

Employer Roadblocks For Hiring Foreign Workers Continue!



Minister of Immigration, Chris Alexander, continues to make the hiring of foreign workers difficult for Canadian employers. On February 21, 2015 Citizenship and Immigration Canada (CIC) introduced new rules that require employers hiring foreign nationals under the International Mobility Programs, such as intra-company transferees and international experience class workers, to complete a new form and pay a \$230 fee per worker as part of a new employer compliance program.

Canada has two programs available to employers to hire foreign workers: the Temporary Foreign Worker Program (TFWP) and the International Mobility Programs (IMP). The TFWP is intended to be used by employers as a last resort when they are unable to fill labour shortages in their workforce with qualified Canadian citizens or permanent residents. The IMP, on the other hand, allows employers to hire foreign workers under various international mobility agreements that Canada has signed with other nations.

In the last several years, significant changes have been introduced to the TFWP to ensure that employers are not abusing the program or the foreign workers they hire. Employers hiring workers under the TFWP are required to make legally binding declarations that they will respect all the terms of their offer of employment to a foreign worker and comply with all applicable employment laws in the province or territory where they operate. They must also agree to be audited through program inspections to verify that they are meeting their legal obligations.

The new changes announced by CIC on February 21 extend the TFW compliance measures to the IMP by requiring employers to submit information about their company and the details of the prospective employee's job offer before a work permit will be issued. A new \$230 fee is also imposed upon employers for IMP work permits to provide funding to make ongoing inspections for employer compliance with the job offers they are making to foreign workers. All of these changes mean that now ALL employers hiring foreign nationals, whether under the IMP or TFWP, are subject to inspections to determine whether they have been compliant with the terms under which they were allowed to hire a foreign worker. Non-compliant employers may face financial penalties, public bans from hiring foreign workers, or even criminal prosecution in the most serious cases.

The changes announced to the IMP should come as no surprise. These changes are consistent with the government's recent trend of introducing tougher new rules for all employers and stiff penalties for those who break them. Last year, the government

introduced new regulatory changes to enhance measures to prevent, detect and respond to employer non-compliance, as well as increasing penalties to punish bad employers and repeat offenders. Specifically, the government is seeking to introduce monetary penalties of up to \$100,000 for each infraction in serious cases of non-compliance, taking into account the size of the business and whether the employer has a prior record of non-compliance. Under the proposed changes, even if an employer has committed only one violation, it could be fined multiple times for non-compliance if the violation affects more than one foreign worker. For example, if a violation affects five foreign workers, it could result in a separate fine being made against the employer for each of them!

Now more than ever, employers must be diligent to keep full and accurate employee records for foreign workers. Employers could be the subject of inspections and be asked for detailed employee records up to six years after a foreign worker has stopped working with them. Employers are recommended to keep employee records for at least six years, with a focus on pay statements to satisfy immigration authorities that they were compliant in providing their foreign workers with the exact employment terms they offered, including hours of work and the payment of wages and benefits. In the new world of inspections and compliance, employers now face significant monetary and reputational risks when hiring foreign workers.

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