

# Citizenship and Immigration Canada

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## Operational Bulletin 523 – May 22, 2013

### Temporary Foreign Worker Program – Four-Year Maximum (Cumulative Duration)

#### Purpose

The purpose of this Operational Bulletin is to provide operational guidelines to officers processing work permits, and information to employers and foreign nationals (FNs) either currently working in Canada or considering coming to Canada to work temporarily, about the Cumulative Duration (4-year maximum) regulation that came into effect April 1, 2011, and which we expect to begin impacting applicants in spring 2013.

#### Background

The Temporary Foreign Worker Program (TFWP) was established to address *temporary* labour and skills shortages in Canada. To prevent FNs who are working temporarily in Canada from losing ties with their country of origin due to prolonged periods of stay in Canada, and to encourage workers and employers to explore appropriate pathways to permanent residence, this regulation – [R200\(3\)\(g\) under the Immigration and Refugee Protection Regulations](#) – establishes a maximum duration that a TFW can work in Canada.

It states that a work permit (WP) should not be issued when “the individual has worked in Canada for one or more periods totalling four years.”

Generally, once a FN has accumulated four (4) years of work, he or she will be ineligible to work in Canada again until a period of four (4) years has elapsed.

#### Important Note:

When issuing a work permit, processing officers will issue for a duration that brings the applicant to – but does not exceed – the four-year maximum (unless the occupation falls into one of the exception categories – see ‘Exceptions’ below).

#### Example:

*Since April 1, 2011, a TFW has accumulated three years of work in Canada, and is now applying for a two-year work permit in an occupation that is not listed in the ‘exceptions’. The work permit would only be issued for one year.*

#### All work counts (see [Appendix B](#), Types A and B)

All work performed in Canada since April 1, 2011 — regardless of whether or not it was authorized by a work permit or exempt under [R186](#) — counts towards a TFW’s four-year total. This includes work done as a volunteer or as a self-employed individual, work in all occupations falling under all categories in the National Occupation Code (NOC) list, work done while under implied status as well as work done while on an open work permit.

**Students:** Any work performed during a period in which the FN was authorized to study on a full-time basis in Canada is *not* included in cumulative

duration totals.

The FN must include a 10-year history of employment on his or her work permit application form, including all periods of work in Canada (even work that does not require a work permit). An officer will verify this information against system data, and determine if these periods of work are to be included in the total work calculation.

### Exceptions (see [Appendix B](#), Type C)

When a TFW is working within one of the occupations or categories listed as 'exceptions' to the cumulative duration regulation, the time worked in Canada is STILL COUNTED in the TFW's cumulative total.

It is only at the point of application/request for a work permit, that these 'exceptions' become relevant, and an officer may issue a work permit to a TFW with a job offer in one of these occupations/categories regardless of whether the TFW has acquired four years of work in Canada or not.

#### Example:

*Jorge has been authorized to work as a university professor in Canada since April 2, 2011. His current work permit expires April 2, 2015. In February 2015, Jorge is informed by the university that his services will no longer be required. Jorge would still like to remain in Canada, but is up for a change of pace, so would like to take a job planting trees in northern BC for one year. He submits an application in Canada for a new work permit on March 1, 2015. System data shows that he has accumulated 4 years less a month of work in Canada, and, since the new position is not one of the 'exceptions' categories, the work permit could either be issued until April 2, 2015 or denied under [R200\(1\)\(b\)](#).*

### Gaps in employment

Periods not worked (outside of the expectations stipulated in the job contract) that occurred after April 1, 2011, and *during the validity period* of any work authorizations issued after April 1, 2011, may be factored into the calculation of the accumulated total, provided that documentary evidence (see [Appendix C](#)) of these gaps in employment can be presented to an officer at the time when a request for work authorization is made. **Only gaps in employment of one consecutive month or more will be considered.** The onus is on the client to indicate this intent and provide satisfactory supporting evidence at the time of application.

Some examples of acceptable gaps in employment are:

- Periods of time spent outside of Canada
- Periods of medical leave spent in Canada, if this period is not covered by the employment contract/agreement
- Maternity/paternity leave spent in Canada

#### Note:

Weekends, vacation, part-time work, or alternative work arrangements are not considered elements that would reduce the time worked.

### When the “clock” resets to zero (see [Appendix D](#) below for examples)

A TFW who spends four consecutive years either a) outside of Canada, or b) in Canada but not working, i.e., with legal status as a visitor or student, may apply for a WP and can start accumulating another four years of work in Canada.

#### Note:

It is not necessary for a TFW to have worked a full four years before the four-year period of not working in Canada can begin. For example, whether a TFW has accumulated one (1) year, or even three (3) years and 11 months of work in Canada, once a period of four (4) years has elapsed where the TFW has *not* worked in Canada, the “clock” resets to zero.

### **TFWs must keep track of time worked**

As of April 1<sup>st</sup>, 2011, foreign nationals are required to keep track of their accumulated time worked in Canada.

In order to avoid delays or other issues when applying for a work permit, TFWs are encouraged to be aware of their time worked in Canada, as well as to retain documents supporting any gaps in employment during the validity periods of previous work authorizations if they intend to reclaim the time. TFWs are already required to disclose their 10-year employment history in the work permit application so this requirement is consistent with current Citizenship and Immigration Canada requirements.

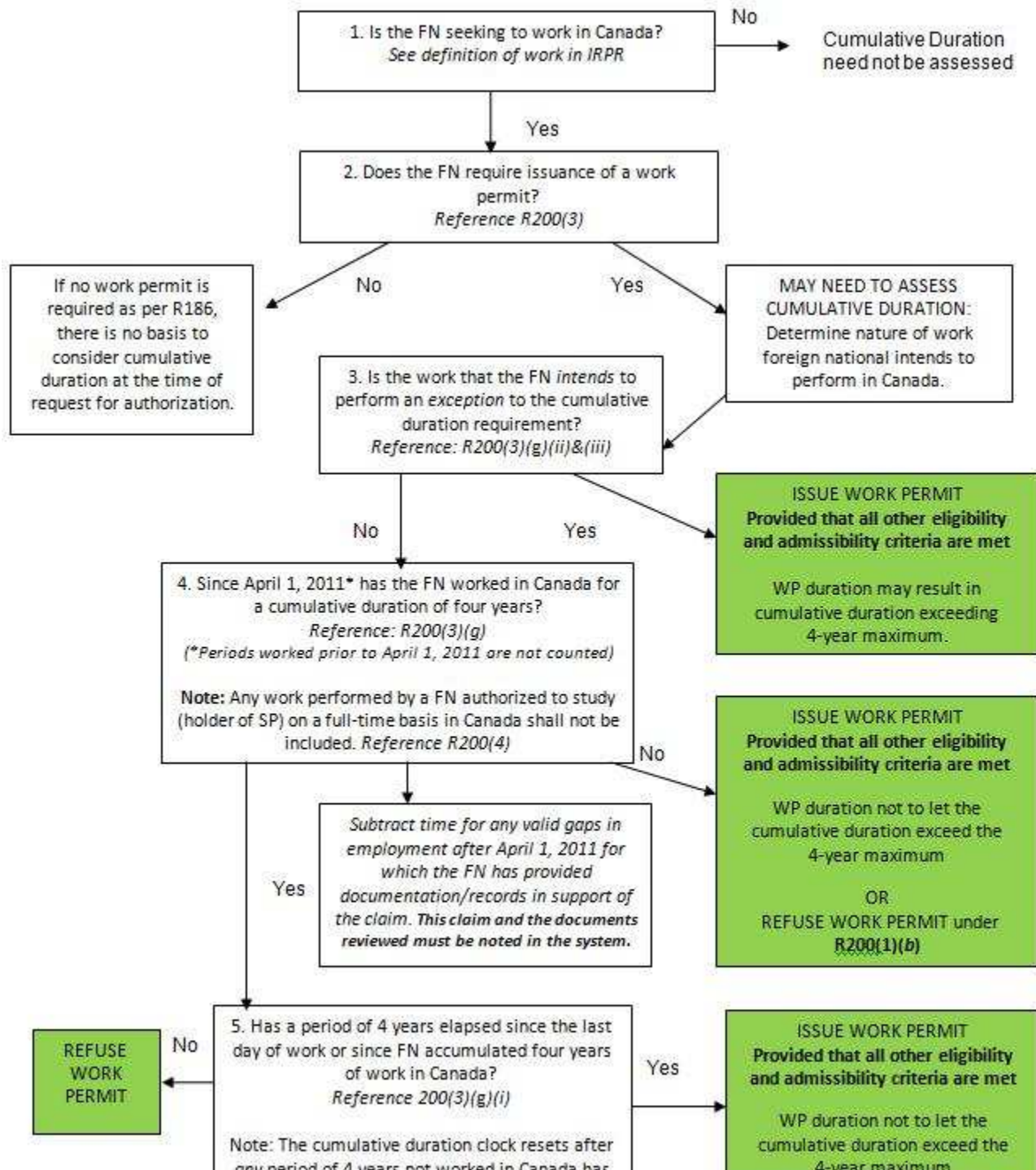
**Employers:** An employer should consider the cumulative total for the TFW they wish to hire to ensure that the TFW is able to work the full duration needed.

### **More information**

More information on the four-year maximum rule can be found on the [Work in Canada](#) page of the Citizenship and Immigration Canada website.

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## **Appendix A – Decision-making process for issuing a Work Permit or Extension when considering Cumulative Duration**



## ► Description: Decision-making process for issuing a Work Permit or Extension when considering Cumulative Duration

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### 1. Is the FN seeking to work in Canada?

If the activity does not meet the definition of work under IRPA, cumulative duration is not a consideration.

### 2. Does the FN require issuance of a work permit?

Subsection [200](#)(3) of the regulations provides that an officer shall not *issue a work permit* to a FN under certain circumstances. So this prohibition only applies in the context of work permit applications.

### 3. Is the work the FN *intends* to perform an exception to the cumulative duration requirement?

Regardless of whether or not the FN may have already acquired four years (or more) of work in Canada, the cumulative duration regulation does not need to be a consideration if the FN is applying to work in an occupation that falls under the specific categories that are an exception to the regulation, and a work permit can be issued. Subparagraphs [R200](#)(3)(ii) & [R200](#)(3)(iii) outline under what circumstances a work permit may be issued despite the fact that the FN has worked in Canada for a cumulative duration of four years.

### 4. Has the FN worked in Canada for a cumulative duration of four years?

Paragraph [R200](#)(3)(g) of IRPR states that a work permit should not be issued when “the individual has worked in Canada for one or more periods totalling four years”. This section refers to the FN having worked in Canada and does not specifically refer to having a work permit. This means that any activity that meets the legislative definition of work, regardless of whether or not the FN held a work permit, would be counted against the four years of cumulative duration (see Type A in [Appendix B](#)). The only exception to that is found in [R200](#)(4) which states that “a period of work in Canada by a FN shall not be included in the calculation of the four-year period referred to in paragraph (3)(g) if the work was performed during a period in which the FN was authorized to study on a full-time basis in Canada”.

Accumulated time worked in Canada is determined by looking at records in the system — starting with the most recent record and going back no further than April 1, 2011 — and adding together the full durations of periods authorized to work in Canada. For example, if a two-year work permit was issued based on the job contract, it is counted as two (2) years towards the accumulated time worked in Canada (unless a claim in regard to a gap in employment can be supported).

**Issuing a work permit for a shorter duration than requested:** as per the cumulative duration regulation [[R200](#)(3)(g)], a work permit may be issued for a shorter duration than requested, if issuing the work permit for the full duration would result in the foreign national exceeding the four-year maximum. **Visible remarks must be entered** by the processing officer so that the work permit indicates the reason for the shorter duration and that no subsequent extensions of this authorization will be approved.

### 5. Has a period of four (4) years elapsed since the day on which the FN accumulated four years of work in Canada?

The onus is on the applicant to satisfy the officer as to whether or not four (4) years of work has been accumulated. It is important to note that the clock “resets” once four years of time not worked in Canada has been accumulated. For example, if a worker accumulated four years *or less* of time worked in Canada since April 1, 2011, then the worker leaves Canada and returns in four years, the cumulative total resets to zero, and the worker is again eligible to work in Canada for another four years.

**Refusing under [R200](#)(3)(g):** a work permit application or request can be refused under [R200](#)(3)(g) when a FN has worked in Canada for one or more periods totalling four years, and four years has not elapsed since the day on which the FN accumulated four years of work in Canada.

**Refusing under [R200\(1\)\(b\)](#):** a work permit application or request can be refused under [R200\(1\)\(b\)](#) if an officer is not satisfied that the FN will leave Canada at the end of the period authorized for their stay. If the FN has only a short term remaining on their maximum four years of work in Canada, and the job offer duration exceeds the amount of time remaining, this could be a consideration. Issuance of a short term work permit — necessary to prevent exceeding the four-year maximum — may provide a temptation for a FN to stay in Canada beyond the period authorized for their stay. Of course, [R200\(1\)\(b\)](#) remains applicable to all work permit decisions, even where exceptions to [R200\(3\)\(g\)](#) apply.

**Officers are to include details of Cumulative Duration calculations and determinations in system notes.**

## Appendix B – Clarifying what types of occupations count toward a TFW's total and when the exceptions are relevant

### Type A

ALL WORK performed in Canada after April 1, 2011, counts towards cumulative duration.

Examples:

- All NOCs; LMO-required and LMO-exempt occupations;
- Open work permits, including Post-Graduation Work Permit;
- [R186](#) authorizations (work permit exempt);
- Work during implied status;
- Internships – if NOT as part of F/T studies as a student;
- Unpaid work;
- Work as a volunteer;
- Self-employed FNs (i.e., physicians under C10, business owners under C11).

### Type B

Work not counted – [R200\(4\)](#):

- Work done while a full-time student: co-ops, internships and other employment while authorized to study full-time.

### Type C

When a FN is applying for a work authorization, these categories or occupations are the *exceptions for which* a work permit can exceed the four-year limit – [R200\(3\)\(ii\)&\(iii\)](#):

- NOC 0 and A.
- *LMO exempt jobs under:*
  - International agreements [[R204\(a\)](#) and [\(b\)](#)]: e.g., NAFTA, SAWP;
  - Canadian interests ([R205](#));
  - Self-support ([R206](#));
  - Humanitarian reasons ([R208](#)).

**Note:** With regard to spouses of TFWs who are LMO-exempt, only spouses/dependants of *skilled TFWs (NOC 0 and A)* would be exempt from the cumulative duration considerations when seeking a WP.

- [R186](#) – No WP required, therefore no basis for assessing cumulative duration of work done in Canada.

**Note:** If a FN who is exempt under [R186](#) chooses to apply for/request a WP for personal reasons, i.e., provincial benefits, the processing officer will now be obligated to assess his/her accumulated time worked in Canada, and the WP will not be able to exceed the four-year maximum allowed.

- Permanent Resident (PR) applicants who have received a positive selection decision or approval in principle in the PR category for which they have applied.
- Provincial Nominees applying for an employer-specific work permit under [R204](#)(c) (nomination must be valid and current).

### **Appendix C – Possible proof documents supporting gaps in employment occurring after April 1, 2011**

- Passport entry and exit stamps;
- Official documents indicating that the employment started and/or ended on certain dates; for example, a Record of Employment or proof of receipt of severance pay;
- Letter from a foreign educational institution stating that the FN was attending their institution for a period of time during the work permit authorization;
- Travel receipts including ticket and boarding passes demonstrating that the FN was out of the country for a period of time during the work permit authorization other than a period of paid leave (e.g., sick leave, vacation leave) from their employment; compare with information regarding period of employment to see whether leave was covered by contract terms;
- Proof of receipt of maternity/parental benefits;
- Letter from physician confirming the FN was on medical leave for a certain period of time; compare with information regarding period of employment to see whether leave was covered by contract terms;
- If a FN did not complete the full duration of a work permit due to poor working conditions or workplace injury, a letter supporting the issuance of a new work permit may have been provided by a Province or Territory, and indicating the gap in employment;
- FNs working under a Group of Employers (GoE) agreement may experience short periods of no work between projects, and a letter from the GoE Administrator can be accepted.

### **Appendix D – Examples of the four-year maximum rule**

- Since April 1, 2011, the TFW has accumulated three years of work in Canada, and is now applying for a two-year work permit in an occupation that is not listed in the 'exceptions'. The work permit would only be issued for one year.
- FN works for three (3) years, leaves Canada for three (3) years, and applies for a two year work permit. Issue a one (1) year work permit, and he has to wait another 4 years before clocks resets and can apply again. If he had waited another year outside Canada, he could have worked another full four years in Canada.
- FN works three years and 11 months in Canada on a work permit, stays outside Canada for three years, and then enters to work under [R186](#) for 2 months. He leaves Canada and is now not eligible for a work permit for another four years.

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