COVID-19 FLASH CALL SUMMARY
THURSDAY, APRIL 16, 2020

Abstract

The impact on businesses, real estate immigration and cross-border relations cannot be overstated. Many are grappling with the legal implications of the unprecedented measures taken by domestic and international governments. At Miller Thomson, we are monitoring this closely.

To discuss how you or your organization might benefit from one of these programs, or if you have questions about the impact of COVID-19 on your business, please contact:

Miller Thomson team
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Accessing Government Programs Information from Daniel Kiselbach

COVID-19 action plans have been announced and are being developed now. See for example the following:

Canada’s COVID-19 Economic Response Plan

- On March 25, 2020 the COVID-19 Emergency Response Act was assented to, and it provides for, amongst other things, the Canada Emergency Response Benefit (“CERB”). The benefit may be available to eligible workers who have stopped working because of COVID-19, and have not voluntarily quit their job or are eligible ordinary employment insurance or sickness benefits.

- On April 11, 2020 Canada announced that Bill C-14, the COVID-19 Emergency Response Act, No. 2 received Royal Assent which will enable eligible employers to obtain the Canada Emergency Wage Subsidy (“CEWS”) to retain employees who are still on the payroll and to rehire workers previously laid off. This subsidy is designed for eligible employers that see a revenue drop (e.g., 15% in the Month of March and 30 percent for the remainder of the eligible period).

- It is not intended that employees obtain the CERB at the same time that their employers obtain the CEWS subsidy. Employees rehired by employers during the CEWS eligibility period should be able to cancel their CERB claim and repay the amount.

- Employers will be expected to attest that they incurred the requisite revenue drop in order to become eligible for CEWS. Civil and criminal penalties may apply for non-compliance with the scheme of the applicable legislation.

COVID-19 British Columbia

- It is time to provide input on how funds are allocated in order to support workers, businesses, and other entities.

- Businesses can direct workers who have been affected by COVID-19 to government benefits programs for immediate benefits.

- Businesses can access government support in order to “weather the storm”.

Protection Against Liability For Essential Services

- Essential services workers may be exempted from liability if they follow applicable emergency and public health guidance. See, for example, the Protection Against Liability Order issued by the Minister of Public Safety and Solicitor General dated April 2, 2020.
Time Limitations / Courts

- Limitation periods to commence court proceedings may be suspended in some instances and some statutory decision-makers may have been provided with discretion to waive, suspend, or extend time periods related to their powers. See, for example, the order of the Minister of Public Safety and Solicitor General under the Emergency Program Act.

- Some courts such as the Canadian International Trade Tribunal are operating well via electronic means. Other courts, such as the Supreme Court of British Columbia, have suspended regular operations and will hear only essential and urgent matters.

Revision To Customs Notice 20-08, titled Imported Goods For Emergency Use In Response To COVID-19

- The Goods for Emergency Use Remission Order, and the application of tariff item No. 9993.00.00 of the Customs Tariff allows for the relief of duty and taxes on goods required for an emergency and are imported by or on behalf of federal, provincial, or municipal entities. As of April 6, 2020, these goods may also be imported by or on behalf of public or private care residences, such as seniors’ residences, retirement homes, nursing homes, and shelters.

Workforce – Business Issues

- Some organizations may be experiencing a decline in demand for products or services, forcing them to consider warehousing and logistics as well as their core product or service offerings.

- One impact of COVID-19 will likely be to accelerate changes in work already in play.

- It is important to establish or revisit policies relevant to remote work programs in order to ensure that they are effective and manageable including, for example: a telecommuting policy; a remote access policy; a VPN usage policy; a disaster recovery and business continuity plan; and a risk management policy.

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Immigration and Cross-border Information from Ellen Kief

U.S. IMMIGRATION PRACTICE UPDATE

Background

On March 20, 2020, the Department of Health and Human Services ("HHS") issued an Interim Final Rule ("IFR") and the Center for Disease Control ("CDC") issued a concurrent order that, together, closed both the northern and southern borders of the U.S. to all but essential travel.
The purpose of this summary is to detail the effects of the IFR and the CDC order.

Authority

The IFR and the CDC order invoke 42 United States Code ("USC") §265, which permits the Surgeon General to prohibit entry of persons to the U.S. where there is a serious danger of those persons introducing a communicable disease into the U.S. This power has since been transferred from the Surgeon General to the HHS Secretary.

Duration of Border Closures

As noted above, the U.S. closed the northern and southern borders to all but essential travel on March 20, 2020. The closure will remain in effect until the HHS Secretary determines it is no longer necessary, or one year from the publication of the closure, whichever is earlier.

Essential Travel

Essential travel, for the purposes of the border closures, includes the travel of:

a. U.S. citizens and lawful permanent residents returning to the United States;
b. Individuals traveling for medical purposes;
c. Individuals traveling to attend educational institutions;
d. Individuals traveling to work in the United States;
e. Individuals traveling for emergency response and public health purposes;
f. Individuals engaged in lawful cross-border trade;
g. Individuals engaged in official government travel or diplomatic travel;
h. Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces; and
i. Individuals engaged in military-related travel or operations.

Notably, leisure and tourism are not considered essential travel.

Customs and Border Patrol at the Southern Border

The Department of Homeland Security ("DHS") is interpreting both the IFR and CDC order as giving them the authority to refuse entry to non-exempt individuals it encounters at and in between Ports of Entry ("POE"). In a statement, U.S. Customs and Border Protection ("CBP") said that they would suspend the processing of inadmissible individuals and, that in between POEs:

...agents will be given tools necessary to identify aliens at the border and to adjudicate some cases in the field at initial encounter. This will enable... agents to rapidly make a decision whether to take someone into custody, or to send them without any further Title 8 processing to the nearest Port of Entry to expel them to Mexico or Canada.
U.S. Visa Status Processing

As of March 18, U.S. Citizenship and Immigration Services ("USCIS") has temporarily suspended routine in-person services through at least May 3 to help slow the spread of COVID-19. USCIS staff will continue to perform mission critical duties that do not involve contact with the public. However, USCIS will provide emergency services for limited situations.

USCIS domestic field offices will send notices with instructions to applicants and petitioners with scheduled interview appointments or naturalization ceremonies impacted by this closure. They will automatically be rescheduled once normal operations resume. Individuals who had InfoPass appointments with a Field Office must reschedule through the USCIS Contact Center.

As of March 17, 2020, United States Embassy and all Consulates General in Canada are cancelling routine immigrant and nonimmigrant visa appointments. As resources allow, embassies and consulates will continue to provide emergency and mission critical visa services. Routine visa services will resume as soon as possible but there is no specific date at this time.

Applicants who had an appointment scheduled with an ASC after their closure on March 18 or who have filed a Form I-765, Application for Employment Authorization, extension will have their application processed using previously submitted biometrics. This announcement is consistent with existing USCIS authorities regarding the agency’s ability to reuse previously submitted biometrics. This will remain in effect until ASCs resume normal operations.

Effective March 20, premium processing services on all Form I-129 (Petition for Nonimmigrant Worker) and Form I-140 (Immigrant Petition for Alien Worker) will be suspended until further notice. Employers who have already filed the forms using premium processing service and who did yet receive any agency action on their case within the 15-day calendar period will receive a refund.

Premium processing on all H-1B petitions, those subject to the cap and cap-exempt petitions, have been suspended until further notice. This announcement replaces all previous announcements by USCIS about premium processing for H-1B applications for FY2021.

USCIS COVID-19 Delays in Extension/Change of Status Filings

On April 13, 2020, USCIS made an announcement with respect to nonimmigrants remaining in the U.S. due to COVID-19. Relevant excerpts from the announcement are below:

Generally, nonimmigrants must depart the United States before their authorized period of admission expires. However, we recognize that nonimmigrants may unexpectedly remain in the United States beyond their authorized period of stay due to COVID-19. Should this occur, the following options are available for nonimmigrants:

1. **Apply for an Extension.** Most nonimmigrants can mitigate the immigration consequences of COVID-19 by timely filing an application for extension of stay (EOS) or change in status (COS). U.S. Citizenship and Immigration Services continues to accept and process applications and petitions, and many of our forms are available for online filing.

2. **If You File in a Timely Manner.** Nonimmigrants generally do not accrue unlawful presence while the timely-filed, non-frivolous EOS/COS application is pending. Where applicable, employment authorization with the same employer, subject to the same terms and conditions of the prior approval, is automatically extended for up to 240 days after I-94 expiration when an extension of stay request is filed on time.
3. **Flexibility for Late Applications.** USCIS reminds petitioners and applicants that it can consider delays caused by the COVID-19 pandemic when deciding whether to excuse delays in filing documents based on extraordinary circumstances.

4. **Flexibility for Visa Waiver Entrants.** Visa Waiver Program (VWP) entrants are not eligible to extend their stay or change status. However, under current regulations, if an emergency (such as COVID-19) prevents the departure of a VWP entrant, USCIS in its discretion may grant a period of satisfactory departure for up to 30 days. Please see 8 CFR 217.3(a). For those VWP entrants already granted satisfactory departure and unable to depart within this 30-day period because of COVID-19 related issues, USCIS has the authority to temporarily provide an additional 30-day period of satisfactory departure. To request satisfactory departure from USCIS, a VWP entrant should call the USCIS Contact Center.

**Trusted Traveler Program Enrollment Centers**

On March 18, 2020, U.S. Customs and Border Protection announced that they would temporarily suspend operations of Trusted Traveler Program enrollment centers nationwide until at least May 1, 2020. This temporary closure includes all public access Global Entry enrollment centers, NEXUS enrollment centers, SENTRI enrollment centers and FAST enrollment locations. Global Entry mobile enrollment events are also paused until further notice.

**Passport Operations**

**Response to COVID-19**

In response to the COVID-19 pandemic, effective March 20, 2020, the U.S. Department of State is only offering in-person service at passport agencies or centers for those with a qualified life-or-death emergency who need a passport for immediate international travel within 72 hours.

Passport applicants should expect significant delays in receiving their passports and citizenship evidence documents. The U.S. Department of State has asked individuals to considering waiting to apply until normal operations are resumed.

**What if an Applicant Applied before March 20, 2020?**

If an applicant applied and requested expedited service on or before March 19, 2020, efforts were made to meet the commitment of 2-3 weeks door-to-door service. However, due to limited staff, a small portion of incomplete expedited applications submitted on or before March 19 are still being worked on. Some applicants may experience additional delays.

If you applied and requested routine service on or before March 19, 2020, you should expect significant delays receiving your passport and your citizenship evidence documents.

**Workers Returning to Canada**

**The Emergency Order**

The Government of Canada has put in place an emergency order under the Quarantine Act. It applies to all travelers arriving in Canada, with some important exceptions described in more detail below. Its purpose is to slow the spread of COVID-19 in Canada. Failure to comply with this order is an offence under the Quarantine Act.
If you are Canadian or a permanent resident, and you have symptoms consistent with COVID-19, you may still enter Canada by land, rail or sea. You may not enter Canada by air, to protect the health of all travelers. If you have symptoms, you must isolate. This is mandatory. If required, immediate medical attention will be provided upon arrival in Canada. If you have recently returned to Canada and you have no symptoms, you must quarantine (self-isolate). This is mandatory. You are at risk of developing symptoms and infecting others.

Compliance under the Quarantine Act

If a traveler is permitted to enter Canada, they will be (i) asked if they have a cough, fever or difficulty breathing, (ii) required to acknowledge that they must self-isolate, and (iii) given instructions about their obligations under the emergency order.

If a traveler violates instructions provided to them when they entered Canada, it is an offence under the Quarantine Act and they could face 6 months in prison and/or $750,000 in fines.

Exceptions to the Emergency Order

The Canadian government has stressed that the continued global movement of goods and people and the ongoing delivery of essential services will be important for Canada’s response to COVID-19. As such, several categories of people are exempted from the emergency order because they provide critical services. These people are only exempt if they have no symptoms. These include people who:

- Are making necessary medical deliveries required for patient care;
- Work in the trade and transportation sector who are important for the movement of goods and people;
- Cross the border to regularly go to work, including in the health care sector or critical infrastructure workers; and
- Have to cross the border to provide or receive essential services, including emergency responders and personnel providing essential services to Canadians related to the COVID-19 outbreak.

Workers Returning to B.C.

Individuals arriving in B.C. from international locations will face additional measures:

Self-Isolation Plan

On April 8, 2020, the B.C. government announced a requirement for all international travelers arriving in B.C. to complete a self-isolation plan, with some important exceptions detailed below. The plan can either be completed and submitted online before arrival in B.C., or completed and submitted using a paper form before or when a traveler arrives in B.C.

A self-isolation plan must consider:

- The location of the traveler’s 14-day self-isolation;
- How the traveler will get to their isolation location;
- Arranging the necessary supports (food, medication, child care, cleaning supplies, pet care, etc.); and
- Social or family support.
If a Traveler has COVID-19 Symptoms

Travelers are required to disclose symptoms in their self-isolation plans. A provincial government official will review the plans. If a traveler’s self-isolation plan is adequate, they will proceed home (or to their identified location) via private transportation to self-isolate.

If they do not have an adequate self-isolation plan, they will be escorted to government-managed accommodation where they can safely complete their 14-day self-isolation.

During their 14-day period of isolation, they must:

- Undergo any health assessments that a quarantine officer requires
- Monitor their signs and symptoms; and
- Report to the public health authority specified by a screening officer or quarantine officer if they require additional medical care

If a Traveler does not have COVID-19 Symptoms

Even if a traveler does not have symptoms, they are required to submit a self-isolation plan that outlines where and how they will self-isolate for 14 days. The plan will be reviewed by provincial government officials.

If the self-isolation plan is adequate, they will proceed home (or your identified location) via transportation that ensures physical distancing to self-isolate.

If the self-isolation plan is adequate, but a traveler needs time to organize support (someone to support grocery drop off, filling prescriptions, etc.), they will be escorted to a provincial accommodation to begin self-isolation. They will be escorted home once all supports are in place.

If they do not have a self-isolation plan, or are not able to arrange adequate support, or don’t have a location to self-isolate, they will be escorted to a provincial accommodation where they can safely complete your 14-day self-isolation.

Exceptions

Essential service workers who must travel across the border for work must still create a self-isolation plan and self-monitor. However, essential service workers are only expected to implement their plan if they develop symptoms. These essential workers who must travel for work include:

- Health care workers;
- Critical infrastructure;
- Trade and transportation workers;
- Airline crews; and
- People making medical deliveries.
Transport Canada Measures

On April 5, 2020, Transport Canada announced new measures to reduce the risk of COVID-19 transmission on commercial passenger vessels and ferries. The new measures:

- Prohibit all commercial marine vessels with a capacity of more than 12 passengers from engaging in non-essential activities, such as tourism or recreation.
  - These measures will remain in place until at least June 30.
- Prevent any Canadian cruise ship from mooring, navigating, or transiting in Canadian Arctic waters (including Nunatsiavut, Nunavik and the Labrador Coast).
  - Should any foreign passenger vessel seek to enter Arctic waters, they would need to give the Minister of Transport 60 days’ notice and be subject to any conditions the Minister determines necessary to ensure the protection of marine personnel and local communities.
  - These measures will remain in place until October 31, 2020.
- Require ferries and essential passenger vessel operators to:
  - Immediately reduce by 50% the maximum number of passengers that may be carried on board (conduct half-load voyages) to support the two-metre physical distancing rule; or
  - Implement alternative practices to reduce the risk of spreading COVID-19 (consistent with Public Health Agency of Canada guidelines) among passengers on board their vessels, such as keeping people in their vehicles, when feasible or enhanced cleaning and hygiene measures.

Custom Border Patrol
U.S. Government Visa Newsroom
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Summary from Brandon Hardenbrook

PNWER recent activity

PNWER has hosted weekly calls with our legislators to share information on the situation in each of our ten jurisdictions. We have also hosted a weekly call with the largest employers in the Seattle area to allow them to share plans and best practices.

PNWER has worked for 20 years on disaster resilience issues and has focused on recovery planning since 2005. Most of the planning has been based on a catastrophic event like a major earth quake. We helped several jurisdictions develop recovery plans and they are now in the process of enacting those plans.
We are working to ensure our states and provinces are staying connected and our critical services continue to flow across the border. Our region is greatly dependent upon our north and south flow of commerce and services and we can’t have a slowdown.

**Border Closure**

Cooperation on border closure between US-Canada and Mexico has been good. No one country closed unilaterally. There has been good cooperation on defining essential travelers and goods. Renegotiation of NAFTA may have helped our countries recognize the importance of the economic ties and the interdependencies that are in place.

PNWER was concerned about restrictions on whom or what is considered essential and we voiced this to our federal partners.

One challenge is that each state is developing their own essential services list and they aren’t coordinated across the region. This will become more of an issue when states begin to relax current orders.

The US Canada border closure will have a 30 day review that will be conducted on April 21.

CBP has stopped processing trusted traveler requests. TSA has granted a 180 day extension on Transportation Worker ID Cards (TWIC) cards that will expire between March and July.

CBP and FEMA issued exceptions for Canada and Mexico on order to bar PPE shipments out of the US and N95 masks were shipped.

CBP is reducing hours at port many ports including Raymond MT (no longer 24 hrs) which has been a concern for us for the past year as this is an important port for Regina. The closures are expected to last until at least April 30th unless it gets extended. CBSA also reducing hours at many ports.

Snow birds returning to Canada from the US must fill out a form upon return and self-quarantine for 14 days.

**COVID19** will significantly impact the implementation of preclearance going forward as every industry and government is facing severe economic challenges that will make it difficult to develop new facilities.

**Tourism and Transportation:**

Tourism in PNWER is a $780 billion dollar industry across our region, with around 780,000 jobs in the tourism industry.

WA Ferry, Clipper and Blackball all have suspended operations until at least June 30th between WA and BC.

Cruise ships are all suspended and the entire cruise season is in doubt. This is a major part of our regional tourism market in WA, BC and AK.

Airlines are now focusing on cargo and not the transport of people. Many have retrofitted planes to carry cargo.

Our tourism working group has begun to meet to develop a regional recovery roadmap. Governments need to coordinate on messaging, When is it safe to travel?. Over the past
several years we have been coordinating on the development of a regional tourism dashboard to measure the industry across all PNWER jurisdictions, this will become important to use as a tool moving forward.

**Agriculture:**

Our interdependent food system also relies heavily on our cross-border neighbors. For example, the United States sends over $25 billion worth of fruits, nuts, vegetables, processed foods, and food preparations to Canada. In return, Canada supplies the United States with $24 billion in vegetables, baked goods, beef and pork, canola oil, and chocolate.

Milk purchases have significantly dropped over the past few weeks, leaving producers with a much larger supply than processors can handle.

Some livestock processing facilities are unable to maintain sufficient staffing to continue operating. Major meat processors are closing or reducing staff. Some processors are modifying their slaughter protocol and no longer collecting blood samples for brucellosis surveillance because they do not have adequate staff to complete all tasks.

Futures prices have drastically fallen for many commodities, and as a result, some fruits and vegetables are not being harvested and instead left in the fields to spoil.

While retail sales of potatoes have increased, the losses in food service cannot be offset. Potato processors are telling growers to find a new home for their 2019 storage crop and are cutting 2020 purchases by up to 50%. Many farms are also concerned about the availability of seasonal workers and how to ensure communities remain healthy as they provide the needed support for harvesting.

**PNWER Economic Recovery Activities**

PNWER’s working group co-chairs held a call on April 14th to discuss our role in assisting with the regional economic recovery effort. Working groups will begin to work with their members to plan relevant webinars. There is an effort to combine some of the groups like Tourism, Border and Transportation to work together.

We are also planning a coordination call with our state and provincial economic development leads to share best practices and to help coordinate efforts. BC and AB have developed economic recovery task forces with private sector leadership. We are encouraging the other states and provinces to do the same and to keep each other updated.

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**Summary from Dr. Laurie Trautman**

**GENERAL CROSS-BORDER TRENDS:**

- Canadians comprise roughly 75% of cross-border travelers (a figure which varies with the exchange rate)
- In 2018, over 14 million trips were made into the U.S. through Blaine, Lynden, Sumas, and Pt. Roberts
• In 2018, 23% of Canadians crossed the border to shop, 18% to purchase gas, and 11% to picking up mail.
• 42% of Canadians who cross the border make short, frequent trips to locations close to the border
• Cross-border tourism industry huge (cruises, ferries, etc.) In BC and WA, estimated to be $30billion industry, with over 60 million visitors, employing about 300k workers, important piece of both economies

**TRADE:**
• Bilateral trade volume via truck totaled $7.5 billion USD in the Cascade Gateway, additional pipeline
• Washington is one of the most trade dependent states in the nation, with the second highest trade surplus. Trade is a critical component of our GDP
  • Trade is a diverse mix of commodities, with wood/wood products, machinery, mineral products

**BORDER RESTRICTIONS ON ALL NON-ESSENTIAL TRAVEL BEGAN 3/21, IMPACTS TO OUR REGION INCLUDE:**

**Trade:**
• At this point, trade is not yet restricted. Truck volumes into B.C. declined by 25%, into WA down by 10%
• Declines due to less demand and supply, as well as challenges for truckers themselves, not border restrictions

**Travel and Tourism:**
• Decline of 98% for travelers in both directions
• Ex. U.S. entries at Blaine during the first two weeks of April average 150-160k cars, this year was only 2,000 cars
• No cross-border passenger ferry service between Vancouver Island and WA

**Economic Impacts:**
• Hard to distinguish from overall impacts, BPRI working on a comprehensive analysis
• Border communities will be impacted harder and longer, especially in industries that are disproportionately dependent on Canadians (mail-order pickups, gas) or on tourism (Victoria, Vancouver Island because of reliance on cross-border transportation routes)
• Will border be closed long enough to change consumer behavior?

**Working together**
• History of collaboration across scales and sectors, strengthened in the last few years, entirely new relationships and collaboration with this crisis
• Moving forward, continued communication and collaboration across the border critical to ensure that the cross-border movement of workers, tourists, and goods can resume. Important that BC and WA move in tandem as much as possible so that we don’t end up with an unbalanced or asymmetrical economic recovery.

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