

Labour Mobility

Background

In support of the ongoing discussions between the governments of Canada and member countries of the European Union for a Trade and Investment Agreement, the Canadian Employee Relocation Council (CERC) has been consulting with its member organizations to gain insights into the challenges they encounter when transferring employees between Canada and EU member countries.

This document summarizes some of the challenges employers identified during those consultations and offers suggested solutions where appropriate. There are areas (healthcare for example) that are flagged as a challenge but are outside the scope of discussions. We hope this document will provide a practical context and be helpful to the discussions underway.

A Model framework

In developing a framework upon which to base a labour mobility agreement between Canada and the EU, the following agreements were identified:

- Chapter 16 of the North American Free Trade Agreement (NAFTA)
- France Québec Agreement on Mutual Recognition, which envisions labour mobility between the two regions and includes an agreement for skills recognition of regulated professions and trades
- Existing labour mobility agreements within the EU
- Canada/ Chile Free Trade Agreement

Most organizations that we spoke to, that have international mobility activities, are more familiar with NAFTA than other agreements.

The NAFTA provisions governing intra company transfers, (section c), were cited as a good working model. The establishment of a Temporary Entry Working Group (such as that provided for under the NAFTA) to review modifications to the agreement on an annual basis should be a part of any agreement between Canada and the EU. There should be a strong stated commitment requiring the working group to meet. With regard to numerical limits, provisions for the

consultation on limits for professionals between the parties should also be considered.

A general concern cited with the NAFTA model is that it is overly restrictive. For example, if the occupation is not included in Appendix 1603.D.1 as a covered occupation then it is particularly difficult to gain entry under the NAFTA.

It has been suggested that for the purposes of labour mobility, future agreements should identify only occupations that are to be excluded from the agreement. This would provide for inevitable changes that occur in labour markets.

Issues of concern to employers

1. Credential recognition

Skills recognition and the lack of standardization between jurisdictions is a concern for employers. An increase in mutual recognition of professional qualifications and skilled trades licensing would be of significant benefit to employers in meeting skilled labour shortages in Canada and the EU. Given the aging populations and low birth rates in Canada and the EU, this will be an ongoing challenge. Immigration and labour mobility are important factors in addressing that challenge.

In recognizing skill sets, barriers exist in the recognition of specific industry and technical skills and knowledge. Train engineers and technicians for example are recognised differently between Canada and EU member countries, yet these skill sets are needed to complete projects. Certified letters are required in some jurisdictions while not in others. Companies that have global staff may often have foreign nationals working in Canada (for example, technicians from Mexico), who are then transferred to the EU for specific projects and their skills are not recognized.

The Free Trade Agreements between Canada and Chile / Peru and the Agreement on Mutual Recognition between Quebec and France were identified as possible options or models. Under these agreements commitments are outlined to secure market access for service providers and for the encouragement of domestic professional bodies regarding the negotiation of mutual recognition agreements. As noted by Premier Charest in support for the Agreement on Mutual Recognition between Québec and France in 2008, a plumber in France is a plumber in Québec.

Licensing is the responsibility of the professional bodies, delegated by legislation to regulate professions and trades, most often in the interests of public safety and health. These should remain as such, however measures can be taken to harmonize recognition of standards, as is being done under Agreement on Internal Trade between the Canadian provinces and territories.

Detailed comments

- Under the NAFTA for an example, professionals are required to meet minimum education standards. This is often considered to be a non-issue for NAFTA, as the North American education systems are very similar. The NAFTA also recognizes that there are certain occupations for which practical experience is given much weight and provides for those who have extensive experience in lieu of formal education to fill certain positions (i.e., Management Consultants).
- Mutual recognition of qualifications is a logical step to take and considers both systems, without leading to potential bias for one system over another (which could result in an unbalanced movement of workers), nor lowering each nation's training requirements for professionals.
- With respect to licensing, it is true that licensing bodies vary between jurisdictions (from country to country, and even province to province). Licensing is a separate issue from immigration, however, and should be dealt with by employers and the provincial or state regulatory bodies.
- Licensing is the professions' method of safeguarding professional standards and in many cases, maintaining public health and safety. In the event a foreign worker does not have the necessary license, they should work with the regulatory body to secure the necessary license or, alternatively, to determine the ambit of permitted activities without a license. This is an issue for the regulatory bodies, however, and not one for the governments.

2. Immigration and Work Permits

There is no consistency between jurisdictions when transferring between Canada and EU member countries. The differing rules make it difficult and costly for organizations to comply. Companies with operations for example in France, the UK and Spain may have to go through very different processes. In some countries the employee must return to the home country (Canada) to complete the application process while in others the application can be processed in the host country. The latter situation expedites the process, reduces costs and gets the employee in place much faster.

3. Spousal and dependent work permits

The issuance of work and study permits for accompanying dependents is a concern for many organizations. While the issuance of work and study permits for accompanying dependents is currently covered by Canada's immigration laws and regulations, this is not necessarily the case in EU member States. Canada's immigration laws require principal applicants to

hold employer-specific work permits before their spouses may obtain an open work permit.

For intra company transfers for example, the employee's spouse may not be able to work in the host country, and this creates obvious problems for transferring employees. While there has recently been much discussion and debate to make all work permits province-based rather than employer-based (and therefore 'open'), all work permits obtained pursuant to the agreement should require an employer to support the application.

There should be reciprocity on this issue.

4. Other issues

Companies were asked to identify if there are other issues to be considered in these discussions:

a. Employment Income

In jurisdictions that have minimum wage standards this proves to be problematic in practice when an employee is entering from a lower wage level country to higher wage level country. For some organizations meeting minimum salary levels poses a challenge. Belgium for example may have a minimum of 48,000 Euros, per annum, yet in the home country the employee may be earning less, and this impacts payroll costs.

b. Personal Income Tax / Social Security Costs

Canada and EU states should have agreements in place that prevent situations of double taxation. Tax treaties provide for the avoidance of double taxation to the employee, and additional costs to the employer. The UK and Australia are noted as models for comparison in considering an agreement.

Social security costs are levied in certain jurisdictions, even though the coverage may not be available to foreign nationals. As a consequence companies are paying social security taxes in two jurisdictions. Issues of pension and benefit portability between jurisdictions are also of concern to employers that have an international workforce.

Inclusion in any agreement to address this issue would be of significant benefit to those organizations and would have no detrimental impact on any party to the agreement, or to the employee.

c. Compatibility of healthcare systems

Between the jurisdictions there exist varying levels of health care insurance coverage and service. In some jurisdictions there exist lengthy waiting periods before eligibility is recognized for business visitors or inter company transfers. At the same time coverage for the spouse and

dependant children may vary, where some jurisdictions provide coverage while others do not. In Canada health care is a provincial responsibility and therefore this is likely beyond the scope of discussion.

d. Access to credit and financial services

A significant issue for expatriates on international assignments and their employers is the access to credit and financial services. In many situations employees with excellent credit and financial history are unable to secure credit in the host country.