

IMMIGRATION LAW ALERT: NEW EASE OF ENTRY FOR MACHINERY REPAIR TECHNICIANS FROM ABROAD

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One of the more challenging issues for Canadian manufacturers has been how to get foreign service technicians into Canada on an expedited basis when industrial machinery needing repair is no longer under warranty or the entry is not supported by an "after-sales" or lease agreement. In one of Citizenship and Immigration Canada's (CIC) better recent moves, it has expanded the labour market impact assessment (LMIA) exemption C13 to allow such technicians to more easily obtain a work permit.

Up until now, there have only been two categories of foreign service technicians who could enter Canada "easily" without going through the LMIA process. The first is repair technicians conducting after-sales service of specialized equipment or machinery purchased from outside Canada, working under the original sales/lease or warranty agreement. A technician in this category does not require a work permit to enter Canada to carry out the services. However, among other criteria, the technician is required to produce a copy of the sales/lease or warranty agreement entered into at the time of sale or lease expressly supporting the entry. In many cases the sales agreement and/or purchase orders neglect to do so. This classification is also not helpful if the equipment is out of warranty. The second category permits "emergency repair personnel" to obtain a work permit without the necessity of the employer first obtaining an LMIA (the C13 exemption), but only if emergency repairs are needed in order to "prevent disruption of employment".

Effective May 21, 2015, the LMIA-exempt category C13 has been expanded to include repair technicians conducting work on machinery that is no longer under warranty or governed by a sales/lease agreement. To qualify for a work permit under this exemption:

- the repair technician must have specific knowledge about the machinery;
- the company that manufactured the machinery being serviced must have no commercial presence in Canada; and
- there must be evidence that Canadian jobs will be greatly affected if the machinery is not repaired in a timely fashion.

The onus is on the foreign worker to provide evidence that the worker meets these requirements. Such

evidence may include a letter from the home employer outlining the foreign worker's status with the company, the purpose of the visit and evidence that the worker has the specialized knowledge required to repair the machinery (copies of degrees, any required professional licences or certifications, a copy of the curriculum vitae). The admission under this exemption is expected to be of short duration (less than 30 calendar days).

As with all LMIA exempt work permit applications, the employer is required to (i) pay a \$230 employer compliance fee, and (ii) complete and submit the *Offer of Employment to a Foreign National Exempt from a Labour Market Impact Assessment* form (IMM 5802) **before** the worker can apply for a work permit. At the time of the application, the foreign worker will also be required to pay a \$155 processing fee. The application can be made at any port of entry provided the technician is a citizen of a visa exempt country.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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