



e2r Alert!

FAQs: Work Permits

While we are the first to admit we are not immigration specialists, we take this opportunity to provide a high-level overview of the most commonly asked questions relating to work permits.

What is a work permit, who needs one, and why?

As a general rule, foreign nationals wishing to work in Canada, even on a temporary basis, must obtain authorization to work in Canada in the form of a work permit, unless they are admissible to Canada as business visitors or under a work permit exemption category.

A work permit may be issued via different programs (ex. Temporary Foreign Worker Program or International Mobility Program), and will typically either be “open” without employment restrictions or “closed” with employment restrictions for the employer, occupation, and employment location.

It is an offence to employ a foreign worker without valid work authorization. Continuing to employ a foreign worker without proper authorization can expose employers to serious consequences, including fines, bans on hiring foreign workers, denial of applications, and damage to reputation.

When and how do I ask about this during the recruitment process?

While it's tempting to figure out a candidate's employment status during the recruitment and selection process, employers must be careful to not seek out particulars at this stage as it could lead to claims of discrimination. Inquiring simply if the candidate is eligible to work in Canada is acceptable and then once an employment agreement is issued, further proof of their eligibility, such as a work

permit, can be requested as a condition of employment. Note that you can tell if an employee is on a work permit if their SIN begins with a 9.

What if my current employee's work permit is expiring or expired?

When an employee's work permit expires or is revoked for any reason, an employer should not allow them to continue working.

If you learn that your employee's work permit is expiring (or expired) before taking any other action, talk to your employee! Ask the employee whether they applied for an extension before the expiry date; request proof (ex. IRCC acknowledgment of receipt); document all communications and due diligence efforts to verify status; and contact an advisor.

If the permit is expired, can't I just terminate?

No, an employer cannot terminate employment just because the permit has expired. If the employee applied to extend their work permit before it expired, then they may have "maintained status" and would remain authorized to work.

However, if an employee's work permit expires and the employee did not apply for an extension before the expiry date, the employment relationship may be considered *frustrated*. The expiry of an employee's work permit does not automatically result in the frustration of the employment relationship, and whether or not the relationship has truly been frustrated will depend on the circumstances of each case.

What else should I know?

It is good practice to include immigration-related language in your employment agreements. Speak to an advisor and consider the need for clauses that:

- Clarify the employee's responsibility to maintain valid authorization to work;
- Acknowledge the employer's limited role in immigration processes;
- Explain the consequences of losing status, including termination due to frustration.

If you would like to discuss the any of the above circumstances or need any other assistance please don't hesitate to reach out to speak to an e2r™ Advisor. Note you may need to speak with an immigration lawyer if your questions are out of our scope - we'd be happy to provide you with a referral. Just a reminder that current e2r™ clients receive a special discount on our immigration lawyer referral's services.