

# PREPARING THE PERFECT LABOUR MARKET OPINION APPLICATION

## Tips & Techniques for drafting LMO applications

Roxanne N. Israel  
&  
Jean-Philippe Brunet

### Canada's Temporary Foreign Worker Program

Despite a dramatic downturn in the global and Canadian economies, there continues to be a need for foreign workers who will fill gaps in the Canadian labour market and contribute to job creation and skills development. In 2007, Canada admitted a record 165,198 temporary foreign workers (including initial admission & re-entries). Approximately 55%, or 90,000, of these workers were issued work permits on the basis of a labour market opinion.<sup>1</sup>

Over the course of the past year, Human Resources and Skills Development Canada / Service Canada ("SC") responded to unprecedented demand for foreign workers in the Western provinces of British Columbia and Alberta by introducing measures to reduce backlogs. While processing times have been creeping back up in the West as well as in Ontario, applications are now being reviewed much more quickly than the six month time frames that were being experienced in Alberta in the first half of 2008. Other significant developments included the introduction of a National Recruitment standard effective January 1, 2009 as well as increased focus on program integrity.

In order to assist you in preparing the 'perfect labour market opinion application', the following will provide general information regarding application procedures, an overview of some of the recent initiatives undertaken by SC as well as some tips to avoid common mistakes which can delay your clients' applications.

### Processing Times and Stats

Decisions within 30 days						
Region	Jul-08	Aug-08	Sep-08	Oct-08	Nov-08	Dec-08
BC	96.4%	97.0%	96.6%	97.1%	98.1%	98.7%
AB	88.4%	92.4%	90.8%	88.6%	86.8%	79.7%
SK	61.9%	61.0%	67.1%	58.6%	82.3%	78.8%
MB	81.4%	73.1%	91.2%	95.7%	90.7%	92.7%
ON	97.3%	98.2%	96.1%	94.5%	86.9%	62.9%
QC	58.5%	62.0%	69.8%	89.1%	88.1%	88.8%
NS	98.2%	91.1%	99.2%	97.4%	99.1%	93.8%
NB	94.7%	100.0%	100.0%	100.0%	97.4%	98.9%
PEI	100.0%	100.0%	100.0%	100.0%	100.0%	90.0%
NL	95.0%	84.7%	93.3%	38.0%	96.5%	100.0%
LCP CoS	98.8%	98.7%	97.2%	98.4%	88.0%	73.5%
NB CoS	99.8%	94.4%	100.0%	99.8%	100.0%	97.6%

<sup>1</sup> CIC. Annual Report to Parliament on Immigration, 2008. Accessed online:  
<http://www.cic.gc.ca/english/resources/publications/annual-report2008/section3.asp>

Average time to decision in business days <sup>2</sup>						
Region	Jul-08	Aug-08	Sep-08	Oct-08	Nov-08	Dec-08
BC	11	9	9	9	9	9
AB	13	12	12	15	16	18
SK	29	27	22	28	18	16
MB	18	20	12	10	13	15
ON	11	13	14	16	18	21
QC	26	25	22	16	16	14
NS	5	7	4	8	7	8
NB	7	3	4	4	6	8
PEI	9	4	4	4	6	13
NL	7	17	10	53	10	6
LCP CoS	18	18	20	19	22	27
NB CoS	5	8	5	5	5	8

Number of confirmed Labour Market Opinions (LMOs) and Temporary Foreign Worker (TFW) positions by province/territory of employment, Canada Q4 2007 and Q4 2008				
Province/Territory	LMOs		TFWs	
	Q4 2007	Q4 2008	Q4 2007	Q4 2008
Newfoundland and Labrador	243	231	310	318
Prince Edward Island	34	37	37	50
Nova Scotia	287	313	393	489
New Brunswick	226	246	312	305
Quebec	1,718	1,978	4,182	4,347
Ontario	9,490	8,277	15,692	13,963
Manitoba	432	337	760	821
Saskatchewan	384	464	650	968
Alberta	5,062	7,165	12,549	15,687
British Columbia	3,904	5,651	6,255	8,635
Territories	128	72	196	103
Canada Total	21,908	24,771	41,336	45,686

**Notes:**

1. Source: *Foreign Worker System (FWS)*, data extracted on February 26 and 27th, 2009.
2. The table shows the number of confirmed Labour Market Opinion (LMOs) applications and Temporary Foreign Worker (TFW) positions having been issued a positive or neutral opinion (confirmation) during the specified period, by province/territory for Canada in Q4 2007 and Q4 2008. An LMO may be requested for any number of TFW positions.
3. An LMO that is confirmed receives a positive or neutral opinion during the specified period. An LMO that is refused receives a negative opinion.

<sup>2</sup> Source: SC 2<sup>nd</sup> & 3<sup>rd</sup> Quarter Report 2008/2009

4. The intended location(s) of employment are specified on the LMO application and entered in the FWS by the officer processing the application. If a location of employment was not entered in the FWS, the address of the employer was used as a proxy.
5. Labour Market Opinions provided in support of permanent immigration (Arranged Employment Opinions) are not included.
6. The decision to issue a work permit rests with Citizenship and Immigration Canada (CIC). A work permit may not be issued for all confirmed TFW positions. In addition, there may be a delay between the date of confirmation and the date at which the TFW obtains a work permit and/or enters Canada.
7. Not all TFWs require an LMO to obtain a work permit. A number of exemptions exist, including those provided for in the General Agreement on Trade in Services and the North American Free Trade Agreement.
8. The numbers appearing in this table may differ from those reported in other SC releases. These differences are adjustments to administrative data files as normally occur over time and reflect refinement in methods of calculation for the purpose of increasing accuracy in the way statistical information is presented.

## **National Recruitment Standards**

On January 1, 2009, SC replaced the occupations under pressure list with a new national advertising directive. The minimum advertising standards apply to every occupation and all LMO applications across the country. The level of recruitment and information required in the posting varies depending on the National Occupation Classification (NOC) skill level. In order to be accepted, the recruitment requirements must have been undertaken within the three months prior to the application for a new LMO or an extension.

In the current economic turmoil, SC officers will be reviewing applications to ensure that employers have undertaken genuine efforts to recruit Canadians. Simply meeting the minimum requirements may not be sufficient. SC has advised that they will be strengthening efforts to ensure that Canadian citizens and permanent residents have greater opportunities to learn about and apply for available jobs. Employers will be required to provide evidence of their recruitment efforts, account for the results of their recruitment efforts and provide an explanation as to why interested Canadians were not hired, if applicable. Employers using the E-LMO process are already required to answer a questionnaire outlining this information.

The minimum recruitment requirements are outlined in the SC website as follows:  
[http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/temp\\_assessment.shtml#aar](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/temp_assessment.shtml#aar).

## **NOC O and A Occupations**

The minimum recruitment efforts required for higher skilled occupations are as follows:

- Advertise on the national Job Bank (or the equivalent in Saskatchewan, Quebec or the Northwest Territories) for a minimum of fourteen (14) calendar days, **or**
- Conduct similar recruitment activities consistent with the practice within the occupation (e.g., advertise on recognized Internet job sites, in journals, newsletters or national newspapers or by consulting unions or professional associations)

## **NOC B Occupations**

For NOC B occupations, the minimum recruitment efforts are limited to posting on the national Job Bank (or the equivalent in Saskatchewan, Quebec or the Northwest Territories) for a minimum of fourteen (14) calendar days. The advertisement must include the employer's name, business address and the wage ranges being offered.

Currently, there is no option for alternative recruitment efforts apart from the national Job Bank for occupations under this skill level. Unlike the higher skilled professional and management occupations, the wage range must also be included in the posting.

## **NOC C and D Occupations (including live-in caregivers and seasonal agricultural workers)**

For low skill, live-in-caregiver and seasonal agricultural workers, the minimum recruitment standards are more rigorous and include the following:

- Advertise for a minimum of 14 days on the national Job Bank (or the equivalent in Saskatchewan, Quebec or the Northwest Territories);
- Conduct recruitment activities consistent with the practice in the occupation, during the three (3) months prior to applying for a LMO. The employer should advertise for the equivalent of 14 days, choosing one or more of the following options:
  - advertise in newspapers, e.g., a weekly ad over the course of two-three weeks, in journals, newsletters, national/regional newspapers, ethnic newspapers/newsletters, free local newspapers;
  - advertise in the community, e.g., posting ads for two-three weeks in local stores, community resource centres, churches, or local regional employment centres;
  - advertise on Internet sites e.g., posting during 14 days/two weeks on recognized Internet job sites (union, community resource centres or ethnic sites);
- Demonstrate reasonable ongoing recruitment efforts which include communities that face barriers to employment (e.g. Aboriginals, older workers, other disadvantaged groups). Job postings on recognized Internet job sites, in local and regional newspapers, at community resource centres (Aboriginal and newcomers) and local regional employment centres will be accepted. The extent of ongoing recruitment requirements will be specific to each region.

As with the NOC B occupations, the advertisement must include the employer's name, business address and wages being offered.

### ***Exceptions to the General Rule***

As indicated on the SC website, there are certain situations where recruitment efforts are not required, for example:

- The work entails installation, inspection or repair of equipment, and the terms of the warranty require the work to be done by skilled workers designated by the manufacturer.
- The work requires a specialist familiar with the overall operation to do the work on a regular basis - duration of the work is limited and there is no opportunity for Canadians to be trained.
- The position is for a specific occupation in the entertainment sector where the workers often work for a limited number of days in a specific location and on very short notice. This is the case of boxers, bar bands and DJ's, musicians, singers, film directors and first assistant directors, etc.
- The position is for an Academics' occupation or facilitated processing for IT specialists.
- The employer wishes to support the immigration of foreign workers who graduated from a recognized post-secondary Canadian institution and hold an open work permit.

**Example:**

*A food processing company is seeking to fill 50 Meat Cutter positions as well as 2 Quality assurance Management positions. What are the minimum recruitment efforts that must be demonstrated when applying for an LMO?*

Industrial Meat Cutters fall within NOC skill level C. As such, the prospective employer must post the position on the national Job Bank website for a minimum of 14 days. The posting must include the salary range for the position, the employer's business address and the employer's name.

The employer should also undertake efforts to recruit Canadian citizens and permanent residents from communities that face barriers to employment. This can be done by contacting local agencies and community organizations who provide services to recent immigrants, aboriginals and/or youth and asking them to advertise the job posting on their notice board or in a newsletter.

It is not, however, enough to simply post the positions for 2 weeks. The employer will also be required to demonstrate ongoing recruitment efforts by advertising the positions in local or industry publications or on recognized job search websites.

All of the recruitment efforts must have been undertaken within 3 months prior to the application and reasonable recruitment efforts should be ongoing.

For the Quality Assurance or Food Inspection Manager, the applicable advertising requirements would be those set out for NOC skill level B. In this case, the employer would be required to post the position on the national Job Bank website for a minimum of 14 days. As long as the employer's name, business address and wage range being offered is included, this should be sufficient to meet the minimum recruitment requirements. There is no provision for alternative recruitment efforts under this NOC category.

In order to appropriately advise an employer with respect to the minimum recruitment requirements for the position they are seeking to fill with a foreign worker, it is important to identify the appropriate NOC Code and skill level. Temporary Foreign Worker Officers will consider the main job duties and educational requirements for the position when assigning a code. If there is some ambiguity regarding the appropriate NOC Code, it is advisable to outline for the TFW Officer the basis for your analysis and identify the NOC Code that you and your client consider to be the most applicable.

### **Tripartite Employment Arrangements & Independent Contractors**

In order to be eligible for an LMO confirmation, there must be an employment relationship (employer – employee) with the foreign worker and the terms of employment including salary and duration of employment must be clear. As outlined in SC's LMO Directives, the employer may be a company, organization or an individual. The employer will have the authority to determine how the work will be performed and will directly benefit from the work to be performed by the foreign worker. The employer must also assume responsibility for ensuring that the conditions of a labour market opinion and employment contract are met and they will also pay the foreign worker's wages or arrange for payment by another entity on their behalf.

By ensuring that an employment relationship exists, the TFW officer will receive assurance that the job offer is genuine, the scope of work is clearly defined, the worker will be employed on a full time basis and will be covered by employment standards, medical coverage and worker's compensation. The TFW officer will also have some measure of confidence that deductions for Income Tax, Employment Insurance and CPP/QPP will be made.

As with any rule, there are exceptions. Non-traditional employment relationships are common in certain industries such as the entertainment and medical industries. Employers in Western Canada are also increasingly retaining the services of skilled contractors through third party employment agencies or recruiters. The criteria and supporting documentation required for LMO applications involving non-traditional employment relationships may vary and it is recommended that you review the LMO Directives and contact the local SC office for further guidance prior to submitting an application (particularly in instances where processing times are in the range of several weeks or months).

#### ***Example:***

*An Oilsands producer in Alberta is seeking to hire a project manager to provide expert technical support for a specialized construction project. They have asked a recruitment agency which specializes in engineering and project management support services to recruit and hire a foreign worker who is ideally suited for this temporary role. The foreign worker would be paid by the third party recruiter but would work onsite and report to the oilsands producer management team.*

In this case, the 'end-user' would be considered the employer despite the fact that the oilsands producer would not be recruiting or paying the foreign worker directly. This is because the employer will be managing and directing the work and will also be receiving the benefits of the foreign worker's efforts. "A tripartite employment arrangement is

when an employer retains the services of a third-party representative to *find, recruit, supply and pay* temporary foreign workers to meet their labour requirements.”<sup>3</sup>

In this scenario, the employer is also required to sign the LMO application form. In addition to the LMO Application form, the application materials should also include: (1) the name of the employment agency / recruiter and a description of the agency’s primary business; (2) a copy of the contract between the foreign worker and recruitment agency as well as (3) the letter of offer to the foreign worker. A copy or evidence of the contract between the employer and the recruitment agency may also be requested. The information provided should clearly outline the respective roles and responsibilities of the employer and third-party recruiter / agency *vis a vis* the foreign worker. Who will be responsible for paying the worker? Who will be making the appropriate deductions? Who will oversee the work?

Information regarding the terms of employment including wages, benefits and working conditions must also be outlined if not specified in the contracts between the parties. Confirmation must also be provided that no placement / recruitment fees have or will be charged to foreign workers destined for British Columbia, Alberta, Saskatchewan or Manitoba and that the third-party representative complies with applicable provincial licensing laws. It is also recommended by SC that the above noted information should be provided to Citizenship and Immigration Canada as part of the work permit application in order to clearly define the level of accountability of the employer who will benefit from the foreign worker’s services.

If a third-party representative / agency is undertaking recruitment efforts on behalf of an employer, it is important that they comply with the minimum advertising requirements noted above.

### **Program Integrity & Employment Standards Compliance**

Program Integrity is a priority for SC. Some of the highlights from 2008/2009 include a closer working relationship with provincial / territorial governments to strengthen protections for temporary foreign workers through the development and implementation of information sharing agreements. The agreements will assist in the administration and enforcement of provincial employment standards and occupational health and safety legislation and will also help SC in the assessment of LMO applications. Agreements have already been signed with Alberta and Manitoba. Negotiations are ongoing with other jurisdictions.

Memoranda of Understanding have also been signed between SC, CIC and CBSA to facilitate information sharing between the three agencies with respect to the issuance of LMO’s and work permits.

Irwin Bess, Director, Integrity and Horizontal Coordination Division, has undertaken a pilot project which included Employer Compliance Reviews (ECRs) of 60 employers who were issued an LMO under the E-LMO application process, described below. Employers from British Columbia and Alberta were contacted and asked to provide evidence that they have met the conditions of the labour market opinions that were issued by SC. Employers participating in the pilot project have been asked to

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<sup>3</sup> SC LMO Directives, Part 10.4.



demonstrate within 55 days that they have complied with four of the six factors outlined in section 203(3) of *IRPR*, specifically wages, recruitment, acceptable working conditions and labour disputes. In the case of low skilled workers, employers are also asked to demonstrate compliance with information provided in the employment contract, including transportation and housing requirements. Employers who are deemed non-compliant and who fail to take corrective action or fulfill review requirements will be denied access to the E-LMO Pilot Project for two years.

In Spring, 2009, a new post-LMO monitoring initiative is forthcoming which will encourage employers to more consistently report on recent labour force changes and to demonstrate program compliance. This initiative is in anticipation of future program changes that may have implications for the LMO decision-making and integrity processes. SC is also working with CIC and CBSA to develop a package of amendments to the *Immigration and Refugee Protection Regulations* aimed at improving program integrity and worker protection as announced in Budget 2007. In the February 24, 2009 edition of the *Toronto Star*, Jason Kenney, Minister of Citizenship, Immigration and Multiculturalism publicly committed to delivering regulatory changes in the late Spring 2009.

Currently, within the framework of the *Immigration and Refugee Protection Act*, SC has little authority to ensure compliance and program integrity. Presently, employers who do not comply with the conditions of an LMO confirmation issued by SC may experience difficulty in having future applications approved. Also, with increased information sharing between the federal and provincial governments, employers may also be subject to employment standards audits such as those currently being undertaken in Alberta. SC has been working closely with Provincial / Territorial authorities to protect temporary foreign workers and hold employers accountable for their actions under the Temporary Foreign Worker Program.

The Province of Alberta has been leading the way on the protection of foreign workers' rights. In 2007, Alberta established two foreign worker advisory units and two enforcement units in Calgary and Edmonton to curb abuses of temporary foreign workers. The foreign worker advisory units provide foreign workers with information about employment and occupational standards, as well as referrals to relevant community organizations. The enforcement units monitor and enforce compliance with applicable employment standards legislation.

Each of the enforcement units is staffed by four employment standards officers who have the power to address employment and occupational health and safety issues. The enforcement units conduct on-site inspections to ensure that employers are complying with the *Employment Standards Code*, as well as with the conditions of any labour market opinions issued to that employer. Site visits may include inspections of employee working conditions, interviews with temporary foreign workers and reviews of personnel files. At present, compliance with audits is voluntary and employers are given advance notice of site visits.

Alberta employers who violate foreign workers' employment rights can be charged with an offence under the *Employment Standards Code*, which could potentially result in a fine of up to \$100,000.00.



It is important to explain the LMO conditions to your client and that they maintain appropriate personnel files and payroll records to demonstrate compliance.

## E-LMO

As stated above, the accelerated process is known as the Expedited Labour Market Opinion Pilot Project (hereinafter referred to as "E-LMO"). This process applies only to temporary foreign workers in specific occupations in the provinces of Alberta and British Columbia who are employed on a full-time basis.

In order to qualify for an E-LMO the Canadian employer must meet the following criteria before sending their application:

- Offer a full-time position located in Alberta or British Columbia;
- Offer a position specifically mentioned in the enclosed list;
  - [http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/elmopp/occlista.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/elmopp/occlista.shtml)
- Pay the appropriate wages for the same position in the geographic area where the job is located;
- Confirm that the business is not involved in a labour dispute;
- Provide proof that the business has been in operation for a minimum of twelve (12) consecutive months;
- During these twelve (12) months, the company has employed at least one (1) worker;
- The company will assume responsibility for paying all of the workers' wages;
- Confirm that the occupation that the company is applying for is consistent with its principle business activities; and,
- Demonstrate recruitment efforts:
  - Provide proof of advertising the position;
  - Provide information on the number of application received;
  - Include rationale as to why each candidate was not hired.

In addition to such requirements, please note that, as of March 9, 2009, employers are required to provide information regarding any lay-offs.

Since March 16, 2009, the Canadian employer will need to provide evidence of recruitment efforts by filing in a questionnaire: [http://www.SC.gc.ca/eng/workplaceskills/foreign\\_workers/elmopp/elmoquestionnaire.shtml](http://www.SC.gc.ca/eng/workplaceskills/foreign_workers/elmopp/elmoquestionnaire.shtml)

### The procedure: the 2 steps

1. Employers for these trades must first meet the eligibility requirements to qualify for the project.
  - Identify the occupation
    - [http://www.SC.gc.ca/eng/workplaceskills/foreign\\_workers/elmopp/occlista.shtml](http://www.SC.gc.ca/eng/workplaceskills/foreign_workers/elmopp/occlista.shtml)
  - Complete and sign the form
    - [http://www.SC.gc.ca/eng/workplaceskills/foreign\\_workers/elmo/emp5414-e.pdf](http://www.SC.gc.ca/eng/workplaceskills/foreign_workers/elmo/emp5414-e.pdf)
  - Attach a copy of remittance forms PD7A from the Canada Revenue Agency for the past 12 months

- Fax or mail your completed application form and remittance forms to:
  - **For positions located in British Columbia:**  
 Service Canada  
 Employer Services  
 1400-300 W. Georgia Street  
 Vancouver, BC V6B 6G3  
 Fax: 604-666-7514  
 Toll-free fax: 1-866-301-5603
  - **For positions located in Alberta:**  
 Service Canada  
 Temporary Foreign Worker Program  
 PO Box 1212 Station Main  
 Edmonton AB T5J 2M4  
 Toll-free fax: 1-866-874-8954
- SC will then contact the employers to confirm reception of the application
- SC will assess the application
- The employer will then receive a letter confirming the approval or the refusal
  - If it is approved, the letter will include an access code and the list of occupations the employer qualifies for

An employer who qualified for an occupation under the Pilot Project and meets the conditions listed above, can apply for as many Expedited Labour Market Opinions as required to fill labour shortages in that occupation for the duration of the Pilot Project or until he is disqualified from participating.

2. Once the registration has been accepted, the employer can then apply for an E-LMO.
  - Employers can apply for occupations that were approved by SC if they agree to meet the conditions of employment for the occupation
  - Employers must include:
    - The application form
    - Part A, B and C of the Occupational Profile
    - Proof of advertising
    - Completed questionnaire that provides information on the employers' workforce

The E-LMO procedure will allow employers to receive a LMO within ten (10) business days. This enables the qualified employers in the designated occupations in demand to employ foreign workers much quicker.

It is to be noted that employers who apply for Expedited Labour Market Opinions for the following occupations must also meet the conditions of the Pilot Project for Occupations Requiring Lower Levels of Formal Training (NOC C and D):

- Commercial Janitors and Caretakers
- Construction Labourers
- Delivery Drivers
- Food and Beverage Servers
- Food Counter Attendants
- Hotel Front Desk Clerks
- Hotel and Hospitality Room Attendants
- Industrial Meat Cutters
- Manufacturing and Processing Labourers
- Residential Cleaning and Support Workers
- Retail Salespersons and Sales Clerks
- Specialized Cleaners
- Surveyor Helpers
- Tour and Travel Guides

These conditions include:

- Meet the minimum recruitment efforts.
- Cover all recruitment costs related to hiring the foreign worker.
- Pay the full transportation costs for the worker to travel from his/her country of permanence residence to the location of work in Canada and for the return to the country of permanent residence.
- Make sure the worker finds suitable and affordable accommodations.
- Provide health insurance coverage at no cost to the worker until he/she is eligible for provincial health insurance.
- Register the foreign worker with the appropriate provincial workers compensation/workplace safety insurance plan.
- Review and adjust the worker's wages (if necessary) after 12 months of employment to make sure they still correspond to the prevailing wage rate.
- Prepare and sign an employment contract that outlines the wages, job duties, transportation, accommodation, and health and occupational safety coverage that will be provided to the foreign worker.

Some countries may require that their citizens meet certain conditions if they want to work in Canada (e.g. approval to leave the country, employer to pay transportation costs and/or medical coverage). Ask the foreign worker to verify if additional conditions apply in his/her country, contact the country's consulate in Canada or check its website to find out if you must meet additional requirements.

### **Extending Status under the Low Skill Program**

On February 23, 2007, the Pilot Project for Occupations Requiring Lower Levels of Formal Training (NOC C&D) was amended to extend the maximum time an employer can hire a foreign worker in a low skill job from 12 months to 24 months. After working

24 months, foreign workers are to return to their home country for four months before applying for a new work permit under the low skill program.

This program was not initially conceived as a long term solution to labour force shortages. Foreign workers admitted under the low skill program are generally not accompanied by their families to Canada. They are required to leave after 24 months to encourage ongoing ties to their home country. As many of the workers admitted under this program are approaching their two year anniversary in Canada, the question has been raised as to whether they are required to leave for four months before they will be issued a new work permit.

There has been no official change in policy, however, some employers have applied successfully for new LMO's for their foreign workers and Citizenship and Immigration Canada has continued to approve work permit extensions without the worker having to leave the country. Given the current economic crisis, it is not surprising that there has been no formal announcement extending the period of stay for low skill workers. It is important, however, for practitioners to understand that some applications have been approved on a case by case basis and it is therefore advisable for employers to submit an application for a new LMO. SC has confirmed that they will continue processing LMO applications regardless of whether a worker has left the country or not. CIC will then assess work permit extension applications on a case by case basis as long as the temporary foreign worker continues to meet the requirements of the *Immigration and Refugee Protection Act and Regulations*.

It is also important to note that the Alberta Immigrant Nominee Program has been approving nominations for low skilled workers in select industries and that work permit extensions are being renewed on the basis of the provincial nomination.

### **Tips & Tricks**

- **Twelve month LMO confirmations – the new norm.** During this period of economic uncertainty, SC has started issuing 12-month LMO confirmations in many cases. Nurses and highly skilled occupations being notable exceptions. The lower the skill level, the more likely a maximum 12-month LMO will be issued.
- **SC reserves the right to contact employers directly to obtain or confirm information.** Due to instances of fraud and/or abuse, SC officers are now contacting employers on a regular and consistent basis to ensure that a job offer is genuine and to request any additional information. Ensure that the employer contact is available and advise them to respond to any requests for information as soon as possible or risk having the LMO application refused.
- **Prevailing Wage Rates.** Prevailing wage rates have yet to be affected in a significant way by the recession. The temporary foreign worker program is currently in the process of reviewing its prevailing wage rate policy in an effort to ensure that its wages are more reflective of local labour market conditions. Greater transparency as to current prevailing wage rates would be welcomed.

- **Identify the most appropriate NOC Code.** In order to ensure that your client has met the new recruitment requirements. It is important to review the detailed position description and identify the appropriate National Occupation Classification code for the position to be filled. While the SC officer will make the final determination as to the appropriate NOC code, it is helpful to specify the code that you have identified in your application materials. If the employer incorrectly identifies the NOC code as a low skill occupation and the officer later determines that it is a skilled role, the employer may be required to re-post the position with a higher wage rate that is consistent with a skilled occupation.
- **Do not simply cut and paste the job duties from the NOC.** Officers are seeking a detailed position description which is specific to the employer.
- **Provide a rationale for the number of positions.** In some cases, it is not clear to the officer how an employer has determined the number of foreign workers they will require to meet their labour force needs. This is particularly the case for small companies who are seeking to hire a proportionately high number of foreign workers. Do not request more positions that the employer reasonably expects to fill with foreign workers.
- **Advise employers to undertake genuine recruitment efforts.** Recruitment efforts should be undertaken *before* the application for an LMO is submitted. An LMO application may be refused if the minimum recruitment criteria are not met prior to the submission of the application. Employers should keep records of any applications received in response to the job posting(s) and be prepared to account for why they did not hire any qualified Canadian candidates.
- **Less is more.** SC does not consider the qualifications of the individual worker and as such, you do not need to include résumés, educational certificates or other personal documents relating to the candidate. If you are making an argument that the specific foreign worker has unique or specialized skills, it is advisable to provide a detailed submission or employer letter outlining the rationale for hiring this worker and the benefits they will bring to the Canadian labour market. In view of the new advertising requirements, specialized skills which are in high demand may no longer be sufficient to justify a lack of recruitment efforts.
- **Keep clients informed.** Ensure that the client contact listed on the Application form is available to answer questions from the SC officer while the application is being processed. Your client should be provided with a copy of the complete application and should keep this on file in the event of a request for information from SC. Be sure that your client understands the responsibility and the conditions that they have agreed to in applying for a labour market opinion.

- **Monitor processing times & avoid unnecessary status requests.** Prior to submitting an application, it is advisable to check the current processing times and to manage your client's expectations as to when they will receive a response. Some SC offices will consider requests for expedited processing if you can demonstrate a genuine need and the benefits for the Canadian labour market. Check with the regional office to determine their current procedure. Do not submit repeated requests for status updates if you are within the standard processing times – this diverts resources away from processing applications.
- **Encourage a culture of compliance.** Encourage clients to maintain complete and up-to-date personnel files for all temporary foreign workers, including copies of all foreign worker status documents and LMO applications. Advise clients to periodically conduct self-audits to ensure compliance with the terms of all labour market opinions and work permits. Ensure that your clients have a tracking and document management system to ensure that all employees have proper authorization to work in Canada.
- **The temporary foreign worker program is viewed as an option of last resort for employers to fill immediate skills and labour shortages where Canadians are not available.**