

New Penalties for Temporary Foreign Workers Violations



Canada's small population belies its sophisticated, industrialized economy and makes shortages of skilled labour all but inevitable. To deal with this situation, the federal government created the Temporary Foreign Workers Program (TFWP) in 1973. The TFWP is a last resort measure that lets Canadian employers use foreign nationals on a temporary basis to fill skilled positions for which qualified Canadians aren't available. After four decades of success, the TFWP has been the target of intense criticism and allegations of abuse. In June 2014, the government responded by reorganizing the TFWP into two distinct programs, or streams sets:

- The TFWP sets that require employers to seek approval through a newly created Labour Market Impact Assessment (LMIA) process; and
- A new International Mobility Program (IMP) that's not subject to the LMIA.

Now, just as the aftershocks from reorganization are subsiding, the government is shaking up the TFWP once again, this time by imposing a tough new penalty regime. Here's an overview of the new regime, which takes effect on Dec. 1, 2015.

OVERVIEW

Current Rules: The current penalty against employers who commit TFWP and IMP violations is a two-year ban on participating in the program(s).

New Rules: Under the new regime, violations will be subject to a range of Administrative Monetary Penalties (AMPs), which include:

- Bans on participation ranging from 1, 2, 5, 10 years up to permanent; and/or
- Fines of up to \$100,000 per violation, subject to a \$1 million cap on a single notice.

Who Can Be Penalized: AMPs can be imposed against:

- Employers who hire foreign nationals under either the TFWP or IMP; and
- Canadians who hire foreign caregivers.

ANALYSIS

In addition to complying with TFPW and IMP rules, employers need to understand how penalties will be handed out under the new AMP system. ESDC and CIC will determine the AMP for a particular violation by assessing the violation a number of points—the more points, the higher the penalty up to a maximum of 15 points per violation. The point system will take into account the following factors:

Categorization of employer: “Large businesses,” i.e., employers with 100 or more employees and more than \$5 million in annual gross revenues, will generally be subject to steeper penalties than a “small business.”

Classification of violation: Violations will be classified as Type A, Type B or Type C according to a list set out in Table 1 of the Regulations, with A being the most and C the least serious.

Employer’s compliance history: Points for past violations will be counted in assessing the AMP for a current violation. Result: Employers with a track record of noncompliance face higher penalties for future violations going forward.

Voluntary disclosure: Employers can reduce the AMP by voluntarily disclosing the offence as long as the disclosure is complete and made before actual enforcement action begins.