

employment and labour relations bulletin

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“Thank you for your service, now please leave the country”: Changes to the *Immigration and Refugee Protection Act Regulations*

Significant amendments to the *Immigration and Refugee Protection Act Regulations* have been made that will impact the availability of work permit renewals for foreign workers. The amendments will take effect on April 1, 2011.

temporary foreign worker program

With limited exceptions, an employer must first obtain a Labour Market Opinion (“LMO”) from Human Resources and Skills Development Canada (“HRSDC”) in order for a foreign worker to receive a work permit in Canada. In order to obtain an LMO, an employer must demonstrate that: (a) it has attempted to recruit Canadian citizens or permanent residents (or satisfy HRSDC that recruitment efforts would be fruitless as there is no one in Canada who could perform the work because of the skills or experience required), (b) that there is no labour dispute in process, and (c) the foreign worker will be paid the prevailing wage rate for the occupation and that working conditions will meet “generally accepted Canadian standards”.

Once a favourable LMO is obtained, the foreign worker can apply to Citizenship and Immigration Canada for a work permit.

highlights of the changes

maximum cumulative work period of four years

The amendments limit a foreign worker to a maximum of four years of work in Canada before being required to either leave or obtain permanent residence status. If the foreign worker leaves, there is a four-year waiting period before he or she can be granted another work permit. **It is important to note that the four-year limitation period does not apply to employees who obtain work permits through an exception to the LMO process, such as intra-company transferees or NAFTA professionals.** Those workers will remain subject to the term limitations established under the applicable category (e.g. seven years for managerial intra-company transferees).

An individual’s employment while studying in Canada as an international student does not count towards the four-year period. The four-year

limitation also does not apply to work performed before April 1, 2011, so foreign workers in Canada will be able to stay in Canada for a further four years after April 1, 2011 (assuming HRSDC issues a new LMO to permit the worker to renew his or her work permit).

two year prohibition on offending employers

Any employer who fails to meet its commitments to foreign workers with respect to wages, working conditions or occupation type will be unable to access the Temporary Foreign Worker Program for a two year period. In addition, Citizenship and Immigration Canada will maintain a public list on its website of the names and addresses of employers who have failed to fulfill their commitments to foreign workers. Temporary foreign workers may not enter into or renew employment with an employer listed on the blacklist for a period of two years.

However, the amendments provide that an employer can raise a number of justifications to avoid this consequence, including changes in the law, changes to collective agreements, dramatic changes in economic conditions and good faith or unintentional errors made by the employer.

what the changes mean for employers

An employer who must obtain an LMO in order to hire a foreign worker must be aware of the time limits and have a succession plan in place before the eligibility period expires. An employer will also need to consider whether it will assist an employee in obtaining permanent residence in order to stay in Canada. A foreign worker may expect that the employer will offer to assist the employee in securing permanent residence. We recommend that an employer make it clear at the beginning of the relationship through a written employment agreement what assistance the employer is prepared to provide. In addition, the employment agreement should address what will happen if the employee is unable to obtain permanent residence (or chooses not to) when the four-year period is reached.

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a cautionary note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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