

Dealing with Service Canada:

Recent Changes to the Temporary Foreign Worker Program

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Immigration

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INTRODUCTION

On April 29, 2013, the Government of Canada announced a new set of reforms to the Temporary Foreign Worker Program (“TFWP”).¹ The reforms are part of a wider initiative outlined in Economic Action Plan 2013 whose stated purpose is to support Canada’s economic recovery and growth ensure that Canadians are offered the first chance at available jobs.² The announcement of the reforms came on the heels of a recent controversy involving the hiring practices of certain Canadian employers, which saw temporary foreign workers (“TFWs”) taking the place of existing Canadian employees.

The reforms also have a secondary purpose of the protecting TFWs themselves, with proposed changes to the *Immigration Refugee Protection Regulations*³ greatly expanding the ability of government agencies to investigate compliance, search and seize documents and require employers to retain records for significantly longer periods.⁴ This aspect of the reforms is considerably more enforcement oriented than it has been in the past, and we identify a number of concerns with the broad reach of the changes and how they may affect the day-to-day operation of Canadian businesses that rely on TFWs. The proposed reforms in connection with this have not yet been implemented, although with a current majority government they are likely to be passed in the near future.

This paper is intended for an audience already familiar with the basic procedure for obtaining a labour market opinion (“LMO”) in Canada.⁵ We discuss the impact of changes that have already been implemented, as well as the anticipated effect of forthcoming changes.

The first part of the paper examines the changes that became effective immediately upon the announcement of the reforms in April 2013: the suspension of the accelerated LMO procedure (“ALMO”); and the cancellation of the flexibility on prevailing wage. The second part discusses the

¹ Canada, *Harper Government announces reforms to the Temporary Foreign Worker Program - Ensuring Canadians have first chance at available jobs* (April 29, 2013), online: Canada <available at <http://news.gc.ca/web/article-eng.do?nid=736729>>. The reforms do not affect certain TFW programs such as positions the Seasonal Agricultural Worker Program (SAWP), the Agriculture Stream or on-farm primary agricultural positions.

² “Canada’s Economic Action Plan – Temporary Foreign Workers” (<http://actionplan.gc.ca/en/initiative/temporary-foreign-worker-program>)

³ *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations].

⁴ Regulations Amending the Immigration and Refugee Protection Regulations, C. Gaz. 2013 I, p.1380 (*Immigration and Refugee Protection Act*) [Amending Regulations].

⁵ For an in-depth discussion of LMO procedures and best practices, please refer to Vance P.E. Langford, “Labour Market Opinions: Are We Ready for the Next Wave?” (Paper delivered at a LESA Seminar, Calgary, (21 September 2011); Vance P.E. Langford, “Servicing Canada: Responding to the Skills and Labour Shortage” (Paper delivered at the Canadian Bar Association Immigration Law Update, Victoria, BC, 13 April 2007); and Vance P.E. Langford and Karen D. Swartzenberger, “Obtaining Labour Market Opinions in Western Canada: Skilled Workers, Low-Skilled Workers and Special Programs” (Paper delivered at the Canadian Institute, 18 September 2006).

changes that became effective July 31, 2013, including new application fees, advertising requirements and language restrictions. The final section discusses the more onerous provisions, including the search and seizure and investigation powers that will be available to government agencies under the TFWP.

CHANGES EFFECTIVE ON APRIL 29, 2013

Suspension of ALMO process

The Accelerated LMO process (“ALMO”) was formally rolled out by Citizenship and Immigration Canada (“CIC”) on April 25, 2012. It was intended for approved employers who met certain minimum requirements in order to have their LMOs processed in as little as 10 days. Employers who had secured at least one positive LMO in the past two years and had no compliance issues with the TFWP were eligible for expedited processing of LMOs. Participation in the ALMO program required employers to consent to back end compliance audits by Service Canada.

The ALMO process was temporarily suspended as of April 29, 2013. The Government of Canada has stated that the program will undergo a review to ensure that it is meeting its original objectives. Statistical information on the use of the ALMO process is not publicly available. However, the program offered approved employers a means to avoid longer processing times.

Employers must pay TFWs at prevailing wage

Briefly, by way of background, one of the factors that the HRSDC considers when deciding whether to issue a positive or neutral LMO is whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards.⁶ The rationale for this is to ensure that wages paid to foreign workers do not adversely affect Canadian wages and that foreign workers in Canada are not paid less than Canadian citizens or permanent residents for the same job.⁷

In order to determine the prevailing wage for a particular occupation, employers and HRSDC can rely on several different labour industry surveys that provide information about the prevailing wage rate for that position in Canada.⁸ Strict reliance on the prevailing wage information could lead to a result

⁶ *Regulations, supra*, note 3, s 203(3).

⁷ Langford & Swartzenberger, “Obtaining Labour Market Opinions,” *supra* note 5.

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