



Submission
to the
Standing Committee on Human Resources, Skills
and Social Development and the Status of Persons
with Disabilities
on the
Temporary Foreign Worker Program

June 1, 2016

The Canadian Chamber of Commerce is pleased to provide comments on how to improve the Temporary Foreign Worker Program (TFWP).

It is worth recalling that historically the TFWP has always been focused on highly skilled talent. It was opened up to lower-skilled workers in 2002 (although the Seasonal Agricultural Worker Program has existed in some form since the 1960s).

The Chamber's comments will focus on the:

- 1) TFW Program's role in the economy
- 2) Highly skilled talent and a dedicated track
- 3) Pathways to immigration for TFWs
- 4) Processing issues and service standards
- 5) Prevailing wage rates
- 6) National Occupational Classification (NOC) codes, and
- 7) Fairness, transparency and the principles of administrative law.

1) TFW Program's role in the economy

The Temporary Foreign Worker Program addresses a range of labour market shortages in our economy. It is not about one kind of worker who is needed in one industry in one part of the country. It is about the need to fill short-term shortages in order to keep Canadians employed and to keep Canadian firms in business, and competitive both domestically and internationally. When Canadian businesses succeed – both domestically and internationally – Canadian job creation occurs. It is important to remember that a critical foreign TFW resource could result in Canadian job growth due to his or her contribution to the business.

The starting point for employers is to find Canadian workers. As well as being the right thing to hire Canadian workers, it is typically far more economical to recruit and hire from the local labour market rather than to pay the substantial additional cost of recruiting and relocating foreign talent to Canada, even where the salary and compensation benefits paid to the foreign national is equivalent to that which would be paid to Canadian employees. The high costs and effort of recruiting from abroad mean that hiring domestically is always the preference wherever possible.

When it comes to temporary work in Canada, it is worth recalling there are several broad categories of entry by foreign nationals.

By far the largest numbers of temporary entries are via the youth exchange programs, the International Experience Canada. These are for young people ages 18-34 who come for short-term work opportunities in Canada. While this category is now under the

International Mobility Program, it is still a source of workers filling labour market needs. The next largest category is typically high-skilled workers, followed by seasonal agricultural workers, low-skilled workers and so on.

In October 2015 Chamber delegates, representing 200,000 businesses across Canada, passed a policy resolution on the TFWP which cited the following concerns:

We support the goal of promoting the hiring of local labour supply, particularly in the Employment Insurance program, as do thousands of member companies that offer countless job opportunities to those beneficiaries every day. But we believe that the strict limits on the use of temporary foreign workers now imposed under the TFWP are contrary to what is desirable for the Canadian labour force.

Increasing the cost for the analysis of a file and imposing substantial fines on offenders to limit abuse is one thing, but:

- making labour market impact assessments (LMIAs) burdensome and unwieldy;
 - requiring employers to develop transition plans for trades and professions in chronic shortage while we know their commitment to developing the workforce;
 - performing continuous checks to ensure that the number of workers does not exceed the allowed threshold;
 - refusing to process applications from districts with full employment which are located in large economic regions where there is no public transport infrastructure that allows commuting;
- are merely red tape measures that hinder rather than encourage prosperity and employment.

Recommendations:

- a) Use the Temporary Foreign Worker Program as a true temporary worker program for immediate shortages while enabling foreign workers to use other immigration programs for permanent residency. To that end, the Canadian Chamber also has recommendations to improve the Express Entry system for economic immigration programs.
- b) Simplify the processing of applications and LMIAs for trades, professions and occupations in high demand while taking into account the varied situations in different labour markets in Canada.

- c) Exempt companies who have developed and are participating in an approved workforce development plan from the obligation to provide specific transition plans for employees in occupations experiencing chronic shortages.
- d) Permit the application process for low-wage temporary foreign worker positions in regions where there is full employment (i.e. less than 6% unemployment) located within large economic regions as defined by Statistics Canada and used in the TFWP.

2) Highly skilled talent and a dedicated track

The principle of "jobs for Canadians first" is laudable, however using this principle to guide the LMIA process can translate into Service Canada and ESDC micro-managing the hiring and growth practices of Canadian businesses, based on general departmental guidelines which may or may not be relevant to the employer or sector of business.

At the point when firms are struggling to fill high-skilled positions with top talent who can help Canadian businesses innovate and grow, there may not be sufficient numbers of qualified and available candidates in Canada no matter the wage that is offered. Firms may need to look abroad to complete their teams, and retain and grow job opportunities for Canadians.

For multinational firms in Canada, the availability of talent supports "winning global mandates" and indeed it is often dependent on having the talent here. It is important to recognize the attraction of *some* foreign talent may be a strategic necessity to maintain jobs and economic activity in Canada, as well as ensure Canada's competitiveness in the international economy.

In professional hockey, for example, we want our teams to win. We focus on the highly skilled players. Why should it be any different in our battle for brains?

The Committee has heard from a host of sectors and employers, including some of our members, about the competition for talent. We urge the Committee to look at the TFW Program in light of Canada's ability to compete in both the domestic and international arenas.

Recommendations:

- e) Explore reintroducing a dedicated track for the assessment of applicants in the digital technology sector, along the lines of the former IT Workers Pilot Program or the new Tech Nation Visa Scheme in the U.K.

- f) Dedicate a number of Service Canada officers for specialized knowledge of certain industries that are high-value and high users of the program.

3) Pathways to immigration and citizenship

“Two-step immigration” is the process whereby international talent arrives in Canada to work on a temporary basis and then applies for permanent residency. The Chamber supports that the TFWP can be one of the pathways to immigration for the international talent that Canada needs. That said, members tell us that certain categories of TFWs do not have an obvious pathway because their experience in Canada as a TFW is not recognized in the immigration process.

Recommendation:

- g) Improve and expand the pathways for TFWs to permanent residency, including by expanding the Canadian Experience Class to give low- and semi-skilled temporary foreign workers the right to apply for permanent residency after three years of work experience here.

4) Processing issues and service standards

Employers often experience technology and process issues with the TFWP and Service Canada. Inadvertent or minor errors, such as not filling out the suite number of a building address, can cause the rejection or unnecessary delay of an application.

Processing issues and timelines vary by location of Service Canada office. Though the LMIA process is administered by Service Canada, a federal agency, regional Service Canada offices have latitude to interpret policy and manage the process.

Administrative issues often frustrate the process and result, and discourage employers from seeking the best resource to grow their business. For example, shredding applications that do not get through the Service Canada intake process could be replaced by contacting the employer applicant to request missing information. A fee of \$1,000 is not inexpensive, and one would hope that a certain level of service would accompany the fee level associated with the application.

Recommendations:

- h) Improve processing times and act on the government's election platform commitment to create new performance standards for services, including streamlining applications, reducing wait times, and providing money-back guarantees.
- i) Create forums at IRCC and ESDC for ongoing dialogue (via webcast, for example) with representatives of key stakeholders of the TFWP, the IMP and Express Entry, in order to communicate information and concerns amongst interested parties and with government officials.
- j) Implement a process to notify employers (via email, for example) of any changes to processes or information utilized in the calculation and submission of their initial LMIA application. This will give employers the opportunity to update applications and avoid costly delays, particularly in the case of prevailing wage rates.
- k) Improve processing efficiencies by creating a temporary foreign worker (TFW) industry-specific labour pool where semi-skilled or skilled TFWs who have been terminated without cause can register with an open work permit, creating a 'pool' from which other qualified industry-specific employers from across Canada can recruit.
- l) Encourage IRCC and Service Canada officers to improve the level of service; for example, Service Canada officers should be urged to call employers to make modest corrections or additions to complete their applications.

5) Prevailing wage rates

Prevailing wage rates established by Service Canada are creating challenges for some businesses since the calculation is not industry specific and often fails to recognize local employment demographics. A further example of the impact of the inflexibility of relying on the current prevailing wage rate structure is how it affects earlier stage workers. That is, the minimum prevailing wage rate is a median wage for a particular occupation in a particular geography; however, as they are median wages, having to meet that threshold necessarily precludes an approval for any foreign worker who will be paid under the amount that is paid to 50% of the respondents in the salary survey. Keeping in mind that the salary survey gathers data relating to workers at all stages of their career, this inflexibility results in near automatic LMIA refusals for employers

seeking approval to hire TFWs who are in the earlier stages of their career development, regardless of a proven labour market shortage.

Increased flexibility in wage determination is needed to ensure that the nature and location of the business, labour demographics and wage parameters are duly recognized at the local level when establishing wages for TFWs.

Access to qualified workers may vary significantly by location (i.e. urban vs. rural, region vs. province etc.). Additionally, Service Canada may change the posted wage rate in the course of a day. Employers who used a wage rate on their initial LMIA application that has subsequently become outdated (and the change is unknown to them) may have their application denied, in which case they must re-apply causing costly delays.

Recommendations:

- m) Implement a process by which employers are notified of any changes to processes or information utilized in the calculation and submission of their initial LMIA application, permitting employers the opportunity to update applications and avoid costly delays, particularly in the case of prevailing wage rates.
- n) Allow for credible alternative (private) wage surveys to be submitted and approved (as frequently used by industry).
- o) Allow for different prevailing wage rates for different levels of experience.

6) National Occupational Classification (NOC) codes

The National Occupational Classification (NOC) system is extremely broad and since it forms the basis for determining prevailing wage rates for specific jobs, it captures too many differing job titles and duties in a single wage, thereby making the minimum required wage to achieve a successful LMIA to be above a realistic wage rate paid to Canadians in some jobs.

Determining the “correct” NOC code is complex, and both Service Canada officers and employers are often challenged to find the most appropriate code for the circumstances. It is a highly subjective analysis, one which is highly consequential due to the fact that it impacts the minimum prevailing wage rate determination.

Recommendations:

- p) Review National Occupational Classification (NOC) code determination processes, and establish flexible, responsive practices that incorporate rural, urban and regional labour market needs.
- q) Update the listed occupations (NOC codes) to actually match the industry occupations.
- r) Improve the labour market information to reflect industry reality.

7) Fairness, transparency and the principles of administrative law

The Canadian Chamber agrees entirely with the government's intent to pursue alleged abusers of the program and to exert its considerable powers, including laying criminal charges with potential sanctions such as jail time and fines. Clearly, some employers have purposely and materially misled the government and those employers should face the consequences of that abuse. To correct the erroneous remark by a witness before the Standing Committee, the Canadian Chamber supports the existence of a compliance regime.

The issues of abuse of the program reflect insufficient scrutiny of applications. The fact is the government provides an assessment of every request for a temporary foreign worker. If greater scrutiny of those requests is required to mitigate the risk of abuse, then that is the government's right.

Discretionary decisions made by administrative decision-makers, however, should be relevant, reasonable and consistent. It is imperative to the overall success and economic well-being of Canadian businesses that the administrative decision-makers of the LMIA's and the TFWP be subject to the standards outlined under Canadian administrative law.

Given the inconsistent and sometimes contradictory information that employers receive from the ESDC website and Service Canada officers handling these applications, including those in the same office and those in different provincial offices, the Canadian Chamber is concerned that employers trying to follow the rules will nevertheless be subject to incorrect decisions or, during compliance audits, subject to unwarranted and harmful fines and bans. For example, the current recruiting guidelines established by ESDC and published on its website, indicate that the guidelines are minimum requirements (emphasis added) and a Service Canada officer may decide that additional recruiting efforts, beyond that which appear on the website, may be required.

There is a lack of transparency when an employer, in good faith, follows the established guidelines, waits two to three months for the application to be reviewed, and is then advised that in the officer's opinion insufficient efforts have been made to recruit Canadian workers, and that the employer must re-start the recruiting effort and pay the application fee again.

In adherence with Canadian administrative law where government officials make discretionary decisions, applicants should be allowed recourse to appeal outside the courts.

Recommendations:

- s) Develop a fully transparent set of guidelines and criteria regarding the LMIA and the TFWP so that everyone is following the same playbook.
- t) Place all of the enforcement power into the hands of an administrative body, such as a quasi-judicial body or tribunal.
- u) Establish an appeal process for the compliance regime under a quasi-judicial body or tribunal.

It is important to take stock of the TFW Program's original intent and how it relates to jobs and Canada's economy. An employer's job is to succeed in business. That's the most important thing; no other concerns can rival that because, without business success, there are no jobs for Canadians and other workers.

The TFWP was created to assist with employers' labour market challenges. Addressing the consequences – either unintended or intended but still harmful – of the 2014 program changes and the process issues will ensure this program serves its original and longstanding objectives in Canada's interests.

The Canadian Chamber appreciates the opportunity to share these comments with the Committee.

We look forward to the Committee's report on how to improve the Temporary Foreign Worker Program.

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