

# UPDATE - PROHIBITION OF ENTRY INTO CANADA TO MINIMIZE THE RISK OF EXPOSURE TO COVID-19 - TRAVEL RESTRICTIONS AND QUARANTINE REQUIREMENTS

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# **Background**

Since March 16, 2020, the Government of Canada has been issuing certain emergency Orders in Council (collectively, the "**Orders**") prohibiting the entry to Canada of foreign nationals with the intention to minimize the spread of COVID-19.

As discussed in our <u>bulletin</u> published on March 16, 2020, the Governor General in Council, under its powers entrenched in the *Quarantine Act*[1] (the "**Act**"), and on the recommendation of the federal Minister of Health, made the first emergency Order in Council prohibiting, among others, the entry into Canada of any class of persons who have been in a foreign country (the "**Travel Restrictions**"), notwithstanding any other provision contained in the *Immigration and Refugee Protection Act* ("**IRPA**") and its Regulations that regulates the entry of foreign nationals[2] to Canada, subject to certain exemptions.

The specifics of the Travel Restrictions imposed by the Government of Canada, as implemented by Canada Border Services Agency ("CBSA") and Immigration, Refugees and Citizenship Canada ("IRCC"), have shifted almost on a weekly basis since March 2020 causing uncertainty to foreign nationals and businesses, particularly those with presence in Canada and in the United States. Since March 2020, twenty Orders have been issued by the Governor General in Council adding separate restrictions and exemptions for U.S. travellers and for non-U.S. citizens travellers, on top of the numerous program delivery instructions and updates issued by IRCC and CBSA with respect to the Travel Restrictions since March 2020 setting out various entry requirements to Canada during the validity of the Orders.

CBSA is the designated representative to administer the Emergency Orders under the Act at the Canadians ports of entry. Upon arrival in Canada, a CBSA officer will assess foreign nationals for potential risks to public health, and will determine whether the foreign national's purpose of entry to Canada clearly falls within the exemptions contained in any of the Emergency Orders, as well as to whether they meet the regular entry requirements under IRPA. It is important to note that the Emergency Orders are very strictly enforced by CBSA.



If a foreign national's entry to Canada is permitted by a CBSA officer, they will be subject to mandatory quarantine for 14 days (the "**Mandatory Quarantine**"), unless they are exempted under any of the Emergency Orders.

Currently, there are three Orders (collectively, the "Emergency Orders") in effect [3], as follows:

- 1. OIC 18 Minimizing the Risk of Exposure to COVID-19 in Canada Order (Mandatory Isolation) No. 3 in effect until August 31, 2020 ("OIC 18")[4];
- 2. OIC 19 Minimizing the Risk of Exposure to COVID-19 in Canada Order (Prohibition of Entry into Canada from the United States) in effect until August 21, 2020 ("OIC 19')[5]; and
- 3. OIC 20 Minimizing the Risk of Exposure to COVID-19 in Canada Order (Prohibition of Entry into Canada from any country other than the United States), in effect until August 31, 2020 ("OIC 20")[6]

# The Emergency Orders Relevant to Business Travellers [7]

The Emergency Orders prohibits the entry of foreign nationals to Canada arriving from the United States or from any other country if they seek to enter for discretionary reasons, such as for tourism, recreation or entertainment ("Non-Essential Purpose"). Temporary foreign workers travelling to Canada for work are exempt from the Travel Restrictions as long as they are not travelling for a Non-Essential Purpose. This includes workers who were already residing in Canada but were temporarily abroad when the restrictions took effect, new applicants, and workers who were approved but not yet travelled to Canada. However, foreign workers are not exempt from the Mandatory Quarantine, unless they are clearly exempt under the Emergency Orders.

### 1. OIC 18 - Mandatory Quarantine

Under OIC 18[8], every person who enters Canada must self-quarantine for 14 days that begins the day on which such person enters Canada, unless he or she is exempted under OIC 18. The following class of persons[9] are exempt from Mandatory Quarantine, provided that they are asymptomatic:

- Persons in the trade or transportation sector who are important for the movement of goods or people, including truck drivers and crew members on any aircraft, shipping vessel or train, and that cross the border while performing their duties or for the purpose of performing their duties;
- Persons who must cross the border regularly [10] to go to their normal place of employment, including critical infrastructure workers (Energy and Utilities, Information and Communication Technologies, Finance, Health, Food, Water, Transportation, Safety, Government and Manufacturing), provided they do not directly care for persons 65 years of age or older within the first 14 days after their entry to Canada;
- Technicians or specialists specified by a government, manufacturer, or company, who enter Canada as required for the purpose of maintaining, repairing, installing or inspecting equipment necessary to



support critical infrastructure (Energy and Utilities, Information and Communication Technologies, Finance, Health, Food, Water, Transportation, Safety, Government and Manufacturing) and are required to provide their services within 14 days of their entry to Canada and have reasonable rationales for the immediacy of the work and the inability to plan for a 14 day quarantine;

- Persons, including a captain, deckhand, observer, inspector, scientist, veterinarian and any other person supporting commercial or research open water aquaculture-related activities, who enter Canada for the purpose of carrying out aquaculture-related activities, including fishing, transporting fish to and from the aquaculture facility, treating fish for pests or pathogens, repairs, provisioning of aquaculture-related vessels or aquaculture facilities or exchange of crew and who proceed directly to an open water facility or vessel upon entry to Canada;
- Emergency service providers, including firefighters, peace officers, and paramedics, who return from providing such services in another country and are required to provide their services within 14 days of their return to Canada; and
- Commercial conveyance operators repatriating human remains into Canada.

Every foreign national who falls under the above essential services categories should not be prohibited from entering Canada, provided that proper documentation related to the essential service is presented at the Canadian port of entry.

For example, if a U.S. technician is coming to Canada to install or repair equipment as part of an after sale service to a entity that is part of the Canada's Critical Infrastructure [11] and is required to provide such services within 14 days of their entry, a CBSA officer should allow a U.S. technician to enter Canada provided that the Canadian entity provides a letter of invitation to the U.S. technician confirming that the foreign national is coming to Canada as part of an after sale service, that they are not subject to a mandatory closure, and that their business is part of Canada's Critical Infrastructure. If the U.S. technician is allowed to enter Canada, they will exempted from the Mandatory Quarantine under OIC 18.

If a foreign national arrives at a Canadian airport exhibiting symptoms of COVID-19, they are subject to OIC 18 and must isolate themselves for 14 days. This could include home isolation, a quarantine facility or even immediate referral to a health care facility. If a foreign national arrives at a Canadian land border with symptoms of COVID-19, they will not be permitted entry, unless they have the right to access Canadian health care.

# 2. **OIC 20**

Under OIC 20, any foreign national is prohibited from entering Canada if they arrive from a foreign country other than the United States unless they have advance approval from IRCC. [12] The following class of persons



who provide an essential service while in Canada are exempt from Mandatory Quarantine:

- Technicians or specialists specified by a government, manufacturer, or company, as required to inspect, maintain or repair equipment necessary to support critical infrastructure (Energy and Utilities, Information and Communication Technologies, Finance, Health, Food, Water, Transportation, Safety, Government and Manufacturing); and
- Persons, including a captain, deckhand, observer, inspector, scientist, veterinarian and any other person supporting commercial or research open water aquaculture-related activities, who enter Canada for the purpose of carrying out aquaculture-related activities, including fishing, transporting fish to and from the aquaculture facility, treating fish for pests or pathogens, repairs, provisioning of aquaculture-related vessels or aquaculture facilities or exchange of crew and who proceed directly to an open water facility or vessel upon entry to Canada.

It is important to note that the above exemption for technicians or specialists does not cover the installation of equipment, unlike the exemption for U.S. technicians under OIC 18. This creates a significant challenge for companies needing to install equipment if the installation must be performed by non-U.S. technicians. For these entries, a work permit will need to be obtained to ensure entry.

## **Mandatory Quarantine Procedure**

As indicated, most travellers are required to self-quarantine upon entry to Canada, unless they are exempt under OIC 18, and are expected to have an adequate plan even if they do not have symptoms.

Upon entry, travelers must demonstrate that they [13]:

- have a suitable place to quarantine for 14 days with access to basic necessities and groceries;
- go directly to their place of quarantine without stopping anywhere;
- stay at their place of quarantine for 14 days;
- have no contacts with any persons during the 14 days, and do not leave the place of quarantine except for medical attention:
- wear a face covering during transit; and
- comply with physical distancing.

### What to expect at the border

All foreign nationals crossing the border should consider keeping up to date with COVID-19 related issues. Foreign employees that are required to travel to Canada for an essential purpose should have available a copy of COVID-19 protocols issued by the home company and the customer's company. These documents may be



requested by a CBSA officer. When speaking to a CBSA officer, it will be important to demonstrate that that the purpose of the travel is essential and have ready a letter from the Canadian company confirming, among others, that the purpose and nature of the trip is essential within the applicable essential sector under the Canada's Critical Infrastructure above mentioned. However, the final decision for entry rests with the CBSA officer at the port of entry.

While it is not yet necessary nor will it ensure entry, foreign nationals coming to Canada for an essential purpose and have been recently tested for COVID-19 may want to bring their results and give them to the CBSA officer to facilitate their entry.

### **Penalties**

Failure to comply with Mandatory Quarantine could face penalties for non-compliance under the Act of up to \$750,000, and/or six months in prison as well as being found inadmissible, removed from Canada and banned from entering for 1 year [14].

In addition, any person who causes a risk of imminent death or serious bodily harm to another person while willfully or recklessly contravening the Act could be liable for a fine of up to \$1,000,000; or imprisonment of up to three years, or to both.

### **Summary for Employers**

Employers should keep in mind that just because a foreign national is travelling for an essential purpose and as part of an essential business does not mean that their entry is guaranteed or that they will not be subject to Mandatory Quarantine. The Mandatory Quarantine exemptions are very limited under the Emergency Orders and are very strictly enforced by CBSA officers at the ports of entry. That means that, unless a clear exemption to the Mandatory Quarantine applies, employers must a) plan to have a foreign worker/visitor in Canada for 14 days prior to their meeting/activity; and b) develop a quarantine plan for their employee, provided that the employee will arrive from the U.S.

If a foreign national need to get advance approval because they have not been in the U.S. for 14 days or more, or they need a visa to enter Canada, then the timeline is hard to predict given the current situation.

As of August 14, 2020, Canada and the U.S. have agreed to keep the border between the two countries closed to Non-Essential Purpose travels for another month until at least **September 21, 2020**. Therefore, it is expected that new Emergency Orders will be issued before August 21, 2020 extending the Travel Restrictions. Of course, this is a fluid situation and it may be different within 24 hours. We will continue to monitor the 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.

by Dave McKechnie and Douglas Zorrilla

- [1] S.C. 2005, c. 20, section 58.
- [2] Foreign Nationals means a person who is not a Canadian citizen or a permanent resident, and includes a stateless person under section 2 of IRPA.
- [3] COVID-19 Emergency Orders.
- [4] Order in Council 2020-0524 issued on June 26, 2020.
- [5] Order in Council 2020-0538 issued on July 20, 2020.
- [6] Order in Council 2020-0549 issued on July 30, 2020.
- [7] OIC 19 deals with family members entering into Canada and will not be discussed in this bulletin.
- [8] Section 6(e) of the OIC 18.
- [9] List of Acts and Regulations.
- [10] This exemption applies to persons who must cross the border regularly to go to their normal place of employment on either side of the Canada-US border.
- [11] Canada's National Strategy for Critical Infrastructure classifies "essential services" for critical infrastructure the following ten sectors: energy and utilities, information and communication technologies, finance, health, food, water, transportation, safety, government, and manufacturing ["Canada's Critical Infrastructure"].
- [12] Section 2 of the OIC 20.
- [13] Coronavirus disease (COVID-19): Travel restrictions, exemptions and advice.
- [14] Coronavirus disease (COVID-19): Who can travel to Canada Citizens, permanent residents, foreign nationals and refugees.

# **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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