such as a work permit based on the NAFTA or similar free trade agreements), or (2) a federal-provincial agreement (such as a work permit based on a PNP Nomination Certificate). This language appeared to preclude the issuance of an ITA to certain foreign workers who would not otherwise require an LMIA (such as a NAFTA intracompany transferee), unless their Canadian employer obtained one on their behalf. However, CIC has recently confirmed that this language was only intended to clarify that applicants in Canada under LMIA-exempt work permits would not obtain points for arranged employment; they are still eligible to receive an ITA if they are selected.
- c) Within 30 days from the date that they submit their Expression of Interest, they must register with the Job Bank maintained by Employment and Social Development Canada (“ESDC”), if they do not have a qualifying offer of arranged employment or are not named in a Nomination Certificate issued under a PNP Express Entry stream at the end of that period.

If someone receives an ITA, they will have sixty days to submit an online application for permanent residence. CIC expects to process the majority of complete applications (meaning

those with all the necessary supporting documents) in six months or less.

Candidates accepted into the Express Entry Pool may remain in the pool for up to twelve months, starting on the date that their Expression of Interest was submitted. If they do not receive an ITA during this period, they will be removed from the pool. However, they may submit a new Expression of Interest; if they still satisfy the criteria, they can re-enter the Express Entry Pool.

If a candidate declines the invitation within the sixty-day period, the remaining portion of the original one-year period of their inclusion in the Express Entry Pool will continue. However, if the candidate does not decline the invitation within the sixty-day period and does not make an application for permanent residence within that period, the Expression of Interest will end, regardless of the portion of the one-year period that remains.

Mandatory Submission of Educational Credential Assessments and Language Proficiency Results

Candidates will be required to provide the results of an assessment of their proficiency in English or French (issued by a designated language testing organization or institution) at the time that they submit their Expression of Interest. Language proficiency assessments are valid for a period of two years from the date that they are issued.

In addition, candidates who are relying on foreign education will be required to provide the

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“The Government of Canada has suggested a processing time of six months or less for candidates who are issued an ITA, which is a significant improvement over current processing times.”

results of a valid educational credential equivalency assessment (issued by a designated credential evaluation organization or institution) at the time that they submit their Expression of Interest. Educational credential assessments are valid for a period of five years from the date that they are issued.

The Comprehensive Ranking System

The ranking of candidates who are included in the Express Entry Pool will be based on the total number of points assigned to each candidate, using the information provided in their Expression of Interest and in accordance with the Comprehensive Ranking System, which considers the following factors:

- a) Core human capital factors;
- b) Accompanying spouse or common-law partner factors;
- c) Skill transferability factors; and
- d) Factors relating to a provincial nomination or a qualifying offer of arranged employment.

The total number of points that may be assigned under the Comprehensive Ranking System is 1200 points. These points will be allocated as follows:

- a) Where a candidate has no accompanying spouse or common-law partner: (i) a maximum of 500 points for core human capital factors, (ii) a maximum of 100 points for skill transferability factors, and (iii) a maximum of 600 points for either a provincial nomination or a qualifying offer of arranged employment; and

- b) Where a candidate has an accompanying spouse or common-law partner: (i) a maximum of 460 points for the core human capital factors, (ii) a maximum of 40 points for accompanying spouse or common-law partner factors, (iii) a maximum of 100 points for skill transferability factors, and (iv) a maximum of 600 points for either a provincial nomination or a qualifying offer of arranged employment.

Further details regarding the Comprehensive Ranking System appear [here](#).

Conclusion

Express Entry will add an additional complex layer of bureaucracy to the FSW, CEC, and FST classes. It will also significantly increase the level of uncertainty for candidates seeking permanent residence under these classes, since it will no longer be possible to reliably predict how long it will take for an applicant to be selected from the Express Entry pool. Many applicants could be included in the Express Entry Pool only to have their Expressions of Interest cancelled one year later if they are not selected.

The Government of Canada has suggested a processing time of six months or less for candidates who are issued an ITA, which is a significant improvement over current processing times. However, these improved processing times may not be worth the increased uncertainty that will result from the implementation of Express Entry.

“The Commission reiterates that employers have a legal duty to prevent and respond to sexual harassment in the workplace.”



Maria Kotsopoulos practices with Blaney’s Employment and Labour Group in all areas of labour, employment and human rights law. Maria advocates on behalf of employers, not for profit organizations, trade unions, and employees, and has been involved in matters before the Superior Court of Justice, the Federal Court, the Labour Board, the Human Rights Tribunal, the Workplace Safety and Insurance Appeals Tribunal, and other tribunals.

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We will be watching to see how these cases are processed once Express Entry begins on January 1, 2015. ■

AODA COMPLIANCE REMINDER

Maria Kotsopoulos

Organizations with 20 or more employees in Ontario must file and make available to the public an Accessibility Compliance Report by December 31, 2014.

Organizations with 20 to 49 employees must answer questions about their requirements under the Customer Service Standard Regulation.

Organizations with 50 or more employees must in addition to answering questions about the Customer Service Standard also answer questions about the Integrated Accessibility Standard Regulation, including the requirement to implement and maintain an accessibility policy and a multi-year accessibility plan. Large organizations will also have other requirements relating to training, and their processes for receiving and responding to feedback in accessible formats beginning on January 1, 2015.

Large organizations will also be required to file Accessibility Compliance Reports every three years thereafter.

How do you file Accessibility Compliance Reports?

They can be filed on-line with the Ministry of Economic Development, Employment and Infrastructure. The Ministry has created an AODA Compliance Wizard which can help you to determine what AODA requirements apply to your organization. ■

OHRC ISSUES STATEMENT ON SEXUAL HARASSMENT

Maria Kotsopoulos

Perhaps not surprisingly given all the media attention on the issue of sexual harassment in recent months, the Ontario Human Rights Commission recently issued a statement regarding sexual harassment and Ontario’s *Human Rights Code*.

The Commission reiterates that employers have a legal duty to prevent and respond to sexual harassment in the workplace. The Commission states that employers can prevent many cases of sexual harassment by:

- Having a clear, comprehensive anti-sexual harassment policy in place;
- Ensuring all employees have the policy and are aware of both their rights and their responsibility not to engage in harassment; and
- Training individuals in positions of responsibility on the policy and their related human rights obligations.

The Commission’s statement also sets out a non-exhaustive list of factors human rights tri-

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“Bill 18 [will tie] future minimum wage increases to the Consumer Price Index for Ontario...”



David Greenwood has represented clients in files involving wrongful dismissals, constructive dismissals, human rights complaints, pension issues, disability claims, allegations of employee fraud, theft of confidential and proprietary information, breach of fiduciary duties and misappropriation of corporate opportunities. Additionally, David is frequently consulted in respect of reorganizations and mass terminations and is routinely retained to draft or to negotiate employment agreements, employee policy manuals and other employment related contracts.

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tribunals will look at in cases involving allegations of sexual harassment. These include:

- The procedures in place at the time to deal with discrimination and harassment;
- How quickly the organization responded to the complaint;
- How seriously the complaint was treated;
- The resources made available to deal with the complaint;
- If the organization provided a healthy environment for the person who complained; and
- How well the person who complained was kept informed about the status of the complaint, actions taken, etc.

The full statement can be found at http://www.ohrc.on.ca/en/news_centre/sexual-harassment-and-ontario-human-rights-code ■

BILL 18 RECEIVES ROYAL ASSENT

David E. Greenwood

In past editions we have noted the progress of Bill 18 - *Stronger Workplaces for a Stronger Economy Act, 2014* (formerly Bill 146). Bill 18 passed third reading in the legislature on November 6, 2014, with all party support and received Royal Assent on November 20, 2014.

Key features of the Bill include:

- Tying future minimum wage increases to the Consumer Price Index for Ontario which will be announced by April of each year, and come into effect on October 1;

- Ensuring *Occupational Health and Safety Act* (“OHSA”) coverage for unpaid co-op students and other unpaid learners, which will give them protection under the OHSA such as the right to know about workplace hazards and the right to refuse unsafe work;
- Eliminating the \$10,000 cap on the recovery of unpaid wages through Ministry of Labour orders to pay and increasing the period of recovery to two years;
- Expanding employment protections to cover all foreign employees who come to Ontario under an immigration or foreign temporary employee program; and
- Holding temporary help agencies and their employer clients accountable for certain employment standards violations, such as failure to pay regular wages, overtime pay, and public holiday entitlements. ■

BROADER PUBLIC SECTOR ACCOUNTABILITY BILL RECEIVES ROYAL ASSENT

Maria Kotsopoulos

Bill 8, *An Act to promote public sector and MPP accountability and transparency by enacting the Broader Public Sector Executive Compensation Act, 2014 and amending various Acts*, received royal assent on December 11, 2014.

Among the changes, the enactment of the *Broader Public Sector Executive Compensation Act, 2014*, provides for the establishment of “compensation frameworks” for certain designated executives of designated employers. These

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frameworks, when established, may limit compensation and payments made to designated executives, including salaries, salary ranges, benefits, and other forms of remuneration set out in the Act.

The full text of Bill 8 can be found here: http://www.ontla.on.ca/bills/bills-files/41_Parliament/Session1/b008ra.pdf ■

NEW BLANEYS PODCAST

Blaney McMurtry LLP

Blaneys Podcasts are available for download at <http://www.blaney.com/podcast>. Topics to date include Powers of Attorney, Canada's Anti-Spam Legislation, Termination of Employment and Family Law. In the newest podcast, Maria Kotsopoulos discusses the timely issue of workplace harassment.

New podcasts continue to be posted so check back regularly for the latest topic. Podcasts are also available for download on [iTunes](#). ■

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