

Workplace Law Bulletin

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Canada's Gain from Brexit Brain Drain

By Doreen Buksner and Lorenzo Lisi

"Cheers to democracy!" said no young voter in the post-Brexit aftermath. The Brexit referendum brought out a record number of voters, but the younger generation, who overwhelmingly supported staying in the EU, simply did not show up to the polls. So now the people with the *most to lose* and the *longest to live* with this decision are not only regretting their lack of participation, but also waiting for the government to figure out "what now?"

Nothing is going to happen for a few months at least. On July 13, Theresa May was declared the new Prime Minister, after David Cameron announced his resignation immediately following the vote. Now that May holds the "poisoned chalice," it is up to her and her newly-appointed ministers to begin Brexit negotiations by way of invoking Article 50 of the Treaty of Lisbon. Invoking Article 50 is the start of a two-year clock of negotiations with the EU to establish the exit strategy and plan for post-exit relations. Although May has avowed her commitment to act on the people's instructions, the timing and specific actions to be taken remain to be seen. What will the UK look like after Brexit plans are implemented, and how will this affect global mobility and market access?

Since much of the Brexit platform was predicated on restricting free movement between EU countries, it is expected that, upon separation, EU nationals will be subject to UK domestic immigration rules. This means that the visa-free allowances for workers, self-employed professionals and self-sufficient students will no longer apply. Although young talented Brits working in the EU may be forced to return home, we are likely to see a much more significant brain drain out of the UK with

the repatriation of EU citizens. EU immigrants in the UK do not only hold highly-skilled jobs in the professional sectors, but also low-skilled work in agriculture, hospitality, trades and in the public sector. Restricted visa opportunities or the departure of foreign workers will create serious labour shortages and skills gaps that could paralyze businesses of all sizes. Luckily for Canadians currently working in the UK, not much is going to change in terms of their status or mobility options. They would have already qualified under the UK's tier system and will be able to continue working under their existing visa.

Could Canada stand to gain from Brexit brain drain? According to Google and job search site Indeed.com, yes. Immediately following the Brexit results, both search engines reported significant spikes in searches related to "jobs in Canada" and "moving to Canada." Canada is an immigrant-friendly country that thrives on its diversity and welcomes immigrants from all backgrounds and abilities. The Government is committed to ensuring that the program meets the needs and expectations of its citizens, and emphasizes its stance that immigrants are critical to innovation, economic development and competitiveness in the global market.

Canadian businesses across the country are experiencing their own brain drain, losing valuable and highly-skilled talent to the United States. Perhaps disgruntled Europeans will help Canada resolve our own labour shortages and skills gaps.

EU nationals can obtain a Canadian work permit relatively easily, particularly for those employed by multinational companies with a Canadian presence. For those wishing to move to Canada on a permanent basis, there are a number of programs to choose from based on employment, investment and family ties.

Canada's point-based system for skilled workers, known as Express Entry, is the most popular choice. Express Entry was launched in January 2015, and it replaced the cumbersome first-come, first-served approach with a best-qualified, first-selected approach to permanent immigration. The streamlined program assesses applicants based on their age, employment history, language abilities, education levels and overall ability to adapt to Canada. For UK and EU nationals, skilled work experience is easily transferrable and English and/or French proficiency is generally high, making them competitive candidates in the Skilled Worker pool.

Other streams for permanent residency include employment or investment options for applicants looking to settle in a specific province; as well as family sponsorships for spouses, (grand) children, and (grand) parents of Canadians. Foreign-born children of Canadian citizens may also be eligible to apply for a citizenship certificate as a quick and simple way to move to Canada with full access and mobility rights.

With a variety of options for temporary and permanent immigration, Canada remains a very attractive destination for UK and EU citizens seeking international opportunities. If, in fact, Canada remains a destination of choice, Canadian employers will not only need to ensure

that they are familiar with all applicable immigration issues, but also integrate them into any offers of employment in the event that they identify appropriate candidates.

Canadian employers may want to be aggressive in recruiting "Brexit Brain Drain Candidates," but should keep the following in mind with respect to any future hire:

- Any offer of employment and/or employment agreement (the "Agreement") should be in writing, provided in advance and with the opportunity to consult local counsel for review;
- Under no circumstances should the candidate be permitted to work without signing the Agreement first;
- The Agreement should confirm as a condition of employment the ability of the candidate to legally work in Canada;
- Explicit language on how "status" will be dealt with in the event of a future termination or cessation of employment (which includes termination for cause, resignation and termination without cause); and
- Address all issues relating to compensation or reimbursement for moving and/or expenses related to a relocation as well as following any future termination.

Canada and the world are on bated breath while a post-Brexit Europe transitions to its next chapter. In the meantime, Canadian employers may want to be bullish in recruiting and hiring UK and EU citizens, but cautious enough to protect themselves against legal liability.

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