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SELF-EMPLOYMENT VISAS: AN OVERVIEW

This article provides an overview of self-employment visas in several countries.

Canada

Interested in working as a self-employed person in Canada? The visa options might be more narrow than you think. As of April 1, 2021, the Ministry of Immigration, Refugees and Citizenship Canada (IRCC) removed the Owner/Operator category from the Temporary Foreign Worker Program (TFWP). The Owner/Operator program enabled applicants to apply for a work permit in Canada without having to comply with the job advertisement regulatory requirements listed under the Labour Market Impact Assessment (LMIA). Unlike a regular high-wage/low-wage LMIA, the Owner/Operator LMIA was an opportunity for entrepreneurs to work in and immigrate to Canada while simultaneously receiving 200 Comprehensive Ranking System (CRS) points for Express Entry—essentially guaranteeing the opportunity to apply for permanent resident status in the future. The end of the owner/operator LMIA means those perks are off the table and the immigration landscape for self-employed persons in Canada has shifted. So, with the Owner/Operator program gone for almost two years, what has filled that void?

Currently, the closest alternative to the Owner/Operator LMIA is the Self-Employed Persons Program, which allows a person to immigrate to Canada permanently as self-employed. The catch? To immigrate as a self-employed person, you must have relevant experience in cultural activities or athletics—a criterion that many do not happen to meet. In this context, relevant experience refers to a minimum of two one-year periods being self-employed or participating at a world-class level in cultural activities or athletics. The two years of relevant experience must be completed during the period starting five years before the day you apply and ending on the day the IRCC makes a decision on your application. While there is no net worth requirement for the program, applicants must satisfy a visa officer that they have enough money to settle in Canada with their dependents and finance the cultural or athletic work on which their selection was based.

For those who have dual intent to immigrate to Canada as a temporary worker and then eventually as a permanent resident, the C11 Entrepreneur Work Permit, under the International Mobility Program (IMP), is a good alternative. The C11 work permit is suitable for three groups of people: (1) self-employed individuals who would like to start a business in Canada; (2) entrepreneurs who would like to buy a business or franchise in Canada; and (3) individuals who were selected under any of the Entrepreneur streams of the Provincial Nominee Program. In each case, all applicants are required to own a minimum of 50% of the company. Under section 183 of the Immigration and Refugee Protection Regulations (IRPR), applicants must satisfy the officer that they have the ability and willingness to leave Canada once their temporary work permit expires. Self-employed applicants who are solely seeking temporary residence have the additional burden of proving that their business would generate significant economic, social, or cultural benefits, or opportunities for Canadian citizens. Significant benefits refer to significant economic stimulus, as well as advancement of the Canadian industry in which the person works, both of which may be hard to prove to visa officers.

On the other hand, applicants seeking eventual permanent residence under the C11 work permit, not including Québec, may apply for a work permit under the actual or potential provincial nominees undertaking business activities portal. A key eligibility requirement under this stream is that the foreign national must have a letter of support from the respective province or territory of which they are seeking residency that indicates the significant economic, social, or

cultural benefit that the person will bring to Canada. With that being said, all work permits issued under IMP C11 can only be issued for a maximum period of two years. Once this period has elapsed, an extension can only be granted if an application for permanent residence is being processed or in exceptional circumstances, i.e., for significant investment projects or applicants for whom a provincial nomination certificate is still pending. If the latter is true, the applicant also requires an additional letter of continued support from the province or territory where they reside. However, extension approvals are hard to come by.

Ultimately, there are no great visa options for self-employed persons wishing to immigrate to Canada. Since the cessation of the Owner/Operator LMIA, the Self-Employed Persons Program, and the C11 Entrepreneur Work Permit have sought to act as the recommended pathways for self-employed persons to obtain a work permit in Canada. However, despite the aforementioned visa options, it's clear that there are many gaps in the system—leaving many skilled self-employed persons, working in various industries, behind.

Going forward, the IRCC needs to create a streamlined pathway for self-employed persons to be able to work in Canada. Self-employed workers shouldn't need to jump through a multitude of hoops to bring business to Canada; they deserve better.

Italy

The type and number of self-employment (*Lavoro Autonomo*) authorizations available to non-European Union (EU) nationals are set by the quota decree (*decreto-flussi*). Not all self-employment categories are available each year. The most common categories available each year are:

- Entrepreneurs intending to implement an investment plan of interest for the Italian economy, involving an investment of at least €500,000 and creating at least three new jobs in Italy. <https://www.mazzeschi.it/self-employment-visa-for-entrepreneurs-intending-to-implement-an-investment-plan-in-italy/>
- Freelancers/independent contractors who intend to practice regulated or controlled professions (i.e., individuals belonging to a professional association or enrolled with an official/public register) or professions that are not non-regulated but are considered representative at the national level and are included in the lists edited by the Public Administration.
- Holders of corporate office or administrative/controlling positions (e.g., Chairman, CEO, member of board of directors, auditor) in an Italian company, active for at least three years (requirements set in Visa Decree May 11, 2011 n. 850).
- Foreign citizens who intend to set up innovative start-up companies, under certain conditions, who will have a self-employment relationship with the start-up. <https://www.mazzeschi.it/italy-startup-visa/> <https://medium.com/agileinsider/italys-start-up-visa-6a442a9fdbd1>
- Internationally well-known and highest-repute artists, artists of recognized highly professional qualification, or artists who are hired by well-known Italian theaters, important public institutions, public television, or well-known national private television (requirements set in Visa Decree May 11, 2011 n. 850).

General eligibility requirements include:

- Suitable accommodation in Italy;
- Financial resources exceeding the minimum level set by law for exemption from the healthcare contribution (€8,500);
- Police Clearance (*Nulla Osta*) in Italy; and
- Certificates, documents, or attestations as required for the type of self-employment activity to be performed (applicants must meet the legal requirements for the performance of the activity in question, including, when required, the prerequisites for entering into professional registers).

Some categories of self-employment visas are issued outside the quota decree (e.g., translators and interpreters, university professors, lecturers, managers in an intra company framework).

Details:

"Italy Self-Employment Visa," Mazzeschi S.r.l. <https://www.mazzeschi.it/italy-self-employment-visa/>

"Italy's Freelance Visa: Not as Easy as it Sounds!," Mazzeschi S.r.l. <https://www.mazzeschi.it/italys-freelance-visa-not-as-easy-as-it-sounds/>

"Can You Work Remotely While on Holiday in Italy? How Much 'Remote Work' Is Allowed If You Do Not Have a Work Visa?," Mazzeschi S.r.l. <https://mm-63015.medium.com/can-you-work-remotely-while-on-holiday-in-italy-3d5ce4eeabd>

Mexico

In general terms, Mexico does not allow a visa based on self-employment. The government believes that if the self-employment visa were an option for foreigners to enter Mexico, a considerable number of foreigners would be coming to Mexico to live and work by themselves.

However, there are some exceptions to authorize this type of activity, for example, for economic dependents provided that their main activity continues to be economic dependence on the principal; self-employed work can be authorized as a secondary activity. If an economic dependent decides to be self-employed, he or she must request a work permit from the National Immigration Institute.

For permanent residents, self-employment is allowed. In fact, permanent residents may carry out any legal activity in Mexico. Mexican immigration law establishes an obligation to notify authorities about new activities within a 90-day period after the new work begins.

A foreigner may incorporate a company in Mexico—a small enterprise, for example—then register the company before the immigration authorities and request a work permit.

Netherlands

Dutch immigration rules for independent entrepreneurs are based on the concept of *added value* for the Dutch economy. This translates into a points-based system (PBS). U.S. and Japanese nationals are exempt from the PBS. Also exempt previously were high net worth

individuals investing at least €1.25 million, but this scheme was discontinued in 2022 for lack of interest.

Entrepreneurs (e.g., self-employed, business owners, contractors) are those who own 25% or more of the stake in a company, run entrepreneurial risk, and can influence the level of their own salary. They are not eligible for employee permit categories, which are generally more straightforward than the PBS, which in some cases is a high threshold to meet.

The allocation of points is administered by RVO (*Rijksdienst voor ondernemend Nederland*), an agency of the Ministry of Economic Affairs. The processing time is around three to six months. Applicants receive a residence permit for two years, renewable as long as the business is kept active and generates an income equal to at least the national statutory minimum wage. Points can be earned for *personal experience*, *business plan*, and *added value*. In each of these categories, 30 points (out of a potential 100 per category) must be obtained, or, alternatively, 45 points in categories 1 and 2. A detailed business plan and accountant-verified financial forecasts are essential for a successful application.

As noted above, U.S. nationals and Japan are exempt from the PBS. The 1956 Treaty of Friendship and Trade allows U.S. entrepreneurs to obtain a residence permit, provided that "substantial" capital is invested in the business. The policy guidelines explicitly quote €4,500 as a substantial amount. Comparable criteria apply to Japanese entrepreneurs, based on the 1913 bilateral Trade and Seafaring Treaty. This makes the entrepreneur scheme a particularly attractive scheme for these nationalities.

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Country Updates

AUSTRALIA

Australia is granting thousands of refugees permanent visas after a decade of uncertainty.

On February 12, 2023, the Australian government announced that refugees who arrived in Australia before 2013 can now transition to a permanent Resolution of Status (RoS) visa. Approximately 19,000 refugees who have essentially lived in indefinite limbo over the past decade will now be able to build their lives in Australia with certainty.

The RoS visa allows for immediate Social Security payments, and access to the national disability insurance scheme and higher education loans. Once the residence requirements have been met, these refugees also can apply for Australian citizenship. Being granted a permanent visa also means that applications can be submitted for separated family members to come to Australia.

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CANADA

The government of Canada has announced forthcoming new Post-Graduation Work Permit measures

On March 17, 2023, the Honourable Sean Fraser, Minister of Immigration, Refugees, and Citizenship, [announced](#) that the government of Canada will be passing special measures that

will allow eligible former international students who hold a Post-Graduation Work Permit (PGWP) to apply for an extension or renewal of their permit of up to 18 months.

Beginning April 6, 2023, former international students whose PGWP expired or is expiring in 2023 can apply for an extension to their PGWP of up to 18 months. Former international students who applied for an extension to their PGWP under the [2022 special measures](#) can apply for an additional PGWP extension of up to 18 months under the new 2023 measures. Furthermore, eligible former international students whose PGWPs already expired and who need restoration of status can apply to restore their status even if they are beyond the 90-day restoration period, and can apply for a new work permit and receive interim work authorization during the processing of their new PGWP application.

Below is a summary of these developments:

No extension to PGWPs before COVID-19

Before the COVID-19 pandemic, PGWPs could not be extended. As such, former international students who had obtained a PGWP at the completion of their studies usually had to apply for either permanent residence or another type of work permit if they wished to continue working and remaining in Canada after the expiration of their PGWP.

Special measures for PGWPs following COVID-19

Since COVID-19, the Government of Canada passed a [set of measures](#) to address labor shortages in Canada, and to help employers find and retain talented and qualified foreign workers.

Among the measures implemented during the COVID-19 pandemic were those allowing former international students with PGWPs expiring between September 20, 2021, and December 31, 2022, to apply for an extension to their PGWP of up to 18 months. The measures also included the option to apply for interim work authorization for all holders of a PGWP expiring between September 20, 2021, and December 31, 2022, and an authorization for those who needed to restore their status to do so even if they were beyond the 90-day restoration period.

3. Additional special measures for PGWPs

As stated in the announcement of the Honourable Sean Fraser of March 17, 2023, the government of Canada will be implementing additional special measures as of approximately April 6, 2023, that will allow certain former international students who hold a PGWP that expired or is expiring in 2023, and who meet the eligibility criteria, to apply for an extension or renewal of their work permit of up to 18 months. Moreover, certain eligible former international students who held a PGWP will benefit from a special authorization allowing them to apply for a new work permit, receive interim work authorization during the processing of their application, and restore their status even if they are beyond the 90-day restoration period.

The government of Canada stated that PGWP holders who are eligible to apply under the new 2023 PGWP special measures will receive a communication in their Immigration, Refugees and Citizenship Canada (IRCC) Secure Account informing them of their eligibility.

More detailed instructions and information are to follow in the coming weeks.

4. Closing remarks

The Government of Canada announcement of March 17, 2023 represents another important step to address Canada's labour shortage and help Canadian employers in their efforts to find and retain qualified workers and talent. The 2023 PGWP special measures are also in line with recent initiatives led by IRCC such as the recent [temporary pilot project](#) to lift the 20-hour off campus work cap for certain qualifying international students. As we have throughout the years, the Gomberg Dalfen team will continue to keep you updated about recent and new developments in Canadian immigration law.

Details:

Post-Graduation Work Permit Program—[R205(c)—C43]—International Mobility Program, Government of Canada. <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/study-permits/post-graduation-work-permit-program.html>

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ITALY

The Italian government has approved a new immigration law decree.

On March 9, 2023, the Italian government approved a new immigration law decree that includes interesting updates to Italian immigration law. The decree will be converted into law by the parliament within 60 days after its publication in the official gazette (March 10, 2023).

The points indicated below are not yet confirmed, as the parliament may modify the decree before converting it into law.

Major changes include:

- Residence permits for work and family reasons can be renewed for three years instead of two years.
- It will be possible to convert study residence permits into work permits without being subject to the quota limitations, also for those students not graduating in Italy.
- The "quota" will be issued every 3 years (*Decreto Flussi* will be published every three years instead of every year).
- Foreign nationals may engage in work-related activities while waiting for the contract of stay to be signed.
- There are restrictions to the rules for special protection permits.
- Tougher punishments are being introduced for traffickers who contribute to the bodily harm or death of people being transported illegally.

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MEXICO

This article provides a summary of the non-lucrative Temporary Resident Visa.

The COVID-19 pandemic has had a significant impact on the way people work, with many companies and employees shifting to remote work to comply with social distancing guidelines and stay-at-home orders. Overall, the pandemic has accelerated the trend toward remote work, and it is likely that remote work will continue to be a more common and accepted way of working in the future.

From an immigration perspective, many countries are exploring the possibility of offering a "nomad" visa, and some others have already updated their laws and now offer a nomad visa. Mexico is not offering a specific "nomad visa" or program, but it does offer a Temporary Resident Visa that can be obtained for a variety of purposes, including studying, working, or retirement.

While the Temporary Resident Visa's non-lucrative activities are not specifically designed for digital nomads, the visa can be a viable option for those who wish to live and work in Mexico for an extended period and continue working remotely. The Temporary Resident Visa for non-lucrative activities, in general terms, will be the appropriate immigration visa for foreigners coming to Mexico to work remotely, provided that they continue to receive their salaries or income from abroad.

Moreover, the non-lucrative visa is a type of visa that allows individuals to live in Mexico for an extended period without engaging in any paid work or remunerative activities. This type of visa is typically intended for individuals who have sufficient financial resources to support themselves while living in the host country and who wish to spend an extended period of time there for leisure or other non-work-related purposes.

To obtain a non-lucrative visa to work remotely and live in Mexico, foreigners must meet certain requirements, such as proof of economic solvency, demonstrating that they have a steady source of income or savings to support themselves during their stay in Mexico, explaining the activities to be carried out, and identifying the city where they plan to live, among others.

This type of visa is requested directly at the Consulate General of Mexico of the foreigner's choice as the first step of the process. The second and final stage of the process is to convert the consular visa to the temporary resident card for non-lucrative activities.

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SCHENGEN AREA

This article answers frequently asked questions about the Schengen visa-free system.

1. In which countries does the visa waiver apply?

The visa-free regime applies to stays in the territories of the European Union (EU) Member States, except for the United Kingdom and Ireland. The EU Member States covered by the visa waiver are:

- The EU Member States that are part of the Schengen area: Austria, Belgium, the Czech Republic, Croatia, Denmark, Estonia, Finland, France, Germany, Greece,

Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, and Sweden;

- The EU Member States that do not yet fully apply the Schengen *acquis* (those who are not yet part of the Schengen area without internal borders): Bulgaria, Cyprus, and Romania. Stays in these states are not calculated in the overall period of stay for the Schengen area. Instead, the 90-day limit is calculated individually for each of these states. For example, after a 90-day stay in the Schengen area, a person can immediately travel to Bulgaria and stay for another 90 days there;

The visa waiver, in principle, also applies to the associated Schengen states: Iceland, Liechtenstein, Norway, and Switzerland.

2. Does the visa waiver include the French and Netherlands overseas territories?

Regarding France and the Netherlands, visa-free travel applies only to the European territory of these Member States. The visa regime between the overseas territories of these Member States and the six countries remains subject to bilateral arrangements between the countries concerned or to national legislation.

The overseas territories of France are Guadeloupe, Martinique, French Guiana, Réunion, French Polynesia, New Caledonia, Mayotte, Saint Pierre and Miquelon, Wallis and Futuna, Saint Barthélemy, Saint Martin, Clipperton Island, and the French Southern and Antarctic Lands.

The overseas territories of the Netherlands are Aruba and the Netherlands Antilles (consisting of Bonaire, Curaçao, Saba, Saint Eustatius, and Saint Martin).

3. How long can I stay without a visa in the Schengen area?

- The date of entry is considered as the first day of stay in the Schengen territory.
- The date of exit is considered as the last day of stay in the Schengen territory.
- The 180-day reference period is not fixed. It is a moving window, based on the approach of looking backward at each day of the stay (be it at the moment of entry or at the day of an actual check, such as inland police control or border check upon departure).
- Absence for an uninterrupted period of 90 days allows for a new stay of up to 90 days.

Periods of the previous stay authorized under a residence permit or a long-stay visa are not taken into account in the calculation of the duration of visa-free stay. Residence permits and long-stay visas are subject to different rules, and the above explanations and calculations do not apply to them.

4. Can I enter the Schengen area more than one time during that period?

Yes, you can. However, you must carefully calculate your days of stay; the overall period of stay must not exceed the overall total of 90 days of stay within any 180-day period (see above).

5. What travel documents are needed to enjoy visa-free travel to the Schengen area?

You will need a passport issued within the previous 10 years and valid for at least three months after the intended date of departure from the Schengen area.

6. Does the visa waiver include the right to enter the territory of the Schengen States?

The visa waiver does not give an unconditional right of entry and stay. The Member States have the right to refuse entry and stay in their territories if one or more of the entry conditions are not met.

For stays not exceeding 90 days in any 180-day period, the entry conditions for third-country nationals include:

- Possession of a valid travel document (see question 4, above) or documents authorizing them to cross the border;
- Justification for the purpose and conditions of the intended stay, and having sufficient means of subsistence, both for the duration of the intended stay and for the return;
- Not being a person for whom an alert has been issued in the Schengen Information System (SIS) for the purpose of refusing entry; and
- Not being considered to be a threat to public policy, internal security, public health, or international relations with any of the Member States, in particular where no alert has been issued in Member States' national databases for the purposes of refusing entry on the same grounds.

7. What documents do I need to show to the immigration officer at the port of entry?

You need to show your passport. In addition, you might be asked to show documents proving your purpose and conditions of stay (for example, tickets for further journeys and return tickets; reservations for accommodation; an invitation letter in case of visits, conferences or events; a school enrollment certificate in case of study) as well as evidence of sufficient means of subsistence (see below).

8. How much money do I need to have with me to travel to the Schengen area?

According to Article 5(3) of the Schengen Border Code, "means of subsistence shall be assessed in accordance with the duration and the purpose of the stay and by reference to average prices in the Member State(s) concerned for board and lodging in budget accommodation, multiplied by the number of days stayed." To assess the means of subsistence, the reference amounts set by each Schengen State must be taken into account.

The verification of sufficient means of subsistence may be based on cash, travelers' checks, and credit cards in the third-country national's possession. Declarations of sponsorship, where such declarations are provided for by national legislation and letters of guarantee/invitation from hosts, as defined by national legislation, in the event that the third-country national is staying with a host, may also constitute evidence of sufficient means of subsistence.

A credit card's validity may be verified by contacting the issuing company or by using other facilities available at the border crossing point (e.g., exchange offices). An invitation from hosts may be verified by contacting the host directly or by verifying the host's good faith through national contact points of the Member States in which the host resides.

9. Is travel medical insurance always necessary for travel in the Schengen area?

Travel medical insurance is not mandatory for visa-free third country nationals. However, it is recommended for travel to the Schengen countries.

10. For what purposes can I travel without a visa to the Schengen area?

You can come as a tourist, to visit friends or family, to attend cultural or sports events or exchanges, for business meetings, for journalistic or media purposes, for medical treatment, for short-term studies or training, and for any similar activities. The visa waiver does not apply to persons traveling for the purpose of carrying out a paid activity in the Member States, i.e., for those who are coming to work in the EU (see question below).

11. Do I need a visa to work in the Schengen area for less than 90 days?

Yes, most of the Member States require a visa and a work permit if you intend to work there, even if it is for less than 90 days. Contact the embassy/consulate of the Member State where you intend to work to ask whether a special type of visa and work permit are needed.

12. If I plan to visit a friend or relative living in the Schengen area, will I need to provide any specific information about this person at the border?

You may be asked to provide information on this person. It is recommended to have at least the address and contact number.

13. Will I need to apply for a visa and/or study permit if I plan to travel to the Schengen area for short-term studies?

You will need to apply for a study permit only if you intend to undertake studies exceeding 90 days of stay in the Schengen area within a period of 180 days. For longer studies, you must apply for a study permit, and the rules vary from country to country. It is recommended to consult the embassy/consulate of the country in which you intend to study.

14. Once the visa-free travel applies, can I travel from one Schengen country into another country?

There are no border controls between countries in the Schengen area. Border controls are carried out between the Schengen countries and Bulgaria, Cyprus, and Romania (the EU Member States that do not yet fully apply the Schengen *acquis*). Controls are also carried out between Schengen countries and Ireland (which does not belong to the Schengen Area).

Non-EU citizens must fulfill all entry conditions (see question 5) and might need to demonstrate that at possible ad hoc controls in the Schengen area.

15. If I stay beyond 90 days (without a residence permit or a long-term visa) or work in the Schengen area (without a working permit), what could happen?

A non-EU national who stays in the Schengen area beyond 90 days (without a residence permit or long-stay visa) is illegally present, which can result in a re-entry ban to the Schengen area. Working in the Schengen area without a work permit is also illegal (even if less than 90 days) and can likewise result in a re-entry ban to the Schengen area. Depending on the Member State, administrative penalties may also apply.

Details:

- Italian Immigration & Citizenship, Mazzeschi S.r.l., Mar. 2023.
https://www.mazzeschi.it/mazzeschi-asiadesk/wp-content/uploads/2023/02/Mazzeschi-Italian-Immigration-and-Citizenship-magazine-March-2023_compressed.pdf

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UNITED KINGDOM

New immigration rules are being implemented. Also, some updates from sponsors are now automated.

New Immigration Rules

[New Immigration rules](#) were set forth recently by the United Kingdom (UK). The main changes and implementation dates are below, including important updates for sponsors.

Sponsored Worker Salary Thresholds and Related Changes

The minimum salary requirements to sponsor staff under the Skilled Worker and Senior or Specialist Worker (previously known as Intra-Company Transfer [ICT]) categories will change for all applications where the Certificate of Sponsorship (CoS) is assigned on or after April 12, 2023:

- **Skilled Worker.** For most applications, sponsors must pay the higher of the general salary threshold, the going rate for the role, or the hourly rate:
 - **General salary threshold: up from £25,600 to £26,200.** A lower general threshold may apply if, for example, the applicant is a new entrant (such as a student or someone under 26 years old) or the role is in a shortage occupation. The lower general threshold is increasing from £20,480 to £20,960.
 - **Going rates.** The going rate for each type of job (occupation code) is changing. The new rates are shown starting on page 39 of the [statement of changes](#). Going rates are currently prorated based on a 39-hour work week. Starting on April 12, this will change to a 37.5-hour work week.
 - **Hourly rate: up from £10.10 to £10.75.**
- **Senior or Specialist Worker.** The general threshold is increasing from £42,400 to £45,800 (and Graduate Trainee applications from £23,100 to £24,220). The going rates for a Skilled Worker are also changing.

- **Irregular working patterns.** In a new development, the rules will account for those being sponsored to work a pattern where their regular hours are not the same each week, resulting in uneven pay.
- **Absence from work.** Normally, if a sponsored worker is absent from work without pay for more than four weeks during a calendar year, their sponsorship must end. Under the new rules, jury service and attending court as a witness are added to the list of permitted reasons for absences that will not count toward the four-week period.

Given that some minimum salary thresholds are increasing, sponsors may wish to assign any CoS for upcoming applications by April 11, 2023.

Other Changes

- **Electronic Travel Authorisation (ETA) scheme.** The UK is implementing a U.S.-style electronic pre-travel authorization system of its own. The [ETA](#) will require non-visa nationals (those who do not require a visa before traveling to the UK as a visitor, and therefore are not on the [visa national list](#)) to apply for electronic pre-travel authorization. If the authorization is refused due to a criminal conviction, for example, the traveler will need to apply for a visitor's visa. The ETA will start in November 2023 for Qatari nationals before extending to nationals of Bahrain, Jordan, Kuwait, Oman, Saudi Arabia, and the United Arab Emirates in February 2024 and thereafter will be extended to all other non-visa nationals (including U.S., Australian, and Canadian nationals).
- **Youth Mobility Scheme.** As of April 12, 2023, New Zealanders applying for the [Youth Mobility Scheme](#) will be eligible if they are ages 18–35 (it is normally 18–30) and will receive a three-year visa instead of the normal two years.
- **Innovator Founder replaces Start-Up.** As of April 13, 2023, applicants seeking to establish an innovative business in the UK can apply for the new Innovator Founder route. The new route has no minimum investment funds requirement (currently £50,000). Unlike under the Start-Up route, Innovator Founders will be permitted to undertake employment in skilled roles (RQF Level 3 or above), outside the running of their business.
- **Long residence settlement (indefinite leave to remain) applications.** It is possible to apply for settlement after 10 years of continuous lawful residence in the UK. In a change starting on April 13, 2023, prospective applicants should be aware that time spent in the UK as a visitor or short-term student, or on the seasonal worker routes, will not count toward long residence. Applicants who have spent time as a visitor (or on other temporary permission) who are later granted permission on another basis will still be able to qualify for long residence settlement, but they will need to wait longer to do so.

UKVI Automates Some Updates From Sponsors

In other news, UK Visas and Immigration (UKVI) recently notified sponsors that they no longer need to wait many weeks or pay a priority service fee to replace their Authorising Officer or Key Contact, or to add a level 1 user. This type of update now takes effect as soon as the request has been made in the Sponsor Management System (SMS), provided that the postcode of the person to be added matches the postcode of the sponsor or their representative as shown in the SMS. A signed submission sheet still must be sent to UKVI for a change of Authorising Officer.

Also, annual allocation renewals for most types of Certificates of Sponsorship (CoS) will be automated as of June 24, 2023. Sponsors will be granted the number of CoS they assigned during the previous year. Sponsors whose annual allocation expires before June 24 will need to submit a renewal request through the SMS unless they have had automatic renewals in previous years.

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New Publications and Items of Interest

[Alliance of Business Immigration Lawyers: https://www.abil.com/](https://www.abil.com/)

- ABIL is also available on Twitter: <https://twitter.com/abilimmigration>

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Several **Gomberg Dalfen, S.E.N.C.** lawyers were named in the 2023 edition of the Canadian Legal Lexpert Directory, including **Seth Dalfen**, **Avi Gomberg** (bio: <https://www.abil.com/abil-lawyers/avi-gomberg/>), **Genevieve Hénault**, and **Lisa Middlemiss**. They are ranked lawyers based on the *Lexpert*® peer Survey. This year, the overall national response rate from law firm practitioners to the survey was 76 percent.

IMMPact Immigration Litigation (Joseph & Hall, PC, Kuck Baxter, Siskind Susser PC, and Bless Litigation LLC) announced a call for plaintiffs in prevailing wage determination litigation. IMMPact will represent individuals who filed Forms ETA 9141, Application for a Prevailing Wage Determination (PWD), before October 1, 2022. IMMPact plans to sue the Office of Foreign Labor Certifications (OFLC) and the Department of Labor because "the OFLC is failing to work on these applications in a timely manner." IMMPact notes that OFLC is currently processing Forms ETA-9141 that were filed in January 2022. "The failure to adjudicate these applications in a timely manner adversely impacts employers' ability to hire needed employees, threatens those in H-1B classification with losing their status, and adversely affects the ability of institutions of higher education to meaningfully take advantage of the special handling procedures implemented to ensure the most qualified professors are hired," IMMPact said.

<https://www.immpactlitigation.com/prevailing-wage-determination-litigation-plaintiff-onboarding/>

Klasko Immigration Law Partners, LLP, has launched a new website that is responsive to mobile and tablet devices. <https://klaskolaw.com/>

Charles Kuck (bio: <https://www.abil.com/abil-lawyers/charles-kuck/>) was included on the Top 100 list of Georgia Super Lawyers, as the only immigration lawyer on the list.

<https://bit.ly/404Ja5H>

Robert Loughran (bio: <https://www.abil.com/abil-lawyers/robert-f-loughran/>) presented "Nonimmigrant Options for Singaporeans," hosted by Enterprise Singapore on March 13, 2023, during SxSW Interactive in Austin, Texas. The presentation reviewed U.S. immigration classifications, options, timeframes, red flags, and trends available to a delegation of companies and startups from Singapore.

Cyrus Mehta (bio: <https://www.abil.com/abil-lawyers/cyrus-d-mehta/>) was quoted by the *Times of India* in "USCIS New Guidelines on Employer's Ability to Pay May Help Startups Retain Talent." Mr. Mehta said, "The new 'Ability to Pay' (ATP) guidance may help employers who may not have sufficient net income or be able to show that the difference between the net current assets exceed[s] the next current liabilities in their tax returns. The guidance allows for an

analysis of 'other factors' to demonstrate the employer's ability to pay especially when companies operate at a loss for a period to improve their business position in the long run." Mr. Mehta added that the new guidance "might thus help startups to demonstrate their ability to pay by submitting other evidence including bank statements, personnel records, credit lines, gross sales and revenues as well as media accounts about the company and its overall reputation." <https://bit.ly/42mo7xe>

Mr. Mehta authored a new blog post: "The Dates for Filing Chart in the Visa Bulletin Not Only Protects Children from Aging Out But Can Be Dramatically Advanced to Allow Many More Backlogged Immigrants to File Adjustment of Status Applications." <https://bit.ly/3Z5IYDU>

Mr. Mehta and **Kaitlyn Box** co-authored several new blog postings:

- "Khedkar v. USCIS Affirms That Employee Also Has an Interest in an I-140 Petition Filed by Employer," <http://blog.cyrusmehta.com/2023/02/khedkar-v-uscis-affirms-that-employee-also-has-interest-in-an-i-140-petiiton-filed-by-employer.html>
- "Making Sense of USCIS's Twitter Posts on Applying for Jobs or Attending Interviews While in Visitor Visa Status," <http://blog.cyrusmehta.com/2023/04/making-sense-of-usciss-twitter-posts-on-applying-for-jobs-or-attending-interviews-while-in-visitor-visa-status.html>
- "Second Circuit Upholds Trump Era Interpretation on Administrative Closure Even Though Biden Has Changed It. Does This Leave Open Possibility that Biden Era Interpretation May Also Be Upheld if Future Administration Changes It?" <https://bit.ly/3MMIMoT>
- "Dealing with Section H.10-B Labor Certification Denials," <http://blog.cyrusmehta.com/2023/03/dealing-with-section-h-10-b-labor-certification-denials.html>

Mr. Mehta and **Jessica Paszko** co-authored several new blog postings: "Pathways for H-1B Workers Who Want to Become Entrepreneurs," <http://blog.cyrusmehta.com/2023/03/pathways-for-terminated-h-1b-workers-who-want-to-become-entrepreneurs.html>; and "National Interest Waiver for STEM Graduates and Entrepreneurs, Along with Premium Processing, Will Benefit H-4 Spouses Seeking Work Authorization." <http://blog.cyrusmehta.com/2023/02/national-interest-waiver-changes-for-stem-graduates-and-entrepreneurs-along-with-premium-processing-will-benefit-h-4-spouses-seeking-work-authorization.html>

Mr. Mehta and **Stephen Yale-Loehr** (bio: <https://www.abil.com/abil-lawyers/stephen-yale-loehr/>) were quoted by the *Times of India* in "Laid-Off H-1B Workers to Get 6-Month Reprieve." The article discusses a recommendation by a presidential advisory panel to extend the grace period for laid-off H-1B workers from 60 to 180 days. In the past six months, the article notes, many laid-off H-1B employees have highlighted on social media their plight of trying to find another job within the 60-day grace period after a layoff. Mr. Yale-Loehr said that U.S. Citizenship and Immigration Services (USCIS) "is not required to follow that recommendation." Moreover, he said, even if USCIS were to extend the grace period, the agency "might have to go through the normal rulemaking process to do that. That could take months." Also, he noted, if USCIS extends the grace period, "expect a lawsuit by U.S. workers challenging the change as beyond the immigration agency's authority. Finally, a grace period extension wouldn't apply retroactively to help H-1B workers already laid off. In sum, laid-off H-1B workers should not get their hopes up yet." Mr. Mehta called the recommendation "good news" and said the extended period would not take effect immediately. "The actual regulation at 8 CFR (Code of Federal

Regulations) needs to be amended, which is a process, since the administration must allow for notice and comment to the public before changing a rule," he said.

<https://timesofindia.indiatimes.com/business/international-business/laid-off-h-1b-workers-may-get-6-month-reprieve/articleshow/98679904.cms?from=mdr>

Angelo Paparelli (bio: <https://www.abil.com/abil-lawyers/angelo-paparelli/>) discussed immigration history, law, politics, and related issues in "Episode 34: Immigration Law: Outspoken Changemaker in a Convoluted Maze," part of the "Fill to Capacity" podcast series. <https://www.nationofimmigrators.com/2023/01/outspoken-changemaker-in-a-convoluted-maze/>

Greg Siskind, of **Siskind Susser, PC**, spoke on an American Bar Association (ABA) Techshow panel recently and was quoted by the *ABA Journal* on artificial intelligence (AI) tools and platforms for lawyers: "There are lower tech, low-code or no-code platforms available to build automation tools. When we're talking about AI for lawyers, we're basically talking about automating tasks in your practice." He said his firm uses Afterpattern, which allows firms, legal aid organizations and courts to create document and workflow automations. The article notes that Mr. Siskind has used the platform to build an app that screens Ukrainians for Temporary Protected Status eligibility. He has also used it as a drafting tool, which the article says enables him to onboard hundreds of plaintiffs in mass immigration litigation in a short amount of time. "The whole thing happens in a matter of minutes. Before, we put tons and tons of labor into getting that information and drafting the declarations. Now, we can start onboarding for a case and file it two weeks later," he said. Mr. Siskind added that he has used Afterpattern for Form I-9 digitization and auditing and for generating retainers. In the past few months, he also began to use Casetext's CoCounsel to conduct research for his mass immigration litigation, the article notes. "Everything that I hate about ChatGPT is like, 'It's nice it said that, but what is that based on?' " Siskind said. "But this tool basically produced a 20-page memo that had all the cases that discussed a particular issue, links to those cases and summaries under each citation telling us what that particular case was about. It was wonderful for the amount of time it saved." <https://www.abajournal.com/web/article/how-can-lawyers-use-ai-to-improve-their-practice>

Mr. Siskind appeared on an MSNBC "Morning Joe" segment with the co-founders of Casetext. <https://www.msnbc.com/morning-joe/watch/first-ever-a-i-legal-assistant-makes-its-debut-164266565592>

WR Immigration, a nationally ranked Tier 1 law firm, was named a [2023 Legal Technology Trailblazer](#) by the *National Law Journal*. The annual list recognizes companies pioneering in the legal industry by developing technology that improves how legal professionals and law firms operate. WR Immigration was recognized for its proprietary Immigration Management System, [WRapid™](#)—a centralized, cloud-based platform and Enterprise Resource Planning solutions software for business immigration. <https://wolfsdorf.com/wrapid-recognized-as-legal-technology-trailblazer-by-the-national-law-journal-for-best-immigration-software/>

WR Immigration will present a webinar on the Department of Homeland Security's (DHS) announcement of a new process to protect undocumented whistleblowers, on Thursday, May 11, 2023, at 11 a.m. PT. WR Immigration and Hirschfeld Kraemer LLP will discuss what employers need to know. Attorneys will share their insights on what employers can expect in the months ahead, including likely claims and how employers can prepare in light of the new DHS policy. <https://wolfsdorf.com/us-department-of-homeland-security-announces-new-process-to-protect-undocumented-whistleblowers/> (article); https://us02web.zoom.us/webinar/register/5916790874887/WN_Ko4qkNdRQAYCpRpYWxfbow (webinar)

WR Immigration published "USCIS Issues Policy Alert on Evidence for Employers' Ability to Pay Proffered Wage." <https://wolfsdorf.com/uscis-issues-policy-alert-on-evidence-for-employers-ability-to-pay-proffered-wage/>

WR Immigration published "Celebrating Black History Month: WR Recognizes Two Important Figures." WR showcased two prominent figures in the black immigrant community in the United States "who have made an amazing impact through their civil advocations and humanitarian efforts: Miriam Makeba and Dikembe Mutombo." <https://wolfsdorf.com/celebrating-black-history-month-wr-recognizes-two-important-figures/>

In the latest edition of "Chatting with Charlie" on the May Visa Bulletin outlook, **WR Immigration** Director of Visa Consulting **Charlie Oppenheim**, Partner **Charina Garcia**, and Senior Associate **Laura Bloniarz** update HR professionals with the latest employment-based green card processing information from the April and May Visa Bulletins. <https://wolfsdorf.com/chatting-with-charlie-webinar-unpacking-the-april-and-may-visa-bulletins/>

WR Immigration recently presented a webinar, "Alternatives to the H-1B Lottery." **Ms. Garcia** and **Audrey Lustgarten** discussed what to do when considering global alternatives, including alternative U.S. options, a review of immigration options to confirm eligibility, non-immigration factors, and more. <https://wolfsdorf.com/webinar-alternatives-to-the-h-1b-lottery/>

Mr. Yale-Loehr co-authored "DACA, Public Health, and Immigrant Restrictions on Healthcare in the United States," which was published in the May 2023 edition of the *Lancet Regional Health-Americas*, a leading medical journal. The article discusses the consequences of court developments for Deferred Action for Childhood Arrivals (DACA) and broader efforts to expand access to healthcare for immigrant populations in the United States. <https://www.sciencedirect.com/science/article/pii/S2667193X23000674?via%3Dihub>

On February 24, 2023, Cornell Law School sponsored "Immigration Reform: Lessons Learned and A Path Forward," a conference held at the National Press Club in Washington, DC. Both in-person and over Zoom, about 220 people attended the conference, which explored targeted legislation and other policy changes that could be enacted in 2023. Panels focused on three topics: work visa changes to help alleviate high-skilled and low skilled-labor shortages, border security and asylum reforms, and a permanent path forward for Dreamers, farmworkers, and others. "Major reforms require the convergence of a widely recognized problem, policy solutions, and sufficient political will," said **Mr. Yale-Loehr**, conference co-organizer and moderator. "Our conference brought together expert scholars, analysts, and advocates to probe ways to clarify key problems, identify achievable policies, and build the political will needed to enact them. We hope to build on the conference discussions to develop constructive proposals that have a realistic chance of enactment this year." <https://www.lawschool.cornell.edu/news/law-school-sponsors-conference-on-immigration-reform-at-national-press-club/>

Mr. Yale-Loehr was quoted by the *New York Times* in "In Rare Victory, Immigrants Prevail in Suit Over Meat Plant Raid." The article reports on a case involving nearly 100 immigrants who were rounded up during a 2018 raid at a meat processing plant in Tennessee and have reached a \$1.17 million settlement against the U.S. government and federal agents, who they said used racial profiling and excessive force during the operation. The article notes that the settlement agreement, approved February 27, 2023, in the U.S. District Court for the Eastern District of Tennessee, is likely the first class settlement over an immigration enforcement operation at a work site, according to immigration experts. In the past, only individual immigrants have reached settlements related to immigration raids, the article says, adding that legal experts have called it

a rare victory for undocumented immigrants. Mr. Yale-Loehr said, "It is very hard to win a settlement from the U.S. government and agents in immigration enforcement cases. The outcome is particularly important because federal agents were held accountable for overreaching and racial profiling." <https://www.nytimes.com/2023/02/27/us/meat-plant-raid-immigrants-tennessee.html> (subscription required)

Mr. Yale-Loehr was quoted by Univision in " 'Cruel,' 'Illegal,' 'Immoral,' 'Disappointment' ... Rain of Criticism Regarding Biden's New Asylum Immigration Policy at the Border." Mr. Yale-Loehr said, "The Biden administration is between a rock and a hard place. Congress has failed to reform our broken immigration system, and more and more people are trying to enter the United States for a variety of reasons, including persecution, gang violence, and climate change. The Biden administration hopes its proposed rule will survive a court challenge. I doubt it."

Mr. Yale-Loehr was quoted by *Cornell Law School News* in "Asylum and Convention Against Torture Appellate Clinic Celebrates 20th Anniversary." Mr. Yale-Loehr said, "Because of the complexity of immigration law, it is very hard to win asylum for someone. We are fortunate that we have excellent students who work tirelessly to save their clients from persecution or torture." He also said, "The clinic has been a highlight of my legal career. I feel honored to have worked with so many excellent students over the years to help persecuted people win asylum and start a new life in the US." Over 20 years, the article notes, about 200 students have represented close to 100 clients. In a system where the vast majority of asylum seekers lose their appeals, the clinic has won an estimated 66 percent of its cases, the article says. https://www.lawschool.cornell.edu/news/clinic_20th_anniversary/

Mr. Yale-Loehr was quoted by Marketplace in "As Summer Approaches, Labor Shortages Make Summer Hiring Tough." He said that consumers will notice labor shortages "in terms of increased prices. When you go to a restaurant, because there's not enough workers, you're going to see it in terms of reduced hours" at restaurants and at the community recreation center, for example. <https://www.marketplace.org/2023/04/14/labor-shortages-make-seasonal-hiring-tough-summer/>

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About ABIL

The Alliance of Business Immigration Lawyers (ABIL) offers a single point of contact for customer needs, news alerts, staff training, and other programs that benefit clients through the collaboration of more than 445 member lawyers and their more than 1,100 staff. Corporate counsel, human resource professionals, in-house immigration managers, and other corporate decision-makers turn to ABIL lawyers for outstanding legal skills and services. ABIL's work also includes advocating for enlightened immigration reform, providing speakers and media sources, presenting conferences, publishing books and articles on cutting-edge immigration topics, and sharing best practices, all with the ultimate goal of offering value-added services to business immigration clients.

The Alliance of Business Immigration Lawyers' website is at <http://www.abil.com/>. ABIL is also on Twitter: @ABILImmigration.

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