



Canada-US Labor Mobility

With offices in:

Arizona ● Michigan ● Nevada ● Ohio ● Tennessee
Washington, DC ● Ontario

GOLDEN RULE

“You Win with People.” – Wayne Woodrow
(Woody) Hayes (1913-1987)



INITIAL CONSIDERATIONS

1. PEOPLE

“This is the face of someone who has fought long and hard for the good of the people without caring much for any of 'em. And I look a lot worse without the wig. The people elected me! To represent them! To lead them! And I lead! You ought to try it!”

US Sen. Thaddeus Stevens / Tommy Lee Jones in *Lincoln* (2012)

INITIAL CONSIDERATIONS - PEOPLE

“A person is smart. People are dumb, panicky dangerous animals and you know it. Fifteen hundred years ago everybody knew the Earth was the center of the universe. Five hundred years ago, everybody knew the Earth was flat, and fifteen minutes ago, you knew that humans were alone on this planet. Imagine what you'll know tomorrow.”

Kay / Tommy Lee Jones in *Men in Black* (1997)

WHERE?

- Human Resources throughout Employee's Life Cycle with Company (from hire to retire)
- Taxation / Accounting
- Corporate Structuring

WHO?

- C-Suite Executives
- Sales Force
- Services / Technicians
- IT Professionals
- HR Staff
- Marketing

In short – labor mobility is a “whole of company consideration”

INITIAL CONSIDERATIONS - NAFTA

- The “Platinum Standard” for Cross-Border Labor Mobility is Dual Citizen.
- The “Gold Standard” is Inter-Company Transferee
- The “Silver Standard” is NAFTA Professional
- The “Bronze Standard” is Business Visitor

ICT

1. The employee must currently be employed by a company outside of Canada and have at least one year of experience with that company in the three years immediately prior to the transfer;
2. The employee must have worked as an executive/senior manager or as a specialized knowledge worker and be entering Canada to assume a similar role; and

ICT

3. The employee must be transferred to a parent branch, subsidiary, or affiliate of his/her foreign-based employer.
- 7 Years for Executives/Managers; 5 years for Specialized Knowledge; 1 year if “setting up shop”

STRATEGIES - ICT

- Have Job Descriptions / Hiring Postings That Align with NAFTA/ICT Criteria
- Examine Corporate Structuring – Common Ownership and Control
- Specialized Knowledge Must Be Specialized

NAFTA Professional

- Again, ensure that job descriptions, actual duties, hiring protocols meet align with NAFTA criteria.
- Keep in mind – NAFTA is 20 years old. The criteria are dated. Need to ensure this alignment.
- **WATCH: Consultants and Self-Employed**

INITIAL CONSIDERATIONS - STAFF

- BUDGETS LED TO CLOSURE OF CONSULATES IN BUFFALO AND DETROIT
- ATTRITION/RETIRMENT OF EXPERIENCE STAFF
- “SOUTHERN TO NORTHERN” BORDER TRAINING

NEXT STEPS

- Again, the days of relying on “slipping through the cracks” are over.
- NAFTA provides a workable labor mobility framework that can be utilized by companies; each company’s responsibility to align protocols with NAFTA
- Yet, NAFTA is 20 years old. Time for an update such as Trusted Employer Program (TEP)

TEP / REGISTERED EMPLOYER

- Beyond the Border 2.0
- Model is CTPAT/FAST
- NEXUS / Trusted Traveller Revocations
- Define the Business Visitor
- After Sales Service Provisions
- L Visitors Criteria

Other “Tees”

- Scope of TEP is Key Question
- NAFTA reopening?
- TPP or other trading agreements?

WHAT ABOUT MY STUFF?

- While employees may be admissible and properly documented, what about the goods that they bring with them?
 - Equipment, Samples, Advertising Materials?
 - Repair Parts?
- Let's take a look at what NAFTA says on this topic

NAFTA ARTICLE 305- Temporary Admission

- Duty-free temporary admission is available for these goods, regardless of origin:
 - Professional equipment for carrying out the business activity, trade or profession of a business person who qualifies for temporary entry
 - Commercial samples and advertising films
- Anything else?

NAFTA ARTICLE 305- Temporary Admission

- You may also import these goods on a duty-free temporary basis, regardless of origin:
 - Equipment for the press, broadcasting or cinematography
 - Goods for sports or intended for display or for demonstration
- Are there any other requirements?

NAFTA ARTICLE 305- Conditions

- For goods other than commercial samples and advertising films, these conditions may apply:
 - Importer must be a national or resident of a NAFTA country
 - Imported good will be used by that person or under his or her personal supervision in that person's business activity, trade or profession
 - Imported good will not be sold or leased

NAFTA ARTICLE 305- Conditions

- These conditions may also apply to these goods:
 - Be capable of identification when exported, be imported in quantity reasonable for intended use, and be exported upon departure of the importer or within a reasonable time considering the use
 - Non-NAFTA good must be accompanied by a bond in an amount up to 110% of duties applicable for permanent importation

NAFTA ARTICLE 305- Conditions

- For commercial samples and advertising films, these conditions may apply to the goods:
 - Used solely for solicitation of orders for goods or services provided from another country
 - Will not be sold, leased or used for purpose other than exhibition or demonstration
 - Capable of identification when exported

NAFTA ARTICLE 305- Conditions

- These conditions may also apply to commercial samples and advertising films:
 - Must be exported with a period reasonably related to the purpose of importation
 - Imported only in a quantity reasonable for its intended use

NAFTA ARTICLE 305- Certain Samples and Advertising Materials

- Commercial samples of negligible value and printed advertising materials may be imported if:
 - Samples are used solely for solicitation of orders for goods or services provided from another country
 - Advertising materials are in packeets containing no more than one copy of the materials

REPAIR PARTS- After-Sales Service

- Will repair parts imported by a business visitor be eligible for duty-free treatment?
 - Repair parts are understood to be imported permanently and would not qualify for temporary duty-free entry
 - Goods imported on a permanent basis must satisfy the NAFTA rules of origin to be eligible for duty-free treatment

BON VOYAGE!!!

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