

Management Alert



Canada Announces Significant Changes to the LMO Process

The Ministry of Economic and Social Development (“Service Canada”) announced significant changes -- effective immediately -- to the Temporary Foreign Worker Program, and in particular, to the Labour Market Opinion (“LMO”) application process and procedures. Citizenship and Immigration Canada (“CIC”) has also enacted legislative changes to the Immigration and Refugee Protection Regulations (“The Regulations”). The changes to the program intensify the Canadian government’s employer compliance measures including newly implemented powers of inspection at the work-site and revocation or suspension of already issued LMOs.

New Conditions Imposed on Employers

As a result of these amendments to the Regulations, Employers must comply and demonstrate compliance with the following conditions during the LMO process:

- Be actively engaged in the business for which the offer of employment was initially made;
- Provide foreign workers with employment in the same occupation (job title/duties/National Occupation Classification code) as initially stated in the job offer;
- Provide foreign workers with substantially the same wage and working conditions--although not less favourable--than those stated in the initial job offer. There can be no reduction in an employee’s wage rate;
- Demonstrate that any “future conditions” upon which the employer agreed at the time of the initial LMO application are met, including promises of job creation or retention, hiring and or training, development or transfer of skills and knowledge for the benefit of Canadians or permanent residents;
- Make reasonable efforts to provide a workplace that is free from physical, sexual, psychological or financial abuse; and,
- Comply with Canadian (federal and provincial/territorial) employment standards laws and recruitment regulations in the province/territory in which the foreign worker is employed.

In addition, employers must now maintain and retain any document that relates to compliance with the conditions of employment (as stated in the application materials, LMO approval notices and Regulations) for a period of six years, beginning on the first day of the period of employment for which the work permit is issued to the foreign worker. Previously, employers were required to retain only two years of detailed records. However, this change is not retroactive.

Evaluating Employers: Service Canada Gains Tremendous Enforcement Powers

Service Canada will adopt three important tools for evaluating employer compliance:

1) Strengthening Employer Compliance Reviews (“ECR”)

The ECR evaluates employer compliance for a previously granted LMO, but it can only be instituted during a subsequent application by the same employer.

2) Newly Implemented Powers of Inspection

Service Canada has now been granted a significant new authority to conduct inspections to verify an employer’s compliance with the employment conditions for a period of six years, from the first day of the period of employment for which the work permit is issued to the foreign worker. These inspections can occur on-site and enable Service Canada officers to interview foreign workers or Canadian employees, by consent.

3) Revocation or Suspension of a Previously Issued LMO

Service Canada can suspend or revoke a positive LMO if it learns new information that would have led an officer to issue a negative decision. Generally, this would occur when there are reasonable grounds to believe that an employer provided false, misleading or inaccurate information or if an employer is not complying with the terms and conditions listed in the positive LMO and associated annexes. Moreover, if an employer has been added to the public “ban list” of ineligible employers to the temporary foreign worker program, Service Canada can suspend or revoke the LMO.

The LMO process can be a long and arduous undertaking. It is important for employers to be well-informed and guided through this process to be prepared to respond to a compliance review or inspection.

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