



Proposed Amendments to Canada's Temporary Foreign Worker Program

A number of proposed amendments to Canada's Immigration and Refugee Protection Regulations will have a significant effect on temporary foreign workers in Canada. Employers of foreign nationals and foreign workers themselves should be aware of the following key changes to the temporary foreign worker program:

1. A temporary foreign worker will be limited to a cumulative duration of four years of work in Canada. After four years of work in Canada, the foreign worker will be ineligible to work in Canada for a period of six years. Certain exemptions will be made, including for those who perform work pursuant to international agreements (such as NAFTA). The purpose of this provision is to emphasize the fact that the temporary foreign worker program is to address temporary labour shortages and that foreign nationals are not meant to stay in Canada indefinitely with temporary status. Where more permanent employment is sought, applicants will have to consider applying for Permanent Resident status.

2. An employer will be ineligible to access the temporary foreign worker program for a period of two years if the employer has been found to have provided significantly different wages, working conditions or an occupation other than what was offered during the previous employment of a temporary foreign worker. Past compliance will be taken into consideration with every application for a LMO or Work Permit.

In addition, a list of the names, addresses and period of ineligibility of any employer not eligible to access the temporary foreign worker program will be posted for public view on Citizenship and Immigration Canada's website.

3. When considering Work Permit applications, immigration officers are to satisfy themselves that the job offer is "real" and that the worker and employer are genuine in their desire to fulfil their employment obligations. This gives the officer a high level of discretion to determine whether or not an employment arrangement is valid.

4. In the case of applications for live-in caregivers, applicants will be required to establish certain employer requirements, such as the actual need for a live-in caregiver, the provision of adequate accommodation, and the ability to pay the wages offered.

These amendments will be applied to temporary foreign workers prospectively. It is anticipated a final evaluation of these amendments will be completed by 2013. The revised Regulations are likely to be implemented shortly thereafter.

What Can I Do?

For now, we are simply waiting for the final form of Regulations to be implemented. Interested groups are invited to prepare submissions to Citizenship and Immigration Canada regarding the draft Regulations.

In preparation for the implementation of the new Regulations, employers should keep complete and organized records for all of their temporary foreign workers (if not already doing so), including copies of LMO and Work Permit Applications, and current status records regarding their position and wages. This information may be useful under the new Regulations to show past compliance with applicable laws. It will also help businesses to make long term plans regarding their labour needs and the availability of foreign workers to fill those needs.

For key or long term temporary foreign workers, employers should consider encouraging such workers to apply for Permanent Resident status, noting that a four year cap on cumulative work in Canada is under consideration. Addressing this issue in the early stages is recommended as we may see an increase in the number of Permanent Resident applications within four years of the new Regulations coming into force. Employers should also consider facilitating this process by nominating workers pursuant to a Provincial Nominee Program.

Temporary foreign workers should consider their long-term plans and, if appropriate, utilize a suitable program to apply for Permanent Resident status. Some of these programs may take years to complete so it is advisable to consider these issues now.

For more information on this article, please contact Ingrid M. Tsui at 604.484.1746 or itsui@ahbl.ca.