

Cross-Border Employee Transfers:

How Canadian and U.S. rules are the same and yet different

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In 1988, Canada signed a free trade agreement with the U.S. allowing multi-national companies to transfer employees across the Canada-U.S. border. Known as intra-company transfers, these rules allow certain executives, managers, and specialized knowledge employees of U.S. companies to work at Canadian branch, affiliate or subsidiary companies. For Canadian looking to work in the U.S., the reverse is true.

While intra-company transfer rules are essentially the same on both sides of the border, the administration of these rules results in differences as to who is eligible for intra-company status (known as “L” status in the U.S.).

Where can intra-company transfer or L status be applied for?

U.S. citizens seeking intra-company status can obtain same day service by applying, upon arrival, at Canadian international airports or designated border crossings. Canadians can obtain same day service by applying for L status at U.S. pre-flight clearance offices at the largest Canadian airports and at designated border crossings on the day of departure/arrival.

Alternatively, both countries allow applications to be filed in advance of travel at designated offices. However, this process may result in travelers having to wait additional weeks for approval.

While the law for citizens is the same, the law for permanent residents is different. Canadian permanent residents cannot apply for L status at U.S. preclearance facilities or at the border. Rather, a petition must first be approved by U.S. Citizenship and Immigration Services and the Canadian permanent resident must also apply for an L visa at a U.S. consulate in Canada prior to entering the U.S. U.S. permanent residents, on the other hand, can apply for intra-company transfers in the same way as U.S. citizens.

What must be presented when applying for intra-company or L status?

Individuals applying for L status must submit a “petition” completed by their employer on forms known as the I-129 and L Classification Supplement. While Canada has forms that can be used by intra-company transfers, it is not universally required. Of course, documents that establish that the traveler and company meet the requirements must be submitted for both the U.S. and Canadian processes.

In terms of the supporting information, L petitions ask for specific information such as the company’s gross and net income as well as number of employees. While Canada does not require this information, it is usually advisable to provide.

In terms of fees, Canada charges a \$150(CAN) application fee. The U.S. charges a \$325(US)



application fee and, for first time applicants, an additional \$500 Fraud Prevention and Detection Fee. The U.S. charges an additional \$2250 fee to employers with 50 or more employees where more than 50% of the company's U.S. employees are on L-1 or H-1B visas. If the individual is applying for L status at the border (as opposed to pre-flight clearance) there is an additional fee for a U.S. document called an I-94 card.

Do employees have to be a current employee of the company?

Under the rules, employees must have worked for at least one year in the three years for the company immediately before applying. In addition, Canada requires that the individual be a current employee of the company. The U.S. does not require individuals to be current employees. For example, employees could be recent retirees of the Canadian company.

Are there any differences in the way intra-company transfers are assessed?

For the most part, executives and managers are assessed using criteria identical on both sides of the border. However, the same cannot be said for specialized knowledge workers. For instance:

1. Canada requires specialized knowledge workers to be paid a wage that approximates the average wage for a similar position in the geographic location where the

worker will be employed. For U.S. L status, there is no wage test.

2. For Canada, knowledge and experience in the use of custom tools for a company does not, in and of itself, demonstrate specialized knowledge. In the U.S., knowledge of specialized tools, while not determinative, can be used as a factor to demonstrate specialized knowledge.

3. While one year of experience in the company is the minimum requirement, Canada can consider whether the minimum amount of experience is sufficient for the knowledge to be specialized.

4. Canada will consider the educational background of an individual in determining specialized knowledge. The educational background of an individual is not necessary in the U.S. process.

How long can employees enter either country as L Status holders or intra-company transfers?

Intra-company "executives" or "managers" are allowed to work in either country for up to seven years. Specialized knowledge employees are allowed only five years. This being said, the initial period of work that is allowed for employees of established companies is generally only three years. To get to the maximum, extensions must be obtained.

While the maximum time period is the same for both countries, there are different rules when calculating the maximum stay.

For instance, an L status holder in the U.S. for less than six months in a year has "intermittent" status. These individuals do not "use up" their years. For example, an individual who spends less than 6 months a year in the U.S. under L status could be eligible for additional years of L status because the "intermittent" years were not counted against them.

Canada, on the other hand, "recaptures" days spent outside Canada to add to the maximum period. For example, an individual who spends 180 days outside Canada every year would, after seven years, accumulate an additional 1260 days (180 days x 7 years) that could be added to the end of the 7 years.

While an individual who is in the US "intermittently" can have L status forever, the number of days an individual can "recapture" in Canada is finite. The only way that the intra-company transfer clock could be reset to zero in Canada is if the individual was outside of Canada for at least one year. U.S. L eligibility also resets after a one-year's physical absence from the U.S. ●

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