



The Northern Miner

October 24, 2013

**Commentary: What you need to know about changes to Canada's Temporary Foreign Worker program
Deborah Cushing Special to The Northern Miner**

Circulation: 20,000

<http://www.northernminer.com/issuesV2/VerifyLogin.aspx>

Earlier this year the federal government made changes to Canada's temporary foreign worker program with the stated purpose of ensuring that Canadians are given the first opportunity to apply for available jobs. Most temporary foreign workers require a work permit to legally work in Canada. In many instances, the employer must first obtain a positive Labour Market Opinion (LMO) from Service Canada before the worker can apply for a work permit.

Under the new program rules, employees must pay a processing fee of \$275 per LMO for each position requested, which is estimated to cover the cost of the LMO. The only exceptions from the processing fee are for employees who are hired under certain agricultural programs. The processing fee is non-refundable.

Employers are now not permitted to make language skills other than English or French a requirement of the job, except if an employer is able to demonstrate that a third language is an essential requirement for the job and for certain agricultural programs. If an employer is advertising a position that legitimately requires a language other than English or French, it must clearly demonstrate, in writing, that the language requested is consistent with the regular activities of the job. Service Canada has provided examples of a translation company hiring a translator to work in a language other than English or French or a tour company catering to foreign tourists in a non-official language.

In addition to these changes, employers must go to greater efforts to recruit Canadians before being eligible to apply for temporary foreign workers. All positions must be advertised for at least four weeks before applying for an LMO. The employer must also continue to advertise the position during the LMO process and until a decision is made on the application. When recruiting for a higher skilled occupation, one of the methods of recruitment must be national in scope. In recruiting for a lower skilled occupation, employers must demonstrate that they have made efforts to target underrepresented groups in the labour force.

Lastly, there is a new application form for both higher and lower skilled occupation classes. The new application form includes a section relating to outsourcing of Canadian jobs. A negative LMO will be issued if the assessment indicates that hiring a temporary foreign worker will have a negative impact on the Canadian labour market or if an employer has not complied with all of the program requirements. Employers should also be aware of proposed amendments to the regulations which will increase the record-keeping requirements for employers and enhance the enforcement powers of Service Canada.

The changes to the temporary foreign worker program will present challenges for employers who are seeking to employ foreign workers. For example, employers often recruit internationally for executive level positions to find the best available qualified candidate. The new recruitment requirements no longer differentiate advertising for executive roles so employers are expected to disclose the company, the position and the compensation package. Recruitment is not normally conducted in this manner for executives. Such disclosure may be of particular concern when a work permit is being renewed for an incumbent and posting an executive position could have a negative impact on the perception of shareholders and investors about the management of the company.

The new four-week advertising requirement coupled with the earlier cancellation of the Accelerated-LMO program will likely result in much longer processing times. Employers will have to start the renewal process about six months before a work permit expires which is of particular concern when the initial work permit is of short duration. This timeline is expected to create stresses for both employers and workers.

The processing fee of \$275 per position will be significant for employers seeking to employ numerous workers in one position. For example, if 50 specialized workers were needed to work in a time limited project, the employer would be expected to pay a processing fee of \$13,750 even if all workers serve in the same capacity on the project. Similarly if each project is considered a separate position, a \$275 processing fee would apply to each worker for each project. This fee would be an unexpected cost to employers in 2013 and in future years may affect the viability of certain work being performed in Canada.

Although it is too early to assess the overall impact of the changes to the TFW program, it is hoped that further refinements will be made to the program in order to protect the interest of all the affected parties including Canadian workers and employers.

— *Based in Vancouver, Deborah Cushing is an associate at Lawson Lundell LLP, a leading Western Canadian business law firm, and she has a specialization in employment and labour law. Visit www.lawsonlundell.com for more information.*

Word Count: 791