

Management Alert



Sweeping Changes to Canada's Temporary Foreign Worker Program

The Effective Immediately: Changes to the Labour Market Opinion Process

On the heels of intense media scrutiny of Canada's foreign worker program, the Harper Government announced sweeping changes to the Temporary Foreign Worker Program. **Some of the changes are effective immediately.**

Please note many of the changes that are effective immediately concern work permits granted pursuant to the Labour Market Opinion ("LMO") program.

Most general work permit categories in Canada require a LMO. This is an application made by the employer to Human Resources and Skills Development Canada ("HRSDC") to weigh factors in assessing the impact on the Canadian labour market of hiring a foreign worker for a proposed job or activity. HRSDC will consider wages, working conditions, the availability of Canadians or permanent residents to perform the duties in question, whether skills and knowledge transfer would result from confirming the foreign worker and whether the work is likely to create other jobs for the benefit of Canadians or permanent residents. HRSDC previously allowed some wage flexibility to pay *less* than the prevailing wage in specific instances. **Effective immediately, all employers must pay foreign workers at least the prevailing wage rate.**

The LMO process requires recruitment for the position and the LMO is specific to each province. The processing time currently ranges between approximately ten to twelve weeks, depending on the province. Under the former regulatory scheme, a company having obtained one positive LMO would be eligible for an Accelerated Labour Market Opinion ("ALMO"), which is processed in 5-10 business days. **The ALMO program has been suspended, effective immediately. Therefore, no applications will be permitted under the ALMO. All applications requiring a Labour Market Opinion will now be processed according to regular (and longer) processing times.**

Given the burdensome nature of this process, many employers opt to seek "Labour Market Exempt" work permits (such as NAFTA Professionals and Intra-Company Transferees). **At this time, no changes have been announced to the LMO-exempt work permit categories.**

The Wave of Change: Additional Changes to be Introduced in the Future

Stemming from the ongoing review of the Temporary Foreign Worker Program, and as announced in Canada's Economic Action Plan 2013, the Government is introducing legislative, regulatory, and administrative changes that will also:

1. Increase the Government's authority to suspend and revoke work permits and LMOs if the program is being misused

This would allow HRSDC to suspend, revoke, or refuse to process a request for an LMO. For instance, if new information before HRSDC indicates that the entry of a temporary foreign worker would have a negative impact on the labour

market or if there is a determination that the LMO or work permit was fraudulently obtained, the HRSDC could refuse to grant an LMO or otherwise suspend or revoke an existing LMO. In the latter circumstances, Citizenship and Immigration Canada will review the work permits that were issued under that LMO on a case-by-case basis to determine whether the work permits should also be revoked.

2. Change the LMO Application Forms

In future, LMO application forms will solicit additional information from the employer. The new questions seek information regarding any outsourcing activities and additional verification that Canadian employees are not being replaced by foreign workers. There will also likely be additional advertising and recruitment requirements.

3. Ensure employers who rely on temporary foreign workers have a detailed and firm plan in place to transition to a Canadian workforce over time through the LMO process

Along with the LMO application, the employer will be required to submit a detailed transition plan outlining the employer's intended actions regarding: recruitment, training, and residency. The transition plan's level of detail will depend on a number of factors including: whether the position is lower- or higher-skilled, the type and size of the industry, and the regional unemployment rate. **This is a significant change to the process.** HRSDC will also review an employer's progress against the transition plan if that employer applies for additional LMOs in the future. **Therefore, employers will also be required to document their ongoing efforts to adhere to their transition plan and effectively transition to a Canadian workforce.**

4. Introduce fees for employers for Temporary Foreign Workers

Currently, an application for a LMO does not require a processing fee. The Canadian Government will be introducing fees for the LMO as well as increasing fees for work permit applications – both at the Ports of Entry and the Consulates. The exact fee amount has not yet been determined.

5. Limit the languages that can be required for a job to English and French

Employers seeking temporary foreign workers, or advertising for jobs, in a language other than English or French will not be allowed to hire temporary foreign workers. Exemptions may be granted in very specific cases where a foreign language is an essential job requirement, such as tour guides, translators, or performers.

Seyfarth Shaw LLP's Canadian immigration team will advise of the additional changes in the coming months as they are announced. The Harper Government is instituting these measures to ensure that the Temporary Foreign Worker Program, which is an important program to deal with acute skills shortages on a temporary basis, is used only as a last resort. This is an important policy shift that will lead to greater scrutiny of all work permits and not only those granted pursuant to a Labour Market Opinion.

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