Significant New Changes To Canada's Temporary Foreign Worker Program: Key Changes For Employers



On June 20, 2014 the Government of Canada made significant changes to the Temporary Foreign Worker Program ("TFWP") in an effort to address recent abuses of the program which have gained national media attention. With these latest changes, the government has signalled that it intends the TFWP to be used only as a last resort to fill acute labour shortages on a temporary basis when qualified Canadians are not available.

The following are the changes which will have the greatest impact on most employers:

1. The Labour Market Opinion ("LMO"), which is issued by Employment and Social Development Canada and is required in order to apply for a work permit, has now been replaced by the Labour Market Impact Assessment ("LMIA") and the advertising requirements for the LMIA have been strengthened. In order to obtain an LMIA, employers will now have to provide information on the number of Canadians that applied for their available job, the number of Canadians the employer interviewed, and an explanation if Canadian applicants were not hired. Employers must also attest that they are aware that Canadians cannot be laid-off or have their hours reduced at a worksite that employs temporary foreign workers.
2. Employers with 10 or more employees applying for an LMIA will be subject to a 10% cap on the proportion of their workplace that can consist of low-wage temporary foreign workers. This cap will be applied per worksite of an employer and is based on total hours worked at that worksite. This rule will be phased in over the next couple of years to allow employers who are above the 10% cap to reduce the proportion of low-wage temporary foreign workers.
3. Applications for the lowest-wage, lowest-skill, entry-level occupations in the food services, accommodation, and retail trade sectors will be barred from the TFWP in areas of Canada where unemployment rates are 6% or higher.
4. Employers seeking to hire high-wage temporary foreign workers will now be required to submit transition plans to demonstrate how they will increase efforts to hire Canadians, including through higher wages, investments in training and more active recruitment efforts from within Canada.
5. Effective immediately, the LMIA fee is increasing from $275 to $1000 for every TFW position requested by an employer.
6. There will be stronger enforcement mechanisms and tougher penalties in place to help ensure compliance with the new rules. Effective immediately, one in four

businesses employing temporary foreign workers will be inspected by the TFWP each year. The TWFP also has increased audit abilities and can award significant monetary fines of up to $100,000 for non-compliance.

7. In addition to changes to the LMO/LMIA program, there will also be changes to a number of programs which have traditionally been LMO exempt:
    - **Provincial Nominee Programs**: Most provinces have agreements with Citizenship and Immigration Canada to help facilitate permanent residency applications for certain high-skilled or managerial foreign workers. Part of the appeal of these programs is that while awaiting processing of their permanent residency applications, these workers were issued work permits without needing an LMO. This may no longer be the case, as the federal government has announced that as of March 2015, these programs will be subject to an LMIA.
    - **Intra-Company Transferees**: Intra-company transferees will remain LMIA exempt but it appears as though Citizenship and Immigration Canada is going to scrutinize these application more vigorously. Further, employers intending to transfer employees on the basis that they have "specialized knowledge" which the Canadian branch requires, will now have to demonstrate that the employees possesses a level of knowledge higher than previously required. Employees in the specialized knowledge category now must demonstrate that they have:
        - a high degree of both proprietary knowledge and advanced expertise;
        - that they are key personnel and not just high skilled; and
        - that they have a high degree of knowledge that is critical to the Canadian company's business.

      In addition, Citizenship and Immigration will now require that certain Intra-Company transferees must be paid higher than the prevailing wage rate published on ESDC's website.

8. There will be an additional $230 compliance fee charged to employers for every LMIA exempt work permit issued which is tied to that employer. Finally, ESDC will be seeking the authority to impose an estimated $100 privilege fee on employers applying for LMIAs to offset the costs of Government of Canada investments in skills and job training so it is possible that fees will increase even further in the sort future.

The practical effect of these new rules is that hiring foreign workers, particularly if an LMIA is required, will become more expensive and more difficult. Employers will need to carefully assess their needs before hiring foreign workers and take care to ensure that they are compliant with the new, ever-changing, rules.

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