



LABOUR MARKET IMPACT ASSESSMENT (LMIA): PRINCIPLES AND OPERATION

What is a positive LMIA?

Generally, a Canadian employer wishing to hire a temporary foreign worker will be required to submit a Labour Market Impact Assessment (LMIA) to Employment and Social Development Canada (ESDC). The LMIA determines whether an employer can temporarily hire a worker to address a labour or skills shortage. To this end, the employer must obtain a positive LMIA, which means that no Canadian citizen or permanent resident of Canada is available to fill the position temporarily. The temporary worker then submits the work permit application to Immigration, Refugees and Citizenship Canada (IRCC). The complexity of the LMIA may be difficult to understand. Our RDÉE Canada National Network can help you with your recruiting process abroad!

How does one determine whether an LMIA is required?

Two temporary foreign worker programs exist:

- The Temporary Foreign Worker Program (TFWP) that requires a positive LMIA;
- The International Mobility Program (IMP) that is LMIA-exempt. The Francophone Mobility stream is part thereof. See our sheet on Francophone Mobility for more information.

To determine whether you need an LMIA, you can:

- Verify the LMIA exemption codes and the work permit exemptions; or
- Contact an International Mobility Workers Unit (IMWU) if the worker is outside Canada and from a country whose nationals are visa-exempt.

Various LMIA applications are based on hiring streams

LMIA applications differ based on the profession and the programs concerned. They are divided into two major categories that differentiate between specialized and general hiring streams:

SPECIALIZED APPLICATIONS	GENERAL APPLICATIONS
Permanent residence stream – <u>Express entry</u> (see our detailed sheet on the Express Entry system)	<u>High-wage position stream</u> Persons in a high-wage position are paid a wage equal to or greater than the provincial or territorial median hourly wage. ¹
<u>Global Talent Stream</u>	
<u>Foreign academics</u> (university professors)	<u>Low-wage position stream</u> Persons in a low-wage position are paid a wage less than the provincial or territorial median hourly wage. ¹
<u>Agriculture</u> (Primary Agriculture sector): Seasonal Agricultural Worker Program (SAWP), Agriculture stream	
<u>In-home caregiver</u>	
<u>Recognized Employer Pilot (REP)</u> for a period of 3 years until December 31, 2026	

Each stream has its specific criteria and its assigned processing centre in Canada.

¹ Median hourly wage according to the province or territory

LMIA process with ESDC and work permit application to the IRCC

EMPLOYER

Submit an application to ESDC via the online LMIA Portal

Since April 2023, LMIA applications must be submitted electronically to Service Canada. The employer must have a valid Job Bank user account to sign in.

LMIA application processing fees: \$1,000 per position requested. These fees shall be covered by the employer, not the foreign worker.

Positive LMIA: the employer receives a letter of confirmation from ESDC and must give a copy to the temporary worker.

LMIA Expiry date: as of May 1, 2024, the validity period is a maximum of 6 months, except for recognized employers who may benefit from validity periods of up to 36 months.

TEMPORARY FOREIGN WORKER (TFW)

Submit an online work permit application to IRCC along with a positive LMIA and biometrics.

Work permit application accepted: a worker outside of Canada shall receive a letter of introduction for the point of entry along with a temporary resident visa (TRV) or an electronic travel authorization (eTA) to enter Canada.

Issuance of a work permit at the point of entry the day they arrive in Canada (or sent directly to the worker if the application was made in Canada).

Type of work permit: employer-specific, specifying the type, place and period of employment and the employer.

Take advantage of two-week processing under the Global Skills Strategy (GSS): for applications submitted outside Canada, in which case a positive LMIA has been obtained through the Global Talent Stream.

Family members accompanying the principal applicant: the spouse or common-law partner and dependent children can submit simultaneously an application to come to Canada as a visitor, student or a worker. The spouse or common-law partner can receive an open work permit if the principal applicant is a skilled worker at TEER level 0, 1, 2, 3, 4 or 5 of the National Occupational Classification (NOC) and has obtained a work permit for at least six months.

What is meant by employer compliance?

Under the Temporary Foreign Worker Program (TFWP), employers that hire workers must comply with their obligations as employers and be the subject of an inspection. In cases of non-compliance, employers can face a financial penalty or be prohibited from hiring TFWs.

What grounds are used to refuse to process an LMIA application?

There are two categories:

1. Regulatory authority:

- The employer offers services in the sex industry;
- The employer appears on the Immigration, Refugees and Citizenship Canada ineligibility list, particularly in cases of non-compliance.

2. Public policy considerations as determined in Ministerial instructions:

- Certain positions in the accommodation and food services and retail trade sectors;
- If the current cap on the number of low-wage temporary foreign workers has been exceeded at the same workplace;
- Certain high-wage and low-wage positions in the province of Alberta (unless they have been exempted);
- In-home caregiver positions where there is a live-in requirement;
- Any position if you have had a Labour Market Impact Assessment revoked in the past two years.

In cases where the LMIA application has not been processed, the employer receives an explanatory letter and no processing fees are owing.