Temporary Foreign Workers: What Are The Rules?



Editor’s Note

Our lawyers frequently collaborate with publications in the legal and human resources fields. This article was originally published by cphr.ca. Its format has been slightly altered to meet the formatting requirements of the Galileo Partners website.

The authors provide insight into the current rules regarding the compensation of temporary foreign workers, as well as best practices that HR professionals can implement in this regard.

Introduction

When a Canadian employer supports a foreign worker’s Canadian work permit application, it is normally required to report the wages that it will pay the foreign worker concerned by the application.

Before the application process is officially started, the employer should always check the specific criteria of the immigration program that will issue the temporary foreign worker’s Canadian work permit, including the criteria for the wages that will be paid.

In both the processing of Canadian immigration applications and the compliance inspections performed by certain government authorities, the wages paid to temporary foreign workers is an essential detail that employers must take into very careful consideration.

General rules

When an employer supports a temporary foreign worker’s Canadian work permit application, it must be thorough in its wage determination analysis to make sure that it meets the government’s requirements.

To do so, it must determine the temporary foreign worker’s future base pay on the basis of the hourly rate that will appear on their pay stubs once they are authorized to work in Canada. In other words, the wages must be determinable and quantifiable.

Accordingly, the basic wages paid to temporary foreign workers will not include the following items:

- tips;
- commissions;
- overtime;
- bonuses;
- benefits;
- profit-sharing;
- other forms of compensation.

Unionized positions

If the position that will be held by a temporary foreign worker is unionized, it is important for the employer to ensure that the temporary foreign worker is paid according to the collective agreement in force for that position.

Here again, the goal is to ensure that the temporary foreign worker is not at a disadvantage compared to Canadian workers who hold a similar position at the same workplace.

This is why it is essential for the temporary foreign worker's wages to be in line with the pay scale specified in the current collective agreement. This scale will be the employer's reference, even if the immigration program has its own specific rules. It is worth mentioning that the competent authorities may require a copy of the collective agreement when the application is being processed.

Temporary Foreign Worker Program (TFWP)

In the Temporary Foreign Worker Program (TFWP), the wage requirements will be specifically determined based on the location of the job offered.

Hiring anywhere in Canada except Quebec

When a temporary foreign worker holds a job in a Canadian province other than Quebec, their wages are determined using the wage comparison tool on the Job Bank website.

This tool uses the National Occupational Classification (NOC) code for the position being offered. By performing a search in the Job Bank, an employer can obtain a comparison of the wages normally paid to Canadian workers for the same occupation and the region concerned.

In the TFWP, the employer must pay at least the hourly median rate listed for the occupation related to the position offered and for the region where the temporary foreign worker will be working.

In the event that the wage comparison tool does not specify the hourly median rate for the region where the foreign worker will be working, the employer must refer to the hourly median rate for the province concerned, and then refer to the national hourly median wage if no hourly median rate is listed for the province.

Hiring in Quebec

If the job offered is located in Quebec, the wage requirements are determined by a tool developed by Emploi Québec, known as the *Guide des salaires*, which is based on data collected by Statistics Canada for the Quebec labour market.

The *Guide des salaires* provides details on the wages that should normally be paid for each of the occupations listed in the National Occupational Classification.

To determine the wages that a temporary foreign worker should be paid, the employer

must check the specific requirements for the particular occupation based on the number of years of experience required to hold the position offered, which are:

- 0 to less than 2 years: The wages should be at least equal to the hourly rate indicated in the first quartile of the *Guide des salaires*;
- More than 2 years to less than 9 years: The wages should be at least equal to the hourly rate indicated in the second quartile of the *Guide des salaires*;
- Over 9 years: The wages should be at least equal to the hourly rate indicated in the third quartile of the *Guide des salaires*.

It should be noted that the employer, and not the authorities concerned, determines the number of years of experience required for the position offered. As a result, even if a temporary foreign worker has more than 3 years of work experience in a related field, the employer may require only 2 years of work experience, which means that the first quartile of the *Guide des salaires* would serve as the reference.

New requirement for annual reviews

For all applications submitted on or after January 1, 2024, and regardless of the province in which the job is located, Canadian employers are required to ensure that the wages paid to temporary foreign workers are at least reviewed once a year.

To meet this new requirement, employers will have to conduct a yearly review of the wages paid to temporary foreign workers with work permits issued under the TFWP.

As part of this review, employers will need to make sure that their foreign workers are paid wages in line with the *Guide des salaires* or the hourly median rate specified on the Job Bank website, depending on where their workplace is located.

However, positions covered by a collective agreement are still the exception to the rule. In their case, as mentioned above, the collective agreement will always determine the wages paid to temporary foreign workers.

International Mobility Program (IMP)

In the International Mobility Program (IMP), wages are also determined using the wage comparison tool on the Job Bank website. Once again, employers must pay at least the hourly median rate specified for the occupation and region where their temporary foreign workers will be working.

Note that this requirement applies in all Canadian provinces, including Quebec.

Compliance inspections and changes to working conditions

If a temporary foreign worker eventually obtains a Canadian work permit under the TFWP or IMP, the employer may at any time be subject to a compliance inspection by the government authorities concerned.

During this inspection, one of the items that the authorities will carefully check is the wages paid to the temporary foreign worker. More specifically, the government’s investigators may request a copy of the pay stubs issued to the temporary foreign workers covered by the inspection request.

Therefore, employers must ensure that the wages paid to temporary foreign workers are always in line with the amount specified on their previously submitted immigration applications.

Moreover, and as mentioned above, it is also important for employers to carry out an

annual wage review whenever the regulations in force dictate such a requirement for them.

Best practices for human resources professionals

For human resources professionals, managing compensation is an inherent part of their profession and work. However, it can quickly become a complicated and gruelling task if they do not have reliable tools and working methods to support them.

To effectively manage temporary foreign workers' pay, we strongly recommend that human resources professionals keep an updated table of current employees that includes detailed information on:

- the expiry date of their status;
- the position they currently hold;
- the National Occupational Classification code associated with their position;
- the wage reported in the application submitted;
- and the wage they are currently being paid.

Before the end of the calendar year, employers should also find time in their schedules to meet with their managers or team members concerned in order to ensure that the wages paid to currently employed temporary foreign workers are reviewed using the abovementioned tools.

In addition, we strongly recommend that human resources professionals be able to communicate the potential significance of a change in the terms and conditions of employment for currently employed temporary foreign workers. Ideally, any change to these conditions should be reviewed by the human resources team to ensure that it does not impact the employer's compliance or any temporary foreign worker's status.

Further reading:

- Government of Canada's National Occupational Classification website
- Government of Canada's Job Bank website
- Government of Quebec's temporary foreign workers website (in French)
- Article (in French) by the authors on best practices for work permits

An earlier version of this article was published on Carrefour RH (Ordre des conseillers en ressources humaines du Québec).

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.

Authors: Jean-Philippe Brunet, Marc-Alexis Laroche

Galileo Partners