

The Foreign Worker and Recruitment Services Act

Guidelines for Defining Recruitment and Immigration Services

The Foreign Worker Recruitment and Immigration Services Act (FWRISA) regulates recruitment and immigration services provided by foreign worker recruiters, immigration consultants and immigration lawyers. The Act does not regulate employment services, unless they are provided in association with the recruitment of a foreign worker. The FWRISA also does not regulate legal services provided by lawyers.

The guidelines are intended for use by recruiters, immigration consultants, immigration lawyers and others to help define and differentiate recruitment and immigration services regulated under the FWRISA, as well as employment and legal services that are not regulated by the FWRISA.

This information is intended only as a guide and does not remove or provide any additional rights or obligations to licensees other than those outlined in the FWRISA and regulations.

Definitions

Recruitment Services: services that assist a foreign national or employer to secure employment for a foreign national in Saskatchewan, including:

- (i) finding or attempting to find employment in Saskatchewan for a foreign national;
- (ii) assisting or advising an employer in the hiring of a foreign national;
- (iii) assisting or advising another person in doing the things mentioned in subclauses (i) and (ii);
- (iv) referring a foreign national to another person who does the things mentioned in subclauses (i) and (ii); and,
- (v) providing or procuring settlement services.

Immigration Services: services that assist a foreign national in immigrating to Saskatchewan, including:

- (i) researching and advising on immigration opportunities, laws or processes;
- (ii) preparing or assisting in the preparation, filing and presentation of applications and documents related to immigration;
- (iii) representing a foreign national to or before immigration authorities; and
- (iv) providing or procuring settlement services.

Interpretation of Definitions Under the FWRISA

Recruitment Services

Exemptions

Where a person provides recruitment services, they are required to be licensed and adhere to applicable requirements under the FWRISA unless they fall within the following exemptions.

- A person who recruits or engages in activities to find foreign nationals for employment with his or her own business or for employment with his or her employer;
- A person who, without receiving a fee or compensation directly or indirectly, provides recruitment services for a foreign national who is a member of that person's family;
- A person who is acting on behalf of a government or a municipality;
- A person who is acting on behalf of a university, regional college, the Saskatchewan Institute of Applied Science and Technology or any prescribed educational institution;
- A person who is acting on behalf of a school regulated pursuant to *The Education Act, 1995*; or
- A union, but only with respect to workers that it is bringing to work in Saskatchewan and only if the workers
 - Are members of an affiliated union; and
 - Will be represented by the union while they work in Saskatchewan;
- A website-based employment agency (e.g., jobshop.ca or Workopolis) that does not recruit workers for specific employers (e.g., information for workers is housed on the website which any employer can access) provided that more than 50 per cent of their business comes from individuals other than foreign nationals; and
- Agents, affiliates, partners, contractors and employees of a licensed recruiter where the licensed recruiter is accountable for their services.

It should be noted that “a person acting on behalf of” in the listed exemptions does not include a third party who is not an employees of one of the listed agencies.

Interpretation

There are five parts to the definition of recruitment services found in subsection 2(q) of the FWRISA.

1. Finding or attempting to find employment in Saskatchewan for a foreign national - this may include:
 - Finding Saskatchewan employers who may hire a foreign national;
 - Making arrangements for a Saskatchewan employer's review and selection of a foreign national (e.g., interviewing, skill testing);
 - Providing employment services (e.g., language training, orientation training, skills training) in the course of recruiting a foreign national. Employment services are considered part of recruitment services if the person who provides the employment services also provides (or may provide in the future) other recruitment activities that involve the foreign worker receiving the employment services. Employment services provided to a foreign national within a one year period prior to recruitment will be considered recruitment services.

2. Assisting or advising an employer in the hiring of a foreign national - this may include:
 - Assisting with preparing or acting on behalf of an employer in submitting a Labour Market Impact Assessment (LMIA) or an employer registration under the FWRISA, excluding legal services (see [Legal Services](#) for more information).
 - Sourcing candidates (e.g., placing advertisements, attending job fairs, soliciting through social media, referring workers to employers, referring or placing an international student with an employer). It does not include:
 - Online job sites whose primary role is to act as a medium for employers to post job ads where job seekers connect directly to employers without assistance of the on-line job site in matching an employer to a specific job seeker.
 - Marketing and advertising companies who place job ads for employers (e.g., newspapers, professional and educational magazines).
 - Screening candidates (e.g., reviewing resumes, assessing skills and knowledge, checking references, verifying qualifications,)
 - Providing employment services (e.g., language training, orientation training, skills training) in the course of recruiting;
 - Assisting with hiring of workers (e.g., arranging and participating in job interviews and skill testing).
3. Assisting or advising **another person** in doing the things mentioned in subclauses 1 and 2, excluding legal services (see [Legal Services](#) for more information). “Another” person includes, but is not limited to, an employer’s employees, partners, agents and contractors.
4. Referring a foreign national to another person who does the things mentioned in section 1 and 2. This applies to anyone directing an individual to another person for the purpose of obtaining recruitment services.
5. Providing or procuring settlement services – this includes services provided to a foreign national by a recruiter or immigration consultant that assist that person in adapting to Saskatchewan’s society or economy or in obtaining access to government or community programs, networks or services. It includes but is not limited to:
 - Short term housing;
 - Obtaining a driver’s license, health card, SIN and other documents;
 - English language training;
 - Finding professional services (e.g., legal services);
 - Finding transportation;
 - Assistance with money management;
 - Providing information about life in Saskatchewan, Canadian culture, laws, rights and responsibilities;
 - Obtaining child care and enrolling children in school; and
 - Referral to immigrant services.

Individuals or agencies that provide settlement services without providing recruitment services are not regulated by the FWRISA.

Foreign worker recruiters can provide settlement services to foreign workers they recruit or to their families. They are, however, prohibited from charging the foreign worker or their family members for

the services, and must charge the employer for any services provided to the worker or their family until three months after the worker has landed in Saskatchewan.

The recruiter's contract with the employer must indicate if the recruiter intends to provide settlement services to the foreign national for a fee. The employer must agree to pay for those services. If the employer is not willing to pay for the settlement services, they must be removed from the contract or provided without charge.

Any settlement services provided by a colleague, employee, and affiliate of a recruiter in the period up to three months after the worker lands in Saskatchewan and begins employment must be charged to the employer.

Beginning Recruitment

Subsection 14(1) of the FWRISA indicates that recruitment should not occur before a certificate of registration is received. That section states:

Subject to subsection 14(2), no employer shall recruit foreign nationals for employment, either directly or through the services of another person, without holding a certificate of registration.

This section indicates that an employer should not undertake recruitment activities unless they have possession of a certificate of registration, which implies the certificate is obtained prior to recruitment. This applies to an employer who recruits by themselves or with the assistance of a recruiter.

The Ministry of the Labour Relations and Workplace Safety will only regard an employer as having begun to recruit once they have engaged in an activity that shows an intention to hire a foreign worker, not merely considering the possibility of recruiting one. Activities that demonstrate an intention to hire include offering a foreign worker a job, engaging a foreign worker recruiter or making a submission for a Labour Market Opinion (LMO).

There will be instances where an employer's decision to recruit foreign workers may be made in a short period of time, which would not allow them to apply for a certificate of registration prior to initiating recruitment e.g. they are approached by a foreign national, assess their qualifications at that time and decide that they wish to hire them. In a scenario such as this, we would expect the employer to apply for a certificate of registration promptly upon making this decision. If they do so, the province will not consider a violation to have occurred.

Immigration Services

Exemptions

Where a person provides immigration services, they are required to be licensed and adhere to applicable requirements under the FWRISA unless they fall within the following exemptions under the FWRISA:

The requirement to be licensed to provide immigration services does not apply to individuals including:

- A member in good standing of a provincial or territorial law society in Canada – lawyers are allowed to provide immigration services under federal legislation and are also accountable to provincial law societies;
- A person who, without receiving a fee or compensation directly or indirectly, provides immigration services to a member of that person's family (as family is defined under the FWRISA regulations);
- A person who is representing a foreign national before an Immigration and Refugee Board;

- Persons that are exempted by an Order of the Minister or by regulation; and
- Agents, affiliates, partners, contractors and employees of a licensed person where the licensed immigration consultant is accountable for their services.

Future exemptions for licensing will be reviewed on a case by case basis by the Ministry, upon the request of the individual/group seeking an exemption. Exemptions can be made through an amendment to the regulations or through a Minister's Order.

Exemptions will only be considered in situations where there is a low risk of exploitation of a foreign worker or where the services provided do not fully meet the intent of the definition of recruitment or immigration services.

Interpretation

There are four parts to the definition of immigration services found in subsection 2(k) of the FWRISA.

1. Researching and advising on immigration opportunities, laws or processes - this includes:
 - Providing information and advice on immigration options (Federal and/or Provincial) that meet the needs of a client;
 - Providing information and advice on Canadian immigration laws and Federal and/or Provincial immigration mechanisms.
2. Preparing or assisting in the preparation, filing and presentation of applications and documents related to immigration this includes:
 - Applications and documents for temporary or permanent federal immigration classes.
 - Application and documents for the Saskatchewan Immigrant Nominee Program (SINP).
3. Representing a foreign national to or before immigration authorities - representing is the act of serving the interest of an individual before Federal and/or Provincial immigration authorities for the purpose of obtaining a visitor permit, temporary resident status, nomination, permanent residency or other means of entry to Canada.
4. Providing or procuring settlement services - settlement services include assistance and provision of information as outlined in the section on recruitment services. Immigration consultants who are not involved in recruitment of foreign nationals can charge for settlement services to the foreign national and their family, provided these services are clearly identified in a contract.

Please note that under the FWRISA's definition, immigration services are provided to a foreign national. Services to an employer, such as assistance with the preparation of a LMIA, an employer registration under the FWRISA or their submission on behalf of an employer, is a service to an employer, not a foreign national, and is defined as a recruitment service except in the case of legal services (see [Legal Services](#) for more information).

Charging for Employment Services

Employment services are typically designed to improve or present the skills and knowledge of a foreign national who intends to apply to an employer for a job. Examples of employment services include skills training, resume preparation, interview preparation, and language training.

Foreign worker recruiters are required to charge any employment services provided to a foreign national(s) they recruit, to the employer for whom they are recruiting the worker. This includes foreign nationals who may be candidates for an employment opportunity, but were not successful in the competition.

Recruiters and their colleagues, employees, partners, affiliates and agents may provide employment services to a foreign national and charge the foreign national for those costs only if they and their colleagues, employees, partners, affiliates and agents have not and will not at any time in the following one year of providing those services recruit that foreign worker for a Saskatchewan employer.

Legal Services

Legal services provided by a lawyer are not considered recruitment services unless the services involve dealing with both the employer and the foreign worker, in which case they will be required to be licensed as a recruiter.

Examples of legal services related to recruitment that are allowed without licensing include assisting employers with or submitting documents on their behalf the government programs such as a LMIA submission registering an employer under the FWRISA providing advice on employment contracts offered to foreign workers, advising on recruitment laws in foreign countries or advising employers on the immigration issues of a foreign worker they intend to hire.