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CHANGES TO CANADIAN FOREIGN WORKER REGULATIONS EFFECTIVE APRIL 1, 2011

By Jennifer Ervick

On April 1, 2011, significant changes were made to Canada's Temporary Foreign Worker Program pursuant to amendments to the Foreign Worker Regulations of the *Immigration and Refugee Protection Act* (Canada). The amendments aim to improve the protection of temporary foreign workers (TFWs).

The changes, which are outlined below, will affect the ability of employers to hire and retain foreign workers. It is important that employers understand the changes and develop strategies to ensure compliance with the new Regulations.

Limit on Length of Time a TFW May Work in Canada

The new Regulations limit the maximum term that certain TFWs can remain in Canada to 4 years with no option to extend. Once a TFW has reached the 4 year limit, he/she will be required to wait a 4 year period before being able to obtain another work permit in Canada.

There are exceptions to the time cap. The time cap appears to apply only to TFWs who have Labour Market Opinion (LMO) based work permits that fall within Canada's National Occupations Classification (NOC) Skill Levels B, C and D. TFWs who have LMO based work permits that fall within NOC Skill Levels 0 and A are not subject to the 4 year time cap. Further, TFWs who are exempt from the LMO process such as intra-company transferees and TFWs with work permits issued under the North America Free Trade Agreement are exempt from the 4 year time cap.

The new time cap does not apply retroactively to TFWs who obtained LMO based work permits prior to April 1, 2011.

If a TFW is affected by the 4 year time cap and the employer wishes to retain such TFW for a longer period, the employer may consider assisting the employee in obtaining permanent residence status. In Manitoba, an employer can assist an employee in making an application for permanent residence through the Manitoba Provincial Nominee Program - Employer Direct stream.

More Rigorous Assessment of Genuineness of Job Offers

Service Canada will be conducting a more thorough review of the offer of employment presented to a TFW to ensure the genuineness of the offer. There are 4 factors that Service Canada will consider: (i) whether the employer is actively engaged in the business; (ii) whether the job offer is consistent with the needs of the employer; (iii) whether the employer will be able to fulfill the terms of the job offer; and (iv) whether the employer has complied with all of the applicable federal, provincial and/or territorial laws regulating employment and recruitment in the province or territory where the worker will be employed.

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2 Year Prohibition from Hiring TFWs for Non-Compliant Employers

An employer will be considered non-compliant if it fails to meet any of the TFW's employment conditions with respect to wages, working conditions and occupation. Employers must provide substantially the same wages, working conditions and occupation to the TFW as originally offered to the TFW.

Non-compliant employers can face a 2 year ban on hiring TFWs. Also, the non-compliant employer's name and address will be placed on a list maintained on Citizenship and Immigration Canada's website.

Employers seeking to hire TFWs will now be assessed against past compliance with program requirements before authorization will be granted. Employers found to have violated worker rights may be refused authorization to hire a foreign worker. The Regulations do provide some defences to non-compliant employers, and employers may be given the opportunity to remedy a breach.

New LMO Forms

As of April 1, 2011, employers are required to use the new LMO application forms. The new forms include additional questions and information. Also, additional supporting documents may be required to be submitted together with the LMO application.

Please note that the online LMO application system is temporarily unavailable. According to Human Resources and Skills Development Canada's website, the online application system is anticipated to be available in January, 2012.

About the Author



This article was written by Jennifer Ervick. Jennifer's practice focuses primarily on corporate and commercial law, intellectual property, commercial real estate transactions including sales, purchases and mortgage financing. Jennifer also practises in the area of business immigration assisting businesses and their executives with a wide variety of immigration and citizenship matters, including temporary resident visas, work and study permits, permanent residence and Canadian citizenship.

Phone: 204.934.2374
Fax: 204.934.0564
Email: jee@tdslaw.com
Website: www.tdslaw.com/jee

For assistance with this or any business immigration related matter, please contact any member of the [TDS Business Immigration](#) Practice Group.

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