

accepted at triage as well). However, if a transfer of ownership is confirmed before an employer goes through triage, officers can:

- accept the current LMIA as-is and request a written confirmation of the ownership transfer details; or
- accept a new LMIA application from the new owner

Definition - Owner Operator

Effective date 2016-08-29

Is there a minimum percentage of shares that a TFW must own to be considered an owner-operator?

Ownership of shares does not guarantee that a foreign national qualifies as an owner-operator. The term owner-operator generally refers to business owners and does not refer to individuals who receive shares as part of a compensation package.

To qualify as an owner-operator, the foreign national must be able to:

- demonstrate a level of controlling interest in the business (e.g. be a sole proprietor or a majority shareholder),
- demonstrate that such temporary entry will result in the creation or retention of employment opportunities for Canadians and permanent residents and/or skills transfer to Canadians and permanent residents and,
- must not be able to be dismissed.

Signing Authority - Owner Operator

Who should be signing the application? A lot of the applications under the owner-operator category are signed by an individual who has no direct influence in managing the business operations.

The foreign national must sign the application as the owner-operator.

Genuineness - Owner Operator

How should an Officer proceed when the purchase of a business is conditional to the issuance of a work permit?

(5) A determination of whether an offer of employment is genuine shall be based on the following factors:

(a) whether the offer is made by an employer that is actively engaged in the business in respect of which the offer is made, unless the offer is made for employment as a live-in caregiver;

This factor must be assessed by reviewing the foreign national's intention to operate the business in Canada (i.e. purchasing a valid operating business or has experience in starting this type of business internationally). This must be demonstrated by one or several documents provided by the owner-operator or employer, and may vary on a case by case basis. Examples of documentation include a letter of intent between the owner-operator and the current owner for the transfer of the business, demonstration of the owner-operator's financial investment in the business, a copy of the owner-operator's share certificate, a copy of a lease agreement between the owner-operator and a landlord for the intended work location, a copy of meeting minutes indicating the transfer of ownership to the owner-operator, or any other document that, at the Officer's discretion, is deemed as demonstrating this factor.

General Low-wage and High-wage

Pending Application Changing Wage Stream

Effective 2016-12-13

When an employer agrees to pay a new prevailing Job Bank median wage, which in turn causes the LMIA to move from the low-wage stream to the high wage-stream, are they required to submit a transition plan and to re-advertise in order to meet the high-wage advertising criteria (i.e. one ad that is national in scope instead of targeting underrepresented groups)?

Yes, the employer must submit a transition plan if applicable for the position on the LMIA. However, there is no requirement to re-advertise if the wage has increased by less than 10%. If the wage has gone up more than 10% the officer should consult the Wage Assessment Directive in order to determine whether the timeframes necessitate re-advertising. If it is required, the employer must re-advertise for four weeks using the high wage stream advertising requirements.

If yes, should the application be held while the employer submits a transition plan and or re-advertises or should it be deemed incomplete?