

## You Raise the Issue

**KAREN FLEMING**

### Hiring Temporary Foreign Workers

**Question: Our company wants to hire an employee, who is a U.S. citizen, on a temporary basis for a particular project. What steps do we have to take in order to hire her?**

Answer: For a U.S. citizen to work in Canada, permission must be obtained both to enter Canada and to work in Canada. Only Canadian citizens and permanent residents have the inherent right to work in Canada. First, the employee you wish to hire must be admissible to Canada. Persons may be inadmissible to Canada for many reasons including medical problems, past criminal convictions, or previous problems with Canada Immigration.

Your prospective employee must satisfy immigration authorities that she intends to come to Canada for a temporary purpose only. Generally, persons seeking to work in Canada require permission to work on a temporary basis from Canada Immigration as well as a job validation from Human Resources Development Canada. Because you are seeking to hire a U.S. citizen, a job validation may not be required if the prospective employee fits within one of the exceptions provided under the North American Free Trade Agreement (NAFTA). Exceptions under NAFTA to the requirement of obtaining a job validation include members of some 60 specific occupations, where, in most cases, the applicant must meet minimum education requirements (generally a Bachelor's degree). The applicant must be coming to work in that profession pursuant to a job offer from a Canadian employer. There are also exceptions under NAFTA for intra-company transfers and business visitors.

If your prospective employee fits within an exception to the requirement of obtaining a job validation, she still must obtain an Employment Authorization from Canada Immigration. This is obtained at the Port of Entry and will be valid only for the specified job and time period. Employment Authorizations may be issued for a duration of up to three years, although

extensions may be available so long as the position remains temporary in duration.

If your prospective employee does not fit within an exception to the requirement of obtaining a job validation under NAFTA, you must have the offer of employment approved by Human Resources Canada. Offers will be approved where the job meets Canadian Labour Standards and cannot be filled by a qualified Canadian. Be prepared to provide Human Resources Canada with information about the position as well as details of the efforts you have made to recruit Canadian workers. An offer will only be approved when it is demonstrated that the entry of the foreign worker is likely to produce benefits to Canada.

2000, 10235 - 101 STREET  
EDMONTON, AB T5J 3G1  
PH: 780.423.3003

400 THE LOUGHEED BUILDING  
604 1 STREET SW  
CALGARY, AB T2P 1M7  
PH: 403.260.8500

201, 5120 - 49TH STREET  
YELLOWKNIFE, NT X1A 1P8  
PH: 867.920.4542

[www.fieldlaw.com](http://www.fieldlaw.com)

*Continued on the next page...*

## Firing Employees for Suspected Fraud

**Question: One of our managers wants : to fire a senior employee that he suspects is involved in a fraudulent - scheme against the company. What should we do?**

Answer: You should seek legal advice as soon as possible. Your legal counsel will likely retain a forensic accountant to investigate the situation for you. You should be cautious in any action that you take with respect to the employee under suspicion. If you are wrong in your suspicions or are unable to prove them, you could face the potential for substantial liability in terms of constructive dismissal, defamation, damages for mental distress, or an increased period of notice based upon the recent Supreme Court of Canada jurisprudence concerning bad faith discharge. Any steps taken to suspend the employee during the course of the investigation must also be taken carefully. Once the results of the investigation are known, you will be better able to decide how to proceed against this employee.

**DISCLAIMER** this article should not be interpreted as providing legal advice. Consult your legal adviser before acting on any of the information contained in it. Questions, comments, suggestions and address updates are most appreciated and should be directed to:

The Labour and Employment Group  
Edmonton 780-423-3003  
Calgary 403-260-8500

**REPRINTS**

Our policy is that readers may reprint an article or articles on the condition that credit is given to the author and the firm. Please advise us, by telephone or e-mail, of your intention to do so.