

Announcement Of Reforms To The Temporary Foreign Worker Program



On April 29th, 2013, the Government of Canada introduced several reforms to the Temporary Foreign Worker Program ("TFWP").

These reforms were announced by Diane Finley, Minister of Human Resources and Skills Development, and Jason Kenney, Minister of Citizenship, Immigration and Multiculturalism. Their joint announcement underscored their position that Canadians must always be considered first for job opportunities available in Canada. The present reforms are being enacted in order to ensure that employers use the TFWP only to fill genuine, temporary labour and skills shortages. Henceforth, employers must make greater efforts to recruit and train Canadians to meet their employment needs.

The reforms include the following:

Effective Immediately:

1. Employers must pay temporary foreign workers at or above the prevailing wage rate for Canadian citizens and permanent residents. The modicum of flexibility in the payment of wages that might previously have been enjoyed by some employers has been revoked.
2. The Accelerated Labour Market Opinion ("A-LMO") application process has been suspended pending review to determine whether it is meeting its intended objectives.

Pending Parliamentary Approval:

3. The government will invoke its authority to suspend and revoke work permits and Labour Market Opinions ("LMOs") if it is found that the TFWP is being misused. Should an LMO be suspended, no new work permits would be issued and existing work permits would be subject to review and possible revocation.

4. The introduction of an LMO application fee, to be paid by the employer applicant, and an increase in the work permit application fee. This change is being implemented to reflect the true cost of processing these applications and so that those costs are no longer subsidized by Canadian taxpayers.

Additional Changes:

5. Questions designed to ensure that the TFWP is not being used to outsource Canadian jobs will be added to the LMO application form. Human Resources and Skills Development Canada ("HRSDC") will utilize the LMO process to verify that Canadian employees are not being displaced by temporary foreign workers.

6. The LMO application will require employers to demonstrate that they have an objectively supported transition plan in place, so that a position filled by a temporary foreign worker will, in time, be occupied by a Canadian citizen or permanent resident.

The details of this plan may vary depending on variables such as the skill level of the position, the type of industry, the regional unemployment rate, and the nature of the position itself. HRSDC will review the employer's plan to determine whether its intended actions in recruitment, training, and residency are sufficient to support the necessary transition.

7. English and French have been confirmed as the only languages that can be properly listed as a job requirement. There may, however, be exemptions to this rule in cases where a foreign language is an essential requirement of the position, for example tour guides, translators, or performers.

Further changes may be announced as these reforms take effect.

HRSDC maintains that these reforms will strengthen the TFWP and support economic growth and recovery by ensuring that Canadians are hired before temporary foreign workers. The changes are also said to be enacted to ensure that the TFWP is used only as a last resort to manage acute and temporary labour and skills shortages.

In an effort to confirm that the TFWP is furthering the best interests of Canadian workers and businesses, the government will seek input from Canadians on additional changes that may be made to the program. Over the next few months, nation-wide consultations will be conducted with businesses, industry and trade organizations, and others regarding possible further changes to the TFWP. We encourage all of our clients to actively participate in this process so that your business needs are understood and reflected in any such reform.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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