

The “9”th Deadly SIN

or

How to Identify Whether a Prospective Employee is Legally Entitled to Work for Your Company

By: R. Reis Pagtakhan

Aikins Law

p: 957-4640

f: 957-4278

e: rrp@aikins.com

and

Janice Harper

New Flyer Industries

p: 224-6412

f: 224-6620

e: Janice_Harper@newflyer.com

About the Authors

Reis Pagtakhan

Reis Pagtakhan is a lawyer with Aikins Law and practices primarily in the area of immigration and business law. His extensive experience includes assisting businesses obtain temporary entry to Canada and permanent residency for their executives, employees and contractors from all over the world.

Reis has lectured on and written papers on immigration law for the Law Society of Manitoba, the Manitoba Bar Association and the Community Legal Education Association of Manitoba. He has presented position papers before the Minister of Citizenship and Immigration and Immigration Department officials and has written articles on the law and legal issues for trade and industry publications as well as local ethnic newspapers in Winnipeg, Edmonton and Vancouver. He is currently a director of the Immigrant Centre Manitoba.

Reis received his Bachelor of Laws and Bachelor of Arts (Hons.) from the University of Manitoba.

Janice Harper

Janice Harper, VP, Human Resources of New Flyer Industries, joined New Flyer in 1998 as a Human Resources Coordinator. She is responsible for the People Function across the organization including sourcing and selection of talent, operational efficiency and effectiveness, staff relations/practices and employee communication. Her team is also responsible for safety, health, wellness and environmental, and organizational training and development. Prior to New Flyer, Janice spent ten years in recruitment/selection, disability management and industrial relations for Westfair Foods Ltd. in the Manitoba and NW Ontario Region.

Janice holds a Diploma in Creative Communications from Red River Community College and a Certificate in Human Resources Management from the University of Winnipeg. She is a Certified Human Resources Professional (CHRP), is pursuing the Human Resources Compensation Committee designation from the Director's College at McMaster University, and is currently completing her BA in Communications at the University of Winnipeg.

Table of Contents

A.	Introduction.....	1
B.	Employers who employ illegal immigrants are guilty until proven innocent..	1
C.	How can employers prove their innocence?	1
	1. Ask the employee whether they are legally entitled not only to work in Canada but legally entitled to work in <i>Canada for your company</i>	1
	2. Review the employee’s Social Insurance Number to ensure that it does not start with a number “9”	2
	3. If the SIN begins with a “9”, review the employee’s immigration documents to make sure that he/she is legally entitled to work in Canada	3
	4. Call Service Canada to confirm the validity of the SIN	4
	5. Ask Citizenship and Immigration Canada whether the employee is legally entitled to work <i>for your company</i> in Canada	4

A. Introduction

With more individuals crossing borders for work, it is sometimes difficult to tell whether a person is legally entitled to work in Canada. Generally, only Canadian citizens and permanent residents are legally entitled to work in Canada. Foreign nationals (non-citizens/permanent residents) are only legally entitled to work in Canada under certain circumstances.

B. Employers who employ illegal immigrants are guilty until proven innocent

Under the *Immigration and Refugee Protection Act*,¹ an employer who employs a foreign national who is not legally entitled to work for their company in Canada is in violation of the law² and could face fines of up to \$50,000, jail time of up to 2 years, or both.³

Because of the way the law is written, an employer who employs a foreign national in an unauthorized capacity is “deemed” to know this⁴. As a result, employers are guilty until proven innocent.

C. How can employers prove their innocence?

In order for an employer to prove its innocence, it must prove that it exercised “all due diligence”⁵ in determining whether a foreign national can legally work in Canada for their company. In this immigration context, the following steps should be considered:

1. Ask the employee whether they are legally entitled not only to work in Canada but legally entitled to work in Canada *for your company*.
2. Review the employee’s Social Insurance Number to ensure that it does not start with a number “9”;
3. If the SIN begins with a “9”, review the employee’s immigration documents to make sure that he/she is legally entitled to work in Canada;
4. Call Service Canada to confirm the validity of the SIN; and
5. Ask Citizenship and Immigration Canada whether the employee is legally entitled to work *for your company* in Canada.

1. Ask the employee whether they are legally entitled not only to work in Canada but legally entitled to work in Canada *for your company*

While most companies ask prospective employees if they are legally entitled to work in Canada, what should be asked is whether the prospective employee is legally entitled to work *for your company* in Canada.

¹ Immigration and Refugee Protection Act, S.C. 2001, c.27 (“IRPA”)

² S.124(1) of the IRPA

³ S.125 of the IRPA

⁴ S.124(2) of the IRPA

⁵ S. 124 (3) of the IRPA

The reason to ask this question is that there are many foreign nationals in Canada who hold work permits that legally entitle them to work in Canada. However, most of these work permits restrict the foreign national to work for a specific employer, in a specific position, and at a specific location. As a result, it is possible that a foreign national can answer “yes” to the question: “Are you legally entitled to work in Canada?” but “no” to question: “Are you are legally entitled to work in Canada *for this particular company?*”

2. Review the employee’s Social Insurance Number to ensure that it does not start with a number “9”

The document that can give you an early indication as to whether an individual is legally entitled to work in Canada is their SIN. The Government of Canada indicates that employers must do the following when hiring a new employee:

- Request and examine a new employee’s SIN card within 3 days of them starting work;
- Record the name and number exactly as they appear on the card; and
- Ensure that any employee’s SIN beginning with a “9” has not expired.⁶

The Government of Canada issues SINs that begin with the number “9” to temporary workers who are neither Canadian citizens nor permanent residents. The expiry date on the SIN card that starts with a “9” corresponds to the expiry date on the Citizenship and Immigration Canada document authorizing the foreign national to work in Canada⁷.

Case Study: SIN Number “9”

In a casual conversation with a company HR director, a question was asked if they had ever checked their list of SINs to determine if any of their employees had SINs that began with “9”. The HR director was not aware of the significance of this and then ran all of their SINs through their database. They identified multiple “9” SINs for which they had no other documentation.

Solution:

Luckily, all individuals were legally entitled to work for the company. The company determined that some individuals had obtained permanent residency but did not provide an updated SIN. As well one individual had an open work permit. However, the company also determined that one of these SINs was about to expire. The company was able to catch the situation in enough time to file an application for an extended work permit for that employee.

⁶ Government of Canada, *What are my responsibilities related to my employees’ SINs?*, online: Service Canada www.servicecanada.gc.ca/eng/sin/employers/responsibilities.shtml

⁷ Government of Canada, *Why should I verify and record the expiry date of all SIN cards bearing a number that begins with “9”*, online: Service Canada www.servicecanada.gc.ca/eng/sin/employers/expiry.shtml

3. If the SIN begins with a “9”, review the employee’s immigration documents to make sure that he/she is legally entitled to work in Canada

Since “9” SINs are only issued to non-Canadians/permanent residents, it is necessary to review the primary immigration document that the individual with a “9” SIN may have. In this connection, you will likely be looking for a work permit. By reviewing the primary immigration document, this will allow you to confirm that the individual is legally entitled to work for your company.

It is important that you request that the employee bring the original immigration document for you to review. You should carefully read the original work permit to review any restrictions that may appear on it. If the foreign national is legally entitled to work for you, you should note the expiry date of the work permit (in addition to the expiry date of the SIN) and diarize that date in your HR system.

You should know that most immigration documents issued to foreign nationals do not contain pictures. As a result, it may be necessary to review picture identification to insure that the employee matches the name on the SIN card or immigration document.

Case Study: The Need to Check Original Work Permit Documentation

A company identified a concern as to whether one of their employees was legally entitled to work in Canada. A copy of the individual’s work permit that was provided to the employer did not include certain words that typically appear on all work permits. While the employer made a copy of the work permit. They only made a copy of a photocopy. The employer never saw the *original* work permit.

Solution:

The company was advised to see the original work permit to determine whether the worker was legally entitled to work for them.

The company attended at the worker’s home and the worker admitted that he was not legally entitled to work for them and had tampered with the photocopy. The employer immediately terminated the worker.

Please note that while “9” SINs are issued to temporary residents, it is also possible that an individual with a “9” SIN is a Canadian permanent resident. There are cases of foreign nationals who become permanent residents who forget to get a new SIN. If this occurs, you should check the individual’s immigration status and request them to get a new SIN immediately.

There is also a possibility that former permanent residents with SINs that do not begin with a “9” are not legally entitled to work in Canada. This can happen if the person left Canada for a prolonged period of time and lost their permanent residency. In these cases

the foreign national would present with a SIN that looks like it belongs to a current permanent resident or citizen.

4. Call Service Canada to confirm the validity of the SIN

To confirm a current or former employee's SIN, you can call Service Canada's Social Insurance Registration Office at 1-800-206-7218 and select option "3". When you call, you need to provide the business' Canada Revenue Agency Business Number along with identification for the company and the employee. Service Canada can then confirm the validity of the SIN⁸.

5. Ask Citizenship and Immigration Canada whether the employee is legally entitled to work for your company in Canada

If there is still doubt as to the legal entitlement of an individual to work in Canada, you should ask Citizenship and Immigration Canada to advise whether the individual is legally entitled to work in Canada or not. Citizenship and Immigration Canada should have records of all individuals who have once had a SIN that began with "9".

This being said, Citizenship and Immigration Canada will not be able to confirm the citizenship and residency of all persons in Canada. For instance, natural born Canadian citizens will not appear on the department's system since these individuals would not have to go through any immigration process to become citizens of Canada.

Case Study: When in doubt ask Citizenship and Immigration Canada

A long term employee of an organization had his permanent residency taken away by Citizenship and Immigration Canada. The employee reported for work and took the position that he was still legally entitled to work in Canada notwithstanding that the only document he had indicated that he was only in Canada as a visitor.

Solution:

Upon being presented with this information, the organization made arrangements to contact Citizenship and Immigration Canada immediately. The situation was outlined and clarification on the individual's status to work in Canada was requested.

Citizenship and Immigration Canada responded that the individual was no longer legally entitled to work in Canada. Upon being advised of this, the client immediately terminated the employee.

⁸ Ibid.