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Management Alert

Canada: Cracking Down on Non-Compliant Employers

Since April 1, 2011, Citizenship and Immigration Canada ("CIC") officers abroad and Canada Border Services Agency ("CBSA") officers at the port of entry have been carefully assessing an employer's track record for compliance with Canadian federal, provincial or territorial agreements in connection with hiring temporary foreign workers. In particular, employers hiring temporary foreign workers are expected to uphold the terms and conditions of the original job offer. Employers are required to confirm that they provided wages, working conditions (hours of work, overtime and workplace safety insurance) and employment in the same position (i.e. the same job duties and skill level) as listed in the Labour Market Opinion Annex or the offer of employment (for those applying under LMO-exempt work permit categories).

Over the last three years, CIC has gained more detailed access to employer data, which enables CIC and CBSA officers the ability to search for particular employers. In addition, CBSA and CIC have issued a detailed Memoranda of Understanding to share this information between the two government entities. In fact, CIC and CBSA officers maintain an up-to-date database whereby they can search for the history of each employer who has participated in the Temporary Foreign Worker Program (TFWP).

On December 31, 2013, CIC, in conjunction with Service Canada (the government entity responsible for adjudicating Labour Market Opinion ("LMO") applications), announced Ministerial Instructions and amendments to the Immigration and Refugee Protection Regulations that will now require an employer to provide evidence that it has abided by the terms and conditions of the job originally offered including accurate job duties, job title, wage rate, working conditions and working location. These regulations are effective immediately.

With the changes announced last week, an employer can be subject to the following harsh consequences when it is determined to be non-compliant by Service Canada, CIC or CBSA:

- The employer will be deemed ineligible to participate in the Temporary Foreign Worker Program for a two year period.
- The employer will have its name, address, and period of ineligibility published online on a public "Ban List".
- The employer will be issued negative LMOs on any pending LMO applications.
- It is an immigration offence for a person to employ a foreign national in a capacity in which the foreign national is not duly authorized to work. Penalties for serious offences include $50,000.00 CAD or imprisonment for a term of up to two years.
- It is an immigration offence to misrepresent or withhold material facts relating to a relevant matter that induces or could induce an error in the adjudication of an application. Penalties for serious offences include $50,000.00 CAD or imprisonment of up to five years.
- The employer may have previously-issued LMOs suspended or revoked.

CIC's Work Permit Revocation Powers: Expanded and Clarified

CIC has now clearly articulated that it may also revoke a valid work permit if:

- The underlying LMO has been revoked by Service Canada.
- It was issued under the regulations relating to the LMO-exempt work permits, including intra-company transfers and the International Agreements Program (including NAFTA). CIC or CBSA may revoke the work permit if new information becomes available indicating that the employment of the foreign national pursuant to a valid work permit is having or will have a significantly greater negative effect than benefit with respect to the development of a strong Canadian economy, unless the revocation of that work permit would be inconsistent with any trade obligation of the Government of Canada under an international agreement.
- The employer provided false, misleading, or inaccurate information in the context of the initial application for the work permit;
- The employer's name has been added to the published list of "Ban List;" or
- The work permit was issued to a foreign national on the basis of their relationship to another foreign national and the work permit of that other foreign national has since been or is currently being revoked. This would affect spouses and children of high-skilled workers whose applications were approved on the basis of accompanying a high-skilled worker.

Best Practices: Avoid the "Ban List" as a Non-Compliant Employer

In light of the sweeping changes to the temporary foreign worker program and increased enforcement, it is incumbent upon employers to adopt measures to remain compliant. Strengthening program integrity for work permits based on LMOs has traditionally resulted in a corresponding heightened sense of scrutiny at the port of entry for all business and work permit applications. Employers should immediately consider the following:

- These changes will undoubtedly effect those employers who are currently relying on LMO-exempt work permit categories such as NAFTA Professionals and those providing a significant benefit to Canada (including intra-company transferees).
- Intra-company transferees relying on specialized knowledge will need to be strengthened in order to ensure they are able to continue to apply under these categories.

Our office continues to assist employers to ensure that they are currently compliant and that they will remain compliant in the face of these changes. In addition, we provide employers with best practices to ensure that they are well-equipped in this era of greater scrutiny.

Please do not hesitate to contact our office if you have any questions about the changes to the temporary foreign worker process and how to remain in compliance with Canada's immigration legislation to ensure that your company is able to engage in important cross-border business.

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