



August 9, 2021

Via email: IRCC.TempResRegulations-ResTempReglement.IRCC@ic.gc.ca. EDSC.DGCE.DPIRP.TET-TFW.IPPI.SEB.ESDC@hrsc-rhdcc.gc.ca

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Dear Ian Gillespie and Brian Hickey:

Re: Canada Gazette, Part 1, Volume 155, Number 28 - Regulations Amending the Immigration and Refugee Protection Regulations (Temporary Foreign Workers)

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) in response to a notice in Part I of the Canada Gazette, Amending the Immigration and Refugee Protection Regulations.¹ Immigration, Refugees and Citizenship Canada (IRCC) and Employment and Social Development Canada (ESDC) are seeking comments on a proposal to amend the Immigration and Refugee Protection Regulations to enhance requirements for employers seeking to hire Temporary Foreign Workers (TFWs) under the Temporary Foreign Worker Program (TFWP) and International Mobility Program (IMP).

The CBA is a national association of 36,000 members, including lawyers, notaries, academics, and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section has approximately 1,200 members across Canada practising in all areas of immigration and refugee law.

The CBA Section is pleased that the proposed regulations intend to better protect vulnerable TFWs while they are working in Canada. We offer comments and suggestions for improvement.

Employment and Healthcare Information

We welcome the requirement that employers give all TFWs hard copies of information explaining their employment rights and emergency and general health care coverage. We suggest having hard copies available in several languages other than English and French so the information reaches TFWs who are not proficient in one of Canada's official languages and may not have access to the internet. For example,

¹ [Canada Gazette, Part I, Volume 155, Number 28: Regulations Amending the Immigration and Refugee Protection Regulations \(Temporary Foreign Workers\)](#).

Ontario's Ministry of Labour offers handouts in ten languages other than English and French,² and the Government of British Columbia offers handouts in five other languages.³ Giving information in many languages will help to address the language barriers TFWs face compared to Canadian citizens and permanent residents.

In some circumstances, it may not be practical to post updated information at the employee's work site as not all employees work in one location. Many TFWs are mobile and travel around the country. The CBA Section recommends that IRCC and ESDC clarify whether information can be given electronically to workers who do not regularly work in one workplace or whether posting the required information at a central location is acceptable under the proposed regulations.

Employers Attesting to the Practices of Recruitment Agencies

It will be challenging for employers using the IMP to attest that third party recruitment agencies do not charge or recover fees for their services in relation to a Labour Market Impact Assessment (LMIA). Would ESDC be able to hold employers accountable if the recruitment agency did not give the employer accurate information about their processes before the employer signed an attestation? This is especially concerning as the proposed changes to the regulations also grant IRCC and ESDC power to compel third parties to provide supporting documentation during a compliance investigation.

It is also unclear what amounts to a reasonable effort by employers to ensure that recruitment agencies are not illegally charging TFWs for fees associated with migrating to Canada. We suggest that IRCC and ESDC offer more detailed guidance on this point. The government could also consider protecting TFWs by requiring third party recruitment agencies to be licensed and regulated.

Signed Employment Agreement

The requirement for a written employment agreement is not consistent with current employment law requirements, which permit employment agreements to be written, oral or hybrid.

This new requirement may not be practical for some work permit applications, such as intra-company transfers and LMIA positions of short duration (30 days), as these employees are required to work in Canada on an intermittent basis or need to travel on an urgent basis for a short stay. For cases where obtaining a signed agreement is not practical, we recommend that employers be required to outline the terms of the employment relationship in writing whether it is signed or not. We also suggest using the wording that is used in low wage LMIA's,⁴ which is brief and clear.

We also recommend that IRCC and ESDC clarify how the employer can satisfy the requirement for a signed employment agreement for positions governed by a collective agreement.

Access to Health Care for Employees in the Workplace

We suggest that the government clarify the requirement that employers "make reasonable efforts to provide access to health care services" for TFWs who do not have a fixed place of employment. Where an employee does not have a fixed place of employment, the definition of "in the workplace" has been interpreted by case law to include on the way to and from work.⁵ It will be challenging for employers to offer access to healthcare for an employee in transit to and from work particularly since the TFW may not have easy access to a mobile phone or service. We suggest that the

² [Other Languages | Ministry of Labour \(gov.on.ca\)](#)

³ [Hiring employees - Province of British Columbia \(gov.bc.ca\)](#)

⁴ See ESDC, [Sample Employment Contract](#).

⁵ See for example: [McNeil v WCAT \(PEI\)](#), 2021 PECA 9 (CanLII).

government clarify expectations for these circumstances so that it is clear to employers and employees.

Private Health Insurance Before Provincial or Territorial Coverage is Available

The CBA Section welcomes the added requirement for employers to ensure that TFWs have medical coverage until they are eligible for provincial or territorial health care. This addition protects vulnerable workers, especially in the low-wage stream. Private health insurance is already a requirement for some LMIA streams, such as the Seasonal Agricultural Worker Program.

However, we are concerned that these changes could deter employers from using these programs. This would have a detrimental economic effect because skilled foreign workers are necessary to transfer knowledge to Canada citizens and permanent residents and grow the Canadian economy. We suggest that the government consider lowering the processing fee for the LMIA so that these programs remain attractive to employers.

Recruitment Fees

The CBA Section wholeheartedly agrees with the goal of eliminating the abuse perpetrated by employers who pass on recruitment fees and costs to the TFW. Many provinces, including British Columbia, Manitoba and Saskatchewan, have passed laws that target this type of abuse. The proposed amendment will make the federal rules consistent with those of these provinces.

Companies Prohibited from Using the TFWP

Many companies applying for LMIA's form part of large multinational corporations that may be loosely affiliated with other Canadian companies found to not comply with immigration laws and are considered to have abused the TFWP. These companies would not necessarily share hiring practices or internal workplace policies captured by the employer compliance regime. A company should not be penalized for the actions of another company that is not under its control. However, a company that has abused the TFWP should not be allowed to create another company for the sole purpose of avoiding punishment.

We recommend that IRCC and ESDC take care in implementing these regulations to ensure that the term "affiliate" is not broadly construed to include innocent companies. If these companies are not able to obtain the labour they need to grow the Canadian economy or to transfer skilled knowledge to Canadian citizens and permanent residents, there could be negative impacts on the Canadian economy.

Open Work Permit for Abused Workers

The CBA Section also recommends amending section 207.1 of the regulations to give TFWs who faced abuse access to open work permits regardless of whether they maintain valid status or are eligible for restoration. The regulations currently require an applicant to maintain valid temporary resident status as a worker. This requirement is unfair to applicants who may have fallen out of status through no fault of their own. The loss of status would aggravate the predicament of these vulnerable TFWs who have suffered workplace abuse, which is inconsistent with the spirit of the changes proposed by IRCC and ESDC.

Conclusion

The CBA Section is pleased that the proposed regulations seek to better protect vulnerable TFWs. Our suggestions seek to balance the need to protect TFWs with ensuring that the TFWP and IMP programs meet the needs of employers and the Canadian economy.

Yours truly,

(original letter signed by Nadia Sayed for Mark Charles Holthe)

Mark Charles Holthe
Chair, CBA Immigration Law Section