



Human Resources and
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Temporary Foreign Worker Program (TFWP)

Changes to the *Immigration and Refugee Protection Regulations* and the Labour Market Opinion Process

Immigration and Refugee Protection Act and Immigration and Refugee Protection Regulations – **TFWP Roles and Responsibilities**

- The *Immigration and Refugee Protection Act (IRPA)* and *Immigration and Refugee Protection Regulations (IRPR)* regulate the entry of temporary foreign workers (TFWs) into Canada and assign responsibilities to the government departments involved in the administration of the Temporary Foreign Worker Program (TFWP).
- At the request of an employer or Citizenship and Immigration Canada (CIC), Human Resources and Skills Development Canada (HRSDC)/Service Canada provides a labour market opinion (LMO).
- CIC and the Canadian Border Services Agency (CBSA) are responsible for determining who is eligible to enter Canada, issuing work permits to foreign workers and enforcing *IRPA*.

What's new? Changes to *IRPR*...

- HRSDC and CIC worked collaboratively to develop amendments to *IRPR*.
- These regulatory amendments were published in the *Canada Gazette* on August 18, 2010, and will come into effect on April 1, 2011.
- These changes will help to strengthen the integrity of the TFWP and protect the TFWs.

...and the scope of the LMO process

- In addition to the standard requirements under each program stream, the LMO process will now include a:
 - ❑ determination that the job offered to a TFW is genuine;
 - ❑ verification that additional Live-in Caregiver Program (LCP) requirements are met (if applicable);
 - ❑ verification that returning employers have met the terms and conditions of employment stipulated in previous LMO confirmation letters (“substantially the same”);
 - ❑ consideration of the job offer’s compliance with federal-provincial/territorial agreements designed to respond to specific provincial/territorial labour market needs.

What has not changed

- HRSDC/Service Canada will still provide an opinion on the potential impact of hiring a TFW on the Canadian labour market.
- Employers must still:
 - ❑ demonstrate that they meet the minimum advertising requirements;
 - ❑ abide by existing program stream specific criteria;
 - ❑ maintain payroll records:
 - e.g. wages, deductions, holidays and vacation pay that are compliant with federal-provincial/territorial employment and labour standards, including payment and record keeping practices.

Compliance with Federal-Provincial/Territorial Agreements

- The new regulatory amendments authorize HRSDC/Service Canada to issue an LMO on whether the provision of a work permit is compliant with the terms of any applicable federal-provincial/territorial agreement.
- This applies to the TFW annexes to the Canada-Provincial/Territorial Immigration Agreements.
- These annexes may provide additional requirements to be considered in the LMO application assessment as well as identify occupations that are exempted from the LMO process. Employers applying to get an LMO for an exempted occupation according to one of these agreements, will be encouraged to withdraw their application or a negative LMO will be issued.

Genuineness

- The genuineness of the job offer made to the TFW will be assessed based on whether the:
 - ❑ employer is actively engaged in the business in which the job offer is being made;
 - ❑ job offered to the TFW meets the reasonable employment needs of the employer, and is consistent with the type of business the employer is engaged in;
 - ❑ employer is reasonably able to fulfil the terms and conditions of the job offer; and
 - ❑ employer, or the third-party representative acting on behalf of the employer, is compliant with the relevant federal-provincial/territorial employment and recruitment legislation.

Live-in Caregiver Program

- Under the regulatory amendments, all LCP employers must demonstrate:
 - ❑ a reasonable need for a full-time live-in caregiver to provide child care, elder care or care for a disabled person;
 - ❑ their capacity to provide adequate, private accommodations to the live-in caregiver; and
 - ❑ that they have sufficient financial resources to pay the live-in caregiver.

Substantially the Same

- Returning employers must demonstrate that the wages, working conditions and occupations provided to previously hired TFWs were substantially the same (STS) as those listed on the associated LMOs.
- The employers who have not met the terms and conditions of previous LMO confirmation letters and annexes (if applicable), will be given a chance to provide a rationale and to implement the appropriate corrective action when requested by HRSDC/Service Canada.
- Regulated justifications include:
 - ❑ Change in law;
 - ❑ Change in collective agreement;
 - ❑ An implementation of measures in response to a dramatic change in economic conditions; and
 - ❑ The employer misinterpreted their obligations under the Program or made an administrative/accounting error – the error must be made in good faith and the employer will need to correct the error;

Substantially the Same *(cont'd.)*

- Failure to provide a rationale and/or follow through with corrective action may result in:
 - a negative LMO on the current application;
 - the revocation of all positions on confirmed LMOs for which work permits have not yet been issued by CIC; and
 - CIC deeming the employer to be ineligible to hire TFWs for two years and the publication of the employer's name and address on a list of ineligible employers posted on CIC Web site.

How does this affect employers?

- Applications received as of April 1, 2011, must be submitted using the new application forms, which are now specific to each program stream.
 - Employers must provide the following information along with the LMO application:
 - the Canada Revenue Agency (CRA) business number;
 - a description of the main business activities ;
 - an explanation of how hiring a TFW meets the employment needs; and
 - signed statement attesting that they will abide by all the Program requirements.
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- Employers may also be asked to submit additional documentation to

New employers to the Program

- In addition to the LMO application, all new employers to the TFWP (except LCP employers) will be required to provide a copy of their business licence or permit. Where a business license/permit is not required by the municipality/province, the employers may also submit:
 - CRA documents: T4 Summary of Remuneration Paid, Schedules 100 and 125 of the T2 Corporation Income Tax Return, T2125 Statement of Business or Professional Activities;
 - Business contracts for goods and/or services;
 - Provincial/territorial workers compensation clearance letter or other provincial/territorial documentation indicating the employer is in good standing; and
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- Attestation by a lawyer, notary public or chartered accountant confirming the employer exists and the type of business the employer operates .

Returning employers to the Program

- Returning employer may be asked to submit any or all of the documents required from the new employers. AND
- In addition to demonstrating that they have met the terms and conditions of employment set out in previous LMO confirmation letters, selected returning employers may be required to submit documentation to support a more detailed employer compliance review (ECR), such as:
 - ❑ payroll records/time sheets;
 - ❑ job descriptions/copies of the employer-employee contract/collective agreements;
 - ❑ proof of: enrolment in provincial/territorial workers compensation, private health insurance (if applicable), transportation payments, accommodations provided by the employer.

Hiring a live-in caregiver

- LCP employers must use the new LMO application form and submit the following documentation:
 - ❑ Proof of age or disability for the person requiring care;
 - ❑ A detailed description of the private accommodations to be provided to the live-in caregiver; and
 - ❑ A CRA Option-C printout.
- Employers may also be asked to provide a workers compensation clearance letter or other appropriate provincial/territorial documentation and proof of having met the term and condition of employment in previous LMO confirmation letters.

How your LMO will be assessed

- LMO applications received as of April 1, 2011, will be assessed based on a 4- step process:
 - 1) Verifying that the employer's name is not on the CIC ineligibility list;
 - 2) Ensuring that the job offer is compliant with the terms and conditions of federal-provincial/territorial agreements;
 - 3) Verifying the genuineness of the job offer and that additional LCP factors are met (if applicable); and
 - 4) Assessing whether the entry of the TFW will have a negative impact on the labour market, and determining whether a returning employer has respected the terms and conditions of employment in previous LMO confirmation letters.
- Employers must meet the requirements of each step in order to move forward through the remaining steps. Therefore, employers must meet all Program requirements to receive a positive LMO.

Additional information

- Human Resources and Skills Development Canada – Temporary Foreign Worker Program
http://www.rhdcc-hrsdc.gc.ca/eng/workplaceskills/foreign_workers/index.shtml
- Service Canada TFWP Processing Centres:
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/listhrcc.shtml
- Citizenship and Immigration Canada:
<http://www.cic.gc.ca/english/work/employers/index.asp>

- To obtain a :
 - CRA business number, visit:
<http://www.cra-arc.gc.ca/tx/bsnss/tpcs/bn-ne/menu-eng.html>
 - CRA Option-C print out call:
1-800-959-8281