Regulatory Changes To The TFWP And IMP Compliance Regimes



As of September 26, 2022, new regulatory requirements and conditions will come into effect in Canada for employers retaining the services of temporary foreign workers, specifically for temporary foreign workers hired under the Temporary Foreign Worker Program (“TFWP”) or the International Mobility Program (“IMP”).

This text provides an overview of the new measures that will be put in place as of September 26, 2022, under the above-mentioned programs.

1. **Providing Information on Applicable Rights in Canada**

As of September 26, 2022, for both the TFWP and the IMP, any Canadian employer who welcomes a new temporary foreign worker will have to provide a document confirming the most up-to-date information regarding their rights in Canada as a worker[1].

This document must be provided no later than the first day of work and must be provided in the official language chosen by the worker. Furthermore, throughout the period of employment, the employer will have the obligation to give this document to the worker, when requested.

In this document, the worker will find more information regarding their rights in Canada, notably regarding the employment contract, access to health care as well as health and safety at work, so that they can be fully informed upon their arrival.

2. **Provide a Signed Employment Contract**

For both the TFWP and the IMP, it will now be required to provide a written employment contract to a temporary foreign worker before they begin their employment in Canada.

This new measure is intended to ensure that temporary foreign workers are fully aware of the working conditions that will be associated with the position offered in Canada before commencing employment in Canada.

Ultimately, the employment contract must indicate working conditions that are similar

to those that will be declared in an application for a Canadian work permit under the TFWP or the IMP. In effect, the employment contracts must indicate the same occupation, salary and benefits as those listed in the job offers.

2.1 Special Considerations for the TFWP

Under the TFWP, the employment contract must be sent to and signed by the temporary foreign worker prior to commencing employment in Canada. At the latest, the temporary foreign worker will be able to sign the employment contract on the first day of work.

In Quebec, this new measure is less restrictive since that a temporary selection application ("CAQ") already requires a signed employment contract between the employer and the temporary foreign worker. This application is submitted at the same time as the application for an LMIA.

2.2 Special Considerations for the IMP

Under the IMP, employers will also be required to provide a written employment contract with the temporary foreign workers they hire.

This employment contract will normally have to be signed prior to the submission of a job offer on the Employer Portal[2]. In addition, when submitting the job offer online, the employer must confirm that an employment contract has been sent to the temporary foreign worker that is the subject of the application.

3. Changes to the Definition of "Violence."

Under the new changes, the definition of the word "violence" will now include retaliatory actions that could be taken by an employer against a temporary foreign worker.

Thus, a Canadian employer would be in non-compliance if they retaliate against temporary foreign workers who are lawfully exercising their rights as workers in Canada.

4. Prohibition on Collecting or Recovering Fees for Services Related to an LMIA, Employer Compliance Fees, and Recruitment-Related Fees

The new changes also reinforce the principle that a temporary foreign worker should not have to pay fees that are related to their recruitment or that are related to employer compliance. As a result, a Canadian employer cannot, either before or during the period of employment, recover money that was required in order to proceed with the recruitment of a temporary foreign worker.

These new requirements also apply to third parties who may have recruited temporary foreign workers on behalf of a Canadian employer.

4.1 Special Considerations for the TFWP

As part of the TFWP, the employer will be required to commit, as part of its application for an LMIA, not to directly or indirectly collect or recover any fees from temporary foreign workers in relation to their recruitment or in relation to government fees for processing an LMIA application.

4.2 Special Considerations for the IMP

Under the IMP, and when filing the online job offer, the employer will be required to certify that they agree not to collect or recover any fees related to the recruitment of temporary foreign workers.

5. Access to Health Care and Medical Insurance

Under both the TFWP and the IMP, Canadian employers will now be required to make reasonable efforts to provide temporary foreign workers with access to health care when they become ill or injured on the work site.

For example, these efforts could include ensuring that a telephone is available to allow temporary foreign workers to call emergency services or to arrange for transportation to a hospital, clinic, doctor’s office or other health care services and providers.

5.1 New Specific Measures for the TFWP

Under the TFWP, there are also important new measures that add to the obligations of Canadian employers.

As of September 26, 2022, subject to certain exemptions, Canadian employers will now be required to provide private emergency medical coverage to their temporary foreign workers upon their arrival in Canada.

This obligation will be in effect for the entire period of employment during which temporary foreign workers are not covered by the applicable provincial or territorial health insurance plan.

6. New Investigative Powers

In addition to introducing new regulatory requirements for Canadian employers, the Canadian government has also announced that new investigative powers will be delegated to relevant authorities.

Under the compliance regime applicable for the IMP and TFWP, it was previously possible for authorities to request documents from an employer or a temporary foreign worker with their consent.

However, with the new measures mentioned above, it will now be possible for relevant authorities to request from third parties, and without the consent of the employer or the temporary foreign worker, documents that they may have in their possession and that would be relevant for the purposes of an inspection.

Considering the important changes that will be made to the compliance regimes related to the TFWP and the IMP, it will be important for Canadian employers to remain vigilant regarding the conditions attached to the hiring of temporary foreign workers.

With these new changes, Canadian employers will also have to be more attentive to the practices and processes that are related to their temporary foreign worker recruitment activities.

If you have any doubts about a potential non-compliance situation or if you wish to

review the compliance of a practice within your company, we invite you to consult one of the members of our specialized immigration team.

Footnotes

1. This document can be obtained on the following website: https://www.canada.ca/content/dam/ircc/documents/pdf/english/corporate/publications-manuals/imp-worker-rights.pdf

2. The Employer Portal is a platform allowing Canadian employers to submit a job offer in the context of a work permit application under the IMP. This offer allows Canadian immigration services to have access to relevant information regarding the position being offered in Canada. It is possible to access the Employer Portal from the following website: https://www.canada.ca/en/immigration-refugees-citizenship/corporate/partners-service-providers/employer-portal.html

by Stéphane Duval
McCarthy Tétrault LLP