

MAJOR REFORMS TO CANADA'S TEMPORARY FOREIGN WORKER PROGRAM

Posted on June 26, 2014

Categories: [Insights](#), [Publications](#)

On June 20, 2014, the Government of Canada announced extensive changes to its Temporary Foreign Worker Program, which are effective immediately. The changes are in direct response to a period of heavy public backlash over widespread program abuse and are designed to ensure that employers look to Canadians first for employment opportunities. Employers seeking to hire temporary foreign workers, particularly for lower-wage jobs will face increasingly restrictive barriers and the government is backing up these new initiatives with steep penalties for non-compliance.

TFWP streamlined into two main categories

Historically, most job offers required an employer to apply for a Labour Market Opinion (LMO) from Employment and Social Development Canada (ESDC) as a first step before the foreign worker could apply for a work permit from Citizenship and Immigration Canada (CIC). Certain foreign workers such as NAFTA professionals, intra-company transferees and specialized knowledge workers were LMO-exempt and had the benefit of applying for a work permit directly via CIC without the added step. As part of the restructuring, temporary foreign workers have now been streamlined into two major categories:

1. The Temporary Foreign Worker Program (TFWP) - Jobs that require government preliminary approval from ESDC to ensure the foreign worker will not have a negative impact on the Canadian labour market. This approval comes in the form of a Labour Market Impact Assessment (LMIA), replacing the LMO.
2. The International Mobility Program (IMP) - Jobs that require government preliminary approval from CIC to ensure the job offer truly falls in an LMIA-exempt category.

1. Temporary Foreign Worker Program

The TFWP will remain within the authority of ESDC, which will administer the LMIA application process. Under this stream, foreign workers will be classified by wage level rather than by the type of occupation. The new classification system for workers includes:

- Low-wage occupations (workers paid below the average median provincial or territorial wage)

- High-wage occupations (workers paid above the average median provincial or territorial wage)
- Highest-demand occupations* (skilled trades)
- Highest-paid occupations* (jobs representing the top 10% of wages earned by Canadians)
- Shortest-duration occupations* (jobs that are for 120 days or less)
- Live-in Caregiver **
- Primary Agricultural Scheme **

Labour Market Impact Assessments

The LMIA has replaced the LMO and has much more extensive requirements. For example, an employer will need to provide details on the number of Canadian applicants interviewed for the job and an explanation as to why they were not hired. Under the new scheme, an LMIA must be obtained each year for positions classified as Low-wage positions. The duration of work permits under an LMIA will be reduced from two years to one. Moreover, fees per LMIA application have increased considerably, from \$275 to \$1,000.

An employer looking to hire a High-wage employee must also submit a transition plan with the LMIA application that sets out how the employer will find a permanent solution to the temporary position. The employer will be required to either assist Canadian workers with obtaining the skills necessary to eventually fill the position or prove it is helping the foreign worker obtain permanent residents status in Canada. In certain circumstances, an employer may be required to report on the success of its transition plan.

Additional Restrictions

There is now a cap on how many Low-wage temporary foreign workers an employer can hire, set at no more than 10% of employees at a worksite. The 10% cap will be introduced in an incremental fashion starting at 30% and decreasing to 10% by 2016. Employers with fewer than 10 employees are exempt from this requirement. For foreign workers already at worksites, the cap will not apply until after their employment contracts have expired.

In areas of high unemployment (at a rate of 6% and above) employer applications in the Accommodation and Food Services and Retailers sectors, as well as jobs under the National Occupation Classification Code level D (ex. cleaners, landscapers, security guards, and janitors) will not be processed by ESDC.

2. International Mobility Program

The IMP will focus on applications previously classified as LMO-exempt, including highly skilled and highly paid workers largely coming to Canada through international trade agreements such as NAFTA and GATS. These workers will not have to go through the ESDC screening process to determine whether an equivalent Canadian worker is available to perform the job; however, employers will now be required to submit certain information including the job offer itself to CIC (likely the Temporary Foreign Worker – Unit) for an "opinion

request" to ensure the job offer is truly LMIA-exempt. There will be a compliance fee of \$230 per work permit under the IMP, which will go towards funding a new compliance program that better allows CIC to monitor employers. There is also a "privilege fee" of \$100 to be charged to individuals who receive an open work permit.

Enforcement measures

The Government is increasing the number of inspections whereby approximately 25% of employers using temporary foreign workers will be inspected each year.

As of the Fall of 2014, the government can issue a fine of up to \$100,000 for any employer that has not complied with the new scheme. ESDC also has the authority to suspend or revoke an employer's LMIA and such employers will be publicly listed on the government's website along with the value of the fine they received.

Final thoughts

The government has made the temporary foreign worker program challenging enough so as to deter employers from turning to a foreign worker over a domestic worker unless they really need to. As such, employers will increasingly need to turn to immigration specialists to not only help them navigate through the complicated process but to also prepare highly persuasive applications that advocate the need for the hiring of a temporary foreign worker over a Canadian to fill a labour shortage.

If you have any questions regarding this bulletin, please contact any member of McMillan's [Business Immigration Group](#).

* A fast-track option is available to ensure LMIA's are processed by ESDC within 10 business days.

** Exempt from most of the restrictions discussed and exempt from paying the \$1,000 fee.

by David Elenbaas, Ruba El-Sayegh and Lindsay Dykstra, Summer Student

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.

© McMillan LLP 2014