

Duty to Comply with Domestic Trade Agreements Policy

November 2021

This policy explains the purpose of this duty, what is required for compliance and the Fair Registration Practices Office's review process.

Legislative Requirements

The Fair Registration Practices in Regulated Professions Act requires Manitoba professions subject to the legislation to comply with domestic trade agreements. Specifically:

Duty to comply with domestic trade agreements

4.1 A regulated profession must ensure that its registration practices comply with the obligations of a domestic trade agreement.

Purpose

The purpose of this duty is to improve compliance among Manitoba professions with the labour mobility provisions of these trade agreements. This duty provides direction to regulated professions to proactively identify and address barriers to labour mobility before they become informal or formal complaints and it strengthens recognition of certified workers applying to Manitoba from other jurisdictions.

Implementation

The duty refers to the labour mobility obligations under Chapter 7 of the Canadian Free Trade Agreement (CFTA) and Article 13 of the New West Partnership Trade Agreement (NWPTA). These agreements apply to all certified workers in regulated occupations and implementation of the obligations extends to all occupational regulators.

Under the CFTA and NWPTA, regulated professions and trades have a general obligation to ensure application requirements of all workers certified in other jurisdictions are non discriminatory, accessible, timely and transparent.

A fundamental principle of labour mobility is license-to-license recognition. Any worker certified for an occupation by a regulatory authority in one jurisdiction shall, upon application, be certified for that occupation by all other jurisdictions that regulate the occupation. No material requirements for additional training, experience, examinations or assessment are permitted for labour mobility applicants, except in limited circumstances when a government has approved exceptions to labour mobility.

A regulated profession's policies and practices for labour mobility applicants are monitored and reviewed for compliance to the mobility agreements as part of the Fair Registration Practices Office's regular review process.

Areas of Focus

Permissible Requirements

Under labour mobility agreements, it is acceptable to request labour mobility applicants:

- complete an application and pay a fee
- provide proof of current certification in another/all other jurisdictions in Canada
- provide evidence of good standing in the other jurisdiction(s)
- provide evidence of good character (including criminal background checks)
- provide proof of proficiency in English or French (only applicable when the applicant has not already met a requirement)
- show evidence of insurance/malpractice coverage
- post a bond
- demonstrate local knowledge (non-material) (e.g., write a jurisprudence exam)

Non-Permissible Requirements

Under labour mobility agreements, application requirements cannot create a disguised restriction to labour mobility. It is unacceptable to request labour mobility applicants:

- meet residency requirements
- complete a reassessment of competency, education/training or ability to practice
- complete more onerous application requirements than workers originally certified within the jurisdiction to which they are applying

Acceptable Restrictions, Limitations and Conditions

Provided the requirement is no more onerous than that imposed on a province/territory's own workers and it is not a disguised barrier, certification restrictions, limitations or conditions may be imposed or a worker may be refused certification. This can occur under the following circumstances:

- an applicant is subject to a complaint, or disciplinary/criminal proceedings – in this case, the worker may be refused certification, or terms/conditions/restrictions may be imposed on their ability to practice
- an applicant has had a substantial break in practice (this does not refer to new graduates or newly certified individuals, etc.) – in this case, conditions may be imposed (e.g., training/exam/assessment/experience)
- an applicant had a limited, restricted or conditional certificate – in this case, an equivalent practice restriction/limitation/condition as currently imposed on the worker can be applied or, if no equivalent practice restriction/limitation/condition exists, the worker can be refused certification

Exceptions

Exceptions to labour mobility must be clearly justified (e.g., based on a difference in scope-of-work between jurisdictions) as necessary to achieve a legitimate objective, such as public safety or consumer protection. Exceptions must be approved and posted publicly by the government maintaining the exception. If they are not, a regulatory authority can be found to be in non-compliance with the agreements. Currently, only one profession in Manitoba has an approved exception in place.

Obligation to Notify

If a regulatory authority is planning to introduce new or revise/remove existing occupational standards, they have an obligation to base these standards on existing or common standards, when possible and practical and to notify the department responsible for their profession. This includes any changes to acts, regulations, by-laws, policies, etc. with the potential to impact labour mobility. Examples of changes could include, but are not limited to, creating or removing a certification category, changing the scope-of-practice, creating a new occupation or no longer regulating an occupation. The department responsible will notify their counterparts in other provinces and allow them the opportunity to comment through the process set out in the agreements.