



Posted on: July 16, 2014

## **MAJOR CHANGES TO THE TEMPORARY FOREIGN WORKER PROGRAM**

**July 16, 2014**

By Ryan Shaw and RBS Lawyers

Richards Buell Sutton Employment Law and Immigration Newsletter

### **Introduction**

On June 20, 2014, major revisions were made to the federal Temporary Foreign Worker Program. These changes will affect numerous businesses, educational institutions, and organizations in various industries. Employers who currently have, or are considering employing, temporary foreign workers should consider, in particular, the information outlined below.

### **The new Temporary Foreign Worker Program**

The Temporary Foreign Worker Program (TFWP) will now only include work permit streams under which foreign workers enter Canada at the request of employers following government approval of a new Labour Market Impact Assessment (LMIA). The LMIA was formally known as the Labour Market Opinion (LMO). The TFWP will be overseen by Employment and Social Development Canada (ESDC).

### **The new International Mobility Program**

The new International Mobility Programs (IMP) will include work permit streams in which foreign nationals are exempt from the requirement to apply for an LMIA, and whose primary objective is to advance Canada's broad economic and cultural national interest, rather than filling particular jobs. IMP programs include the Working Holiday program, International Experience Canada program, and reciprocal programs under various free trade agreements. The IMP will be overseen by Citizenship and Immigration Canada (CIC).

### **Changes to the LMO, which is now the LMIA**

Below is a summary of LMIA changes which may be most relevant to employers:

*New LMIA process* – The new LMIA process is more comprehensive and rigorous. An LMIA is a labour market





verification process whereby the federal government assesses an offer of employment to ensure that the employment of a foreign worker will not negatively impact the Canadian labour market. The LMIA process begins with advertising for a specific position, at a specific wage range, with specific qualification criteria. In addition to the previously required information under the LMO process, employers must now provide additional information including the number of Canadians that applied for their available job, the number of Canadians the employer interviewed, and explanations for why those Canadians were not hired.

*Wage-based focus* – The TFWP will now be administered and assessed based on wage instead of the National Occupational Classification. Temporary foreign workers (TFWs) being paid under the provincial/territorial median wage will be considered low-wage, while those being paid at or above median wage will be considered high-wage.

*Cap on Low-Wage Foreign Workers* – Employers with 10 or more employees applying for a new LMIA are subject to a cap of 10% on the proportion of their workforce that can consist of low-wage TFWs. Additional provisions allow employers to transition from a higher percentage to a maximum 10% low-wage TFW proportion by 2016.

*Certain LMIA applications will not be processed* – Any LMIA applications for positions that require little or no education or training will not be processed in economic regions with an unemployment rate at or above 6%.

*Reduction in maximum work permit duration* – The duration of work permits set out in LMIAs is limited to a maximum of 1-year for all low-wage positions, a decrease from the 2-year duration that existed previously. Furthermore, the maximum 4-year work permit cap will be reduced.

*Transition Plans* – Transition Plans will be required (with limited exceptions) for high-wage foreign workers. Employers are required to submit transition plans with their LMIA application.

*Expedited Processing* – Employers hiring workers in certain occupations will be eligible to have their LMIA applications processed in just 10 days. These occupations include those which are highest-demand (skilled trades), highest -paid (top 10% of wages earned by Canadians in a given province); and shortest-duration (120 calendar days or less).

### **Enforcement and Penalties**

Below is a summary of the new enforcement initiatives and penalties most relevant to employers:

*Employer's knowledge* – Employers must attest that they were aware of the rule that Canadians cannot be laid-off or have their hours reduced at a work-site that employs TFWs.





*Increase in the number of inspections* - 1 in 4 employers of TFWs will be inspected each year.

*Increase in the scope of inspections* - Additional powers have been provided to inspectors to assess 21 program requirements in each case. Banks are now compelled to provide information regarding the employment of foreign workers. Employers must now keep all documents related to their applications for 6 years to allow for verification of compliance.

*Blacklist, suspension and revocation* - If an employer breaks the rules, or is suspected of breaking the TFWP rules, ESDC has the authority to suspend or revoke the employer's LMIA. Furthermore, since early 2014, the names of employers whose LMIAs are suspended, revoked or fined are being added to a public Blacklist website.

*Penalties* - The applicable penalties involve up to \$100,000 in fines and up to 5 years in jail.

#### **Increase in Fees**

The LMIA fee has increased from \$275 to \$1,000 for every TFW position requested by an employer. A new IMP Compliance fee of \$230 will be charged on LMIA-exempt files and to specific employers. A Privilege fee of \$100 will be charged to individuals who receive open work permits.

#### **How We Can Help**

Given the complexities respecting the major revisions to the TFWP and the new IMP, you may wish to consult with an authorized immigration representative (either a lawyer or a certified immigration consultant) regarding how the changes will affect you.

Outlined below are some services we can provide you in relation to the TFWP and IMP:

1. Educating your colleagues, clients, employees, and employers on the relevant TFWP changes and the new IMP;
2. Providing further details regarding the TFWP changes and the new IMP;
3. Advising on and assisting with preparing new LMIA applications;
4. Analyzing and conducting a review of your current recruitment procedures and providing suggested responses to the changes;
5. Providing the applicable median wage, per hour and annually, for your jurisdiction;
6. Identifying the job positions eligible for expedited processing;
7. Assisting with transition plans for high-wage foreign workers;
8. Strategically preparing for the cap on the number of low-wage foreign workers;





RICHARDS  
BUELL  
SUTTON<sup>LLP</sup>  
*Established in 1871*

9. Strategically planning for the work permit duration limit; and
10. Advising on methods to prepare for possible compliance enforcement and future investigation by the government.

For more information regarding our immigration services, please contact Phebe Chan, at 604.909.9302 or [pchan@rbs.ca](mailto:pchan@rbs.ca).

For more information regarding our employment services, please contact Scott MacDonald at 604.661.9217 or [smacdonald@rbs.ca](mailto:smacdonald@rbs.ca), or Ryan Shaw at 604.909.9312 or [rshaw@rbs.ca](mailto:rshaw@rbs.ca).



**VANCOUVER OFFICE:**  
700 - 401 W GEORGIA STREET  
VANCOUVER, BC CANADA V6B 5A1  
TEL: 604.682.3664 FAX: 604.688.3830

**SURREY OFFICE:**  
200 - 10233 153 STREET  
SURREY, BC CANADA V3R 0Z7  
TEL: 604.582.7743 FAX: 604.582.7753

[RBS.CA](http://RBS.CA)