

Improving the Temporary Foreign Worker Program

Canada's future economic growth will be determined by our ability to access and retain workers with the necessary skills to strengthen our workforce. It will also be determined by establishing sound economic policy in conjunction with fuelling prosperity for all Canadian citizens. The Temporary Foreign Worker Program, in conjunction with Canada's Economic Action Plan, supports Canada's economic and labour market interests.

The Chamber network has watched, with growing concern, moves by the federal government to restrict businesses' ability to utilize the TFWP. The changes introduced in 2013 made the program much harder to use. The further extensive changes in 2014 are harming many small businesses across Canada, thus changing the original intent to address genuine and acute labour needs so that businesses could grow and create more opportunities for Canadians.

Institute an Appeal Process for Labour Market Impact Assessments

In order to hire a Temporary Foreign Worker, the employer must first request a Labour Market Impact Assessment (LMIA), through Service Canada. The LMIA process is the government's way of ensuring that hiring a foreign worker is not taking away employment opportunities for Canadians and permanent residents.

When reviewing LMIA applications, it is necessary for the administrative decision-makers to utilize some level of discretion. Subject to numerous rulings under Canadian administrative body of law, discretionary decisions must be exercised via a standard of reasonableness and subject to procedural fairness. Discretionary decisions made by the administration should be relevant, reasonable, and consistent, with the process being free of any abuse.

Unfortunately, this has not been the case with past Labour Market Opinion (recently renamed LMIA) applications.

It is imperative that the administrative decision-makers of the TFWP be subject to the standards outlined under Canadian administrative law, and that decisions made be subject to review and appeal when necessary. Decisions subject to review are made with an increased level of consideration.

Improving the LMIA Component

LMIA's may only be requested for full-time work yet often employers have need for part-time workers and there are no local sources of labour to fill the positions. Because the number of employed hours has been deemed more important than other factors, employers looking for part-time workers are ineligible for a LMIA.

The absurdity of this situation becomes evident when we recognize that employers may not apply

for an LMIA for a 0.8 position working as a registered nurse for \$32.40 per hour, since 0.8 is less than a full-time position. This is despite the fact that \$32.40 per hour is considered a high-wage position, higher than the median wage in 12 of the 13 provinces and territories.

Retain flexibility within TFW Annex agreements

The Canadian Chamber agrees with stronger enforcement and tougher penalties for those who abuse the program, but it feels that the federal government needs to increase flexibility of the program for the provinces that have exceptionally low unemployment and high job vacancy, as, for instance, Saskatchewan and Alberta.

The federal government announced that during the next year (until the spring of 2015) it would make changes to the provincial/territorial TFWP Annexes it has with Alberta, British Columbia, Ontario, Nova Scotia and Yukon as part of their respective immigration agreements with Canada. The annexes to immigration agreements have allowed the provincial/territorial governments to identify situations where certain occupations could be exempted from the requirement to obtain a LMIA (before called LMO), facilitating access to the program. According to the Overhauling the Temporary Foreign Worker Program document, the Government will be changing the existing annexes with provinces/territories to limit their use of LMIA exemptions.⁹

In the near future, Canada will likely face a nation-wide demand for senior expertise due to increasing global competition for talent, retirement, as well as the need for foreign expertise in emerging Canadian industries. Training local talent to replace retired workers will take years and in the meantime, rapidly growing industries desperately need to fill the empty gap between newly trained labour and locally available senior talent.

Therefore, annex agreements should be renegotiated to include only a limited list of industries and occupations where qualified Canadians are not available, in order to address immediate labour needs on a temporary basis.

Recommendations

That the federal government:

1. Place a priority on enforcement and prosecution of offenders prior to placing any further restrictions on the program.
2. Ensure that any further changes to the TFWP reflect the needs of the economy on both a regional and a sectoral basis.
3. Institute an appeal process for denied LMIA applications.
4. Give clearly detailed explanations to applicants when LMIA applications are denied.
5. Remove restrictions for full-time employment on the LMIA application.
6. Negotiate with provinces and territories new Annexes on the Temporary Foreign Worker Program to the immigration agreements with provinces and territories in ways that will increase the flexibility to use the TFWP in provinces and territories with areas of low unemployment and high job vacancy rates.
7. Introduce Annexes related to the use of Temporary Foreign Worker Program into immigration agreements with all provinces and territories, tailored to their specific economic goals and priorities.
8. List key industries in the federal-provincial/territorial Annex Agreements that are eligible for occupation-specific (but not employer specific) work permits for TFWs without a requirement to apply for an LMIA.
9. Include industry representatives in TFW Working Groups prescribed in the Annex Agreements.
10. Not require LMIA's for work permits in key industries, or in the alternative, waive the advertising requirements and shorten processing times to one week for work permits in key industries.