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Important Changes to the Foreign Worker Program



By **Predrag Tomic**

Employers seeking to employ foreign workers must often obtain a positive labour market opinion (LMO) from Human Resources and Skills Development Canada (HRSDC) before a foreign worker will receive a work permit. If you are an employer relying on the Foreign Worker Program this year, you need to consider recent changes to the LMO application process, and the addition of expanded government search and seizure powers in connection with the employment of foreign nationals.

The most recent changes to the *Immigration and Refugee Protection Regulations*, which came into effect on December 31, 2013, are the final stage of a comprehensive set of reforms announced in the spring of 2013. This article highlights some of the key changes which may impact your business.

New LMO Application Forms

If you are applying to hire a temporary foreign worker, be aware that a new LMO application form was introduced on December 31, 2013. Among other changes, the form includes additional employer attestations about the employer's compliance with the requirements of the Foreign Worker Program.

Audit Period Increased to Six Years

As of December 31, 2013, employers must maintain records relating to an LMO or work permit application for six years, starting on the first day of employment for which a work permit was issued to the foreign worker. The records include evidence of advertisement and recruitment efforts and any document that relates to compliance with imposed conditions.

Search and Seizure Powers

To verify compliance with the Foreign Worker Program, HRSDC and Citizenship and Immigration Canada (CIC) have been granted vastly expanded search and seizure powers. HRSDC/CIC has the authority to:

- Require an employer to provide documents to verify compliance,
- Require an employer to report at any specified time and place in order to answer questions,
- Without a warrant conduct inspections of any premises or place where a temporary foreign worker does work (with the exception of private dwellings, which require warrants),
- Question any employee on-site or demand production of documents, and
- Be accompanied or assisted during site inspections by any person required by HRSDC/CIC (this could include the Canada Revenue Agency or employment standards inspectors, for example)

HRSDC/CIC can trigger an inspection if it has a reason to suspect that an employer is not complying or has not complied with any conditions imposed under an LMO or work permit. However, it can also do so simply as part of random compliance verification. The search and seizure powers extend for six years from the first day of employment of a temporary foreign worker, even if that foreign national is no longer employed by that employer.

Potential Penalties for Non-Compliance

Employers who are determined not to be in compliance could be banned from hiring foreign workers for 2 years and have their name published on a public "black-list." Any pending LMO applications by that employer could also be refused.

Please contact Field Law's Business Immigration Group if you would like further information about the recent changes or require assistance navigating the Temporary Foreign Worker Program. Our immigration counsel can assist you in complying with the Program's requirements to reduce risk of disruption to your business.

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