



THE CANADIAN
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Via email: patty.hajdu@hrsdc-rhdcc.gc.ca; minister@cic.gc.ca

The Honourable Patty Hajdu, P.C., M.P.
Minister of Employment, Workforce
Development and Labour
140 promenade du Portage
Phase IV, 12th Floor
Gatineau, QC K1A 0J9

The Honourable Ahmed Hussen, P.C., M.P.
Minister of Immigration, Refugees and
Citizenship
Immigration, Refugees and Citizenship Canada
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Ministers Hadju and Hussen:

Re: Foreign Remote Workers with Employers Outside of Canada

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) to raise concerns about issuing work permits under the Temporary Foreign Workers Program (TFWP) to foreign telecommuters working for employers outside of Canada from office space in Canada. These workers do not meet the definition of “work” in the *Immigration and Refugee Protection Regulations*, or as interpreted by Immigration Refugees and Citizenship Canada (IRCC) and Employment and Social Development Canada (ESDC). We believe issuing work permits in these situations undermines the integrity of the TFWP.

The CBA is a national association of 36,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section is comprised of over 1,000 lawyers, practicing all aspects of immigration law and delivering professional advice and representation in the Canadian immigration system to clients in Canada and abroad.

In limited circumstances, temporary entrants to Canada may work remotely for their foreign employers while visiting Canada. The IRCC website refers to permissible activities, which are “normally part-time or incidental to the reason that the person is in Canada” and specifically includes the example of a temporary resident working remotely for their foreign employer.¹ These individuals are not viewed as entering the Canadian labour market. They do not require and are not eligible for work permits. Their immigration status is that of visitor. They may work in Canada remotely for their foreign employer from a hotel room, local coffee shop or dedicated commercial space. While a Canadian commercial landlord could rent them office space, this arrangement amounts to a landlord-tenant relationship not an employment relationship.

¹ Immigration, Refugees and Citizenship Canada, [Temporary Foreign Worker and International Mobility Programs: What is work?](#) (2017).

Some companies rent office spaces on a larger scale to employers abroad looking to employ teams of foreign workers remotely from Canada. For example, Calgary-based MobSquad offers US technology companies struggling to renew their foreign workers' US work authorisations the opportunity to "house" their workers in Canada.² Terminal, a US company, has a similar business model, allowing companies around the world—and particularly the US—to build remote teams of foreign workers in Vancouver, Toronto, Montreal or Kitchener-Waterloo.³

While these companies offer a legitimate business service, we question their access to the TFWP. Providing commercial space to foreign telecommuters does not establish an employment relationship. The foreign employees are not employed by the company that gives them a workspace, nor are they providing goods or services in the Canadian labour market. These companies do not appear to engage in the usual responsibilities of employers such as hiring, firing, training and daily direction of remote workers. Rather, their role appears to be limited to offering office space and providing minimal back office support like payroll services to foreign employers.

Remote workers gain many benefits by being classified as employees of the company that gives them office space: the right to temporarily live and work in Canada; their spouse's eligibility for "open" work permits; their children's access to free public education; and the family's eligibility for provincial health care coverage. The temporary foreign worker also gains a foothold on the path to permanent residence and Canadian citizenship. This potential link to permanent residence undermines the integrity of the Express Entry programme. Future remote workers located in Canada, designated as Temporary Foreign Workers, will be credited with Canadian work experience and arranged employment making them eligible for limited invitations to apply in direct competition with applicants employed in Canada by local employers. Meanwhile, foreign workers employed by Canadian employers are not credited for time spent travelling outside Canada on behalf of the Canadian businesses that employ them.

We fear that the success of this model will draw imitators, and that its expansive redefinition of the employment relationship for immigration purposes may give rise to abuse.

The CBA Section supports recent efforts by IRCC and ESDC to facilitate hiring highly skilled temporary foreign workers by Canadian enterprises. The streamlined movement of these workers through programs such as the Global Talent Stream gives Canadian companies a competitive advantage. Helping foreign employers build remote teams of foreign workers in Canada does not further the TFWP's fundamental purpose—connecting Canadian employers with skilled workers.

We ask that you review the issuance of Labour Market Impact Assessments (LMIA's) and work permits to remote foreign workers who do not have Canadian employers and are not operating in the Canadian labour market. If you conclude this practice is consistent with the TFWP, we suggest that you issue a bulletin clarifying that this model is acceptable, and workers need not engage in Canadian business activity to qualify for the TFWP. If the model is not acceptable, a bulletin should be issued clarifying this to the public including prospective employers and representatives, and steps should be taken to investigate companies that have been issued LMIA's based on this model. We would be pleased to clarify our recommendation or participate in further discussions.

Yours truly,

(original letter signed by Nadia Sayed for Marina Sedai)

Marina Sedai
Chair, CBA Immigration Law Section

² MobSquad website, [Provide an Innovative Solution](#).

³ Terminal website, [Destination Terminal](#) at Terminal Campuses.