

# COVID 19 – GOVERNOR IN COUNCIL ORDER PROHIBITION OF ENTRY INTO CANADA TO MINIMIZE THE RISK OF EXPOSURE TO COVID-19 IN CANADA: WHAT EMPLOYERS NEED TO KNOW

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## Introduction

On March 16, 2020, the Governor General in Council, under its powers entrenched in the *Quarantine Act*<sup>[1]</sup>, and on the recommendation of the federal Minister of Health, made an Order<sup>[2]</sup> (the “**Order**”)<sup>[click here]</sup> prohibiting the entry to Canada of certain persons with the intention to minimize the risk of exposure to COVID-19 coronavirus disease (“**COVID-19**”) in Canada.

Under section 58 of the *Quarantine Act*, in the event of a communicable disease in foreign countries that poses an imminent and severe risk to public health in Canada, the Governor in Council is entitled to make an order prohibiting, among others, the entry into Canada of any class of persons who have been in a foreign country, notwithstanding any other provision contained in the Immigration and Refugee Protection Act (“**IRPA**”) and its Regulations that regulates the entry of foreign nationals to Canada.

In addition, the Minister of Transport under the Aeronautics Act has also issued a Notice<sup>[3]</sup> (the “**TC Notice**”) preventing certain persons from boarding flights to Canada due to COVID-19, and requiring air carriers on flights to Canada to deny boarding to any passenger who is not a Canadian citizen or permanent resident, and has resided in any country other than the United States in the last 14 days.

## Summary for Employers

As set out in more detail below, given the Order made by the Government in Council as well as the TC Notice issued by the Minister of Transport, it is important for employers who employ foreign workers to understand that any business travel outside of Canada must be cancelled. If a foreign national leaves Canada after March 18, 2020, he or she will not be able to fly back to Canada until the Order expires, which is June 30, 2020, unless they are coming directly from the United States.

Similarly, as of 11:59 p.m. on March 18, 2020, there will not be a clear path to entry for anyone who needs to come to Canada for business, unless they are US citizens or permanent residents and/or have been in the

United States for the 14 day period prior to entry.

Of course, this is a fluid situation and it may be different within 24 hours. We will continue to monitor this situation and provide updates when they are available. If you have any questions about your employees' status or options, please do not hesitate to contact us.

### **Prohibition Under the Order**

The Order contains a prohibition whereby anyone who is not a Canadian or permanent resident, is prohibited from entering Canada, if they arrive by means of an aircraft from a foreign country.

However, it should be noted that this prohibition will apply only to foreign nationals flying into Canada from destinations other than the United States, as further detailed below, subject to any further update(s) by the Government of Canada.

### **Effective Period of the Order**

The Order will come into force on Wednesday, **March 18, 2020 at 12:00 p.m.** (noon) EST and will end on Tuesday, **June 30, 2020.**

### **Exceptions to the Order**

The prohibition under the Order does not apply to the following persons:

- a. a person who arrives by means of an aircraft, if the scheduled arrival in Canada according to the flight plan is **before 11:59 p.m.** Eastern Standard Time on Wednesday, **March 18, 2020;**
- b. a person who has been only in the United States or Canada during the period of 14 days before the day on which they arrived in Canada;

This means that if a foreign national has been in the United States during the last 14 days and is trying to enter Canada (at least on a trans-border flight rather than an international flight, as further detailed below), the foreign national would not be subject to the travel ban.

- a. a spouse, common law partner or dependent child of a Canadian citizen or of a permanent resident;
- b. a crew member assigned to duty in an aircraft during flight time, or assigned to duty related to the operation of a remotely piloted aircraft system during flight time<sup>[4]</sup>;
- c. a diplomatic and their spouse, common law partner or dependent child;
- d. a person who enters Canada at the invitation of the Minister of Health for the purpose of assisting in the COVID-19 response;
- e. a person who arrives by means of an aircraft operated by the Canadian Forces or the Department of

National Defense;

- f. a member of the Canadian Forces or a visiting force as defined in section 2 of the *Visiting Forces Act* and their spouse, common law partner or dependent child;
- g. a person on whom refugee protection is conferred, under subsection 95(2) of IRPA.
- h. a French citizen who resides in Saint-Pierre-et-Miquelon and has been only in Saint-Pierre-et-Miquelon, the United States or Canada during the period of 14 days before the day on which they arrived in Canada;
- i. a person or any person in a class of persons who, in the opinion of Chief Public Health Officer appointed under subsection 6(1) of the *Public Health Agency of Canada Act*:
  - i. does not pose a risk of significant harm to public health, or
  - ii. will provide an essential service while in Canada; or
- j. a person whose presence in Canada, in the opinion of the Minister of Foreign Affairs, the Minister of Citizenship and Immigration or the Minister of Public Safety and Emergency Preparedness, is in the national interest.

In light of the above, all foreign nationals, except the above-described persons, will be prohibited from entering Canada by air travel effective 12:00 p.m. EST, today March 18, 2020, unless their flight is scheduled to arrive in Canada, according to the flight plan, before 11:59 p.m. EST today, Wednesday, March 18, 2020.

### **TC Notice**

In addition to the Order made by the Governor in Council, the Minister of Transport (the “**Minister**”) has also issued the TC Notice indicating that an air carrier is prohibited from permitting a foreign national to board an aircraft for an international flight with a destination to Canada.

Similar to the prohibitions contained in the Order, the travel ban will apply to any passenger who is not a Canadian citizen or permanent resident, and has resided in any country other than the U.S. in the last 14 days.

The TC Notice clarifies that the denial of boarding would apply to:

- all foreign nationals on flights to Canada other than trans-border (US) flights, and
- any foreign national on a trans-border flight who has resided outside the US and Canada in the last 14 days.

In addition, a person cannot board a plane to Canada if he/she has been outside of Canada or the United States in the last 14 days, unless he or she is a Canadian Citizen, Canadian Permanent Resident or in transit to a 3rd country. Similar to the exceptions under the Order, the prohibition would not apply to air crews, travelers arriving in Canada in transit to a third country, Canadian Permanent Residents, diplomats, or immediate family

members of Canadian citizens. However, all carriers must do a health check of passengers and is required to refuse boarding to anyone who has exhibited symptoms of COVID-19.

For greater clarity, this measure only applies to travel by air. As such, it does not apply to surface traffic (i.e. land borders) or marine shipping.

Accordingly, given that the TC Notice has been issued pursuant to the Aeronautics Act (which does not apply to the land borders), it seems that the land border with the United States will remain open to foreign nationals who have only resided in the United States during the last 14 days, subject to any further update by the Government of Canada.

### **Foreign Nationals Who Have Legal Status to Live in Canada**

Both the Order and the TC Notice also affect foreign nationals, including temporary foreign workers and international students who have legal status to live in Canada, are residents of Canada, and were only temporarily visiting another country when the Order came in to effect.

However, Immigration, Refugees and Citizenship Canada (“**IRCC**”) has confirmed to the Canadian Bar Association – Immigration Branch that those foreign nationals with legal status in Canada will be allowed to return to Canada. To this end, IRCC has strongly suggested that those foreign nationals are strongly encouraged to bring documentation proving an established residence in Canada, such as tax returns, bank account information, proof of employment, rental contract, showing that such foreign national in fact resides in Canada and not in the country of departure.

Unfortunately, foreign workers and foreign students that are not in the United States will not be allowed to entry into Canada if they do not board a flight to the Canada that is scheduled to arrive before 11:59 p.m. today, March 18, 2020, regardless of their employment, or program of study in Canada until further instructions are issued by IRCC.

### **Conclusion**

Given the declaration of pandemic made by the WHO and the Order made by the Government in Council as well as the TC Notice issued by the Minister of Transport, it is important for employers who employ foreign workers to understand that any business travel outside of Canada must be cancelled. If a foreign national leaves Canada after March 18, 2020, he or she will not be able to fly back to Canada until the Order expires, which is June 30, 2020, unless they are coming directly from the United States. Of course, this is a fluid situation and it may be different within 24 hours. We will continue to monitor this situation and provide updates when they are available.

Similarly, as of 11:59 p.m. on March 18, 2020, there will not be a clear path to entry for anyone who needs to come to Canada for business, unless they are U.S. citizens or permanent residents and/or have been in the United States for the 14-day period prior to entry.

If you have any questions about your employees' status or options, please do not hesitate to contact us.

by Dave McKechnie and Douglas Zorrilla

[1] S.C. 2005, c. 20, section 58

[2] Minimizing The Risk of Exposure to COVID-19 Coronavirus Disease in Canada Order (Prohibition of Entry into Canada), 81200-2-518, 2020-03-16 (23:32) [Confidence of the Queen's Privy Council]

[3] Government of Canada: [New measures for COVID-19 response](#)

[4] *Canadian Aviation Regulations* at section 101.01(1)

### **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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