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Working in Canada: What is Work, and when is a Work Permit needed?

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In the Canadian immigration context, ‘work’ is broadly defined. Even volunteers, those providing services in a private residence, and student interns may require a work permit, and may run into trouble if they do not have one. This article helps to explain when a work permit is needed and why.

Beware the dreaded report from the Canada Border Services Agency (CBSA): working without a work permit! It is often a fatal allegation, and hard to disprove. Deportation can often result.

The test is balance of probabilities, and grounds to believe. The threshold is rather low. All the Canadian government needs is “reasonable grounds to believe” that a foreign national has done any work at all, even in the form of help, without having a valid work permit.

The Regulations to the *Immigration and Refugee Protection Act (IRPA)* contain the general definition of “work” requiring a work permit: any “activity for which wages are paid or commission is earned, or that is in direct competition with the activities of Canadian citizens or permanent residents in the Canadian labour market”.

Like most of our Canadian laws, it is not the legal definition that tells the story, but instead the interpretation of it by government policy-makers, immigration officials, and courts.

The news here is rather unfortunate. Whereas business owners, managers, visitors to Canada and other foreign nationals in Canada hope for a permissive or relaxed interpretation, the opposite is generally true. The definition in the Regulations has been interpreted as broadly as can be imagined.

Businesses and employers often feel that they can skirt the law by treating the worker as unpaid or as a “volunteer”, and remunerate (i.e. pay) the worker “conditionally” only once they have received authorization to work, or once their Canadian permanent resident status is obtained. But arrangements that include banked hours and retroactive pay for services previously rendered are unlawful.

The definition of “work” can also include unpaid employment undertaken for the purpose of obtaining work experience, such as an internship or practicum normally done by a student. Compensation arrangements such as accommodation and meals instead of payment in money have also been considered and found to require a work permit.

Tasks as nominal as unpacking boxes, carrying vegetables to a kitchen in a restaurant, cooking or food preparation in the restaurant kitchen, answering the phone of the business and taking messages, taking



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orders from customers, and childcare have all been determined to be significant enough to constitute work requiring a work permit. If the task—no matter how insignificant in the eyes of the worker or of the business—might have reasonably deprived someone else of employment, then a work permit is required. Another way to look at it is like this: if the employer benefitted in any way at all from the task(s) or services performed by the foreign national, then it is fair to assume that a work permit is required.

Courts have also grappled with the situation involving an individual, often a visiting relative, performing tasks in a private residence. There is some good news here: not all tasks performed by a visitor for a relative are considered work requiring a work permit, even when the Canadian resident would normally need to hire a paid employee to have the tasks completed. Consider, for example, babysitting, cleaning, or garden work. These tasks would not normally require a work permit when done in a private residence by a visiting family member.

Courts have determined that it is the intent of the legislation to protect employment opportunities, no matter how minor, for all citizens and permanent residents of Canada. Arguably, this rationale also applies for those who have already been authorized for temporary work permits.

The Department has even tried to define what is NOT work: any activity that does not really “take away” from opportunities for Canadians or permanent residents to gain employment or experience in the workplace.

The lesson is this: it is all in the eye of the beholder. Foreign nationals and Canadian organizations do not want to be involved in any litigation where the issue is work without authorization. Such hearings are stressful, costly, and usually unsuccessful, because of the broad interpretation. If a work permit exemption is being relied upon, it is best to disclose and seek it ahead of time, to have the regulator review the circumstances and approve it.

We would be happy to speak to you about your specific questions surrounding authorization to work in Canada. Please contact us to set up a consultation appointment.

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