

Temporary foreign worker protections boosted in British Columbia with Bill 48

Employers face increased enforcement measures, much higher penalties

BY SARAH DOBSON

STORIES about the mistreatment of temporary foreign workers in Canada have filled the media for years. Tales of exorbitant fees being charged to workers, or of passports or wages being withheld, have painted a bleak picture for many involved with the program.

While the federal government is responsible for the Temporary Foreign Worker Program (TFWP), it's the provinces that are responsible for enforcing labour laws. And, gradually, provinces such as Nova Scotia, Manitoba, Ontario, Saskatchewan and New Brunswick have responded to the concerns.

The latest province to step up is British Columbia, which passed Bill 48, the Temporary Foreign Worker Protection Act, at the end of November.

Most importantly, foreign worker recruiters will have to be licensed, and employers that recruit and hire temporary foreign workers will have to be registered with the provincial government.

"Workers coming to B.C. want to feel safe, confident their rights are protected, and that abusive employers will be held accountable," said Harry Bains, minister of labour for the province.

"The exploitation of anyone working in our province runs against the values of British Columbians. We need to shut any door that allows recruiters or employers to wilfully ignore and abuse the rights of workers in this province."

The federal government issued 47,620 work permits for foreign nationals destined for B.C. in 2017, of

which 16,865 were issued under the TFWP.

Fixing past abuses

Currently, employers that hire foreign workers through the TFWP must ensure they meet all of the conditions and requirements of the federal program, as outlined in documents such as the Labour Market Impact Assessment (LMIA) application, and LMIA decision letter and annexes, according to Daniel Lee, an associate at Alexander Holburn Beaudin + Lang in Vancouver.

Inspections may be conducted for up to six years after a work permit is issued but, in practice, some employers are still treating foreign workers unfairly because the inspections are random, he said.

Workers often pay recruiters illegal fees for the promise of a job and, once they arrive in Canada, they are sometimes underpaid or not paid at all, said Lee.

They may also end up working or living in conditions that are unfit and unsafe, and could be bullied or intimidated by employers that threaten to deport them if they don't comply with their demands.

"What the government is noticing is a lot of these job offers are not genuine and they want to prevent that from happening, and also prevent abuses from recruiters of these workers in giving false hopes and false information," he said.

Literally every worker who comes to Canada is paying an illegal recruitment fee unless they're coming to work for family, according to Susanna Allevato Quail, a lawyer at

Allevato Quail & Roy in Vancouver.

"The only time we've ever seen someone not pay an illegal fee is when it's for a family member, so the fees are nearly universal, and the only way to recoup them prior to this legislation was through the employment standards branch and there was a six-month limitation to do that."

The foreign workers were also required to first approach their employer with a complaint, before reaching out to government, she said, "so lot of people were scared to do that."

But many are hiring foreign workers because they have chronic skills shortages and can't find Canadians to fill these roles, said Susan Martyn, a senior immigration lawyer at PwC Law in Vancouver.

"These tend to be employers that have exceptional track records when it comes to things like respecting employment standards and abiding by the terms of the foreign worker program rules."

So it's disappointing the B.C. government didn't decide to target high-risk sectors such as agriculture and hospitality, she said.

"The government could have approached this in a more targeted fashion and required employers to register if they're going to be employing these semi-skilled foreign workers who would then typically require much lower levels of education to perform their roles. And those tend to also be the individuals who might not have the language skills or be super-familiar with the Canadian legal system who

might have those issues accessing proper resources in the event that they did find themselves working for a non-compliant or abusive employer," said Martyn.

"Instead, I feel government has cast a pretty wide net here and it's capturing not just those live-in caregivers and nursing home assistants but also the companies who are employing the tech superstars and university professors and the CEOs."

New registry requirements

With the new rules, foreign worker recruiters will have to be licensed and will be responsible for all work entrusted to their employees, partners, affiliates and agents, including those based in other countries, said Lee.

"They will be required to comply with the law and act with integrity and honesty. Licensed recruiters will be made public, online, so that employers and foreign workers will know which recruiters will meet the standards."

Employers will be required to register with the B.C. government before moving ahead with an LMIA with the federal government or hiring a foreign worker under the International Mobility Program, he said.

"Right now, because responsibility for the well-being of foreign workers is spread throughout many agencies and jurisdictions, it can be difficult to get the needed information to hold exploitive or abusive employers accountable. This registry will allow the government of B.C. to allow which employers are hiring foreign workers."

The registry — “a cost-free and simple online process for employers,” according to the government — will also provide tools for the government to gain new information that will help prevent abuse and provide practical and meaningful solutions, said Lee.

“For example, if we learn of temporary foreign workers housed in unsafe living conditions, the registry can serve as a hub to alert other ministries and agencies like (the Ministry of) Health and WorkSafeBC. Further, the act allows the government of B.C. to proactively monitor, audit and investigate workplaces to ensure compliance with the law.”

However, it’s not clear whether the B.C. government will be adding more staff to the Employment Standards Branch to deal with the extra workload from the new requirements, said Kael Campbell, president of Red Seal Recruiting Solutions in Victoria.

“The current registration process for licensed recruiters is — let’s just put it this way — antiquated... currently there’s 3,000 to 4,000 employment agencies that are being licensed by hand. I’ll find it interesting whether or not they plan to modernize or produce any efficiencies, or just add regulations,” he said.

“It seems like there’s politicians writing this legislation, but whether they’re looking at how it’ll be implemented, and how it’ll slow down employers and companies, is another thing.”

Previously, employers and recruiters were not allowed to charge a fee or expense to a foreign worker for employment, and that still stands, he said.

The new act also prohibits recruiters and employers from: producing or distributing false or misleading information relating to recruitment services, immigration, immigration

services, employment, housing for foreign workers or the laws of B.C. or Canada; taking possession of a foreign national’s passport; misrepresenting employment opportunities; or threatening deportation if there’s no lawful cause.

Complaints process changes

Temporary foreign workers can now file a complaint with B.C.’s Employment Standards Branch. If a complaint is not resolved voluntarily, the director of employment standards issues a determination and assesses mandatory administrative penalties for every contravention of the act, said Lee.

“Government has cast a pretty wide net and it’s capturing not just live-in caregivers... but tech superstars and university professors and CEOs.”

The director also works to collect outstanding wages and penalties.

“When there’s a complaint from one department, and the department that received the complaint doesn’t have authority to handle that complaint, that complaint a lot of times is not dealt with, so this will be better because this will ensure the employer will be in full compliance with all their obligations, not just under employment (standards) but also health and the immigration act.”

The changes make sense, and the Employment Standards Act does provide a lot of protection, but the gap really comes when somebody blames a problem on an overseas agent, or claims ignorance of the current Employment Standards Act, said Campbell.

“The biggest occurrence happens in another country where it’s very commonplace; in some countries, it’s very common to pay for an overseas job.”

And if work permits are still tied to an employer, it may be difficult for people to make a complaint, he said.

“If somebody’s status in Canada is temporary, their housing situation is likely fairly temporary as well,” said Campbell.

“So if the process takes three months to make a complaint, will they have moved in that time? How do you guarantee somebody’s protection, as it seems to do, from the current job when they don’t have

you wouldn’t want to jeopardize that with hopes the government will protect you.”

Implications for employers

Employers wanting to use the TFWP will have to register in British Columbia, and retain records related to foreign workers for four years.

But for those employers that are already following the rules, there won’t be a big impact — aside from more effective enforcement mechanisms, said Quail.

“I wouldn’t expect to see a big change in demand (from employers), just because there’s lots of hoops to jump through already,” she said.

“This addition of an administrative burden is probably not enough to dissuade people. I think people are only accessing (the program) if they perceive they really need to,” said Quail. “Because if you could hire Canadian workers, it’s administratively so much easier.”

The paperwork required for international hiring is quite large, so adding another step in dealing with multiple federal levels — and now a provincial level — is onerous, especially for a small business, said Campbell.

“But for a larger business that has a larger HR department, it would be OK.”

It’s unlikely employers will be less inclined to use the program if they’re already in compliance, said Lee.

“They’re not going to put themselves into any additional risk and the compliance obligation is not high because all they simply have to do is go through the registration process,” he said.

“It’s going to be large consequences for those employers who don’t behave or play by the books.”