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1. Program Foundations

The goal or purpose of this section is to tell the story of the Temporary Foreign Worker Program (TFWP) within the context of the need for managing immigration with Citizenship and Immigration Canada (CIC) and the need for labour. This section defines the authorities and key responsibilities of the program principles.

1.1. Purpose/goal – Vision of the Temporary Foreign Worker Program

Part of the immigration legislative framework. Citizenship and Immigration Canada (CIC) issues work permits, on the basis of Employment and Social Development Canada (ESDC) Labour Market Opinion (LMO). Role of ESDC is to provide an opinion to CIC, which allows CIC to proceed to consideration of work permit application.

1.2. Legislative and Regulatory Framework

1.2.1. *Immigration* and *Refugee Protection Act* (IRPA)

1.2.1.1. Immigration and Refugee Protection Act

1.2.2. Immigration and Refugee Protection Regulations (IRPR)

1.2.2.1. Immigration and Refugee Protection Regulations

1.2.3. *Department of Employment and Social Development Act (DESDA)* include freedom of information and protection of privacy
1.2.4. Federal / Provincial / Territorial considerations: legislation and accords
1.2.5. *Access to Information* and *Privacy Act*

1.3. Departmental Infrastructure

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2. Program Policy and Design

The previous section outlined the legislative authorities and the role of Employment and Social Development Canada (ESDC). This section moves to discussion of the fundamental function of ESDC in the Temporary Foreign Worker Program (TFWP).

2.1. Program Streams

2.1.1. Occupations requiring a high level of formal education or training (NOC 0, A, B) skilled workers
2.1.2. Occupations requiring lower levels of formal training (NOC C and D)
2.1.3. Live-in Caregiver Program (LCP)
2.1.4. Seasonal Agricultural Workers Program (SAWP)

2.2. Temporary Foreign Worker Program Structure

2.2.1. Role of Employment and Social Development Canada / Service Canada
2.2.2. Role of Citizenship and Immigration Canada / Canada Border Services Agency

2.3. Program Integrity

2.3.1. Verifying accuracy of employer representations and dealing with fraudulent representations

2.4. Definition of Employer

2.5. Interpreting Legislated Criteria for Arranged Employment Opinion and Labour Market Opinion's. Clarify Immigration and Refugee Protection Act and Immigration and Refugee Protection Regulations factors such as:

2.5.1. Assessing genuineness

- **2.5.1.1.** Assessing whether the employer is actively engaged
- **2.5.1.2.** Assessing whether the job offer is consistent with the reasonable employment needs
- **2.5.1.3.** Assessing employer's ability to fulfill
- **2.5.1.4.** Assessing employer's compliance with federal or provincial laws

2.5.2. Assessing the impact of the employment of the foreign worker on the canadian labour market

- **2.5.2.1.** Assessing probability of job creation or job retention
- **2.5.2.2.** Assessing probability of knowledge creation or transfer
- **2.5.2.3.** Assessing likelihood of filing a labour shortage
- **2.5.2.4.** Assessing consistency of prevailing wage rate and working conditions against generally accepted norms
- **2.5.2.5.** Assessing reasonable efforts to hire or train
- **2.5.2.6.** Assessing likelihood of affecting a labour dispute

2.5.3. Assessing consistency with federal-provincial agreement that apply to the employers of foreign nationals
2.5.4. Assessing the hiring of a Live-in Caregiver

- **2.5.4.1.** Residing in a private household and providing child care, senior home support care of a disabled person
- **2.5.4.2.** Providing adequate furnished and private accommodations
- **2.5.4.3.** The Employer has sufficient financial resources to pay the foreign national

2.5.5. Assessing whether the wages, working conditions and occupation are substantially the same as originally offered

- **2.5.5.1.** Substantially the same - wages
- **2.5.5.2.** Substantially the same – working conditions
- **2.5.5.3.** Substantially the same – position / occupation

2.6. Program Policy Positions

2.6.1. Entertainment and film-related occupations
2.6.2. Foreign academics
2.6.3. Labour market information: alternate sources of data

- **2.6.3.1.** All sector councils collect and disseminate labour market information. Here is a list of all the Sector Councils Programs http://www.councils.org/sector-councils/list-of-canadas-sector-councils/

2.6.4. Labour mobility
2.6.5. Third party representation

- **2.6.5.1.** Third party representation

- **2.6.5.2.** Tripartite emplolyment arrangements

2.6.6. Group of employers (GoE)
2.6.7. Duty to protect, shared with provinces and territories and delegated organisations, such as Workplace safety and insurance board (WSIB)
2.6.8. Outreach and stakeholder relations
• Outreach for the public is generally provided by Service Canada regional offices. Consultations occur on a issue specific basis.
2.6.9. Non-governmental organizations and stakeholders

- **2.6.9.1.** Sector councils
- **2.6.9.3.** Canadian Bar Association

2.6.10. Federal / Provincial / Territorial working group and annex agreements
2.6.11. Information sharing
• In order to effectively deliver the Temporary Foreign Worker Program, Employment and Social Development Canada, Citizenship and Immigration Canada and Canada Border Services Agency share information related to labour market opinions and arranged employment opinion applications and decisions on a regular basis. Information sharing is regulated by legislation and organized by policy in order to protect clients, workers, and citizens privacy while ensuring efficient delivery of service and safeguarding the integrity of the program. Memoranda of understanding outline the parameters governing sharing of information.

- **2.6.11.1.** Memorandum of understanding with Citizenship and Immigration Canada
- **2.6.11.2.** Memorandum of understanding with Canada Border Services Agency
- **2.6.11.3.** Sharing of information with other federal departments
- **2.6.11.4.** Letters of understanding with provinces and territories

2.6.12. Verifying accuracy of employer representations and dealing with fraudulent representations

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3. Program Operations

This section defines the operational steps and needs in order for Service Canada staff to assess an application. The information is provided by stream.

.1 emporary Foreign Worker Program (TFWP) Infrastructure
.2 dministrative Requirements Common to Labour Market Opinion and Arranged Employment Opinion
rranged Employment Opinions (archived)
.5 bour Market Opinions
.6 ademics
.7 ilm & Entertainment
.8 NOC C & D
.9 ive-in Caregiver Program
.10 Seasonal Agricultural Worker Program

3.1 Temporary Foreign Worker Program (TFWP) Infrastructure

- Provides ESDC and Service Canada roles and responsibilities. Contains links of National Headquarters NHQ and Regional Headquarters RHQ contacts information as well as unit roles, responsibilities, authorities and accountability, at Director and Manager levels.

3.1.1 Roles and Responsibilities

3.2 Administrative Requirements Common to Labour Market Opinion and Arranged Employment Opinion

- Outlines the administrative steps in order to create a complete file (i.e. assigning NOC codes, employer contact information, entering information in FWS, etc.)
- This section also educates about the importance of acquiring and maintaining accurate records to support defensible LMO and AEO decisions.

3.2.1. NHQ/Regional/Centre of Specialization (CoS) Communications

- **3.2.1.1.** Service Canada/NHQ Inbox
- **3.2.1.2.** WebCims
- **3.2.1.3.** Documenting Communications with Members of Parliament (MP)
  - **3.2.1.3.1.** MP Hotline Process
  - **3.2.1.3.2.** Inquiries Resolution Flowchart
- **3.2.1.4.** Public Affairs and Stakeholder Relations Branch (PASRB)/Service Canada Corporate Secretariat - Communications

3.2.2. Sharing of information

- **3.2.2.1.** Clients/Employers
  - **3.2.2.1.1.** Declaration of Employer
  - **3.2.2.1.2.** Denied Work Permits
  - **3.2.2.1.3.** Representatives including MPs
  - **3.2.2.1.4.** Third Parties
  - **3.2.2.1.5.** Lawyers
- **3.2.2.2.** CIC
  - **3.2.2.2.1.** NHQ, senior management
  - **3.2.2.2.2.** Missions/Officers
    - **3.2.2.2.2.1.** CIC Enquiries
  - **3.2.2.2.3.** Investigations/Enforcement
- **3.2.2.3.** CBSA
  - **3.2.2.3.1.** NHQ, senior management
  - **3.2.2.3.2.** Entry points/Officers
  - **3.2.2.3.3.** Investigations/Enforcement
- **3.2.2.4.** Royal Canaian Mounted Police RCMP
- **3.2.2.5.** Public/media, stakeholders, outreach
- **3.2.2.6.** Other Government Departments, Provinces & Territories

3.2.3. File Construction

- **3.2.3.1.** Checklist
- **3.2.3.2.** Notes in the Foreign Worker System
- **3.2.3.3.** File Construction: maintaining the paper trail for Quality Assurance

3.2.4. Service Standards

- *Program Officers are obligated to respond to requests for AEOs and LMOs. Program officers must perform and be perceived as performing duties in a principled, lawful, responsible and courteous manner.*
  - Providing personalized service
  - Explaining what client needs to know
  - Helpful and respectful of their needs
  - Satisfying client expectation, or providing information on alternate venue
  - Providing notice of timelines: when to expect decision, next steps in process
  - Providing and seen to be providing, fair and unbiased service; and
  - Ensuring privacy of information provided

3.2.5. Links to forms / templates

3.2.5.1. Letters
3.2.5.2. Bulk Assessment Form Template
3.2.5.3. AEO related

3.2.6. Foreign Worker Application Administrative Procedures Common to AEO and LMO

3.2.6.1. Determination of issue: is a LMO or AEO required? Consultation with CIC required?

3.2.6.1.1. Arranged Employment Opinion - Related (archived - 2013-11-28)

3.2.6.2. Assignment of file: which Region, CoS or NHQ Unit deals with file – criteria for determination include NOC code, geographical area, industry.
3.2.6.3. Employer Information

3.2.6.3.1. Employer I.D.

3.2.6.3.1.1. Third Party Representatives

3.2.6.3.1.1.1. Members of a Bar (lawyers)

3.2.6.3.1.2. Non-traditional Employment Arrangements
- (e.g. Contractors, or Self Employed workers)

3.2.6.3.1.2.1. Self Employed Temporary Foreign Worker
3.2.6.3.1.2.2. Other Examples of Non-traditional Employment Relationships

3.2.6.3.2. Canada Revenue Agency - 15 digit code and Business Number
3.2.6.3.3. Employer Name (name of business)
This document contains sections 3.2.6.3.3 and 3.2.6.3.3.1:
3.2.6.3.4. Employer Contact Information
This document contains sections 3.2.6.3.4 to 3.2.6.3.18:
3.2.6.3.19. Number of Canadian/permanent residents employed in Canada
This document contains sections 3.2.6.3.19 to 3.2.6.3.21:

3.2.6.4. Third Party Information (if applicable)
This document contains sections 3.2.6.4.1 to 3.2.6.4.6:
3.2.6.5. Details of Job Offer
This document contains sections 3.2.6.5 to 3.2.6.5.11:

3.2.7. Rendering a decision and post-decision process

3.4 Arranged Employment Opinions

(archived – 2013-11-28)

3.5 Labour Market Opinions

- This section guides through the steps of assessing the labour market under section 203.

3.5.1. Overview of the Labour Market Opinion process

3.5.1.1. Map of Application Assessment

3.5.2. Step 1 - CIC Ineligibility List

3.5.2.1. Step 1(b): Section 91 of IRPA and Eligibility Status of Representative

3.5.3. Step 2 - Consistency with Federal/Provincial Agreements
- Federal/Provincial Agreements (Annexes) (c) the issuance of a work permit would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals

3.5.4. Step 3 - Genuineness/LCP

3.5.4.1. Genuineness - R203(1)a)
3.5.4.2. LCP - R203(1)d) - in the case of a foreign national who seeks to enter Canada as a live-in caregiver
- *See Section 3.8 for elaboration on the following LCP related factors:
  - the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision;
  - the employer will provide adequate furnished and private accommodations in the household; and
  - the employer has sufficient financial resources to pay the foreign national the wages that are offered to the foreign national.

3.5.5. Step 4 - Labour Market Factors/STS

3.5.5.1. Labour Market Factors - R203(1)b)

3.5.5.1.1. Job creation and/or retention
- Whether the employment of the foreign national is likely to result in direct job creation or job retention for Canadian citizens or permanent residents

3.5.5.1.2. Transfer of skills and/or knowledge
- Whether the employment of the foreign national is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents

3.5.5.1.3. Labour shortage
- Whether the employment of the foreign national is likely to fill a labour shortage

  - **3.5.5.1.3.1.** Assessment of the Record of Employment Factor on Labour Market Opinion Applications

- Whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents

3.5.5.1.5.1. Process for requesting an advertising requirement variation
Advertising Variation Request Form
3.5.5.1.5.2. Foreign companies
3.5.5.1.5.3. Training

3.5.5.1.6. Labour dispute
- Whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute

3.5.5.2. Step 4 (b) STS
- Did the employer provide the TFW with wages, working conditions, and an occupation that were STS as originally offered in the LMO application?

3.5.5.2.1. Attestations
3.5.5.2.2. STS Selection Methodology
3.5.5.2.3. STS ECR Level Determiner Tool
3.5.5.2.4. Random vs. Risk-Based Selection (non-random)

3.5.5.2.4.1. Random

3.5.5.2.4.1.1. ECR Level Determiner Tool

3.5.5.2.4.2. Risk-Based (non-random)

3.5.5.2.5. Initiating the STS ECR
3.5.5.2.6. Commencing a Level II STS-ECR

3.5.5.2.6.1. Contacting the employer
3.5.5.2.6.2. Dealing with Third Parties
3.5.5.2.6.3. Employer withdrawals

3.5.5.2.7. Demonstration of STS

3.5.5.2.7.1. Wages
3.5.5.2.7.2. Working conditions
3.5.5.2.7.3. Occupation

3.5.5.2.8. Justification and Compensation

3.5.5.2.8.1. Justification

3.5.5.2.8.1.1. Change in federal or provincial law
3.5.5.2.8.1.2. Change in the provisions of a collective agreement
3.5.5.2.8.1.3. Implementation of measures due to change in economic conditions
3.5.5.2.8.1.4. An error in interpretation
3.5.5.2.8.1.5. An unintentional accounting or administration error made in good faith
3.5.5.2.8.1.6. Other circumstances

3.5.5.2.8.2. Principles of compensation

3.5.5.2.8.2.1. Repetition of justification/compensation

3.5.5.2.9. Concurrence process (if required)
3.5.5.2.10. Revocation of an opinion
3.5.5.2.11. Ineligibility
3.5.5.2.12. Regional considerations
3.5.5.2.13. Charts

3.5.5.2.13.1. Chart A – STS ECR elements and compensation
3.5.5.2.13.2. Chart B – Information sharing agreements
3.5.5.2.13.3. Chart C – Federal/Provincial employment Information

3.5.6. LMO specific adminstrative requirements

3.5.6.1. Employer-employee relationships (specific to LMOs)

3.5.6.1.1. Tripartite employment arrangements
3.5.6.1.2. Self-employed temporary foreign worker
3.5.6.1.3. Clarification on Labour Market Opinions for Owners/Operator of a Business
- See section 3.2 for more information

3.5.7. Location of work

3.5.7.1. Concurrence-general labour market opinion

000006

3.5.7.2. Concurrence request process map
3.5.7.3. Bulk request template

3.5.8. Provincial/territorial/federal certification, licensing, or registration requirements of the job and regulated occupations
3.5.9. Temporary with intent to permanent
3.5.10. Unnamed labour market opinions

3.5.10.1. Name submission
3.5.10.2. Foreign worker name submission template

3.5.11. Operational procedures

3.5.11.1. Application assessment process map
3.5.11.2. Application assessment process text
3.5.11.3. 4 step assessment process map
3.5.11.4. Foreign Worker System scan to network - foreign worker unit
3.5.11.5. Active / inactive function and request for information (RFO) indicators

3.5.11.5.1. Regional reference: usage of the Foreign Worker System (FWS) 'Active / Inactive' function and request for information indicators
3.5.11.5.2. Inactive / active function of Foreign Worker System

3.6 Academics

- This section provides specific requirements for LMO under Academics.
- Academic Occupations

3.6.1. Exclusions from LMO Process
3.6.2. Recruitment of Foreign Academics

3.7 Film & Entertainment

- This section provides specific requirements for LMO under Film & Entertainment, including Exotic Dancers.

3.7.1. Directive Sex Trade-related Businesses (2013-01-09)

- Annex A - List of Potential Businesses in the Sex Trade (2012-12-19)
- Annex B - Declaration Letter for Employers (2013-01-09)

3.7.2. Assessment for First Assistant Directors for Feature Films
3.7.3. Assessment for First Assistant Directors for Commercials
3.7.4. Assessment for musicians, bar bands and singers
3.7.5. Camera Operators for WWE
3.7.6. Exemption for concurrence from other regions in the Art and Entertainment sector

3.8 Pilot Project for Occupations Requiring Lower Levels of Formal Training (NOC C & D)

- This section provides specific requirements for LMO under the NOC C&D Pilot Project.

3.8.1. Overal Information

3.8.1.1. History and Pilot Objectives
3.8.1.2. National Occupation Classification (NOC) (DRAFT)
3.8.1.3. Definitions

3.8.1.3.1. Streams within the Pilot (SAWP, LCP, Ag., Exotic Dancer)

3.8.2. TFW- Pilot Project Program Requirements

3.8.2.1. Advertising and Recruitment
- For general advertising and recrutitment requirements refer to section **3.5.**

3.8.2.1.1. Additional Advertisement Requirements
3.8.2.1.2. Proof of Advertisement
3.8.2.1.3. Variations to the Minimum Advertising Requirements
3.8.2.1.4. Qs & As on Advertisement - Recruitment

3.8.2.1.4.1. Do I have to advertise a position before applying for a Labour Market Opinion under the Pilot Project?

3.8.2.1.5. Wage Rate identified in the Advertissement
3.8.2.1.6. Advertising & Recruitment Exemptions
3.8.2.1.7. Recruitment Report/ Human resources plan

3.8.2.2. Consultation with the local union

3.8.2.2.1. Labour Disputes

3.8.2.3. Coverage of all recruitment costs related to the hiring of the foreign worker
3.8.2.4. Employment Contract

3.8.2.4.1. Purpose of the employment contract
3.8.2.4.2. Content and changes to the employment contract template

3.8.2.4.2.1. Clause in the employment contract - Contract Subject to Provincial Labour and Employment Legislation and Applicable Collective Agreements

3.8.2.4.3. Third-party /Tripartite Representatives and the employment contract
3.8.2.4.4. Provincial labour and safety legislation

3.8.2.4.5. Enforcing the terms and conditions of the employment contract
3.8.2.4.6. Procedures related to the employment contract

3.8.2.6.1. Reviewing Wages clause in employment contract

3.8.2.7. Transportation Costs for the worker to travel from his/her country of permanent residence to the location of work in Canada and for the return to the country of permanent residence

3.8.2.7.1. Transportation clauses in the employment contract
3.8.2.7.2. Transportation questions and answers on the Web

3.8.2.8. Accommodation

3.8.2.8.1. Accommodation clause in the employment contract

3.8.2.9. Medical coverage

3.8.2.9.1. Hospital and Medical Care Insurance Clause in the employment contract

3.8.2.10. Registration of TFW under the appropriate provincial workers compensation/ workplace safety insurance plans

3.8.2.10.1. Workplace Safety Insurance (Worker's Compensation) clause in the employment contract

3.8.3. NOC C & D LMO Application Assessment

3.8.3.1. Service Canada Process
3.8.3.2. Process Map
3.8.3.3. Tools: TFWP LMO Assesment Guidelines Manual
3.8.3.4. System File
3.8.3.5. Notes to file, ER Notes, CIC, Third Parties, MICC Notes
3.8.3.6. File Construction (maintaining paper trail for QA)

3.8.4. Out of Pilot
3.8.5. Emergency processing (abusive situations) and Urgent processing and ER applying and under court case situation
3.8.6. Concurence in NOC C & D
3.8.7. Interprovincial concurrence apply to the trucking sector. I will provide the directives shortly.
3.8.8. Trucking Sector, Fishing Sector, Vessels
3.8.9. Agricultural Stream of the NOC C & D Pilot Project

3.8.9.1. Link to forms/templates
3.8.9.2. Determining Prevailing Wage Rate

3.8.9.2.1. SAWP commodity or LMI
3.8.9.2.2. Collective Agreements

3.8.9.3. Assessing Working Conditions

3.8.9.3.1. Accommodation
3.8.9.3.2. National Policy on Minimum Standards for Agricultural Accommodations
3.8.9.3.3. Transportation

3.8.9.4. Recruitment Efforts

3.8.9.4.1. Advertising

3.8.9.5. Worker's Compensation
3.8.9.6. Transfer of workers
3.8.9.7. Bilateral Agreements
3.8.9.8. Comparative table between SAWP and NOC C & D Agriculture

3.9 Live-in Caregiver Program

- This section provides specific requirements for LMO under the Live-in Caregiver Program.

3.9.1. Definitions

3.9.1.1. The live-in caregiver (including NOC 6474)

3.9.1.1.1. Definition
3.9.1.1.2. LCP National Occupation Classification (NOC)

3.9.1.2. The Employer

3.9.2. Roles and Responsibilities

3.9.2.1. Citizenship and Immigration Canada (CIC)
3.9.2.2. Employment and Social Development Canada (ESDC)
3.9.2.3. Service Canada - Centre of Specialization (COS)
3.9.2.4. Service Canada Call Centre

3.9.3. Administrative Requirements

3.9.3.1. LCP requirements of employers and of live-in caregivers

3.9.3.1.1. Employers
3.9.3.1.2. Live-in caregivers

3.9.3.2. Emergency processing (abusive situations) and Urgent processing

3.9.3.2.1. Emergency processing
3.9.3.2.2. Urgent processing (other situations)

3.9.3.3. Multiple Caregivers

3.9.4. LMO Application Assessment

3.9.4.1. Employer Application process

3.9.4.1.1. Paper Applications

3.9.4.2. Employer details of authentication

3.9.4.2.1. Verification procedures (call ER,send a letter, etc)
3.9.4.2.2. Definition of Care and Definition of Employer in Quebec
3.9.4.2.4. Shared Custody

3.9.4.3. Employer Representatives

3.9.4.3.1. Third Parties
3.9.4.3.2. Family Members as Third Party Representatives
3.9.4.3.3. Power of Attorney
3.9.4.3.4. Alternative payment arrangements

3.9.4.4. Details of Job Offer

3.9.4.4.1. Expected duration of employment
- Extending a Work Permit

3.9.4.4.2. Working conditions

3.9.4.4.2.1. Wages
3.9.4.4.2.2. Working hours
3.9.4.4.2.3. Room and Board

3.9.4.4.3. Foreign Live-in Caregiver Information

3.9.4.5. Recruitment and Advertisement

3.9.4.5.1. Advertisement
3.9.4.5.3. Recruitment Exemptions

3.9.4.6. Employment Contract

3.9.4.6.1. Employer-Employee Contract
3.9.4.6.2. Breakdown of employment relationship

3.9.4.7. Provincial/Territory Considerations

3.9.4.7.1. Québec/Ministère de l'Immigration et des Communautés culturelles (MICC)
3.9.4.7.2. Manitoba -WRAPA
3.9.4.7.3. British-Columbia
3.9.4.7.4. Ontario

3.9.4.8. Notes

3.9.4.8.1. Notes to file
3.9.4.8.2. Employer notes
- For employer notes, CIC notes and third party notes, the "Notes in FWS" might be useful

3.9.4.8.3. CIC notes
- See note in **3.9.4.8.2.** for more information

3.9.4.8.4. Third parties
- See note in **3.9.4.8.2.** for more information

3.9.4.8.5. MICC notes
- MICC notes capture pertinent information regarding a conjoint decision with MICC (i.e. recommendation for an on-site visit, multiple caregivers, etc.). Please note that MICC notes must be in French.

3.9.5. Process and Tools

3.9.5.1. Service Standards
- The CoS processes LCP applications within 15 business days.

3.9.5.2. Forms and Templates – description and links
- LCP related forms that are available on ESDC's website are:
  - Paper and on-line LMO application forms
  - A check-list of documents to be attached to the LMO application
  - Employment Contract template
  - Quebec Employment contract template
  - Appointment of Representative Form

3.9.5.3. File Construction
3.9.5.4. Retention/Returns/Destruction of Documents
3.9.5.5. Training

3.9.5.5.1. Foreign Worker System (FWS)
- The document called FWS Training is used by the COS to train new FW Officers on how to search and input into FWS using LCP as an example.

3.9.5.5.2. TFWP training
- Developed by CoS: NTF Training March 2010

3.9.6. Decision Options – Pre and Post LMO
3.9.7. Integrity

3.9.7.2. Irregularities
- A Chart has been developed by the COS to describe the process when Service Canada staff is faced with potentially fraudulent or suspicious information. Please refer to Annex **6.4.1.7.** for the Chart called "Potentially Fraudulent and Suspicious Information"

3.10 Seasonal Agricultural Worker Program

This section provides specific requirements for LMO under the SAWP.
3.10.1. Goal
3.10.2. History
- See Annex **6.4.2.1.** for the SAWP chronology.

3.10.3. Roles and Responsibilities
3.10.4. Link to forms/templates

- The forms and templates are available on the Foreign Worker Internet site

3.10.5. Link to Agreements, with summary of main points, and brief analysis of major differences between them

- Bilateral agreements are signed between Canada and all SAWP participating countries. They were signed again in 1995 to reaffirm the commitment of all parties to the program. Those copies are available upon request to the TFWP at NHQ.

3.10.6. Determining Prevailing Wage Rate

3.10.6.1. SAWP Commodity
3.10.6.2. Unionization

3.10.7. Recognition Payment
3.10.8. Assessing Working Conditions

3.10.8.1. Accommodation
3.10.8.2. National Policy on Minimum Standards for Agricultural Accommodations
3.10.8.3. Transportation

3.10.9. Health Insurance
3.10.10. Recruitment Efforts

3.10.10.1. Advertising

3.10.11. Worker's Compensation
3.10.12. Transfer of Workers
3.10.13. Premature Repatriation
3.10.14. SAWP Process
3.10.15. SAWP Flow chart
3.10.16. Processing a SAWP Application
3.10.17. Human Resources Planning
3.10.18. SAWP British Columbia

Date modified: 2014-07-15

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ESDC IntraWeb

Skills and Employment Branch (SEB)

4. Post-Labour Market Opinion Integrity

Overview of post-labour market opinion (LMO) monitoring authorities and current initiatives and processes and tools, including key bulletins/directives, training materials and templates.

4.1. Complaints/Information Directive

4.2. Labour Market Opinion Revocation Process Directive

4.3. Employer Compliance Reviews (ECR)

(archived - 2013-11-29)

4.4. Arranged Employment Opinion Directive

(archived - 2014-02-05)

4.5. Forms

4.5.1. Substantially the Same (STS)

4.5.1.1. Letters and Enclosures

- **4.5.1.1.1.** STS - Initial Contact
- **4.5.1.1.2.** Annex B - Enclosure (NOC 0, A & B)
- **4.5.1.1.3.** Annex B - Enclosure (NOC C & D)
- **4.5.1.1.4.** STS - Additional Information Required
- **4.5.1.1.5.** STS - Justification
- **4.5.1.1.6.** STS - Proof of Compensation
- **4.5.1.1.7.** Redaction Letter

4.5.1.2. Tools

- **4.5.1.2.1.** STS Checklist (NOC 0, A & B)
- **4.5.1.2.2.** STS Checklist (NOC C & D)
- **4.5.1.2.3.** STS and MI Tracker
- **4.5.1.2.4.** STS Tracking Instructions

4.5.2. Monitoring Initiative (MI)

(archived - 2013-11-28)

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5. Quality Assurance

Outline purpose of Quality Assurance and detail operational procedures.

5.1. Vision, Mission, Goal, Principles

5.2. Quality Assurance File Reviews

- (Joint National Headquarters/Region Internal Audit Function to Review Adherence to Program Policies)

5.3. Quality Assurance Reports

5.4. Quality Standards

- (See blurbs, pages 15 & 16 of Service Canada College Online learning integrity operations document, adapted for the Temporary Foreign Worker Program)

5.5. Risk Management Framework

5.5.1. When to assess risk
5.5.2. Risk workshops - process and report

5.6. Policy to Service Delivery Continuum

5.6.1. The TFWP Policy to Service Delivery Continuum

Date modified: 2014-01-23

Temporary Foreign Worker Program Manual

Section 1.2.1.1 – Immigration and Refugee Protection Act

The TFWP operates under the authority of the ***Immigration and Refugee Protection Act and Regulations.*** They describe who may enter and work in Canada and outline the respective roles of the federal departments responsible for regulating the entry of foreign workers into Canada's workforce -- HRSDC/Service Canada, CIC and the CBSA.

http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lmodir/lmodir-2.shtml#24

Temporary Foreign Worker Program Manual

Section 1.2.2.1 – Immigration and Refugee Protection Regulations

The Government of Canada has taken action to strengthen the protection of TFWs by introducing regulatory changes which are going to be in place as of April 1, 2011. The following provision describes the five Opinions that HRSDC will assess upon an application by an employer or employer's agent. CIC will make the final determination:

203 (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(c)(i) to (ii.1), an officer shall determine, on the basis of an opinion provided by HRSDC, if:

a) the job offer is genuine under subsection 200(5);

b) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada;

c) the issuance of a work permit would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals;

d) in the case of a foreign national who seeks to enter Canada as a live-in caregiver:
   (i) the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision,
   (ii) the employer will provide adequate furnished and private accommodations in the household, and
   (iii) the employer has sufficient financial resources to pay the foreign national the wages that are offered to the foreign national; and

e) during the period beginning two years before the day on which the request for an opinion under subsection (2) is received by HRSDC and ending on the day that the application for the work permit is received by the Department:
   (i) the employer making the offer provided each foreign national employed by the employer with wages, working conditions and employment in an occupation that were substantially the same as the wages, working conditions and occupation set out in the employer's offer of employment, or
   (ii) in the case where the employer did not provide wages, working conditions or employment in an occupation that were substantially the same as those offered, the failure to do so was justified in accordance with subsection (1.1).

203 (1.1) A failure referred to in subparagraph (1)(*e*)(ii) is justified if it resulted from:

a) a change in federal or provincial law;

b) a change to the provisions of a collective agreement;

c) the implementation of measures by the employer in response to a dramatic change in economic conditions that directly affected the business of the employer, provided that the measures were not directed disproportionately at foreign nationals employed by the employer;

d) an error in interpretation made in good faith by the employer with respect to its obligations to a foreign national, if the employer subsequently provided compensation — or if it was not possible to provide compensation made sufficient efforts to do so — to all foreign nationals who suffered a disadvantage as a result of the error;

e) an unintentional accounting or administrative error made by the employer, if the employer subsequently provided compensation — or if it was not possible to provide compensation made sufficient efforts to do so — to all foreign nationals who suffered a disadvantage as a result of the error; or

f) circumstances similar to those set out in paragraphs (a) to (e).

<u>The following provision describes the four factors under the Regulations that HRSDC and CIC will consider in a determination of genuineness of the job offer and employer</u>

200 (5) A determination of whether an offer of employment is genuine shall be based on the following factors:

a) whether the offer is made by an employer, other than an employer of a live-in caregiver, that is actively engaged in the business in respect of which the offer is made;

b) whether the offer is consistent with the reasonable employment needs of the employer;

c) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and

d) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work.

200 (3) An opinion provided by the HRSDC with respect to the matters referred to in subsection (1)(*b*) shall be based on the following factors: [effect on labour market]:

a) whether the employment of the foreign national is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;

b) whether the employment of the foreign national is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;

c) whether the employment of the foreign national is likely to fill a labour shortage;

d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards;

e) whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents; and

f) whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute.

Province of Quebec:

In the case of a foreign national who intends to work in the Province of Quebec, the opinion provided by HRSDC shall be made in concert with the competent authority of that Province.
*Note: Quebec regulatory amendments are now under revision.

Section 1.3 – Departmental Infrastructure, Temporary Foreign Worker Program

The TFWP is a demand-driven program which enables Canadian employers to hire foreign workers on a temporary basis to meet immediate and short-term skills and labour needs when Canadians or permanent residents are not available. Employers can recruit foreign workers into any legal profession and from any source country, subject to employers and foreign workers meeting specified criteria.

The program responds to short-term regional, occupational, and sectoral skills and labour demands while protecting employment opportunities for Canadians. TFWs enjoy the same rights and protections as Canadians.

These objectives are congruent with CIC and HRSDC related strategic outcomes, as made known in their Program Activity Architectures (PAA): *A skilled, adaptable and inclusive labour force and efficient labour market* (HRSDC) and *Migration that significantly benefits Canada's economic, social and cultural development* (CIC).

TFWP is intended as a program of last resort and employers, industry sectors, governments and stakeholders are engaged in long term planning to develop more permanent labour market responses to Canada's long term needs for workers, including skills development solutions for Canadians and permanent immigration.

With the increase in the demand for TFWs, there has been a similar increase in the use of labour brokers and recruiters. Employers are encouraged to use reputable organizations in order to protect the integrity of the TFWP.

To enhance the integrity of the TFWP, CIC and HRSDC are developing processes for monitoring employers' adherence to program requirements through various means in coordination with provinces and territories (e.g. employer compliance reviews, provincial referrals, outreach activities and information sharing).

Shared outcomes of the program are:

- to enhance Canadian productivity and participation through efficient and inclusive labour markets and internationally competitive workplaces;
- to respond to regional, occupational, and sectoral skills and labour demands;
- to protect employment opportunities for Canadians; and
- ensure that TFWs have the same rights and protections as Canadians.

In the province of Quebec, the TFWP is administered through a partnership with the Government of Quebec.

The Integrated Business Plan can be found at:
http://hrsdc.prv/eng/corporate/department/ibp/index.shtml

The HRSDC organizational chart can be found at :
http://hrsdc.prv/eng/corporate/department/alt/pdf/dept_structure_100726.pdf

Skills & Employment organizational chart can be found at :

http://intracom.hq-ac.prv/seb-dgce/eng/about/org/orgchart.pdf

Section 2.1 – Program Streams

Since the end of the Second World War, several member countries in the Organisation for Economic Co-Operation and Development (OECD) have introduced foreign worker programs as a means to respond to domestic labour and skills shortages in certain sectors. In Canada, the TFWP began during a time of high unemployment with the expectation that, with the appropriate commitment to training, most of Canada's labour market needs could be met within the domestic workforce.

Employer interest in the TFWP has grown over time; the program has become a key tool in assisting employers, in certain sectors and regions, meet short-term skill requirements when qualified Canadian or permanent resident workers are not available. Prior to the introduction of the IRPA in 2002, decisions regarding the entry of TFWs were based primarily on the availability of Canadian workers. However, recently, Canadian skills shortages and other economic factors have resulted in a greater demand on the program.

The Canadian labour market is comprised of workers with a wide range of formal education, skills and training. However, marked regional differences in the supply of labour may create a challenge for employers and may have an impact on regional economic development. The TFWP endeavours to be responsive and flexible to both employer needs in the short-term and regional labour market realities.

For the purpose of providing the five Opinions that HRSDC will assess upon an application by an employer or employer's agent, there are four broad program streams, based on the NOC:

- occupations requiring a high level of formal education or training (NOC 0, A, B);
- occupations requiring a low level of formal education or training (NOC C, D);
- seasonal agricultural occupations (Seasonal Agricultural Program – SAWP); and
- LCP.

Section 2.1.1 – Occupations Requiring a High Level of Formal Education or Training (NOC 0, A, B) Skilled Workers

Employers may wish to hire TFWs to work in occupations or sectors of the economy requiring workers with a high level of formal education or training. Such types of occupations are covered by skill levels 0, A and B of the NOC and include managerial positions, occupations that usually require university level training and occupations that usually require college or apprenticeship training (e.g. Doctors, Nurses, Engineers and Trades People).

Employers who wish to hire foreign skilled workers have two options:

1. they can follow the process to hire a TFW by submitting an opinion application to Service Canada and the foreign national applies to CIC for a temporary work permit. If a work permit is issued, the skilled worker then comes to Canada to work temporarily; or
2. they can submit an application for an HRSDC AEO under section 82 of IRPR. http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/ei_tfw/sisw_tfw.shtml

Depending on provincial labour legislation, the Opinions may be issued for a period up to 24 months and is either associated with a specific employer or, under a Group of Employer arrangement, is issued on behalf of the aggregation of employers. A work permit may be issued for the same period as the one listed on the Opinion depending on other factors such as health requirements, the visa duration (if applicable), and the duration of travel documentation. An extension to a work permit beyond the specified period may be requested and is usually preceded by a new Opinion from HRSDC.

NOTE: it should be noted that an AEO does not fall under the TFWP and should not be confused with an Opinion. While the Opinion is relating to temporary worker, an AEO is an Opinion provided by HRSDC to CIC on the genuineness of an inderterminate offer of employment made to a foreign national who is applying for permanent residence in Canada and does not intend to work in Canada before being issued a permanent resident visa.
The Opinion is based on the following criteria:

1. whether the offer is genuine;
2. whether the wages and working conditions would be sufficient to attract and retain Canadians; and
3. whether the employment is not seasonal or part-time in nature.

Section 2.1.2 – Occupations Requiring Lower Levels of Formal Training (NOC C and D)

The Pilot Project was established in 2002. Since that time, there has been exponential growth in some lower-skilled NOC categories, particularly in the food service industry. This represents an unavailability of Canadians/Permanent Residents in regions where these TFWs are concentrated, an unwillingness to work in these occupations on the part of Canadians/Permanent Residents or a combination of the two. From 2005 to 2008, there has been an increase in the proportion of TFWs entering Canada to work in NOC C&D occupations, with the percentage of workers in these skill levels increasing from approximately 40% to close to 60% of the total number of positions (*Document Immigration Diagnostique p.22, p.27*).

The employer may be allowed to hire TFWs for a maximum of 24 months through the Pilot Project when there is a demonstrable shortage of Canadians citizens and permanent residents.

In Canada, lower levels of formal training are defined as occupations that usually require at most a high school diploma or a maximum of two years of job-specific/on-the-job training according to the NOC Classification system (e.g. Labourers in Manufacturing, Construction, Hospitality and Clerical positions).

http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lowskill.shtml

In addition to the factors listed under IRPR, employers must meet additional requirements such as: entering into an employer/employee contract; payment of return airfare; ensuring availability of medical insurance; suitable accommodations; and registration under provincial workers' insurance regime.

Section 2.1.3 – Live-in Caregiver Program

The LCP is in place to help families care for children, the elderly and/or persons with disabilities by hiring foreign nationals when and where Canadians/Permanent Residents are not available. Children are defined as being less than 18 years of age and seniors as 65 years of age and over.

The LCP has traditionally been used as the path to permanent residency for foreign nationals looking to immigrate to Canada. After two years of living in Canada and working as a Live-In Caregiver, TFWs may apply to be a permanent resident, which, if approved, would no longer require them to work for a specific employer and in a specific occupation in order to legally remain in Canada.

This stream of the TFWP, which sees over 35,000 TFW positions annually, represents a significant proportion of total TFWs in Canada's labour market. In 2005, nearly one in three TFWs belonged to the LCP and in 2007, 26% of all TFWs belonged to LCP. Over time, Live-In Caregivers have represented proportionately less of total TFW positions, as rapid growth in other lower-skilled occupations (such as Food Counter Attendants, Kitchen Helpers and Related Occupations) have offset modest growth in LCP. From 2005 to 2008, the number of confirmed TFW positions has increased by 66%, compared to non-SAWP/non-LCP occupations which have grown by over 180% over the same four year period.

Immigration Paper & Diagnostique

http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/caregiver/description.shtml

Section 2.1.4 – Seasonal Agricultural Workers Program

The SAWP allows for the organized entry of TWFs from Mexico and a number of Caribbean countries into Canada to meet the seasonal needs of agriculture producers when Canadian workers are not readily available. The sector commodities include vegetables, tender fruits, tobacco, apples, apiary, ginseng, nurseries, greenhouse vegetables and sod.

In this case, the work permit issued by CIC remains valid for a specific job and for a maximum of eight months. Employers in Canada are required to cover certain costs such as: providing free housing; covering partial round trip airfare; and assuring the employees are covered by workers' health insurance plans and registered under provincial workers' insurance regime.

Specific bi-lateral international agreements also guide program delivery and operations. The Canada-Mexico SAWP, for example, operates according to a bilateral MOU originally signed in 1974, which outlines the operational guidelines and responsibilities of each player (Governments of Canada and Mexico, employers and workers) within the Program. Under the agreement, source countries are responsible for: assisting in the recruitment, selection, and documentation of bona-fide agricultural workers, maintaining a pool of workers who are ready to depart to Canada when requests are received from Canadian employers, appointing agents at their embassies/consulates in Canada to assist CIC and HRSDC/Service Canada staff in the administration of the program, and to serve as a contact point for TFWs (e.g. working conditions, employer complaints, etc.).

Agricultural foreign workers can help producers to meet their labour needs during peak agricultural periods when Canadian workers or permanent residents are not available.

SAWP allows employers to hire agricultural workers to work in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia and Prince Edward Island in specific agricultural commodity sectors. Other provinces and territories do not participate in SAWP.

Under SAWP, employers can hire workers from Mexico, Anguilla, Antigua and Barbuda, Barbados, Dominica, Grenada, Jamaica, Montserrat, St. Kitts-Nevis, St. Lucia, St. Vincent, and Trinidad and Tobago.

To hire agricultural workers from countries that do not participate in SAWP, employers must apply through the Pilot Project for Occupations Requiring Lower Levels of Formal Training.

http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/sawp.shtml

Section 2.2 – Temporary Foreign Worker Program Structure

HRSDC/Service Canada, CIC and the CBSA work to ensure that the employment of foreign workers **supports economic growth** and helps **create** more **opportunities for all Canadians**.

http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/index.shtml

HRSDC/Service Canada work with employers who want to hire foreign workers to meet their labour needs when qualified Canadian workers or permanent residents are not readily available. **CIC and the CBSA works with foreign workers** who want to work in Canada.

http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/ei_tfw/rr_tfw.shtml

Each Department is responsible for the design and management of those elements of the program under its Minister's responsibility.

http://www.tbs-sct.gc.ca/hidb-bdih/initiative-eng.aspx?Hi=39

Section 2.2.1 – Role of HRSDC / Service Canada

HRSDC/Service Canada is responsible for the design, management and delivery of those elements of the TFWP under the Minister of HRSDC's responsibility. HRSDC provides functional direction, support, and guidance to Service Canada regional offices to ensure consistent delivery of the Opinions components of the TFWP which CIC ultimately considers in assessment of a work permit. An Opinion provides an assessment on the genuineness of the job, the likely effect of the employment of the foreign national on the Canadian labour market, the consistency with any federal-provincial agreement that apply to the employers of foreign nationals, the live-in caregiver specific opinions, and whether the wages, working conditions and occupation are substantially the same as originally offered. HRSDC is continually working toward ensuring that employers adhere to program requirements and improving the integrity of the Opinion component of the program.

Service Canada Centres deliver program services in all regions. Service Canada Centres are responsible for processing Opinion applications from employers and ensuring that all necessary requirements are met in support of the work permit application process.

Refer to ***Results-Based Management and Accountability Framework and Risk-Based Audit Framework*** (section 3.1Roles & Responsibilities) found in Section 6 of the TFWP Manual

Section 2.2.2 – Role of Citizen and Immigration Canada and the Canadian Border Services Agency

Citizen and Immigration Canada (CIC) is responsible for assessing work permit applications and issuing work permits to workers on the basis of Human Resources and Skills Development Canada (HRSDC) opinions (http://www.tbs-sct.gc.ca/hidb-bdih/initiative-eng.aspx?Hi=39). Foreign workers must be authorized to work in Canada, either through a valid work permit or because they are exempt from this requirement under *section 186 of the Immigration and Refugee Protection Regulations* (IRPR). CIC is responsible for issuing the documents required for foreign workers to enter Canada, and helps make the final decisions as to whether foreign workers may enter and work in Canada.

Besides HRSDC opinions, CIC also considers other factors, including the *bona fides* of the individual and ensuring the temporary foreign worker (TFW) has the qualifications required to perform the job, has proper documentation, is likely to leave Canada voluntarily at the end of the work period, and meets health and security admissibility criteria. A similar application process is followed from within Canada for extension requests. When necessary, the issuance of entry visas is also provided. Staff located in visa offices outside Canada has responsibility for most of this work. However, TFW staff in Vancouver, Calgary, Toronto, Montreal and Moncton provide specialized services to guide employers seeking to employ foreign workers through the immigration process and facilitate the entry of workers who are exempt from the Opinion process.

Refer to ***Results-Based Management and Accountability Framework and Risk-Based Audit Framework*** (section 3.1 Roles & Responsibilities) found in Section 6 of the TFWP Manual

While CIC is responsible for processing work permit applications and for making final decisions on those applications, the Canadian Border Services Agency (CBSA) staff also exercise this authority in their immigration functions for port of entry examination only (border crossings and airports), to ensure that foreign workers meet admissibility requirements. Staff can deny entry if they believe foreign workers do not meet the requirements of *Immigration and Refugee Protection Act* and IRPR.

http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lmodir/lmodir-2.shtml

NOTE : Canada-Quebec Accord
Under the Canada-Quebec Accord federal and provincial governments share jurisdiction with regards to immigration. Job offers to foreign workers of **more than thirty days** in Quebec must be approved by both HRSDC/Service Canada and the provincial Ministère de l'immigration et des Communautés culturelles (MICC). The Temporary Foreign Worker Program staff located in the area where work will first occur is responsible for obtaining both of these approvals. Job offers of thirty days or less do not require provincial approval.

Public or private employers who want to hire foreign workers in Quebec must obtain a Quebec Acceptance Certificate from MICC.

Section 2.4 – Definition of employer

The "employer" is the end user person, corporation, company or other entity to which the worker will be directly providing his or her services. An employer controls the work and how, when and where it is to be done.

Many businesses have been utilizing temporary help/employment agencies to fulfill their requirement for workers. These agencies might be described as intermediaries, in that they supply businesses with the services of the workers they recruit. The legal relationship between the agency, their client and the worker is not clearly defined. Therefore, identifying the "real employer" is more difficult.

The criteria of legal subordination encompasses the notion of actual control by a party over the employee's daily work activities. The aspect of control may be broken out into several elements such as:

- the party exercising direction and control over the employees performing the work;
- the party bearing the burden of remuneration;
- the party imposing discipline;
- the party hiring the employee;
- the party with the authority to dismiss the employee;
- the party which is perceived to be the employer by the employees; and
- the existence of an intention to create an employer/employee relationship.

No single factor among those contemplated shall be, in itself, determinative. It is the overall relationship that shall be examined.

http://www.hrsdc.gc.ca/eng/labour/ipg/068/page01.shtml

Section 2.5.1 – Assessing Genuineness

A determination of whether an offer of employment is **genuine** shall be based on the following factors:

- whether the offer is made by an employer, other than an employer of a live-in caregiver, that is actively engaged in the business in respect of which the offer is made;
- whether the offer is consistent with the reasonable employment needs of the employer;
- whether the terms of the offer are terms that the employer is reasonably able to fulfil; and
- the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work.

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Section 2.5.1.1 – Assessment of Genuineness – Actively Engaged

Purpose:

The purpose of this directive is to define and to outline how Human Resources and Skills Development (HRSDC) and Service Canada will consider the genuineness of a job offer made by an employer that is actively engaged in the business in respect of which the offer is made. HRSDC/Service Canada will assess the existence of the employer and if an actual job exists.

Authority:

The following provision describes the four factors under the *Immigration and Refugee Protection Regulations* (*IRPR*) that HRSDC/Service Canada and Citizenship and Immigration Canada (CIC) will consider in a determination of genuineness of the job offer and employer.

CIC's authority is found in section 200(5):

> 200. (5) A determination of whether an offer of employment is genuine shall be based on the following factors:
> **(*a*) whether the offer is made by an employer, other than an employer of a live-in caregiver, that is actively engaged in the business in respect of which the offer is made;**
> (*b*) whether the offer is consistent with the reasonable employment needs of the employer;
> (*c*) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and
> (*d*) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work.

HRSDC/Service Canada's authority to provide an Opinion to CIC on the genuineness of the employer and the job offer, based on the four genuineness factors (See Genuineness factors per s.200(5) above), is found in section 203(1)(*a*):

> **203.** (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(*c*)(i) to (ii.1), an officer shall determine, on the basis of an opinion provided by the Department of Human Resources and Skills Development, if
>
> (*a*) the job offer is genuine under subsection 200(5);
>
> *[200 (5) A determination of whether an offer of employment is genuine shall be based on the following factors:*
>
> ***(a) whether the offer is made by an employer, other than an employer of a live-in caregiver, that is actively engaged in the business in respect of which the offer is made;***
> *(b) whether the offer is consistent with the reasonable employment needs of the employer;*
> *(c) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and*
> *(d) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the*

recruiting of employees, in the province in which it is intended that the foreign national work.]

(*b*) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada;

[203(3) An opinion provided by the Department of Human Resources and Skills Development with respect to the matters referred to in subsection (1)(b) shall be based on the following factors:

(a) whether the employment of the foreign national is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;
(b) whether the employment of the foreign national is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;
(c) whether the employment of the foreign national is likely to fill a labour shortage;
(d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards;
(e) whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents; and
(f) whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute.]

(*c*) the issuance of a work permit would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals;

(*d*) in the case of a foreign national who seeks to enter Canada as a live-in caregiver,

(i) the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision,
(ii) the employer will provide adequate furnished and private accommodations in the household, and
(iii) the employer has sufficient financial resources to pay the foreign national the wages that are offered to the foreign national; and

(*e*) during the period beginning two years before the day on which the request for an opinion under subsection (2) is received by the Department of Human Resources and Skills Development and ending on the day that the application for the work permit is received by the Department,

(i) the employer making the offer provided each foreign national employed by the employer with wages, working conditions and employment in an occupation that were substantially the same as the wages, working conditions and occupation set out in the employer's offer of employment to the foreign national, or
(ii) in the case where the employer did not provide wages, working conditions or employment in an occupation that were substantially the same as offered, the failure to do so was justified in accordance with subsection (1.1).

Policy Guidelines:

For the purposes of preparing an analysis under section 203(1)(*a*) and s. 200(5)(*a*) of the *IRPR*, the general policy intent is to consider if the employer/business exists and is "actively engaged" in the provision of a good or service in an unequivocal manner. In general, the employer should have an actual, operating/functioning business - one where an employee could work. The business should currently have at least one paid employee. In all instances the work must take place in Canada. New businesses or self-employed companies may require special officer consideration.

Live-in caregiver employers are exempt from an assessment of "actively engaged".

For the purposes of the Temporary Foreign Worker Program, the "employer" of the temporary foreign worker is the end user company to which the worker will be directly providing his or her services. More specifically, an employer controls the work and how, when and where it is to be done. Further characteristics of an employer include exercising direction and control over the employees performing the work, bearing the burden of remuneration, imposing discipline, hiring employees, exercising the authority to dismiss employees, being perceived to be the employer by the employees, or the existence of an intention to create an employer/employee relationship.

In all applications, all four genuineness factors will be assessed. However, the degree to which employers will be asked to demonstrate each factor will depend on the employer's past history with the program and other risk factors. For example, an officer may take into account a recent Employer Compliance Review under HRSDC's Monitoring Initiative in determining the extent of information required for the assessment.

A negative finding for one or more of the four factors listed in the Authority section above will result in a negative opinion for genuineness and the specific request for a HRSDC/Service Canada Opinion will be denied.

Genuineness of the employer and the job offer is one of the five opinions to be issued by HRSDC/Service Canada. HRSDC/Service Canada will also issue an Opinion on labour market impact, consistency with federal or provincial agreements, live-in caregiver requirements, and whether wages, working conditions and occupation were "substantially the same as" originally offered. A letter, outlining the positive or negative result of each opinion, as applicable, will be sent to the employer and shared with CIC.

Associated Directives:

Assessment of Genuineness – Reasonable Employment Needs
Assessment of Genuineness – Reasonably Able to Fulfill the Terms of the Offer
Assessment of Genuineness – Compliance with Federal or Provincial Laws Regulating Employment or Recruitment

Temporary Foreign Worker Program Manual

Section 2.5.1.2 – Assessment of Genuineness – Reasonable Employment Needs

Purpose:

The purpose of this directive is to define and to outline how Human Resources and Skills Development (HRSDC) and Service Canada will consider the genuineness of a job offer to ensure that it is consistent with the reasonable employment needs of the employer. HRSDC/Service Canada will assess if the offer is in line with the nature of the business.

Authority:

The following provision describes the four factors under the *Immigration and Refugee Protection Regulations* (*IRPR*) that HRSDC/Service Canada and Citizenship and Immigration Canada (CIC) will consider in a determination of genuineness of the job offer and employer.

CIC's authority is found in section 200(5):

> 200. (5) A determination of whether an offer of employment is genuine shall be based on the following factors:
> (*a*) whether the offer is made by an employer, other than an employer of a live-in caregiver, that is actively engaged in the business in respect of which the offer is made;
> **(*b*) whether the offer is consistent with the reasonable employment needs of the employer;**
> (*c*) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and
> (*d*) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work.

HRSDC/Service Canada's authority to provide an Opinion to CIC on the genuineness of the employer and the job offer, based on the four genuineness factors (See Genuineness factors per s.200(5) above), is found in section 203(1)(*a*):

> **203.** (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(*c*)(i) to (ii.1), an officer shall determine, on the basis of an opinion provided by the Department of Human Resources and Skills Development, if
>
> (*a*) the job offer is genuine under subsection 200(5);
>
>> *[200 (5) A determination of whether an offer of employment is genuine shall be based on the following factors:*
>>
>> *(a) whether the offer is made by an employer, other than an employer of a live-in caregiver, that is actively engaged in the business in respect of which the offer is made;*
>> ***(b) whether the offer is consistent with the reasonable employment needs of the employer;***
>> *(c) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and*
>> *(d) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the*

recruiting of employees, in the province in which it is intended that the foreign national work.]

(*b*) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada;

[*203(3) An opinion provided by the Department of Human Resources and Skills Development with respect to the matters referred to in subsection (1)(b) shall be based on the following factors:*

(a) whether the employment of the foreign national is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;
(b) whether the employment of the foreign national is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;
(c) whether the employment of the foreign national is likely to fill a labour shortage;
(d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards;
(e) whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents; and
(f) whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute.]

(*c*) the issuance of a work permit would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals;

(*d*) in the case of a foreign national who seeks to enter Canada as a live-in caregiver,

(i) the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision,
(ii) the employer will provide adequate furnished and private accommodations in the household, and
(iii) the employer has sufficient financial resources to pay the foreign national the wages that are offered to the foreign national; and

(*e*) during the period beginning two years before the day on which the request for an opinion under subsection (2) is received by the Department of Human Resources and Skills Development and ending on the day that the application for the work permit is received by the Department,

(i) the employer making the offer provided each foreign national employed by the employer with wages, working conditions and employment in an occupation that were substantially the same as the wages, working conditions and occupation set out in the employer's offer of employment to the foreign national, or
(ii) in the case where the employer did not provide wages, working conditions or employment in an occupation that were substantially the same as offered, the failure to do so was justified in accordance with subsection (1.1).

Policy Guidelines:

For the purposes of preparing an analysis under section 203(1)(*a*) and s. 200(5)(*b*) of the *IRPR*, the general policy intent is to consider whether or not the job offer is consistent with the reasonable employment needs of the employer. In other words, HRSDC/Service Canada will assess if the job offered matches the general type of work that is reasonably and usually part of the employer's work environment/business and sector.

The offer of employment should make "basic business sense" as determined by a comparison between the principal business activity indicated on the application and the general type of positions/occupations required to support such business operation.

In all applications, all four genuineness factors will be assessed. However, the degree to which employers will be asked to demonstrate each factor will depend on the employer's past history with the program and other risk factors. For example, an officer may take into account a recent Employer Compliance Review under HRSDC's Monitoring Initiative in determining the extent of information required for the assessment.

A negative finding for one or more of the four factors listed in the Authority section above will result in a negative opinion for genuineness and the specific request for a HRSDC/Service Canada Opinion will be denied.

Genuineness of the employer and the job offer is one of the five opinions to be issued by HRSDC/Service Canada. HRSDC/Service Canada will also issue an Opinion on labour market impact, consistency with federal or provincial agreements, live-in caregiver requirements, and whether wages, working conditions and occupation were "substantially the same as" originally offered. A letter, outlining the positive or negative result of each opinion, as applicable, will be sent to the employer and shared with CIC.

Associated Directives:

Assessment of Genuineness – Actively Engaged
Assessment of Genuineness – Reasonably Able to Fulfill the Terms of the Offer
Assessment of Genuineness – Compliance with Federal or Provincial Laws Regulating Employment or Recruitment

Section 2.5.1.3 – Assessment of Genuineness – Reasonably Able to Fulfill

Purpose:

The purpose of this directive is to define and to outline how Human Resources and Skills Development (HRSDC) and Service Canada will consider the genuineness of a job offer as it relates to whether the terms of the offer are terms that the employer is reasonably able to fulfill.

Authority:

The following provision describes the four factors under the *Immigration and Refugee Protection* Regulations (IRPR) that HRSDC/Service Canada and Citizenship and Immigration Canada (CIC) will consider in a determination of genuineness of the job offer and employer.

CIC's authority is found in section 200(5):

> 200. (5) A determination of whether an offer of employment is genuine shall be based on the following factors:
> (*a*) whether the offer is made by an employer, other than an employer of a live-in caregiver, that is actively engaged in the business in respect of which the offer is made;
> (*b*) whether the offer is consistent with the reasonable employment needs of the employer;
> **(*c*) whether the terms of the offer are terms that the employer is reasonably able to fulfil;** and
> (*d*) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work.

HRSDC/Service Canada's authority to provide an Opinion to CIC on the genuineness of the employer and the job offer, based on the four genuineness factors (See Genuineness factors per s.200(5) above), is found in section 203(1)(*a*):

> **203.** (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(*c*)(i) to (ii.1), an officer shall determine, on the basis of an opinion provided by the Department of Human Resources and Skills Development, if
>
> (*a*) the job offer is genuine under subsection 200(5);
>
> *[200 (5) A determination of whether an offer of employment is genuine shall be based on the following factors:*
>
> *(a) whether the offer is made by an employer, other than an employer of a live-in caregiver, that is actively engaged in the business in respect of which the offer is made;*
> *(b) whether the offer is consistent with the reasonable employment needs of the employer;*
> ***(c) whether the terms of the offer are terms that the employer is reasonably able to fulfil;*** *and*
> *(d) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the*

recruiting of employees, in the province in which it is intended that the foreign national work.]

(*b*) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada;

[*203(3) An opinion provided by the Department of Human Resources and Skills Development with respect to the matters referred to in subsection (1)(b) shall be based on the following factors:*

(a) whether the employment of the foreign national is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;
(b) whether the employment of the foreign national is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;
(c) whether the employment of the foreign national is likely to fill a labour shortage;
(d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards;
(e) whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents; and
(f) whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute.]

(*c*) the issuance of a work permit would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals;

(*d*) in the case of a foreign national who seeks to enter Canada as a live-in caregiver,

(i) the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision,
(ii) the employer will provide adequate furnished and private accommodations in the household, and
(iii) the employer has sufficient financial resources to pay the foreign national the wages that are offered to the foreign national; and

(*e*) during the period beginning two years before the day on which the request for an opinion under subsection (2) is received by the Department of Human Resources and Skills Development and ending on the day that the application for the work permit is received by the Department,

(i) the employer making the offer provided each foreign national employed by the employer with wages, working conditions and employment in an occupation that were substantially the same as the wages, working conditions and occupation set out in the employer's offer of employment to the foreign national, or
(ii) in the case where the employer did not provide wages, working conditions or employment in an occupation that were substantially the same as offered, the failure to do so was justified in accordance with subsection (1.1).

Policy Guidelines:

For the purposes of preparing an analysis under section 203(1)(*a*) and s. 200(5)(*c*) of the *IRPR*, the general policy intent is to consider whether the terms of the offer are terms that the employer is reasonably able to fulfill. The employer must be able to demonstrate that it is capable of providing full-time work, in line with the job description, and in an appropriate environment, for the duration of the temporary foreign worker's work permit. This includes the ability to pay the salary and same benefits as provided to Canadians, and provide generally accepted working conditions, such as providing return airfare and interim medical coverage, as appropriate.

In all applications, all four genuineness factors will be assessed. However, the degree to which employers will be asked to demonstrate each factor will depend on the employer's past history with the program and other risk factors. For example, an officer may take into account a recent Employer Compliance Review under HRSDC's Monitoring Initiative in determining the extent of information required for the assessment.

A negative finding for one or more of the four factors listed in the Authority section above will result in a negative opinion for genuineness and the specific request for a HRSDC/Service Canada Opinion will be denied.

Genuineness of the employer and the job offer is one of the five opinions to be issued by HRSDC/Service Canada. HRSDC/Service Canada will also issue an Opinion on labour market impact, consistency with federal or provincial agreements, live-in caregiver requirements, and whether wages, working conditions and occupation were "substantially the same as" originally offered. A letter, outlining the positive or negative result of each opinion, as applicable, will be sent to the employer and shared with CIC.

Associated Directives:

Assessment of Genuineness – Actively Engaged
Assessment of Genuineness – Reasonable Employment Needs
Assessment of Genuineness – Compliance with Federal or Provincial Laws Regulating Employment or Recruitment

Section 2.5.1.4 - Assessment of Genuineness – Compliance with Federal or Provincial Laws Regulating Employment or Recruitment

Purpose:

The purpose of this directive is to define and to outline how Human Resources and Skills Development (HRSDC) and Service Canada will consider the genuineness of a job offer as it relates to the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work.

Authority:

The following provision describes the four factors under the *Immigration and Refugee Protection* Regulations (IRPR) that HRSDC/Service Canada and Citizenship and Immigration Canada (CIC) will consider in a determination of genuineness of the job offer and employer.

CIC's authority is found in section 200(5):

> 200. (5) A determination of whether an offer of employment is genuine shall be based on the following factors:
> (*a*) whether the offer is made by an employer, other than an employer of a live-in caregiver, that is actively engaged in the business in respect of which the offer is made;
> (*b*) whether the offer is consistent with the reasonable employment needs of the employer;
> (*c*) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and
> **(*d*) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work.**

HRSDC/Service Canada's authority to provide an Opinion to CIC on the genuineness of the employer and the job offer, based on the four genuineness factors (See Genuineness factors per s.200(5) above), is found in section 203(1)(*a*):

> **203.** (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(*c*)(i) to (ii.1), an officer shall determine, on the basis of an opinion provided by the Department of Human Resources and Skills Development, if
>
> (*a*) the job offer is genuine under subsection 200(5);
>
> > *[200 (5) A determination of whether an offer of employment is genuine shall be based on the following factors:*
> >
> > *(a) whether the offer is made by an employer, other than an employer of a live-in caregiver, that is actively engaged in the business in respect of which the offer is made;*
> > *(b) whether the offer is consistent with the reasonable employment needs of the employer;*
> > *(c) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and*

(d) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work.]

(*b*) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada;

[*203(3) An opinion provided by the Department of Human Resources and Skills Development with respect to the matters referred to in subsection (1)(b) shall be based on the following factors:*

(a) whether the employment of the foreign national is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;
(b) whether the employment of the foreign national is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;
(c) whether the employment of the foreign national is likely to fill a labour shortage;
(d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards;
(e) whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents; and
(f) whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute.]

(*c*) the issuance of a work permit would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals;

(*d*) in the case of a foreign national who seeks to enter Canada as a live-in caregiver,

(i) the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision,
(ii) the employer will provide adequate furnished and private accommodations in the household, and
(iii) the employer has sufficient financial resources to pay the foreign national the wages that are offered to the foreign national; and

(e) during the period beginning two years before the day on which the request for an opinion under subsection (2) is received by the Department of Human Resources and Skills Development and ending on the day that the application for the work permit is received by the Department,

(i) the employer making the offer provided each foreign national employed by the employer with wages, working conditions and employment in an occupation that were substantially the same as the wages, working conditions and occupation set out in the employer's offer of employment to the foreign national, or
(ii) in the case where the employer did not provide wages, working conditions or employment in an occupation that were substantially the same as offered, the failure to do so was justified in accordance with subsection (1.1).

Policy Guidelines:

For the purposes of preparing an analysis under section 203(1)(*a*) and s. 200(5)(*d*) of the *IRPR*, the general policy intent is to verify and ensure that an employer, or any person who recruited the foreign national for the employer, is currently or for the past two years has been, in compliance with federal or provincial laws that regulate employment or the recruiting of employees in the province in which it is intended the foreign national work.

The term "past compliance" refers to both past and present compliance with relevant federal or provincial laws regulating employment, or the recruiting of employees. A Service Canada officer may look back two years from the date the application is received, in order to assess past compliance.

For the purpose of this assessment, federal and provincial/territorial laws are defined as laws related to the regulation of employers, employer consultants and/or recruiters, as well as, the employment of temporary foreign workers, Canadians and Permanent Residents. Violations by employers and/or third-parties reported by federal and/or provincial regulatory bodies will be considered whether the violations involved Canadians, Permanent Residents or temporary foreign workers.

Compliance of third party agents with relevant provincial and federal legislation will be assessed in provinces where legislation regulates third parties. Documentation and requirements will be specific to each province.

The federal or provincial territorial laws that are assessed under s.200(5)(*d*) and s.203(1)(*a*) must have a bearing on the genuineness of the offer. If an employer is in clear violation of a law, but it is of no real significance in determining whether the employer or the offer of employment is genuine, it may not be defensible to issue an Opinion that the offer of is not genuine based on this factor alone. However, it may be possible to consider the violation under another factor, such as whether the working conditions being offered meet generally accepted Canadian standards. Generally, but not always, compliance with federal and provincial/territorial legislation related to employment standards or occupational health and safety would be considered under the assessment of working conditions when considering the impact on the labour market.

In all applications, all four genuineness factors will be assessed. However, the degree to which employers will be asked to demonstrate each factor will depend on past history with the program and other risk factors. For example, an officer may take into account a recent Employer Compliance Review under HRSDC's Monitoring Initiative in determining the extent of information required for the assessment.

A negative finding for one or more of the four factors listed in the Authority section above will result in a negative opinion for genuineness and the specific request for a HRSDC/Service Canada Opinion will be denied.

Genuineness of the employer and the job offer is one of the five opinions to be issued by HRSDC/Service Canada. HRSDC/Service Canada will also an Opinion on labour market impact, consistency with federal or provincial agreements, live-in caregiver requirements, and whether wages, working conditions and occupation were "substantially the same as" originally offered. A letter, outlining the positive or negative result of each opinion, as applicable, will be sent to the employer and shared with CIC.

Associated Directives:

Assessment of Genuineness – Actively Engaged
Assessment of Genuineness – Reasonable Employment Needs
Assessment of Genuineness – Reasonably Able to Fulfill the Terms of the Offer

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Section 2.5.2 – Assessing the Impact of the Employment of the Foreign Worker on Canadian Labour Market

When assessing an application for an Opinion, TFWP officers consider the following factors, identified in section 203(3) of *IRPR*, to determine what impact the employment of the foreign worker is likely to have on the Canadian labour market:

- whether the employment of the foreign worker is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;
- whether the employment of the foreign worker is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;
- whether the employment of the foreign worker is likely to fill a labour shortage;
- whether the wages offered to the foreign worker are consistent with the prevailing wage rate for the occupation and region(s) where the worker will be employed and the working conditions meet generally accepted Canadian standards;
- whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents; and
- whether the employment of the foreign worker is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute;

TFWP officers assess both straightforward, measurable criteria such as wages and working conditions and harder-to-measure benefits such as skills transfer and job retention for Canadians.

http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lmodir/lmodir-7.shtml

Section 2.5.2.2 – Assessing probability of knowledge creation or transfer

The employer has to demonstrate that a foreign worker with a particular skill set is integral to the business and that hiring him or her will result in the transfer of skills to the Canadian staff or create jobs, then choosing that individual over a qualified Canadian or permanent resident may be acceptable.

http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lmodir/lmodir-7.shtml

Section 2.5.2.3 – Assessing likelihood of filling a labour shortage

Under section 203(3)(C) of the IRPR, the TFWP is required to ensure that the entrance of a TFW is likely to fill a labour shortage.

Currently the TFWP does not have one national methodology to identify occupational labour shortages. However, in general, most regions rely on labour market information at the regional and sub regional level, to help make the determination whether an occupational labour shortage exists.

Sources of labour market information used by Service Canada to help make the determination of whether an occupational labour shortage exists in a particular sub-geographic area may include: EI claimant data; information received from any applicable Unions; Sector council information; StatsCan data; labour market information received from the province and territories; Work-Sharing information; and any recent layoff information Service Canada may have for the occupation.

Service Canada officers as well may look at the employer's advertisement efforts and responses to their job postings to help determine if an occupational labour shortage exists. For example, a Service Canada officer may take into consideration the number of resumes an employer received for a position and the rationale provided by the employer for not hiring and/or offering training to those individuals who applied for the position. However, the responses to the advertising is not generally used as the sole determinate as to whether or not a labour shortage exists, but is rather one of the sources considered by Service Canada in their labour market analysis.

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Section 2.5.2.4 – Assessing consistency of prevailing wage rate and working conditions against generally accepted norms

Wages:

Non-Unionized Positions

HRSDC/Service Canada reviews the wages that the employer is offering to the foreign worker, and compares them to wages paid to Canadians in the same occupation based on labour market information from StatsCan, HRSDC/Service Canada, provincial ministries, and other reliable sources.

The wage rate for all skill levels (0, A, B, C, D) must be consistent with the wages being paid to Canadians working in the same occupation and geographical area. The same applies for the wage range identified in the advertisement which must also include reference to benefits packages being offered. The wage range must always include the prevailing wage for the position. For purposes of the TFWP, the prevailing wage is identified as the average hourly wage for the requested occupation in the specified geographical area.

These requirements apply to the regular Opinion process and the Pilot Project for Occupations Requiring Lower Levels of Formal Training (NOC C and D).

NOTE: This section is currently being looked at for revisions. Once the new text has been approved by senior management, this section should be replaced with the new approved messaging on wages. We are aware that this messaging is currently written for the employer and not for the officer.

Unionized Positions

The wage rate must be consistent with the wage rate established under the collective bargaining agreement.

In order to address unique circumstances, HRSDC/Service Canada maintains the discretion to set the prevailing wage rate that an employer must offer, whether or not the position is covered by a collective agreement.

Intern Pharmacists Positions

To ensure national consistency across regions and to ensure that the wages offered to TWFs are reflective of the wages being paid to Canadians/Permanent Residents working in the same occupation and location with comparable qualifications, when assessing LMO applications for Intern Pharmacists (or similarly related positions where the temporary foreign worker is working towards full licensing as a Pharmacist), the position should be classified as belonging to NOC 3131 and the prevailing wage rate for the position shall be **equal to OR above two-thirds** (66.7%) of HRSDC's LMI Services "average" wage rate for NOC 3131 for the region/sub-region where the work will take place.

This wage assessment will allow temporary foreign workers to be paid in a manner which is more consistent with the pay structure used by employers to pay their Canadian/Permanent Resident Intern Pharmacists and will help to ensure *that foreign interns will be paid a wage that is closest to the wage paid to Canadians/Permanent Residents Intern Pharmacists.*

Once the TFW has successfully obtained Canadian licensure and is registered as a practicing Pharmacist, the employer will need to apply for another LMO that reflects the change in the foreign national's status (i.e. expanded scope of practice and wage adjustment).

Live-in Caregiver Prevailing Wage Rates

To view current prevailing wage rates for live-in caregivers, please visit:

http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/advertReq/wageadreq.shtml#tphp

Seasonal Agricultural Workers Program Prevailing Wage Rates

To view current prevailing wage rates for foreign workers employed under the SAWP please visit:

British Columbia
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/SAWPSheets/BC.shtml

Alberta
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/SAWPSheets/AB.shtml

Saskatchewan
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/SAWPSheets/SK.shtml

Manitoba
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/SAWPSheets/MB.shtml

Ontario
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/SAWPSheets/ON.shtml

Quebec
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/SAWPSheets/QC.shtml

New Brunswick
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/SAWPSheets/NB.shtml

Nova Scotia
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/SAWPSheets/NS.shtml

Prince Edward Island
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/SAWPSheets/PEI.shtml

Newfoundland and Labrador
SAWP does not operate in Newfoundland and Labrador.

Section 2.5.2.5 – Assessing reasonable efforts to hire or train

On January 1, 2009, the occupations under pressure list initiative was replaced by new national advertising requirements.

All occupations based on the NOC system, skills levels 0, A, B, C and D are subject to the same minimum advertisement requirements. Failure to comply with the requirements outlined below will result in the application for an Opinion being denied.

Employers seeking to hire TFWs must be prepared to demonstrate that they meet the minimum advertising requirements by providing proof of advertisement and the results of their efforts to recruit Canadians or permanent residents. This proof include copies of advertisements, number of Canadian applicants and why they were rejected, as part of the Opinion process. Records of employers, efforts should be kept for a minimum of two years, in the event that a Service Canada Officer contacts them to verify their advertising efforts.

All employers are encouraged to conduct ongoing recruitment efforts, including among under represented groups that face barriers to employment (e.g., Aboriginal peoples, older workers, immigrants/newcomers, persons with disabilities and youth). The advertisement could be on recognized Internet job sites, in local and regional newspapers, at community resource centres and in local regional employment centres

The advertisement criteria vary slightly in the province of Quebec. For further information, consult Hiring Temporary Foreign Workers in Quebec.

NOC 0 and A Occupations - The employer will have conducted the **minimum advertising efforts required** if he:

- conducts 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); **or**
- advertises on the national Job Bank (or the equivalent in Newfoundland and Labrador, Saskatchewan or the Northwest Territories) for a minimum of fourteen calendar days, during the three months prior to applying for an Opinion.

NOC B Occupations - The employer will have conducted the **minimum advertising efforts required** if he:

- conducts recruitment activities consistent with the practice within the occupation for a minimum of fourteen days (e.g., advertise on recognized Internet job sites, in journals, newsletters or national newspapers or by consulting unions or professional associations); **and**
- advertises on the national Job Bank (or the equivalent in Newfoundland and Labrador, Saskatchewan or the Northwest Territories) for a minimum of fourteen calendar days during the three months prior to applying for an Opinion.

The advertisement must include:

- the company operating name;
- job duties (for each position, if advertising for more than one vacancy);

- wage range (i.e. an accurate range of wages being offered to Canadians and permanent residents). The wage range must always include the prevailing wage for the position – see "wage rate";
- the location of work (local area, city, or town); and
- the nature of the position (i.e. project based, or permanent position)

Wage Rate

The following applies to all NOC B, C and D advertising conducted in support of applications for Opinions:

- the wage range identified in the advertisement must represent an accurate range of wages being offered to Canadians and permanent residents, working in the same occupation and geographical area. The wage range must always include the prevailing wage for the position;
- the prevailing wage is identified as the average hourly wage for the requested occupation in the specified geographical area;
- for a unionized position, the wage rate must be consistent with the wage rate established under the collective bargaining agreement; and
- all benefits provided to Canadian workers or permanent residents must be extended to TFWs.

In order to address unique circumstances, HRSDC/Service Canada maintains the discretion to set the prevailing wage rate that an employer must offer, whether or not the position is covered by a collective agreement.

Variations to the Minimum Advertising Requirements

Variations to the minimum advertising requirements may apply in certain cases.

HRSDC/Service Canada reserves the right to require alternative or additional recruitment efforts (i.e., increased duration [length of time] or broader advertisement [whether local, regional, or national]) if it believes that additional efforts would yield qualified Canadian citizens or permanent residents who are available to work in the occupation and region.

http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/temp_assessment.shtml#aar

However, the Minimum Advertising Requirements policy provides that limited variations may be made to reflect specific regional and/or occupation specific circumstances. The variation in advertising requirements can range from complete exemption (i.e. no advertising required) to differences in the duration and/or location of the advertisement (e.g. advertising for 3 weeks instead of 2, advertising in locations other than job bank). Variations will only be considered to address specific occupational and/or regional circumstances. Changes will not be made for employer convenience.

When developing the case to request a variation from the Minimum Advertising Requirements policy, the Regional Consultant/Manager must provide a detailed description of the situation and the variation being requested. The request should be developed taking the following items into consideration:

- solid evidence/objective data (labour market information at the local, regional or national level, including employer/sectoral surveys, employer-based research, provincial government studies/policy documents;
- relevant contextual information such as:
  - any known past history of alternative recruitment requirements in the requested area and/or occupation and the reasons provided at the time;
  - existence of related policies at the federal, provincial, or municipal level;
  - program integrity considerations in light of documented evidence/known events;
  - federal, provincial and municipal political considerations; and
  - have particular stakeholders made representation on a preferred approach? Who and what are they proposing as the ideal outcome?
- potential labour market impact of not granting the variation whether in quantitative and/or qualitative terms, its relative importance in the region, stakeholders' reactions, etc.;
- description of the proposed recruitment requirements and how it would be assessed, if the variation were granted;
- how is the proposal adequately addressing the identified needs? and
- any other relevant information the region considers important to be considered.

See ***Variations to Minimum Advertising Requirements*** found in Section 3.5.3.5.1.1

Section 2.5.2.6 – Assessing Likelihood of Affecting a Labour Dispute

A variety of situations may constitute a labour dispute. These situations, which often arise during collective agreement/contract negotiations between an employer and a union, may include: work stoppage, strikes, refusal to work, picketing, refusal to serve customers, a slowdown of work, demonstrations, withdrawal of services, strategic shutdown of premises, and lockouts.

The existence of a grievance between a union and an employer does not necessarily constitute a labour dispute, since many collective agreements contain provisions that allow their members to submit grievances against their employer to the union, and to have them dealt with in arbitration.

Employers are prohibited from using foreign workers to circumvent a legal work stoppage or to influence the outcome of a labour dispute. Therefore, if the entry of a foreign worker could reasonably be expected to affect the course or the outcome of a labour dispute, a negative Opinion must be issued. In this case, the employer would be encouraged to apply again once the dispute is resolved.

When assessing the likelihood of affecting a labour dispute, TFWP officers consider whether:

- the foreign worker would be doing work that would normally be done by a striking employee;
- the foreign worker would be hired to replace a worker who is on strike; and
- the entry of the foreign worker would have an adverse affect on the settlement of the labour dispute.

http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lmodir/lmodir-13.shtml#13

Section 2.5.3 – Consistency with the terms of any federal-provincial agreement that apply to the employers of foreign nationals

Purpose:

The purpose of this directive is to define and to outline how Human Resources and Skills Development (HRSDC) and Service Canada will assess if the issuance of a work permit based on the opinion by provided by HRSDC would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals. In other words, HRSDC/Service Canada will assess whether the employer and the job offer listed in the application comply with the terms of any federal-provincial agreement. HRSDC/Service Canada will only assess the opinion in consideration of provisions related to employers and not provisions related to foreign nationals.

Authority:

The *Immigration and Refugee Protection Regulations* (IRPR) provides the authority for HRSDC/Service Canada and Citizenship and Immigration Canada (CIC) to assess if the application for an opinion will not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals. HRSDC/Service Canada will indicate its findings in its opinion to CIC and the employer.

CIC's authority is found in section 200(1)(*c*)(iii):

> 200. (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for the permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that:
>
> (*c*) the foreign national
> (iii) has been offered employment and an officer has made a positive determination under paragraphs 203(1)(a) to (e).

HRSDC/Service Canada's authority is found in section 203(1)(*c*):

> **203.** (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(*c*)(i) to (ii.1), an officer shall determine, on the basis of an opinion provided by the Department of Human Resources and Skills Development, if
>
> (*a*) the job offer is genuine under subsection 200(5);
>
> *[200 (5) A determination of whether an offer of employment is genuine shall be based on the following factors:*
>
> *(a) whether the offer is made by an employer, other than an employer of a live-in caregiver, that is actively engaged in the business in respect of which the offer is made;*
> *(b) whether the offer is consistent with the reasonable employment needs of the employer;*
> *(c) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and*

(d) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work.]

(*b*) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada;

[*203(3) An opinion provided by the Department of Human Resources and Skills Development with respect to the matters referred to in subsection (1)(b) shall be based on the following factors:*

(a) whether the employment of the foreign national is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;
(b) whether the employment of the foreign national is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;
(c) whether the employment of the foreign national is likely to fill a labour shortage;
(d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards;
(e) whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents; and
(f) whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute.]

(*c*) the issuance of a work permit would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals;

(*d*) in the case of a foreign national who seeks to enter Canada as a live-in caregiver,

(i) the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision,
(ii) the employer will provide adequate furnished and private accommodations in the household, and
(iii) the employer has sufficient financial resources to pay the foreign national the wages that are offered to the foreign national; and

(e) during the period beginning two years before the day on which the request for an opinion under subsection (2) is received by the Department of Human Resources and Skills Development and ending on the day that the application for the work permit is received by the Department,

(i) the employer making the offer provided each foreign national employed by the employer with wages, working conditions and employment in an occupation that were substantially the same as the wages, working conditions and occupation set out in the employer's offer of employment to the foreign national, or
(ii) in the case where the employer did not provide wages, working conditions or employment in an occupation that were substantially the same as offered, the failure to do so was justified in accordance with subsection (1.1).

Policy Guidelines:

For the purposes of preparing an analysis under section 203(1)(*c*) of the *IRPR*, the general policy intent is that HRSDC/Service Canada would assess whether the employer and the job offer listed in the application for an opinion comply with terms of any federal-provincial agreement. CIC officers will assess more broadly that the issuance of the work permit is not inconsistent with the employment (including the elements specific to the worker) of relevant federal-provincial agreements.

When referencing any federal-provincial agreements that apply to the employers of foreign nationals, this is currently defined as the Temporary Foreign Worker Annexes to the Canada-Provincial/Territorial Immigration Agreements. The policy directive and subsequent operational directive will be updated as new federal-provincial agreements come into force that have an impact on the opinion process.

NOTE: The Letters of Understanding (LOUs) on information sharing are not applicable under 203(1)(*c*) of the *Immigration and Refugee Protection Regulations (IRPR)* and do not apply to this directive. The LOUs identify the mechanisms and supporting legislation for the exchange of personal information.

HRSDC participates in the negotiation and implementation of Temporary Foreign Worker Annex agreements with provinces and territories. Led by CIC, these Annexes are negotiated under the umbrella of CIC's Immigration Agreements with the provinces and territories. The Annexes support federal-provincial/territorial cooperation in responding to province's labour market needs through (1) innovative pilot projects, and (2) the possible use of section 204(c) of the *IRPR*, which exempts the need for a Labour Market Opinion (LMO). The Annexes strengthen protections for TFWs through increased federal-provincial/territorial cooperation and information sharing.

Pilots
The first element to the Annexes is specific pilots for the respective provinces and territories. The majority of the pilots affect the work permit process. However, some pilots will impact the assessment of employers and the job offer. Refer to Appendix A for a list of current agreements.

No HRSDC/Service Canada Opinion Needed for Specific Occupations
The second key element to the Annexes is the authority for the province to request the issuance of work permits from CIC without requiring an opinion from HRSDC/Service Canada, as described in 204(c) of the *Immigration and Refugee Protection Regulations*. In such instances, HRSDC/Service Canada would not assess applications received for the specified occupations in the specified province.

Consistency with any federal-provincial agreements that apply to the employers of foreign nationals is one of the five opinions to be issued by HRSDC/Service Canada. HRSDC/Service Canada will also issue opinions on genuineness of the job offer, labour market impact, live-in caregiver requirements, and whether wages, working conditions and occupation were "substantially the same as" originally offered. An opinion letter, outlining the neutral, positive or negative result of each opinion, as applicable, will be sent to the employer and shared with CIC.

Attachments:

Appendix A – signed agreements

Appendix A

To date, Annex agreements have been signed with the provinces of Ontario, Alberta and British Columbia.

TFW Annex Agreements

Province	Effective Date	No Need for LMO	HRSDC/ SC Relevant Pilots
Alberta **http://www.cic.gc.ca/english/department/laws-policy/agreements/alberta/can-alberta-annex_B-2008.asp**	April 1, 2009		**To be Implemented**: Section 5.4 - Employers who are recruiting foreign nationals for NOC C & D occupations will be required to submit a work place and community orientation plan with their LMO application.
British Columbia **http://www.cic.gc.ca/ENGLISH/department/laws-policy/agreements/bc/bc-2010-annex-f.asp**	April 9, 2010		
Ontario **http://www.cic.gc.ca/english/department/laws-policy/agreements/ontario/can-ont-amend_agree.asp**	August 1, 2008		

Section 2.5.4 – Assessing the Hiring of a Live-in Caregiver

The IRPR describes the three factors that HRSDC/Service Canada and CIC will consider in a determination for live-in caregivers:

(i) if the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision;

(ii) the employer will provide adequate furnished and private accommodations in the household; and

(iii) the employer has sufficient financial resources to pay the foreign national the wages offered the foreign national.

HRSDC/Service Canada will indicate its findings in an Opinion to CIC and the employer. CIC's authority is found in section 200(1)(*c*)(iii) of IRPR. HRSDC/Service Canada's authority is found in section 203(1)(*d*) of IRPR.

Section 2.5.4.1 – Live-in Caregiver Requirements: Residing in a Private Household and Providing Child Care, Senior Home Support Care or Care of a Disabled Person

Purpose:

The purpose of this directive is to define and to outline how HRSDC and Service Canada will assess the hiring of a live-in caregiver as it relates to the offer being made to employ a foreign national to reside in a private household in Canada and carry out the duties of child care, senior home support care or care of a disabled person in the household without supervision.

Authority:

The IRPR describes the three factors that HRSDC/Service Canada and CIC will consider in a determination for live-in caregivers. HRSDC/Service Canada will indicate its findings in an Opinion to CIC and the employer.

CIC's authority is found in section 200(1)(*c*)(iii):

> 200. (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for the permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that:
>
> (*c*) the foreign national
> (iii) has been offered employment, and an officer has made a positive determination under paragraphs 203(1)(a) to (e).

HRSDC/Service Canada's authority is found in section 203(1)(*d*):

> **203.** (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(*c*)(i) to (ii.1), an officer shall determine, on the basis of an opinion provided by the Department of Human Resources and Skills Development, if
>
> (*a*) the job offer is genuine under subsection 200(5);
>
> *[200 (5) A determination of whether an offer of employment is genuine shall be based on the following factors:*
>
> *(a) whether the offer is made by an employer, other than an employer of a live-in caregiver, that is actively engaged in the business in respect of which the offer is made;*
> *(b) whether the offer is consistent with the reasonable employment needs of the employer;*
> *(c) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and*
> *(d) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work.]*

(*b*) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada;

> *[203(3) An opinion provided by the Department of Human Resources and Skills Development with respect to the matters referred to in subsection (1)(b) shall be based on the following factors:*
>
> *(a) whether the employment of the foreign national is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;*
> *(b) whether the employment of the foreign national is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;*
> *(c) whether the employment of the foreign national is likely to fill a labour shortage;*
> *(d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards;*
> *(e) whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents; and*
> *(f) whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute.]*

(*c*) the issuance of a work permit would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals;

(*d*) in the case of a foreign national who seeks to enter Canada as a live-in caregiver,

> **(i) the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision,**
> (ii) the employer will provide adequate furnished and private accommodations in the household, and
> (iii) the employer has sufficient financial resources to pay the foreign national the wages that are offered to the foreign national; and

(*e*) during the period beginning two years before the day on which the request for an opinion under subsection (2) is received by the Department of Human Resources and Skills Development and ending on the day that the application for the work permit is received by the Department,

> (i) the employer making the offer provided each foreign national employed by the employer with wages, working conditions and employment in an occupation that were substantially the same as the wages, working conditions and occupation set out in the employer's offer of employment to the foreign national, or
> (ii) in the case where the employer did not provide wages, working conditions or employment in an occupation that were substantially the same as offered, the failure to do so was justified in accordance with subsection (1.1).

Policy Guidelines:

For the purposes of preparing an analysis under section 203(1)(*d*)(i) of the IRPR, the general policy intent is to consider if the live-in caregiver will be residing in a private household and providing child care, senior home support care or care of a disabled person in that household without supervision.

For the purposes of the LCP, a child is defined as being a person under 18 years of age or a child to be born (attestation by a medical doctor confirming the pregnancy and the due date of the child required to be followed by a long form Birth Certificate after the child's birth) and a senior is defined as being a person 65 years of age or older.

The providing care factor is tied to the genuineness of the job offer. HRSDC/Service Canada officers will have authority to refuse applications for Live-in Caregiver opinions on the grounds that a caregiver is not being requested to provide care for a child, senior, or person with a disability.

In all LCP applications, all three live-in caregiver requirements will be assessed. However, the degree to which employers will be asked to demonstrate each factor will depend on past history with the program and other risk factors.

A negative finding for one or more of the three LCP factors will result in a negative opinion for the live-in caregiver requirements.

The LCP-specific opinion is one of the five opinions to be issued by HRSDC/Service Canada. HRSDC/Service Canada will also issue an opinion on the genuineness of the employer and job offer, labour market impact, consistency with federal or provincial agreements, and whether wages, working conditions and occupation were STS as those originally offered. A letter, outlining the positive or negative result of each opinion, as applicable, will be sent to the employer and shared with CIC.

Associated Directives:

Live-in Caregiver Requirements - Providing Adequate Furnished and Private Accommodations

Live-in Caregiver Requirements - The Employer has Sufficient Financial Resources to Pay the Foreign National

Section 2.5.4.2 – Live-in Caregiver Requirements: Providing Adequate Furnished and Private Accommodations

Purpose:

The purpose of this directive is to define and to outline how Human Resources and Skills Development (HRSDC) and Service Canada will assess the hiring of a live-in caregiver (LC) as it relates to the offer being made, namely the employer's ability to provide adequate furnished and private accommodations in the household where the employment will be undertaken.

Authority:

The *Immigration and Refugee Protection* Regulations (IRPR) describes the three factors that HRSDC/Service Canada and Citizenship and Immigration Canada (CIC) will consider in a determination for live-in caregivers. HRSDC/Service Canada will indicate its findings in an Opinion to CIC and the employer.

CIC's authority is found in section 200(1)(*c*)(iii):

> 200. (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for the permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that:
>
> (*c*) the foreign national
> (iii) has been offered employment, and an officer has made a positive determination under paragraphs 203(1)(a) to (e).

HRSDC/Service Canada's authority is found in section 203(1)(*d*):

> **203.** (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(*c*)(i) to (ii.1), an officer shall determine, on the basis of an opinion provided by the Department of Human Resources and Skills Development, if
>
> (*a*) the job offer is genuine under subsection 200(5);
>
> *[200 (5) A determination of whether an offer of employment is genuine shall be based on the following factors:*
>
> *(a) whether the offer is made by an employer, other than an employer of a live-in caregiver, that is actively engaged in the business in respect of which the offer is made;*
> *(b) whether the offer is consistent with the reasonable employment needs of the employer;*
> *(c) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and*
> *(d) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work.]*

(*b*) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada;

> [*203(3) An opinion provided by the Department of Human Resources and Skills Development with respect to the matters referred to in subsection (1)(b) shall be based on the following factors:*
>
> *(a) whether the employment of the foreign national is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;*
> *(b) whether the employment of the foreign national is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;*
> *(c) whether the employment of the foreign national is likely to fill a labour shortage;*
> *(d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards;*
> *(e) whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents; and*
> *(f) whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute.]*

(*c*) the issuance of a work permit would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals;

(*d*) in the case of a foreign national who seeks to enter Canada as a live-in caregiver,

> (i) the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision,
> **(ii) the employer will provide adequate furnished and private accommodations in the household**, and
> (iii) the employer has sufficient financial resources to pay the foreign national the wages that are offered to the foreign national; and

(*e*) during the period beginning two years before the day on which the request for an opinion under subsection (2) is received by the Department of Human Resources and Skills Development and ending on the day that the application for the work permit is received by the Department,

> (i) the employer making the offer provided each foreign national employed by the employer with wages, working conditions and employment in an occupation that were substantially the same as the wages, working conditions and occupation set out in the employer's offer of employment to the foreign national, or
> (ii) in the case where the employer did not provide wages, working conditions or employment in an occupation that were substantially the same as offered, the failure to do so was justified in accordance with subsection (1.1).

Policy Guidelines:

For the purposes of preparing an analysis under section 203(1)(*d*)(ii) of the *IRPR*, the general policy intent is to consider whether the employer will provide adequate furnished and private accommodations in the household.

The accommodations factor is tied to the genuineness of the job offer. HRSDC/Service Canada officers will have authority to refuse applications for Live-in Caregiver Opinions on the grounds of “unsuitable/inadequate” accommodations.

In all LCP applications, all three live-in caregiver requirements will be assessed. However, the degree to which employers will be asked to demonstrate each factor will depend on past history with the program and other risk factors.

A negative finding for one or more of the three LCP factors will result in a negative Opinion for the live-in caregiver requirements.

The LCP-specific Opinion is one of the five opinions to be issued by HRSDC/Service Canada. HRSDC/Service Canada will also issue an Opinion on the genuineness of the employer and job offer, labour market impact, consistency with federal or provincial agreements, and whether wages, working conditions and occupation were “substantially the same as” originally offered. A letter, outlining the positive or negative result of each opinion, as applicable, will be sent to the employer and shared with CIC.

Associated Directives:

Live-in Caregiver Requirements - Residing in a Private Household and Providing Child Care, Senior Home Support Care or Care of a Disabled Person

Live-in Caregiver Requirements - The Employer has Sufficient Financial Resources to Pay the Foreign National

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Section 2.5.4.3 – The Employer has Sufficient Financial Resources to Pay the Foreign National

Purpose:

The purpose of this directive is to define and to outline how Human Resources and Skills Development (HRSDC) and Service Canada (SC) will assess the hiring of a live-in caregiver (LC) as it relates to the offer being made, namely the assessment of sufficient financial resources of the employer to pay the offered wages to the foreign national.

Authority:

The *Immigration and Refugee Protection* Regulations (IRPR) describes the three factors that HRSDC/Service Canada and Citizenship and Immigration Canada (CIC) will consider in a determination for live-in caregivers. HRSDC/Service Canada will indicate its findings in an Opinion to CIC and the employer.

CIC's authority is found in section 200(1)(*c*)(iii):

> 200. (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for the permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that:
>
> (*c*) the foreign national
> (iii) has been offered employment, and an officer has made a positive determination under paragraphs 203(1)(a) to (e).

HRSDC/Service Canada's authority is found in section 203(1)(*d*):

> **203.** (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(*c*)(i) to (ii.1), an officer shall determine, on the basis of an opinion provided by the Department of Human Resources and Skills Development, if
>
> (*a*) the job offer is genuine under subsection 200(5);
>
> *[200 (5) A determination of whether an offer of employment is genuine shall be based on the following factors:*
>
> *(a) whether the offer is made by an employer, other than an employer of a live-in caregiver, that is actively engaged in the business in respect of which the offer is made;*
> *(b) whether the offer is consistent with the reasonable employment needs of the employer;*
> *(c) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and*
> *(d) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work.]*

(*b*) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada;

[*203(3) An opinion provided by the Department of Human Resources and Skills Development with respect to the matters referred to in subsection (1)(b) shall be based on the following factors:*

(a) whether the employment of the foreign national is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;
(b) whether the employment of the foreign national is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;
(c) whether the employment of the foreign national is likely to fill a labour shortage;
(d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards;
(e) whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents; and
(f) whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute.]

(*c*) the issuance of a work permit would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals;

(*d*) in the case of a foreign national who seeks to enter Canada as a live-in caregiver,

(i) the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision,
(ii) the employer will provide adequate furnished and private accommodations in the household, and
(iii) the employer has sufficient financial resources to pay the foreign national the wages that are offered to the foreign national; and

(*e*) during the period beginning two years before the day on which the request for an opinion under subsection (2) is received by the Department of Human Resources and Skills Development and ending on the day that the application for the work permit is received by the Department,

(i) the employer making the offer provided each foreign national employed by the employer with wages, working conditions and employment in an occupation that were substantially the same as the wages, working conditions and occupation set out in the employer's offer of employment to the foreign national, or
(ii) in the case where the employer did not provide wages, working conditions or employment in an occupation that were substantially the same as offered, the failure to do so was justified in accordance with subsection (1.1).

Policy Guidelines:

For the purposes of preparing an analysis under section 203(1)(*d*)(iii) of the *IRPR*, the general policy intent is to consider whether the employer has sufficient financial resources to pay the foreign national the wages offered for the duration of time specified in the contract.

Employers must demonstrate financial ability at the initial stage of the Opinion application. The ability to pay is tied to the genuineness of the job offer. HRSDC/Service Canada officers will have authority to refuse an Opinion application for a Live-in Caregiver on the grounds of an employer's inability to demonstrate that he/she is financially capable of providing stable and full-time employment for a caregiver for the duration of the request submitted.

When assessing the salary of the employer, officers should consider the entire household salary, as opposed to the individual applicant's salary. HRSDC/Service Canada will use the definition of *family household* as being an economic family. It includes occupants of a dwelling unit who are living together in marital or common-law relationships. It will exclude extended family members, including brothers, sisters, etc.

A group of individuals may also be considered if they are joining together to hire a live-in caregiver for a senior or a person with a disability. One example is if a group of siblings jointly hired a live-in caregiver to care for a senior parent. Directives for these situations can be found at: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lcpdir/lcpdir-9.shtml#9

Financial assistance provided by a province, intended to pay for care, would also be acceptable.

In order to determine a "reasonable" income rate for an employer to hire a live-in caregiver, the Low Income Cut-Off (LICO)[1] will be used as a benchmark to determine the minimum required income level for employers wishing to hire caregivers. LICO is used by Statistics Canada and defines a set of income cut-offs below which people may be said to live in *strained circumstances*.

An employer's annual income, including a deduction for the caregiver's salary, must be above the up-to-date LICOs in order to qualify for a positive opinion under the Live-in Caregiver Program (LCP).

In all LCP applications, all three live-in caregiver requirements will be assessed. However, the degree to which employers will be asked to demonstrate each factor will depend on past history with the program and other risk factors.

A negative finding for one or more of the three LCP factors will result in a negative Opinion for the live-in caregiver requirements.

The LCP-specific Opinion is one of the five opinions to be issued by HRSDC/Service Canada. HRSDC/Service Canada will also issue an Opinion on the genuineness of the employer and job offer, labour market impact, consistency with federal or provincial agreements, and whether wages, working conditions and occupation were "substantially the same as" originally offered. A letter, outlining the positive or negative result of each opinion, as applicable, will be sent to the employer and shared with CIC.

[1] LICO varies with the number of family members, capped at seven. It also distinguishes among five different-sized urban and rural communities. The larger the community; the higher the low income cut-off for a family size.

Associated Directives:

Live-in Caregiver Requirements - Residing in a Private Household and Providing Child Care, Senior Home Support Care or Care of a Disabled Person

Live-in Caregiver Requirements - Providing Adequate Furnished and Private Accommodations

Section 2.5.5 – Assessing Whether the Wages, Working Conditions and Occupation Are Substantially the Same as Originally Offered

The IRPR describes the three factors that HRSDC/Service Canada and CIC will consider in assessing whether the actual wages, working conditions, and occupation provided to the foreign nationals were substantially the same as those originally offered by the employer and confirmed by HRSDC/Service Canada's Opinion and/or CIC's work permit. The assessment will cover the two-year period preceding the request for an Opinion. HRSDC/Service Canada will indicate its findings in its Opinion to CIC and the employer. CIC's authority is found in section 200(1)(*c*)(ii.1) of IRPR. HRSDC/Service Canada's authority is found in section 203(1)(*e*) of IRPR:

Section 2.5.5.1 – Substantially the Same – Wages

Purpose:

The purpose of this directive is to define, and to outline how Human Resources and Skills Development (HRSDC) and Service Canada will assess whether or not the employer, in the two-year period preceding the request for an Opinion, provided each temporary foreign worker (TFW) with wages that were substantially the same as the wages set out in the employer's offer to the worker.

Authority:

The *Immigration and Refugee Protection Regulations* (IRPR) describes the three factors that HRSDC/Service Canada and Citizenship and Immigration Canada (CIC) will consider in assessing whether the actual wages, working conditions, and occupation provided to the foreign nationals were substantially the same as those originally offered by the employer and confirmed by HRSDC/Service Canada's Opinion and/or CIC's work permit. HRSDC/Service Canada will indicate its findings in its Opinion to CIC and the employer.

CIC's authority is found in section 200(1)(*c*)(ii.1):

> (ii.1) [foreign national] intends to perform work described in section 204 or 205, has an offer of employment to perform that work and an officer has determined
>
> (B) that during the two-year period preceding the day on which the application for the work permit is received by the Department,
> (I) the employer making the offer provided each foreign national employed by the employer with wages, working conditions and employment in an occupation that were substantially the same as the wages, working conditions and occupation set out in the employer's offer of employment to the foreign national, or
> (II) in the case where the employer did not provide wages, working conditions or employment in an occupation that were substantially the same as offered, the failure to do so was justified in accordance with subsection 203(1.1).

HRSDC/Service Canada's authority is found in section 203(1)(*e*):

> **203.** (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(*c*)(i) to (ii.1), an officer shall determine, on the basis of an opinion provided by the Department of Human Resources and Skills Development, if
>
> (*a*) the job offer is genuine under subsection 200(5);
>
> *[200 (5) A determination of whether an offer of employment is genuine shall be based on the following factors:*
>
> *(a) whether the offer is made by an employer, other than an employer of a live-in caregiver, that is actively engaged in the business in respect of which the offer is made;*
> *(b) whether the offer is consistent with the reasonable employment needs of the employer;*

(c) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and
(d) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work.]

(*b*) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada;

[*203(3) An opinion provided by the Department of Human Resources and Skills Development with respect to the matters referred to in subsection (1)(b) shall be based on the following factors:*

(a) whether the employment of the foreign national is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;
(b) whether the employment of the foreign national is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;
(c) whether the employment of the foreign national is likely to fill a labour shortage;
(d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards;
(e) whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents; and
(f) whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute.]

(*c*) the issuance of a work permit would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals;

(*d*) in the case of a foreign national who seeks to enter Canada as a live-in caregiver,

(i) the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision,
(ii) the employer will provide adequate furnished and private accommodations in the household, and
(iii) the employer has sufficient financial resources to pay the foreign national the wages that are offered to the foreign national; and

(e) during the period beginning two years before the day on which the request for an opinion under subsection (2) is received by the Department of Human Resources and Skills Development and ending on the day that the application for the work permit is received by the Department,

(i) the employer making the offer provided each foreign national employed by the employer with wages, working conditions and employment in an occupation that were substantially the same as the wages, working conditions and occupation set out in the employer's offer of employment to the foreign national, or

> **(ii) in the case where the employer did not provide wages, working conditions or employment in an occupation that were substantially the same as offered, the failure to do so was justified in accordance with subsection (1.1).**

A list of acceptable justifications is found in section 203(1.1):

> (1.1) A failure referred to in subparagraph (1)(*e*)(ii) is justified if it resulted from
>
> (*a*) a change in federal or provincial law;
> (*b*) a change to the provisions of a collective agreement;
> (*c*) the implementation of measures by the employer in response to a dramatic change in economic conditions that directly affected the business of the employer, provided that the measures were not directed disproportionately at foreign nationals employed by the employer;
> (*d*) an error in interpretation made in good faith by the employer with respect to its obligations to a foreign national, if the employer subsequently provided compensation — or if it was not possible to provide compensation, made sufficient efforts to do so — to all foreign nationals who suffered a disadvantage as a result of the error;
> (*e*) an unintentional accounting or administrative error made by the employer, if the employer subsequently provided compensation — or if it was not possible to provide compensation made sufficient efforts to do so — to all foreign nationals who suffered a disadvantage as a result of the error; or
> (*f*) circumstances similar to those set out in paragraphs (*a*) to (*e*).

If a finding of failure to provide wages, working conditions, or occupation that were "substantially the same" is made, the authority to post information about an ineligible employer on CIC's website is found in section 203(5) and (6):

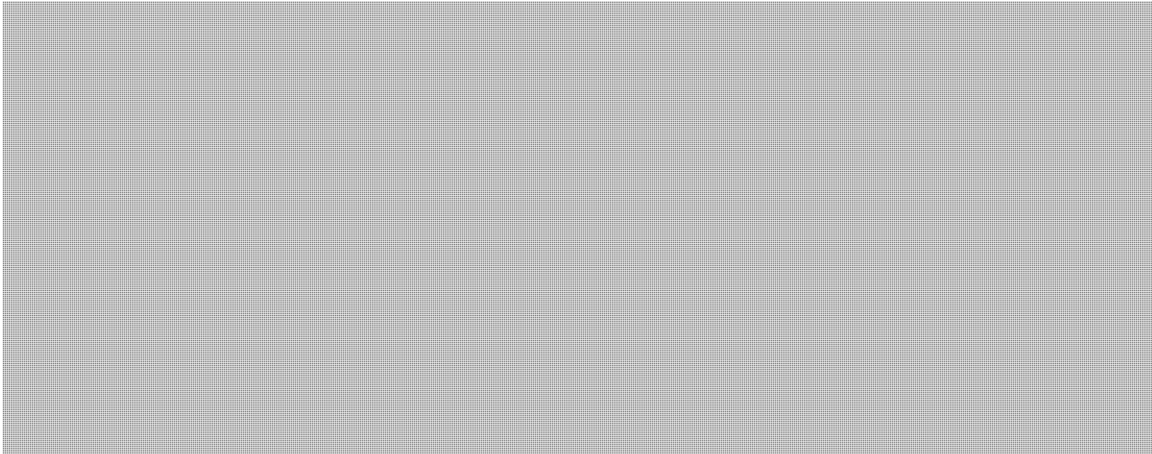
> (5) If an officer determines under subparagraph 200(1)(*c*)(ii.1) or paragraph (1)(*e*) that, during the period set out in paragraph (1)(*e*), an employer did not provide wages, working conditions or employment in an occupation that was substantially the same as those offered and that the failure to do so was not justified in accordance with subsection (1.1), the Department shall notify the employer of that determination.
>
> (6) A list shall be maintained on the Department's website that sets out
>
> (*a*) the names and addresses of employers referred to in subsection (5); and
> (*b*) the date on which the determination referred to in that subsection was made in respect of an employer.

Definitions:

s.16(2)

Disadvantage
The TFW suffers a disadvantage where there has been an unauthorized decrease in wages related to the original Opinion and/or work permit, and in the absence of a justification.

s.16(2)



Policy Guidelines:

For the purposes of preparing an analysis under section 203(1)(*e*) of the *IRPR*, the general policy intent is to consider whether the wages the employer committed to in HRSDC/Service Canada's Opinion and/or CIC's work permit applications, and the actual wages provided to the TFW over the course of the period of employment were substantially the same. HRSDC/Service Canada may look at any TFW who worked for the employer in the past two years, not only those who required an Opinion from HRSDC/Service Canada to obtain a work permit.

"Substantially the same" is assessed to ensure the integrity of the Opinion and the work permit, and to protect the worker and the labour market. Generally, wages paid to TFWs are expected to be the same as that on HRSDC/Service Canada's Opinion and/or CIC's work permit. If the wages paid are lower than on the Opinion or work permit, an assessment must be made to confirm if wages are "substantially" the same since a deviation in wages paid to a TFW could have negative effects on workers and their degree of vulnerability.

s.16(2)

A Service Canada officer should take a neutral approach in an assessment of "substantially the same". In other words, the objective should not be to find a difference, but rather to objectively assess whether or not the wages were substantially the same as the wages originally set out in the Opinion and work permit documents.

A Service Canada officer may assess wages paid to any temporary foreign workers in the two years preceding the date the application is received, in order to assess potential differences in the wages during that period. Where possible, the officer will examine recent LMOs, to minimise the probability of the temporary foreign workers having returned to their home countries.

Where a large difference in wages is noted, the Service Canada officer should review the NOC and job descriptions to ensure that the worker was not doing a different job/occupation than was indicated on the Opinion or work permit. The policy directive entitled, "*Substantially the Same*" – *Position/Occupation*" has information on assessment under that factor.

An employer may modify the wages set out in the original contract, only upon notifying HRSDC/Service Canada and during the time of the original contract. Any change in wages must still adhere to the prevailing wage policy and be approved by HRSDC/Service Canada. The amended wage will become the new "wages originally offered" and would be the wages assessed in a review of "substantially the same", upon a new application for a temporary foreign worker being received by HRSDC/Service Canada.

This directive applies equally to Canadian and foreign-based employers. Foreign-based employers will have latitude to provide alternative but sufficient documentary evidence to satisfy the officer.

Employers always have the option of withdrawing an application but should NOT be advised by HRSDC/Service Canada to do so in order to avoid a finding of failure to provide wages that were substantially the same as the offer.

Associated Directives:

Substantially the Same – Working Conditions
Substantially the Same - Position/Occupation

Section 2.5.5.2 – Substantially the Same – Working Conditions

Purpose:

The purpose of this directive is to define, and to outline how Human Resources and Skills Development (HRSDC) and Service Canada will assess whether or not the employer, in the two-year period preceding the request for an Opinion, provided working conditions that were substantially the same as the working conditions originally offered by the employer to the temporary foreign worker (TFW).

Authority:

The *Immigration and Refugee Protection Regulations* (IRPR) describes the three factors that HRSDC/Service Canada and Citizenship and Immigration Canada (CIC) will consider in assessing whether the actual wages, working conditions, and occupation provided to the foreign nationals were substantially the same as those originally offered by the employer and confirmed by HRSDC/Service Canada's Opinion and/or CIC's work permit. HRSDC/Service Canada will indicate its findings in its Opinion to CIC and the employer.

CIC's authority is found in section 200(1)(*c*)(ii.1):

> (ii.1) [foreign national] intends to perform work described in section 204 or 205, has an offer of employment to perform that work and an officer has determined
>
> (B) that during the two-year period preceding the day on which the application for the work permit is received by the Department,
> (I) the employer making the offer provided each foreign national employed by the employer with wages, working conditions and employment in an occupation that were substantially the same as the wages, working conditions and occupation set out in the employer's offer of employment to the foreign national, or
> (II) in the case where the employer did not provide wages, working conditions or employment in an occupation that were substantially the same as offered, the failure to do so was justified in accordance with subsection 203(1.1).

HRSDC/Service Canada's authority is found in section 203(1)(*e*):

> **203.** (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(*c*)(i) to (ii.1), an officer shall determine, on the basis of an opinion provided by the Department of Human Resources and Skills Development, if
>
> (*a*) the job offer is genuine under subsection 200(5);
>
> *[200 (5) A determination of whether an offer of employment is genuine shall be based on the following factors:*
>
> *(a) whether the offer is made by an employer, other than an employer of a live-in caregiver, that is actively engaged in the business in respect of which the offer is made;*
> *(b) whether the offer is consistent with the reasonable employment needs of the employer;*

(c) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and
(d) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work.]

(*b*) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada;

[203(3) An opinion provided by the Department of Human Resources and Skills Development with respect to the matters referred to in subsection (1)(b) shall be based on the following factors:

(a) whether the employment of the foreign national is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;
(b) whether the employment of the foreign national is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;
(c) whether the employment of the foreign national is likely to fill a labour shortage;
(d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards;
(e) whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents; and
(f) whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute.]

(*c*) the issuance of a work permit would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals;

(*d*) in the case of a foreign national who seeks to enter Canada as a live-in caregiver,

(i) the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision,
(ii) the employer will provide adequate furnished and private accommodations in the household, and
(iii) the employer has sufficient financial resources to pay the foreign national the wages that are offered to the foreign national; and

(e) during the period beginning two years before the day on which the request for an opinion under subsection (2) is received by the Department of Human Resources and Skills Development and ending on the day that the application for the work permit is received by the Department,

(i) the employer making the offer provided each foreign national employed by the employer with wages, working conditions and employment in an occupation that were substantially the same as the wages, working conditions and occupation set out in the employer's offer of employment to the foreign national, or

> **(ii) in the case where the employer did not provide wages, working conditions or employment in an occupation that were substantially the same as offered, the failure to do so was justified in accordance with subsection (1.1).**

A list of acceptable justifications is found in section 203(1.1):

> (1.1) A failure referred to in subparagraph (1)(*e*)(ii) is justified if it resulted from
>
> (*a*) a change in federal or provincial law;
> (*b*) a change to the provisions of a collective agreement;
> (*c*) the implementation of measures by the employer in response to a dramatic change in economic conditions that directly affected the business of the employer, provided that the measures were not directed disproportionately at foreign nationals employed by the employer;
> (*d*) an error in interpretation made in good faith by the employer with respect to its obligations to a foreign national, if the employer subsequently provided compensation — or if it was not possible to provide compensation, made sufficient efforts to do so — to all foreign nationals who suffered a disadvantage as a result of the error;
> (*e*) an unintentional accounting or administrative error made by the employer, if the employer subsequently provided compensation — or if it was not possible to provide compensation made sufficient efforts to do so — to all foreign nationals who suffered a disadvantage as a result of the error; or
> (*f*) circumstances similar to those set out in paragraphs (*a*) to (*e*).

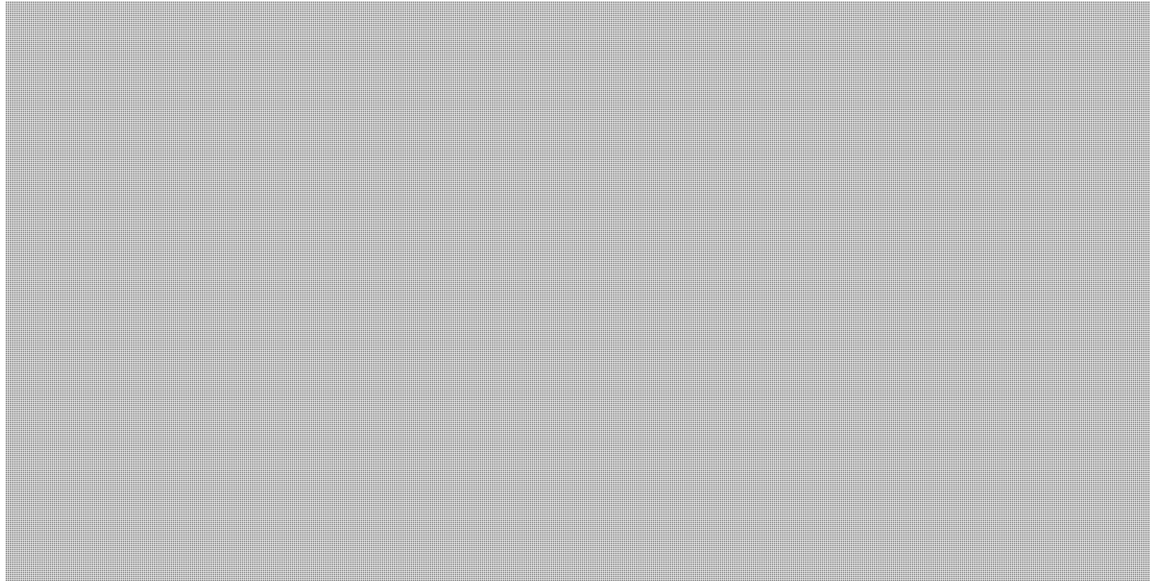
If a finding of failure to provide wages, working conditions, or occupation that were "substantially the same" is made, the authority to post information about an ineligible employer on CIC's website is found in section 203(5) and (6):

> (5) If an officer determines under subparagraph 200(1)(*c*)(ii.1) or paragraph (1)(*e*) that, during the period set out in paragraph (1)(*e*), an employer did not provide wages, working conditions or employment in an occupation that was substantially the same as those offered and that the failure to do so was not justified in accordance with subsection (1.1), the Department shall notify the employer of that determination.
>
> (6) A list shall be maintained on the Department's website that sets out
>
> (*a*) the names and addresses of employers referred to in subsection (5); and
> (*b*) the date on which the determination referred to in that subsection was made in respect of an employer.

Definitions:

Substantially the Same – Working Conditions
Any deviation that would result in working conditions not meeting generally acceptable Canadian standards including benefits, or in the employer not upholding the requirements of the Temporary Foreign Worker Program (TFWP), may result in a failure to provide working conditions substantially the same as the working conditions in the initial offer, for the purposes of assessing this factor.

s.16(2)



Requiring employers to address actions in the future is not considered compensation, but should be considered as part of future assessments for Opinion applications.

Policy Guidelines:

For the purposes of preparing an analysis under section 203(1)(*e*) of the *IRPR*, the general policy intent is to consider whether the working conditions the employer committed to in the HRSDC/Service Canada's Opinion and/or CIC's work permit applications, and the actual working conditions provided to the TFW over the course of employment were substantially the same. HRSDC/Service Canada may look at any TFW who worked for the employer in the past two years, not only those who required an Opinion from HRSDC/Service Canada to obtain a work permit.

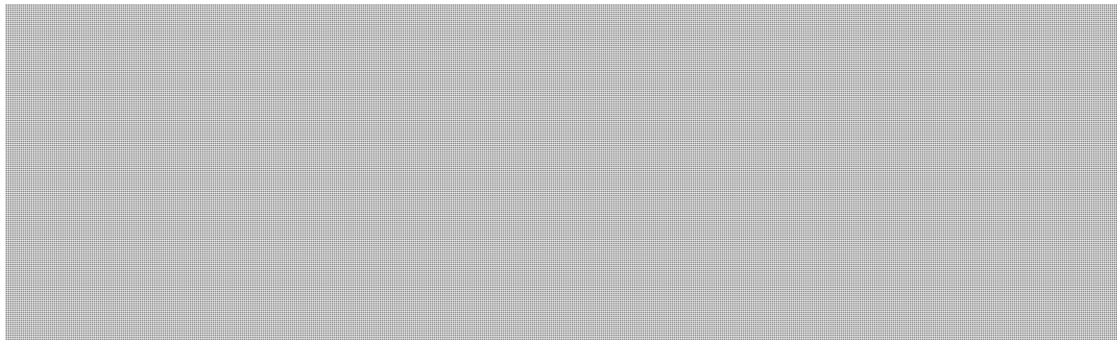
Working conditions must always meet generally acceptable Canadian standards including benefits as well as the requirements of the Temporary Foreign Worker Program (TFWP), including additional specific requirements for live-in caregivers, seasonal agricultural workers, and occupations requiring lower levels of formal training. Please see the Working Conditions Policy Directive for details.

"Substantially the same" is assessed to ensure the integrity of the Opinion and work permit, and to protect the worker and the labour market.

Temporary foreign workers are covered by the same provincial employment standards codes, occupational health and safety regulations legislation, and have the same rights as Canadian workers. However, not all provincial violations will be assessed for "substantially the same". Only those employment standard codes, occupational health and safety regulations and violations that would or could form part of the working conditions of that temporary foreign worker or a Canadian doing similar work would apply. For instance, if the employer was cited for using improper scaffolding at a job site that had no temporary foreign workers, but the temporary foreign workers were required to use similar scaffolding as part of the working conditions of their positions, then the violation would apply. Similarly, if the employer used improper fencing, but no temporary foreign worker or Canadian doing similar work was affected by the use of that fencing, then a violation would not apply in this assessment.

For the purposes of preparing an analysis under section 203(1)(*e*) of the IRPR, a violation of federal or provincial labour standards or occupational health and safety legislation is one where the governing body has made a finding that there has been a breaking or dishonouring of law, or contravention of a duty or right. An allegation of misconduct, for example, will not be considered a violation for assessment purposes.

s.16(2)



A Service Canada officer should take a neutral approach in an assessment of "substantially the same". In other words, the objective should not be to find a difference, but rather to objectively assess whether or not the working conditions were substantially the same as the working conditions originally set out in the Opinion and work permit documents.

A Service Canada officer may look back two years from the date the current application is received in order to assess if there was any potential difference in the working conditions for any temporary foreign workers during that period. Where possible, the officer will examine recent HRSDC/Service Canada Opinions, to minimise the probability of the temporary foreign workers having returned to their home countries.

An employer may modify the working conditions of the temporary foreign worker, but would not need to notify HRSDC/Service Canada, so long as they still meet generally acceptable Canadian standards, including benefits. If the changes to the working conditions are more significant, the employer must apply for a new Opinion and work permit. The new documentation is what will be assessed in a review of "substantially the same" for working conditions, upon a new application for a temporary foreign worker being received by HRSDC/Service Canada.

This directive applies equally to Canadian and foreign-based employers.

Employers always have the option of withdrawing an application but should NOT be advised by HRSDC/Service Canada to do so in order to avoid a finding of failure to provide working conditions that were substantially the same as the offer.

Associated Directives:

Substantially the Same - Wages
Substantially the Same - Position/Occupation

Section 2.5.5.3 – Substantially the Same – Position/Occupation

Purpose:

The purpose of this directive is to define, and to outline how HRSDC and Service Canada will assess whether or not the employer, in the two-year period preceding the request for an Opinion, provided a TFW with employment in an occupation that was STS as the occupation set out in the employer's offer to the worker.

Authority:

The IRPR describes the three factors that HRSDC/Service Canada and CIC will consider in assessing whether the actual wages, working conditions, and occupation provided to the foreign nationals were STS as those originally offered by the employer and confirmed by HRSDC/Service Canada's Opinion and/or CIC's work permit. HRSDC/Service Canada will indicate its findings in its Opinion to CIC and the employer.

CIC's authority is found in section 200(1)(*c*)(ii.1):

> (ii.1) [foreign national] intends to perform work described in section 204 or 205, has an offer of employment to perform that work and an officer has determined
>
> (B) that during the two-year period preceding the day on which the application for the work permit is received by the Department,
> (I) the employer making the offer provided each foreign national employed by the employer with wages, working conditions and employment in an occupation that were substantially the same as the wages, working conditions and occupation set out in the employer's offer of employment to the foreign national, or
> (II) in the case where the employer did not provide wages, working conditions or employment in an occupation that were substantially the same as offered, the failure to do so was justified in accordance with subsection 203(1.1).

HRSDC/Service Canada's authority is found in section 203(1)(*e*):

> **203.** (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(*c*)(i) to (ii.1), an officer shall determine, on the basis of an opinion provided by the Department of Human Resources and Skills Development, if
>
> (*a*) the job offer is genuine under subsection 200(5);
>
> *[200 (5) A determination of whether an offer of employment is genuine shall be based on the following factors:*
>
> *(a) whether the offer is made by an employer, other than an employer of a live-in caregiver, that is actively engaged in the business in respect of which the offer is made;*
> *(b) whether the offer is consistent with the reasonable employment needs of the employer;*
> *(c) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and*
> *(d) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the*

recruiting of employees, in the province in which it is intended that the foreign national work.]

(*b*) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada;

[203(3) An opinion provided by the Department of Human Resources and Skills Development with respect to the matters referred to in subsection (1)(b) shall be based on the following factors:

(a) whether the employment of the foreign national is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;
(b) whether the employment of the foreign national is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;
(c) whether the employment of the foreign national is likely to fill a labour shortage;
(d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards;
(e) whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents; and
(f) whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute.]

(*c*) the issuance of a work permit would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals;

(*d*) in the case of a foreign national who seeks to enter Canada as a live-in caregiver,

(i) the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision,
(ii) the employer will provide adequate furnished and private accommodations in the household, and
(iii) the employer has sufficient financial resources to pay the foreign national the wages that are offered to the foreign national; and

(e) during the period beginning two years before the day on which the request for an opinion under subsection (2) is received by the Department of Human Resources and Skills Development and ending on the day that the application for the work permit is received by the Department,

(i) the employer making the offer provided each foreign national employed by the employer with wages, working conditions and employment in an occupation that were substantially the same as the wages, working conditions and occupation set out in the employer’s offer of employment to the foreign national, or
(ii) in the case where the employer did not provide wages, working conditions or employment in an occupation that were substantially the same as offered, the failure to do so was justified in accordance with subsection (1.1).

A list of acceptable justifications is found in section 203(1.1):

(1.1) A failure referred to in subparagraph (1)(e)(ii) is justified if it resulted from

(*a*) a change in federal or provincial law;
(*b*) a change to the provisions of a collective agreement;
(*c*) the implementation of measures by the employer in response to a dramatic change in economic conditions that directly affected the business of the employer, provided that the measures were not directed disproportionately at foreign nationals employed by the employer;
(*d*) an error in interpretation made in good faith by the employer with respect to its obligations to a foreign national, if the employer subsequently provided compensation — or if it was not possible to provide compensation, made sufficient efforts to do so — to all foreign nationals who suffered a disadvantage as a result of the error;
(*e*) an unintentional accounting or administrative error made by the employer, if the employer subsequently provided compensation — or if it was not possible to provide compensation made sufficient efforts to do so — to all foreign nationals who suffered a disadvantage as a result of the error; or
(*f*) circumstances similar to those set out in paragraphs (*a*) to (*e*).

If a finding of failure to provide wages, working conditions, or occupation that were STS is made, the authority to post information about an ineligible employer on CIC's website is found in section 203(5) and (6):

(5) If an officer determines under subparagraph 200(1)(*c*)(ii.1) or paragraph (1)(*e*) that, during the period set out in paragraph (1)(*e*), an employer did not provide wages, working conditions or employment in an occupation that was substantially the same as those offered and that the failure to do so was not justified in accordance with subsection (1.1), the Department shall notify the employer of that determination.

(6) A list shall be maintained on the Department's website that sets out

(*a*) the names and addresses of employers referred to in subsection (5); and
(*b*) the date on which the determination referred to in that subsection was made in respect of an employer.

Definitions:

Substantially the Same – Occupation

Any unauthorized deviation in position or job duties that would have resulted in a change in NOC code may result in a failure to provide an occupation that is STS as the occupation in the initial offer, for the purposes of assessing this factor.

Disadvantage

The TFW suffers a disadvantage related to occupation where there has been an unauthorized deviation in position or job duties related to the original Opinion and/or work permit, and in the absence of a justification. The TFW is now outside of the requirements of the original work permit.

Compensation

Compensation (e.g. corrective measures) are actions the employer could take to address any discrepancy in the wages, working conditions or occupation committed to in the original Opinion and/or work permits. Such measures do not necessarily need to be financial in nature, but should be required according to the nature of the discrepancy. Where the worker whose position is being assessed is still employed by the employer and it is noted that position is not STS as the offer, the officer should contact the employer and ensure that a new Opinion and work permit is sought

and issued. The worker may have to return to the original job duties until the new LMO and work permit are issued.

For a worker that has already completed his contract and returned to the country of origin, the Service Canada officer must ensure that the worker was paid the prevailing wage for the occupation listed on the job offer, for the duration of the contract. The officer should also notify the employer that, in the future, it must provide the occupation specified or apply for a new Opinion if the modifications would result in the position being reclassified under NOC.

Policy Guidelines:

For the purposes of preparing an analysis under section 203(1)(*e*) of the IRPR, the general policy intent is to consider whether the occupation the employer described in the HRSDC/Service Canada's Opinion and/or CIC's work permit applications, and the actual position the TFW occupied over the course of the entire period of employment were STS. The officer will validate that the occupation was within the same NOC level.

STS is assessed to ensure the integrity of the Opinion and the work permit, and to protect the worker and the labour market.

s.16(2)

For the purposes of assessment, any change that would result in a change in NOC code would be considered a failure to provide an occupation that is STS as the occupation in the initial offer and will require further analysis by the officer. If the job changes are sufficient enough to move the employee into a different salary range and different duties, even though the position remains within the same NOC code, these may be considered a failure to provide an occupation that was STS.

In all applications, all three STS factors will be assessed. However, the degree to which employers will be asked to demonstrate each factor will depend on past history with the program and other risk factors. For example, an officer may take into account a recent ECR under HRSDC's MI in determining the extent of information required for the assessment.

The assessment of STS is one of the five opinions to be issued by HRSDC/Service Canada. HRSDC/Service Canada will also issue an Opinion on the genuineness of the employer and job offer, labour market impact, concurrence with federal or provincial agreements, and live-in caregiver requirements (if applicable). A letter, outlining the positive or negative result of each opinion will be sent to the employer and shared with CIC.

A Service Canada officer should take a neutral approach in an assessment of STS. In other words, the objective should not be to find a difference, but rather to objectively assess whether or not the occupation was STS as the occupation originally set out in the Opinion and work permit documents.

A Service Canada officer may look back two years from the date the current application is received in order to assess if there was any potential differences in the occupations of any TFWs during that period. Where possible, the officer will examine recent HRSDC/Service Canada Opinions, to minimise the probability of the TFWs having returned to their home countries.

Where a variation in the job duties or position is noted, the Service Canada officer should review the wages paid to ensure that the worker was paid the prevailing wage for the position described in the job offer. The policy directive entitled, "Substantially the Same – Wages" has information on an assessment of wages.

Employee-specific or identifying information on a job offer/employment contract should be blacked out.

An employer will need to notify HRSDC/Service Canada if there is a change in NOC code or if there is a dramatic change in occupation/job duties (even if it is within the same NOC code). In some instances, the employer will have to apply for a new Opinion and work permit. The new documentation is what will be assessed in a review of STS for occupation, upon a new application for a TFW being received by HRSDC/Service Canada.

This directive applies equally to Canadian and foreign-based employers.

Employers always have the option of withdrawing an application but should NOT be advised by HRSDC/Service Canada to do so in order to avoid a finding of failure to provide an occupation that was STS as the offer.

Associated Directives:

Substantially the Same – Wages
Substantially the Same – Working Conditions

Section 2.6.1 – Entertainment and Film-related occupations

Hiring foreign workers in film and entertainment can be an important part of making a production or holding a cultural or entertainment event in Canada. The entry of foreign workers in film and entertainment can also bring unique international talent to Canada and support cultural exchange.

In most cases, Canadian employers hiring foreign workers in film and entertainment must get a HRSDC/Service Canada Opinion. The foreign worker also requires a CIC work permit to work in Canada. These conditions are designed to take into account career development and employment opportunities for Canadians.

TFWP Internet site:

Hiring Foreign Workers in Entertainment and Film-Related Occupations

Section 2.6.2 – Foreign Academics

Employing foreign academics can help degree-granting post-secondary educational institutions in Canada meet their staffing and teaching needs and attract new knowledge and expertise to Canadian campuses.

Special hiring criteria have been developed by HRSDC/Service Canada and CIC in cooperation with universities, degree-granting colleges, and unions representing Canadian academics. These criteria are designed to take into account the career development and employment of Canadian academics.

http://www.rhdcc-hrsdc.gc.ca/eng/workplaceskills/foreign_workers/academic.shtml

Section 2.6.5.1 – Third party representation

There are instances when companies in Canada who benefit from the services provided by foreign workers, hire employment referral, hiring or placement agencies to find and recruit foreign workers. These agencies are referred to as third-party representatives.

The company who hired a third-party representative is the “employer” for the purposes of an Opinion application under section 203 of the IRPR.

The company who wants to hire foreign workers (not the third-party representative) is ultimately responsible for making sure the information provided to HRSDC/Service Canada is accurate and that they meet their obligations and responsibilities. The worker is employed by the company (not the third-party representative) and reports to the employer named on the application form.

A placement or employment agency can be considered the “employer” for the purposes of an Opinion application if it hires a TFW for its own human resource requirements in which the knowledge and skills of the foreign worker will directly contribute to the day-to-day business activities of the agency. A temporary placement agency that recruits workers but does not offer a guaranteed salary or wages with full-time hours (i.e., the agency will only pay the worker if it can find a job for the worker) will not be approved.

The employer directly benefits from the services provided by a foreign worker. A third-party representative provides services to the employer such as finding, recruiting and/or issuing cheques to foreign workers on behalf of the employer, he does not benefit directly from the services provided.
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lmodir/lmodir-10.shtml#102

Third-party representatives are individuals or companies hired by employers to act on their behalf for the purposes of Opinions. In these instances, employers must submit a signed authorization with their applications for Opinions (i.e., Appointment of Representative form), specifically authorizing third-party representatives to act on their behalf. TFWP officers may, at their discretion, contact employers directly to confirm the authorization or to clarify aspects of Opinion applications.

Even if a third-party representative acts on an employer's behalf (for the purposes of recruiting and/or submitting an Opinion application), TFWP officers makes sure that a valid employment relationship exist between the employer (not the third-party representative) and the foreign worker.
http://www.rhdcc.gc.ca/fra/competence/travailleurs_etrangers/amtdir/amtdir-3.shtml

Section 2.6.5.2 – Tripartite Employment Arrangements

A tripartite employment arrangement is when an employer retains the services of a third-party representative to find, recruit, supply and pay TFWs to meet their labour requirements.

The third-party representative assumes some of the responsibilities and obligations of the employer such as issuing pay cheques, accreditation of workers, etc**.** The company who hired the representative is the employer for the purposes of an Opinion; he/she benefits from the services provided by the foreign worker, gives direction and controls the on-site work to be performed, sets the working conditions, and ultimately pays the TFW through a contract with the third-party representative. This ensures that the foreign worker cannot be moved from one employer to another and location once the worker enters Canada, thereby changing the basis under which the Opinion was provided. Employers intending to hire workers in NOC skill level C and D must meet all the requirements under the Pilot project including an employer-employee contract.

http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lmodir/lmodir-10.shtml#104

Section 2.6.6 – Group of Employers

Section 203(2) of IRPR allows a Group of Employers (GoE) to collectively request an Opinion for the purpose of hiring TFWs.

A GoE is an aggregation of at least two employers wishing to band together to hire TFWs for a common purpose, such as a specific project (e.g. construction project).

An Administrator, nominated by members of the GoE, represents the Group to Government authorities and will be responsible for the application of the framework. Initially, HRSDC/Service Canada (NHQ) and CIC (NHQ) will approve each request to create a GoE.

The Employer of Record (EoR) identified on Opinions and work permits will be the GoE. Therefore, members of a GoE have the ability to transfer TFWs amongst themselves, within pre-approved worksites and in identical occupations, without having to request new Opinions and new work permits.

Section 2.6.9.1 – Sector councils

Sector councils are national partnership organizations that bring together business, labour and educational stakeholders. Operating at arms length from the Government of Canada, sector councils are a platform for stakeholders to share ideas, concerns and perspectives about human resources and skills issues, and find solutions that benefit their sector in a collective, collaborative and sustained manner.

http://www.hrsdc.gc.ca/eng/workplaceskills/sector_councils/information.shtml

Section 2.6.9.3 – Canadian Bar Association

CBA members and professional staff are actively involved in the development of government policy and law reform, lobbying on matters identified by members or responding to government initiatives.
http://www.cba.org/CBA/submissions/main/

http://www.cba.org/CBA/submissions/pdf/09-66-eng.pdf

Section 2.6.10 – Federal/Provincial/Territorial Working Groups and Annex Agreements

The TFWP works closely with provincial and territorial governments to strengthen program integrity and responsiveness to regional labour needs. Under the Canada-Quebec Accord on Immigration, HRSDC and Quebec are required to jointly assess LMO applications.

In partnership with CIC, representatives from the Federal-Provincial-Territorial Relations & Policy Unit from PPD as well as regional Service Canada colleagues participate on federal-provincial/territorial Working Groups on TFW. The mandate of the Working Groups is to address region-specific issues related to the entry and safe employment of TFWs. Working Groups are currently established with Alberta, British Columbia, Manitoba, Ontario, Saskatchewan, and Newfoundland and Labrador. HRSDC put in place a bi-lateral HRSDC-Quebec working group to jointly develop policies and processes, and to strengthen the partnership.

Led by CIC, the negotiation and implementation of TFW Annex agreements with provinces and territories are negotiated under the umbrella of CIC's Immigration Agreements with the provinces and territories. The Annexes support federal-provincial/territorial cooperation in responding to provinces' labour market needs through innovative pilot projects and the possible use of section 204(c) of the IRPR, exempting the need for a LMO. The Annexes also strengthen protections for TFWs through increased federal-provincial/territorial cooperation and information sharing.

Annexes provide for specific pilots for the provinces and territories. The majority of the pilots affect the work permit process. However, some pilots will impact the assessment of the HRSDC Opinion. Refer to Appendix A for a list of current agreements.

Another key element of all Annexes is the authority for the province to request the issuance of work permits from CIC without requiring an Opinion from HRSDC, as described in 204(c) of the IRPR.

The Provinces of Ontario (2008), Alberta (2009) and British Columbia (2010) have signed TFW Annex agreements and implementation is currently underway. Negotiations continue with Manitoba, Nova Scotia and the Yukon. Discussions have commenced between HRSDC, CIC and the MICC du Québec on the establishment of a protocole d'entente regarding occupations that are in high demand and require a modified approach to the joint decision making process.

Appendix A (section 2.5.3)

To date, Annex agreements have been signed with the provinces of Ontario, Alberta and British Columbia.

TFW Annex Agreements

Province	Effective Date	No Need for LMO	HRSDC/ SC Relevant Pilots
Alberta **http://www.cic.gc.ca/english/department/laws-policy/agreements/alberta/can-alberta-annex_B-2008.asp**	April 1, 2009		**To be Implemented**: Section 5.4 - Employers who are recruiting foreign nationals for NOC C & D occupations will be required to submit a work place and community orientation plan with their LMO application.
British Columbia **http://www.cic.gc.ca/ENGLISH/department/laws-policy/agreements/bc/bc-2010-annex-f.asp**	April 9, 2010		
Ontario **http://www.cic.gc.ca/english/department/laws-policy/agreements/ontario/can-ont-amend_agree.asp**	August 1, 2008		

Section 2.6.11.1 – Memorandum of Understanding with Citizenship and Immigration Canada

The MOU signed in 2009 with CIC has clarified the scope and purpose of the personal information that may be shared by the departments for the administration and enforcement of the TFWP, the authorities for doing so, and the applicable conditions and limitations placed on the use and further disclosure of that information. This MOU provides for the forwarding of work permit information from CIC to HRSDC to assist HRSDC with program integrity initiatives, such as administering the employer monitoring and compliance element of the expedited labour market opinion (E-LMO) pilot and the voluntary compliance initiative.

Under section 34(1) of the DHRSDA, HRSDC can disclose information, including personal information, directly to CIC as long as the information is going to be used for the administration and enforcement of sections 82 (AEO) or 203 (LMO) of the IRPR. This includes activities that directly relate to the issuance of an AEO or LMO.

NOTE: Any information given under Section 34(1) that is to be used for any purpose other than those described above is not permitted and requires a written request under Section 35(2).

Under section 35(2) of the DHRSDA, HRSDC can disclose personal information to CIC for the administration and enforcement of OTHER provisions of IRPA. Upon written request, CIC can request information from HRSDC related to the inadmissibility sections (sections 3 to 42) and the enforcement sections (sections 117 to 131) of the IRPA to conduct their investigations and undertake enforcement activity. Annex C of the CIC MOU outlines which data elements and types of personal information HRSDC is permitted to disclose under this authority.

Section 2.6.11.2 – Memorandum of Understanding with Canada Border Services Agency

As of April 2011, a MOU with the CBSA has not yet been signed. Under section 34(1) of the DHRSDA, HRSDC can disclose information, including personal information, directly to the CBSA as long as the information is going to be used for the administration and enforcement of sections 82 (AEO) or 203 (LMO) of the IRPR. This includes activities that directly relate to the issuance of an AEO or LMO. For all other purposes, the CBSA must seek the information via CIC.

For HRSDC to be satisfied that the CBSA is enforcing the administrative responsibilities assigned to HRSDC, the CBSA must identify that they are seeking information to investigate whether there is a significant material difference or misrepresentation related to the factors that an AEO/LMO is assessed against, which had the TFW Officer had at the date of issuance, may have rendered a different decision.

NOTE: Any information given under Section 34(1) that is to be used for any other purpose other than those described above is not permitted. The CBSA needs to be listed as a “prescribed institution” in DHRSDA to extend authorities to permit the disclosure of personal information for purposes outside of IRPR 82 or 203.

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Section 2.6.11.3 – Sharing of Information with Other Federal Departments

Information sharing agreements must be in place to facilitate the sharing of information between HRSDC and other federal departments and agencies.

For example, as of April 2011, the MOU between HRSDC and the RCMP has been finalized, but not yet signed. Until the MOU is signed, any requests for personal information cannot be disclosed under this section of the DHRSDA. The requests may be forwarded to the attention of Susan Seeger, Manager of ATIP, where it can be determined if the request meets the requirements of a disclosure under the Privacy Act.

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Section 2.6.11.4 – Letter of Understanding with Provinces and Territories

HRSDC is developing LOU to facilitate information sharing between HRSDC and the provinces/territories to strengthen enforcement of provincial labour standards and to assist with LMO assessments. These agreements have two main purposes: to exchange administrative data, such as LMO confirmation information from HRSDC and labour standards violations from provinces; and to facilitate the exchange of complaint information to assist with ensuring the appropriate jurisdiction is notified of complaints in a timely manner. LOU have been signed with Alberta (2008), Manitoba (2008), British Columbia (2010) and Saskatchewan (2010) and are in the process of being implemented. Negotiations are underway with Ontario and Nova Scotia, with preliminary discussions taking place with New Brunswick, Prince Edward Island and Newfoundland and Labrador.

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Section 3.2.1.1 – SC / NHQ Inbox

The NHQ inbox is intended to receive questions and comments from Temporary Foreign Worker Program staff in the regions at the consultant level and above. These requests may be clarifications on policy or directives, requests for advice on particular cases, or questions about upcoming changes to the program. The inbox provides a mechanism to direct questions and information appropriately within NHQ, and also ensures that all regional questions and NHQ responses are maintained in the directorate's corporate memory.

At NHQ, the inbox is checked on a daily basis and requests are tracked via WebCIMS. Requests are then directed to the appropriate division and team at NHQ, and assigned to an individual analyst to prepare a response. The analyst will prepare a response to the email within two (2) working days then return it to the administrator who will respond via email. The email may provide a response to the question or, if necessary, give an estimate as to when the issue may be resolved or an update provided. Many of the questions posed to NHQ involve larger policy issues that require a significant amount of time to resolve, so it's not always possible to provide a resolution to the question or comment in this first correspondence.

Follow-up emails are copied to the NHQ inbox and BF dates will be updated in WebCIMS as appropriate. All responses from NHQ are director approved.

- **The email address for the NHQ inbox is:**
  - NC-TFWP_PTET-INBOX-GD

NHQ has also supported the establishment of corresponding email inboxes in each of the regions. In order to promote consistent communication to the regions regarding policy and operational issues, and to avoid duplicate submissions from various regions, all NHQ inbox responses will also be sent to regional inboxes (business expertise inboxes and operational inboxes, where applicable).

The email addresses for regional inboxes are:

- **Western region:**
  - BAT-FWP-MGT-PTE-GES-GD
  - W-T-FWR_Consultant-DTE_Conseiller-GD
- **Quebec region:**
  - QC-FWP-DTE-GD
- **Atlantic region:**
  - Nova Scotia: NS-TFWP-PTET-GD
  - Prince Edward Island: PE-TFWP-PTET-GD
  - New Brunswick: NB-TFWP-PTET-GD
- **Ontario region:**
  - ON-TFWP-PTET-GD
- **National Capital:**
  - NC-TFWP-PTET-GD

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Section 3.2.1.3.1 – MP Tel Hotline Process

Temporary Foreign Worker Program (TFWP) Procedure for Handling MP Requests for Information

1. Once an MP's request for information on the TFWP is received by the **Telephone Inquiry Resolution Service for Parliamentarians (TIRSP)**, a folder is created in WebCIMS by the Inquiry Resolution Officer (IRO). A detailed summary of the inquiry is captured in the Input Request Template (see Annex A) and attached in WebCIMS.

   If the inquiry is received by voice mail or e-mail, TIRSP will acknowledge receipt of the inquiry by telephone within 1 business day.

   Via telephone, the IRO will always inform the MPs office that TFWP will provide the response within 7 business days, and assure the MP's Office that the IRO will monitor the status of the inquiry with our partners in TFWP, and ensure that regular updates are provided until resolution.

2. Via WebCIMS, the IRO will send an assignment to TFWP, informing them of the inquiry.

   Via e-mail, the IRO will inform the individuals listed below of the inquiry, provide the WebCIMS number and attach the Input Request Template.

   E-mail TO:
   - TFWP officer in charge of MP. Tels (Radislav Gurov)
   - Administrative Coordinator for PDI (Céline Monette)
   - Administrative Coordinator for PDI (Brigitte Therrien)

   E-mail Copied (cc) to:

   - TFWP-PDI-OMC Manager (Lara White)
   - TIRSP Team Leader

3. TFWP will determine if sufficient information was gathered by the TIRSP IRO to respond to the inquiry and if regional input is required.

   TFWP will follow-up with the MP and/or request regional input as required.

4. Via WebCIMS, TFWP will capture the status of the inquiry every 48 hours in order for the IRO to monitor the progress made on the inquiry

5. A TFWP officer will prepare a response to the inquiry, and once this response is approved by the TFWP Director General, the officer will contact the MP's office directly to provide input.

6. Via WebCIMS, TFWP will capture a summary of the inquiry's conclusion using the template Summary of Response (see Annex B) and assign it to TIRSP.

7. The IRO will review the Summary of Response, determine if additional action is required or briefing should be made to the Team Leader. If resolution has been reached, TIRSP to close the WebCIMS folder.

MP Tel. Inq.
Input Request Form /
Formulaire De Demande D'apport
Ren. Tel. Députés

WebCims Tracking ID/Numéro WebCims:	
Date sent/ Date envoyé :	
Employer Name/Nom de l'employeur : LMO #/No. AMT : Employer ID/Identificateur d'employeur : Language/langage :	
Details/détails :	
Program/Programme:	
Group responsible / Groupe responsable :	
Requested activity / Activité demandée:	
BF date/date d'échéance:	
MPTel Contact for this case / Contact MPTel pour ce cas :	

Important

Once your input is attached in WebCIMS, Please send an assignment to the MP TEL. INQ. / REN. TEL. DÉPUTÉS - SC (Group) with the action "Attached input".

Dès que votre apport est attaché dans WebCIMS, veuillez envoyer une assignation à MP TEL. INQ. / REN. TEL. DÉPUTÉS - SC (Group) avec mention "Attached input".

Response Summary Sheet

WebCIMS# :	
Date and Time of Call back / Date du retour d'appel :	
Details of final conversation with Caller/ Détails de la conversation finale avec l'appelant :	
Caller / Appelant :	
Approved by / Approuvé par :	

Section 3.2.2.1.1 – Information Sharing: Declaration of Employer

The "Declaration of Employer" was added to the revised application on April 27, 2009.

Letters of Understanding (LOUs) are now in place, or are being developed, with various provincial departments across the country. There are privacy restrictions on sharing information from employers who are unincorporated, sole proprietors or partnerships. There are no restrictions on sharing information from employers who are incorporated.

The Declaration asks them to indicate if they are an unincorporated employer, sole proprietor or partnership. If they answer "yes" than they should proceed with answering the next question about sharing information with the provincial nominee program with either a "yes" or "no". If they are incorporated then they do not need to answer the next question as there are no privacy restrictions on sharing the information under the LOU.

The provincial nominee program is the only program mentioned at this time. However, as more LOUs are signed other programs may be added.

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Section 3.2.2.1.2 – Information Sharing: Denied Work Permits

The current Letter of Understanding between Human Resources and Skills Development Canada (HRSDC) and Citizenship and Immigration Canada (CIC) does not permit **CIC** to forward any personal information to HRSDC. Copies of denied work permits constitute personal information, and therefore, we do not have any authorities to collect such personal information.

As a result, we would advise that any such documents be returned to the CIC mission. Alternatively, you can destroy the letters that you received in accordance with the Records Disposition Authority (RDA) and notify the CIC mission of your actions via email. The documents should be handled as Protected B, and so they should be returned by first class mail in a double sealed envelope, by secure fax or destroyed by a paper shredder

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Section 3.2.2.2.2.1 – General Enquiry E-mail Account for CIC/CBSA

HRSDC/SC receives LMO-related questions from CIC/CBSA officials in visa posts spanning the globe. The increasing number of interdepartmental inquiries requires a managed process to ease HRSDC/SC, CIC/CBSA communication.
To this end a new email account has been established by HRSDC. This account allows for departmentally-approved responses to be sent to CIC/CBSA officials.

The email account address is: **NC-CIC_Exchange-GD**

Guidelines:

On behalf of regions, NHQ will be responding to procedural and operational questions such as:

- Missing information on LMOs
- Confirming or verifying information on LMOs (e.g. wages, employer name)
- Ensuring all information is still valid (e.g. LMO is still valid, but was issued months prior)
- Inability to read the complete notes fields in the TFW system (CIC systems limit the characters shown)
- Requests for communications material

This account will also receive:

- Reports of potential fraud or misrepresentation
- Policy suggestions

Instructions:

If an email is received from CIC/CBSA, send a reply advising that his/her email has been forwarded to NHQ for response, and at the same time advise NHQ of the enquiry by including the above mailbox address in the TO section of the email. The message in the email is to be:

"Please be advised that a central e-mail account has been set up by HRSDC to respond to enquiries from CIC/CBSA officials. Your request for information/clarification has been forwarded to this email account for response and/or action. In future, you may send your enquiry directly to: **NC-CIC_Exchange-GD**."

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Section 3.2.3.1 – Labour Market Opinion Application Assessment Checklist

SF#: ______________________ **Agree to Participate in MI [YES] NO**

Employer Name: ____

Contact Name: __________________________________

Phone #: ____________________

Contact Fax #: ___________________________

3rd Party Contact Name: ____________________

3rd Party Fax: _______________________

REVIEW and VERIFICATION	DISCUSSION
Prior to call: □ Review ER info, ER Notes, previous history □ NOC and Duties/Job Description in order □ Low Skill Contract meets program criteria □ Recruitment in order □ Wages and Working conditions in order **During call:** □ Legal and Operating Names Verified □ Address/Phone/Fax # correct □ ER aware of application/low skill (LS) contract □ # of workers requested confirmed □ ER confirms prevailing wage rate □ ER confirms understanding of LS obligations including payment of airfare □ Clarify business and ER needs □ Results of Recruitment	

MANDATORY CALL	
Call #1: Date __________ **Time________** If employer not contacted: ☐ Message left – deadline of __________ ☐ Unable to Contact - RFI sent ☐ **Notes to file completed**	
Call #2: Date __________ **Time________** If employer not contacted: ☐ Message left – deadline of __________ ☐ **Notes to file completed**	
DECISION	
☐ **Confirmed** ☐ **Refused** ☐ **Withdrawn at Employer's Request** **Officer ____ Date ____________________**	

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Section 3.2.3.3 – File Construction: maintaining the paper trail for Quality Assurance

Documenting the file

It is important to properly document the file, both electronically and physically. It should be documented electronically in such a way that any foreign worker officer working in any office across Canada can look in the system and know exactly what has been done to the file, where the file is located and what needs to be done to the file. Once the notes are completed on the file electronically, they can be accessed and printed through the View/Print menu in order to be added physically to the file.

System File Notes

These notes are used to record any information specific to the application itself.

All messages left for, or conversations with, the employer contact or verified third party should be documented on a system file note with the date notated and a description of the conversation.

Any time the officer deviates from the norms, a system file note should be added to the file describing why they deviated from the norms and how. For example, if the officer is accepting a utility bill in lieu of a business license or lease agreement to prove the job location, it should be noted on a system file note.

Employer Notes

These notes are used to record information related to the employer and not the application. For example:

- Change in contact information such as: address, phone or fax number or employer's contact information.
- Change of ownership. Reference the new name and new employer ID number (if applicable)
- Change or removal of third party representative
- Information for officers that no action is to be taken for this employer at this time.

Third Party Notes

These notes are used to update information related to the third party and that are not specific to the application or employer. For example:

- Change in phone or fax number
- Change in contact person at the third party company
-

CIC Notes

These notes are used to provide CIC with additional information that is not contained on the confirmation letter or annex. For example:

- To provide CIC with the governing body for trade occupations
- To provide CIC with any information that has changed since the confirmation was issued, such as reason for cancellation.

Section 3.2.5.1 – Procedural Guidance-Letters

Background:

To ensure consistent messaging when communicating with our clients, and to ensure outgoing correspondence meets program criteria, national guidelines and regional direction, the content, look and feel of client letters have been standardized.

Guidelines:

Letters are to use the standardized business format and have a professional look and feel.
Inserted text is not to be capitalized, bolded or underlined. Stars, lines or symbols should not be used
The content of the letter is to be consistent with the purpose of the letter

- Be clear, concise, and informative
- Specific to the application
- Contain all relevant information
- Have a positive tone

Instructions:

1. FYI letters

- Used by Program Support to acknowledge receipt of applications and to advise clients of incomplete applications
- Application specific information (including confirmation of the date the application was received) is inserted into the FYI letters.
- Are used by FW Representatives and FW Officers to confirm the withdrawal of an application

2. Confirmation Letters including Annex

- The confirmation letter template in FWS and the associated annex were developed by NHQ to provide the employer, the foreign worker, and CIC with the information required to support the work permit application. At the time the confirmation letter is issued, the employer should already be aware of program criteria and all issues regarding the contract have been resolved.
  - Additional, pertinent information is provided to the employer on the system generated letters.
    - If the names of the foreign worker(s) are not provided with the application, the header on the system generated letter will be a "confirmation of unnamed LMO" and the letter will contain text advising the employer to submit the names of the workers.
    - Upon receipt of names submitted a revised LMO Confirmation is issued.
  - Information is added to the Confirmation Annex to provide the CIC/CBSA officer with information not contained in the letter. For example:
    - The anticipated start and end dates of seasonal positions
    - AIT requirements
    - NOC C and D information
    - Remaining available positions on an unnamed LMO or confirmation
    - The start and end dates of the project on Group of Employer applications

3. <u>Refusal Letters: Mainstream/Unnamed LMO</u>

- The Refusal Scripts have been designed to advise the employer why the application is being refused, to educate the employer with regard to program requirements, and to provide the employer with the necessary information to submit a new application (if required)
- When selecting more than one reason for refusal, the supporting text is to be inserted into the body of the letter in the same order as the selected reasons.
- The closing paragraph in which we advise the employer they may reapply must only be indicated once. Please ensure that you remove any other paragraph in the letter referring to reapplying.

Additional Information:

When copying and pasting word documents into FWS problems have occurred when trying to merge a - (dash) from word into FWS which would create an upside down question mark when the letter was generated out of FWS. Apparently, this glitch is due to the way we have Word set up and the default options. To fix this problem please observe the following prompts:

- Open a new Word document.
- Go to the Tools menu and select Auto-correct options.
- Select the tab for Auto format as you type.
- Under "Replace as you Type" you will see an entry for "Hyphens with Dash".
- This will be "on" with a checkmark in the box.
- Click in the checkbox to remove this setting.
- OK to exit.

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Section 3.2.6.3 – Employer – Employee Relationship

For the purpose of the Temporary Foreign Worker Program (TFWP), the employer must have an employment (employer-employee) relationship with the foreign worker who agrees to work for him/her for a specified or indeterminate period of time in return for salary or wages.

The employer:

- Can be a company, organization or individual.
- Has the authority to decide where, when and how the work will be done.
- Directly benefits from the work performed by the foreign worker.
- Is obligated to meet all the requirements of the Labour Market Opinion (LMO) and employment contract (in cases where a signed contract is required).
- Pays the workers wages or has hired a company to do so on his/her behalf.

The employment relationship provides some assurance that:

- A genuine job exists with a set wage rate and clear working conditions.
- The worker will be employed full-time and will be covered by provincial labour laws, medical coverage and worker's compensation.
- Deductions for Income Tax, Employment Insurance and Canada/Quebec Pension Plan purposes will be made.

Non-Traditional Employment Relationship

There are instances when the employer does not have a traditional employment relationship with the foreign worker. Exceptions generally apply to managerial and professional occupations and highly specialized and well remunerated technical occupations.

Examples of non-traditional employment relationships:

Entertainment industry

Due to the unique nature of the entertainment industry, an individual or company may be considered the employer (except if the entertainer works in the television and film industry or as an exotic dancer), even though there is no traditional employment relationship between the worker and the employer.

An agent has contractual agreements with other parties involved in an entertainer's performance (e.g., the venue operator, promoter, club owner). These contractual agreements include the number of hours of work and wages to be paid to the foreign entertainer. The agent is a middleman; he is paid for the entertainer's performance by other individuals or companies in exchange for arranging work and wages. In this respect, an employment relationship exists between the agent and the entertainer since the agent is ultimately responsible for paying the entertainer's wages.

Medical practitioners

A provincial authority may be identified as the employer when requesting LMOs to hire medical doctors. Although many doctors and other medical professionals are technically self-employed, they are usually invited by health authorities to set up practice and bill provincial/territorial public health care plans.

Foreign worker related to the employer

For the purposes of an LMO, whether the employer is related to the foreign worker is immaterial when assessing job offers.

Financial interest in the business

TFWP officers can issue a positive LMO when a foreign worker owns less than 50 percent of the business – as long as there is an offer of employment specifying the wages, duties and requirements of the position, and an employment relationship is established.
When a foreign worker owns 50 percent or more of the business, an LMO is not required. Citizenship and Immigration Canada (CIC) determines whether or not to issue a work permit using the significant benefit to Canada exemption (Section 205(a) of the *Immigration and Refugee Protection Regulations (IRPR)*). CIC may ask Human Resources and Skills Development Canada HRSDC/Service Canada for labour market information as part of its process.

Section 3.2.6.3.1 – Employer Identification

Most applications are submitted without this.

- Clerical Support searches the company on the FW system to find the ER ID number if they have previously applied.
    - If not, a new ER ID number is created and noted on the bottom of the application form by the clerical support.
    - Officers should not use this ID to find the employer. Instead, the officers should either use the employer's phone number or the company's name. This will help finding duplicate employers' profile and merging them.

Section 3.2.6.3.1.2 – Non-Traditional Employment Arrangements

With few exceptions, HRSDC TFWP guidelines require that there be an employer-employee relationship in order to provide a LMO. Section 203 of the IRPR makes various references to "employers" hiring workers, and there is a requirement for an assessment of wages and working conditions.

The requirement for the establishment of an employment relationship provides some assurance that there is a contracted arrangement relating to a specific job with a set wage and clear working conditions, and provides assurance as well to help determine that the salaried worker will be employed full-time, will be covered by applicable federal or provincial labour laws, will be insured by worker's compensation, and that deductions for income tax, Employment Insurance and Canada/Quebec Pension Plan will be made.

There are, however, certain situations where an employer will wish to hire a foreign national to meet a skill/business need on the basis of a contractual business relationship as opposed to an employer-employee relationship. Some are well-known such as in the cases of medical practitioners, for whom the regional health authority/province can be seen as quasi-employers, and certain entertainers who are in Canada for short periods under specific contracts. Other instances can also be addressed without the need for an LMO if it is considered a significant benefit to Canada under Section 205 (a).

The current section on non-traditional employment relationships will also explain how to assess applications in other circumstances where foreign independent contractors/self-employed individuals are hired to meet a temporary business requirement.

Section 3.2.6.3.1.2.1 – Self-Employed Temporary Foreign Worker

What is a self-employed individual?[1]

For the TFWP purposes, a self-employed individual works as an independent contractor for his/her own account and draws income from a business that he/she operates personally. To be self-employed is not the same as being a business owner. A business owner is not required to be hands-on with the day-to-day operations of his or her company and usually has paid employees working for him/her.

For the purpose of the TFWP, a self-employed person is directly responsible for the services he/she renders and carries out the work himself/herself. A self-employed individual has a direct contractual agreement with the employer/end user for whom the work is being produced.

Please note that an employee of a foreign company that is performing a service for the end user/employer is not a self-employed individual.

How to recognize situations where the foreign national is a self-employed individual for the purposes of assessing an LMO application under the TFW Program?

a) Specialized knowledge

Self employed foreign nationals can be considered by employers for their expertise in a specific managerial, professional or technical occupation or in relation to a niche product or service. This expertise can be defined as having specialized or unique knowledge relating to the production of a good or a service. Specialized knowledge can also be defined with reference to the definition used by CIC such as[2]:

- An advanced level of knowledge or expertise in the organization's processes and procedures (product, process and service can include research, equipment, techniques, management, etc.);
- Unusual and different from what is generally found in a particular industry. The knowledge need not be proprietary or unique and should be uncommon;
- A person who possesses specialized knowledge would usually be in a position that is critical to the well-being of the enterprise;
- The knowledge is not generally identified and is of some complexity and cannot be transferred to another individual in the short term.
- The FW possesses knowledge that is valuable to the employers competitiveness in the market place;
- The specialized technical or managerial expertise could not be sourced within a reasonable period of time by Canadians.

[1] There are a number of different definitions of what may constitute a self-employed situation depending on a given organization or program's intent. For the purpose of the TFWP, an application relating to hiring a foreign national on a contractual basis as a self employed individual will be assessed , provided it meets the conditions defined under this section of the national Directives.

[2] These definitions can also be found in CIC's Section 5.31 of the Foreign Worker Manual

b) After-Sales Services

Self-employed foreign nationals can also be considered with reference to after sales services, by doing repair and servicing specialized equipment, supervising installers, setting up and testing commercial or industrial equipment including computer software and robotics, which are not anymore covered by original or extended warranty. These specialized equipments have been usually purchased or leased from a foreign company and the services are being performed once the extended sales agreement, lease agreement warranty, or service contract has expired.

After sales services generally includes cases of equipment or machinery that is either out of warranty or where no contract service exists and where the company needs to purchase someone's expertise to maintain or to operate previously sold equipment. For example: a specialized service person coming to Canada to install, configure, or to give training on upgraded software.

This directive lists considerations to take into account in addition to those normally considered when assessing an LMO application. These considerations provide clarifications on how to process applications for LMOs in cases in which a self-employed foreign national will be providing technical/ professional or management services to an employer/end user for a fixed period, for remuneration, under a contractual "business-to-business" arrangement different from an employer-employee relationship. As a result, the foreign national will not become a salaried employee of the company yet there is an employer and a service provider whose likely impact on the labour market must be assessed.

List of considerations

a) **Occupations**
The present directive applies to managerial/professional and technical occupations which fall under the National Occupational Classification (NOC) Skills Type O and NOC Skill levels A and B. NOC skill levels C and D occupations are not considered within the scope of this directive. Please note that hands-on building and construction work are not covered by this directive.

b) **Whether an exemption from the requirement for an LMO applies**
There are situations where LMO-exemptions may apply. CIC and Canada Border Services Agency (CBSA) officials (at POEs) can make a final determination on whether an exemption applies. Service Canada officers could ask the employer whether he/she has contacted CIC TFW unit in that regard. . However, when CIC or CBSA require an LMO, an LMO needs to be issued.

c) **Recruitment efforts and advertising requirements**
The employer is expected to have conducted recruitment efforts to fill the position as it is the case for other situations and these efforts are assessed as per the regular LMO assessment. It is also possible that the employer is only interested in meeting its business needs through procurement of a contract to a professional/technical self employed individual[3]. When this is the case, the employer, just as in the regular process, has to demonstrate what type of recruitment efforts and/or advertisement provided an opportunity to Canadians and

[3] There are various types of procurement processes a business can use. MERX is a commonly known process and covers all levels of government including the Federal and Provincial Governments as well as the MASH sector which covers (Municipal, Academic, School Boards and Hospitals) from across Canada. When such a procurement process is used, a proof, such as a photocopy of the advertisement, should be attached to the LMO request. Requests for proposals can also be made through newspapers, specialized websites or other media and evidence of such advertisements/call for proposals should be provided.

permanent residents, including advertisement/procurement efforts for soliciting bids from domestic suppliers.

d) **Signed Contract:**
As part of an application to HRSDC, the employer (I.e. service buyers) must provide a copy of the proposed contract signed by the employer. The contract will be showing at a minimum the period covered by the contractual arrangement; rate of pay/remuneration; the services to be performed; the location of the work; and the date of the contract. The information on the LMO application should be consistent with the information provided on the contractual arrangement.

e) **Remuneration:**
The contract must demonstrate that the remuneration to be paid to the foreign individual is comparable or higher to the compensation that Canadians and permanent residents would earn in a similar occupation. Considering that self employed individuals generally enter into contracts that do not provide for advantages enjoyed by salaried employees (e.g. employment insurance, disability/medical insurance), the remuneration offered to the foreign national must be higher than prevailing wages by at least 18%[4] in order to reflect the fact that the employer does not have to pay for basic deductions covering items such as pensions, employment and disabilities insurance. Otherwise, employers could be lead to use such contractual arrangements in order to avoid providing the protection and other benefits associated with standard employer-employee situations.

Processing of a self-employed application

In cases of requests for LMOs for situations involving self-employed professionals/management/highly specialized contracts for service or fee for service, employers should submit the standard application for an LMO to HRSDC/Service Canada with supporting evidence i.e. demonstration of recruitment and/or procurement aimed at seeking Canadian suppliers over the last three months preceding the date of application, copy of the employment arrangement between the employer and the TFW including reference to the description of the work to be performed and remuneration. The employer is the company or entity for whom the foreign national will be providing the services; in other words, the end-beneficiary, who will be paying for the services.

In situations involving an employment agency or recruiting firm, it is important to carefully analyze the role of such agency and the nature of their relationship with respect to both the own account/self-employed foreign national and the employer requiring the specialized services/expertise. For example, there are cases where an employer may contact an agency specializing in finding self-employed individuals with specific expertise in some fields. In these cases, the LMO application would be assessed against the criteria set out here with respect to self-employment.

However, where the employment agency is in the business of employing individuals for the purpose of placing them on a temporary basis with clients with whom they have a contractual agreement, the workers are not considered to be self-employed. Rather, in this type of situation the tripartite directive applies and must be followed.

[4] As indicated in Statistics Canada's Workplace Employment Survey

Section 3.2.6.3.1.2.2 – Other Examples of Non-traditional Employment Relationships

Entertainment industry

Due to the unique nature of the entertainment industry, an individual or company may be considered the employer (except if the entertainer works in the television and film industry or as an exotic dancer), even though there is no traditional employment relationship between the worker and the employer.

An agent has contractual agreements with other parties involved in an entertainer's performance (e.g., the venue operator, promoter, club owner). These contractual agreements include the number of hours of work and wages to be paid to the foreign entertainer. The agent is a middleman; he is paid for the entertainer's performance by other individuals or companies in exchange for arranging work and wages. In this respect, an employment relationship exists between the agent and the entertainer since the agent is ultimately responsible for paying the entertainer's wages.

Medical practitioners

A provincial authority may be identified as the employer when requesting LMOs to hire medical doctors. Although many doctors and other medical professionals are technically self-employed, they are usually invited by health authorities to set up practice and bill provincial/territorial public health care plans.

Foreign worker related to the employer

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Financial interest in the business

TFWP officers can issue a positive LMO when a foreign worker owns less than 50 percent of the business – as long as there is an offer of employment specifying the wages, duties and requirements of the position, and an employment relationship is established. When a foreign worker owns 50 percent or more of the business, an LMO is not required. Citizenship and Immigration Canada (CIC) determines whether or not to issue a work permit using the significant benefit to Canada exemption (Section 205(a) of the Immigration and Refugee Protection Regulations (IRPR)). CIC may ask Human Resources and Skills Development Canada HRSDC/Service Canada for labour market information as part of its process.

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Section 3.2.6.3.2 – Canada Revenue Agency - What is the Business Number?

The Business Number is a numbering system that simplifies and streamlines the way businesses deal with the federal government. **It is based on the idea of one business, one number**, similar to a SIN for an individual. A business (legal entity) can only have one CRA Business Number.

The Business Number consists of two parts – the first nine digits identify the business and the following two letters and four digits identify each account a business may have. The most common accounts are as follows:

Corporate income tax (RC)

When a business incorporates with the province, territory, or Industry Canada, the business is automatically registered for a Business Number and a corporate income tax account.

Payroll (RP)

As soon as the business has employees, they must also register for a payroll account (then are required to submit PD7A's).

GST (RT)

When registering for a GST account, employers provide CRA with information on their business and organization structure, the legal name of the business or organization, and the operating or trade name being used (if different than the legal name).

Additional Information
Canada Revenue Agency – Business Number

15-digit code CRA Number

TFWP Officers should be verifying the CRA where possible. The only verification currently available is the FWS that will tell Officers if the number itself is not valid. Officers can check in the system using the business number and postal code. This tool can allow Officers to confirm and double check the NAICS.

If any doubt arises concerning the CRA number, Officers are to ask the employer, if possible, to provide a copy of their PD7As which would have the CRA business number on it.

The CRA should be entered into the FWS if it is supplied by the employer.

Section 3.2.6.3.3 – Employer Name

The employer's name must be verified

s.16(2)

TFWP officers verify unfamiliar business names by searching in the FWS (You can also verify the existence of the Employer via search engine websites: (CIDREQ in Quebec https://ssl.req.gouv.qc.ca/slc0110_eng.html), canada411.ca, google.ca or the employer's own website if available. These verification checks are also the responsibility of the Officers. The employer in question must be the one that is requesting the LMO.

TFWP Officers may contact the employer and inquire about the actual operating name if the information is not found using the above methods.

Some applications contain a **Tripartite Employment Arrangement**. In tripartite employment arrangements, a worker's services are supplied to an end user company by an agency. The agency is under contract with the end user company to "hire" the worker and assumes some of the responsibilities and obligations of the employer such as paying the wages or salary of the worker.

NOTE: It is important to note that some businesses have a provincial business number (Ex: 1234-5678 Quebec Inc. or 1234567 Canada Inc). As this is their registered business name, some businesses operate under different names. It is important to cross reference the registered business name with the operating name.

Section 3.2.6.3.3.1 – Changes to Employer's or Third Party's name

Background:

Changes to the name of the employer or the third party as identified in FWS may be required as a result of the sale of a business, a change in the type of business, or through the verification of the employer or third party representative. By correctly naming the employer or third party in the FWS, both the integrity of the FWS data and the accuracy of historical records are maintained.

Guidelines:

In general, for each unique employer or third party, there should only be one active ID in the FWS. Prior to amending any profile, a key consideration is that the ability to locate previous applications/activity in the FWS is not lost. The name cannot be changed nor can FWS ID's be merged if the action taken will result in the loss of historical records.

Documenting actions taken by creating employer and/or third party notes helps to ensure that pertinent information is captured, duplication of efforts is reduced (calls to employer) and registration of applications against inactive IDs is prevented.

Instructions:

Whenever possible, prior to issuing a decision, the employer's name is to be corrected in the FWS to ensure that the correct name of the employer appears on the decision letter.

Minor Name Changes

A minor change is defined as one that does not significantly change the name of the employer or the third party so that the FWS record can still be found when a name search is conducted (e.g. adding "Ltd" or "Inc" to the existing record). If the employer has not had previous activity in FWS, the name can be corrected immediately.

TFWP officers correct the name in FWS and complete the assessment of the application:

- the decision letter is issued in the corrected name;
- an employer verification note is created in FWS; and
- a router slip is completed, requesting a new label.

Major Name Changes

A major name change is one that would result in the inability to locate a previous record when conducting a name search and thus a new ID must be created; the original ID is then made inactive.

Prior to issuing a letter, TFWP officers complete a router slip to request the creation of a new employer ID:

- the file location box on the RFO screen is updated to read “YYYMMDD sent for name change”;
- TFWP representatives will create a new ID in the FWS:
  - the application is then input against the new ID and a new SF is created; a new label is placed on the file folder;
  - the original SF is closed and the note states “YYYYMMDD SF# closed – app registered under new ER ID xxxxx, see SF#”; and
  - the file will be returned to the officer for processing.
- TFWP officers complete the assessment of the application:
  - issuance the decision letter;
  - creation of Employer Verification note on new employer ID; and
  - enter Inactive Employer note on original employer ID.

Sale or Closure of Business

If the business has been sold, and:

- the name of the business is changing, a new employer ID is created and the old employer ID is made inactive following the Major Name Process described above;
- neither the legal entity nor the name of the business is changing, a new employer ID is not required:
  - the particulars surrounding the change of ownership are documented in employer notes; and
  - the foreign worker Officer confirms the CRA BN to be used by the new business.

If the business is no longer active (closed, bankrupt, sold, etc), a note is placed stating the ID is inactive.

Employer Contact Information

Section 3.2.6.3.4 – Address

Verification of Address

The Clerical Staff verifies the address of the Employer via search engine websites such as, CIDREQ (in Quebec, https://ssl.req.gouv.qc.ca/slc0110_eng.html), http://www.canada411.ca/ or www.google.ca. If available, the employer's website is also a good way to learn more about the company.

The clerical staff also uses this information to assign the file to the Officers. Each Officer has a predetermined territory to serve.

If a business provides a PO Box number as place of business, TFWP Officers are to get the physical street location of the business. This often happens in rural communities.

If mail is returned, Officers are to initiate a telephone call to get a new address.

Section 3.2.6.3.5 – City

Officers are to provide the city or town in which the business or organization is located, NOT the location of the job. If the city or town entered on the application is not a city/town within the Service Centre region, the application must be forwarded to the appropriate region. Program support will watch for this when reviewing received applications.

Section 3.2.6.3.6 – Province/State

Section 3.2.6.3.7 – Country

Employers can be from any country in the world (not limited to Canada). The FWS allows employers' addresses, telephone numbers and postal codes and zip codes from around the world. Refer to section 3.2.6.3.3 for Tripartite Agreements.

TFWP officers often receive applications from employers who need to work in Canada. For example, BBC in Britain and Japan will require an LMO to film in Churchill.

Section 3.2.6.3.8 – Postal/Zip Code

Section 3.2.6.3.9 – Business Telephone Number

When checking the business name in the telephone book, TFWP Officers should check the telephone number as it is very important to have the correct business telephone number.

Clerical Staff will check that the telephone number is the company's main number. This must be the general telephone number of the business or organization, NOT the direct line of the employer contact or the representative (e.g. McGill, Royal Bank, etc.).

Canada 411 can also be a very helpful search engine (www.411.ca).

The telephone number of the employer should always be verified against that of the third party to ensure its validity. Sometimes third parties will use their number as the business number when completing applications. **The employer's number must be used, no exceptions**.

Files are identified by the last three digits of the employer's telephone number (in descending order).

Section 3.2.6.3.10 – Website

Not all businesses provide a website. If a company website is provided, it can be used to verify the employer/business against the information provided on the application. When referring to the site, Officers can take into consideration the information provided (E.g.: nature of business, business plans, recent news, advertising for employment opportunities, etc.)

Section 3.2.6.3.11 – Date Business Started

Employers must state the start date of their business. If left blank, TFWP officers, in Quebec, can find start dates at CIDREQ: https://ssl.req.gouv.qc.ca/slc0110_eng.html.

There is no real cause for concern when it comes to well-known establishments.

When a business is not established or well-known, NHQ further advises the "*emphasis should be on asking the employer to provide more detailed/in-depth information regarding the new position that is being created, the detailed job description/requirements for this position, and how the recruitment efforts made to attract Canadians to fill this position are consistent with the nature of the job.*"

If there are still underlying concerns about the job offer, working conditions, etc, a possible risk mitigation strategy is to limit the duration of the LMO, and to re-assess the situation upon the employer's subsequent LMO applications (i.e. the unit's current practice of issuing an initial LMO for a 6 month period only).

Section 3.2.6.3.12 – Describe the Principal Business Activity

Clerical staff initially enters the NAICS code. However, advisors must verify that the codes are correct. It is imperative to always ensure that the description of the principal business activity coincides with NAICS coding. Please refer to the NAICS website for instructions on how to determine NAICS coding: http://www5.hrsdc.gc.ca/NOC/English/NOC/2006/SearchIndex.aspx.

TFWP Officers must verify if the description of the business activity is clear and if not, they are to contact the employer directly for additional information. Officers can also contact LMI for extra help.
TFWP Officers must also verify that the employer is actively engaged in a business and that the job offer fits with the business activities. The description of the employer's main business activities will also be used to evaluate the job offer's genuineness. When evaluating the genuineness of a job offer (step 3 of the LMO assessment), Program Officers must verify that the employer is actively engaged in a business that relates to the offer being made (G directive - **3.5.2.2 R200(5)(a))**. A description of the employer's business activities will provide the information on which the officer will rely to make this assessment. The Officer will also use this information to assess whether the offer is a reasonable employment need in relation to the kind of business the employer is engaged in (G directive - **3.5.2.3 R200(5)(b)).**

Section 3.2.6.3.13 – Contact Name

The name MUST be filled in. If the contact name is not provided, TFWP Officers are to contact the business immediately and ask to speak to someone that is familiar with the application. If the business is not aware of the application, an automatic refusal letter is sent.

Clerical staff are required to phone the employer if the signature at the end of the application and the contact name are not the same. It is very important for the Officers to ensure that the contact name is **not** that of a third party representative

Section 3.2.6.3.14 – Job Title

This is the job title of the Employer Contact Person, NOT the job title of the position the employer wishes to fill with a foreign worker. This **must** be filled in.

Section 3.2.6.3.15 – Contact Telephone Number & Extension

TFWP Officers must verify and compare the main telephone number to the business telephone number provided. Officers must verify that the contact telephone number is NOT the same as the third party representative's telephone number.

Section 3.2.6.3.16 – Fax Number

Section 3.2.6.3.17 – Email

Email addresses are often supplied by the employer but not necessary for assessment. Officers may correspond with the employer via e-mail but decisions are not to be sent using this communication method. All decisions must be sent via letter or fax. The same goes for applications and supporting documentation. This type of information is protected and therefore cannot be transmitted via external email.

Section 3.2.6.3.18 – Preferred Official Language of Correspondence

The employer must be served in the official language of their choice, being either English or French. If French is indicated as the preferred official language of correspondence, this application must be assessed by a bilingual TFWP Officer.

Exceptions:

If an office is short-staffed for a bilingual person and bilingual capacity is not available, the employer should be given the choice of English or French in order to assess more expediently. The TFWP officer would explain that they may have to wait for a bilingual officer to contact them prior that their application is assessed. Otherwise, the region will process the application when the first bilingual officer is available.

Employee Information

Section 3.2.6.3.19 - Number of Canadians/permanent residents employed in Canada

This information must be provided. Although there is no specific cap on the ratio of Canadians or permanent residents to TFWs, this information can influence the LMO assessment. The ratio of TFWs can warrant a closer examination during assessment (except for in the agricultural sector), particularly when the employer is a returning user of the program and it appears that the ratio of TFWs to Canadians/permanent residents is increasing over time.

If a TFWP officer feels that the ratio is high or increasing over time, he/she can ask for a HR plan to substantiate how the business plans to recruit, train and retain Canadians and permanent residents.

Information on the number of Canadians and permanent residents (in addition to the number of TFWs) may also be useful for the assessment of Genuineness (refer to section 3.5.4.1, step 3 in the LMO assessment process). Employers must demonstrate on their application how the hiring of TFWs meets their employment needs. For instance, is the business experiencing growth or attrition? In the absence of these factors and without justification, the employer may not be able to demonstrate that they have a reasonable employment need.

Section 3.2.6.3.20 – Number of Foreign Workers

This will provide an idea of previous activity with this employer.

If the employer currently has a majority of temporary foreign workers on staff, this is a cause for questioning the employer. In other words, this is a red flag to ask more questions.

TFWP Officers could ask for an HR plan; update sheet; and payroll records.

The TFWs ratio to Canadian/permanent residents workers can be explained by a number of reasons, therefore we use it as a guideline only. The wages could be low, so the employer isn’t attracting Canadians/permanent residents, there could be little or no advertising, or, there could be a valid reason for the shortage.

Section 3.2.6.3.21 – Were there any employees laid off in the past 12 months?

If **NO** – Then go on to next question.

If **YES** – The employer must provide the number of employees laid-off in the past 12 months, the occupation titles affected as well as provide a reason. Officers must contact the employer to inquire about the layoffs and obtain detailed information regarding the status of laid-off employees. If there is a layoff and they haven’t been recalled then the application is problematic. It is expected that employers recall laid-off employees prior to hiring TFWs if it is for the exact same position that the employer requires a foreign worker for. Plans on recalling laid-off employees are to be solicited and noted on file.

Note: A layoff must be relevant to the job title indicated on the application for it to be relevant in assessing an LMO for that employer.

Information on whether the employer laid off workers in the past 12 months can also be useful in the assessment of Genuineness (refer to section 3.5.4.1, step 3 of the LMO assessment process). This speaks directly to the employment need of the employer, which is one of the factors now assessed under Genuineness (G directive - **3.5.2.3 R200(5)(b)).** More information on the reasons for the lay-offs would be warranted. For example, if the lay-offs were among low-skilled workers but the employer wishes to hire a specialized high-skilled work, then the lay-off may not have an impact on the employer's reasonable employment need.

Section 3.2.6.4.1 – Deadline for receipt of original documents

When working with a third party representative, TFWP Officers must request original documents, giving them a reasonable time frame for submission (regionally determined). If not received by the deadline, the application is to be assessed based on the information on hand (except for assessments of STS – Please refer to section 3.5.6).

Section 3.2.6.4.2 – Canada Revenue Agency Business Number

TFWP Officers should be verifying the CRA Business Number. The Business Number should be entered by the Clerical Staff if it is supplied by the third party. The TFWP Officer should ask the third party to supply his Business Number and add it to the FWS.

Section 3.2.6.4.3 – Company Name

The third party company name is required if it is a business. TFWP Officers must verify and compare that the third party has signed page 4 and confirm that all the information provided on page 5 (Appointment of Representative) is accurate.

Section 3.2.6.4.4 – Address and contact info

Number / Street / PO Box #, City, Province / State, Country, Postal / Zip Code, Telephone and / or Fax number. Officers must verify and compare to page 5 of the application (Appointment of Representative) to confirm that all the information provided is accurate.

Section 3.2.6.4.5 – Preferred Official Language of Correspondence

Section 3.2.6.4.6 – Third Party Representative authorized to act for employer

Information should be the same as on page 5 of LMO application (Appointment of Representative). The expiry date (at bottom right side of "Appointment of Representative" sheet) should be valid throughout the analysis of the file and not left blank. TFWP officers are not to discuss the application with anyone other than those appointed by the employer.

Details of Job Offer

3.2.6.5 Job offer information

This is one of the most important sections of the application. The job title will point the application assessment in any number of directions, based on the criteria listed below:

- if it is a high skilled position (NOC 0 & A);
- if it is a skilled position (NOC B);
- if it is a low skilled position (NOC C & D)? (Please refer to Pilot Project for NOC C & D); and
- if there is a link between the job being offered and the business activity (3.2.6.3.12).

While the NOC codes are inputted by the clerical staff, it is the Officer's responsibility to make sure that the job is coded correctly. A NOC is attributed based on the main duties and educational requirements to the job offer. Officers are required to determine whether the job offer is consistent with the employer's line of business. Link to list of NOC Codes: http://www5.hrsdc.gc.ca/NOC/

If it is a low skilled position (NOC C & D) in the pilot project, employers must include a contract with their request. Most employers are not aware of this requirement and the advisor will have to request it when he/she analyzes the file. The contract can be found at: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/forms/annex2-e.pdf

The employer can also supply his own contract (not necessarily HRSDC's form) as long as it contains all the information on HRSDC's form.

Assigning NOC Codes when more than one Code is appropriate

Contrary to how NOC specialists will code specific jobs, if the duties appear to fall under more than one NOC code but within the same skill level, TFWP Officers can choose the code that corresponds closest to the predominant duties of the position. If the duties or qualifications fall under different NOC codes and skill levels, the TFWP Officer must choose the code at the highest skill level.

When developing a LMO, TFWP Officers assign a NOC code based on the main duties and educational requirements of the job offer made to the foreign worker as identified by the employer on the LMO application form.

Section 3.2.6.5.1 – Determination of Occupation

Assigning a NOC code: main duties and occupational skill type or levels

On each application form, employers must indicate the main duties and job requirements of the offer of employment, which includes skills and experience, education or knowledge, language and any certification licensing or registration requirements of the position.
TFWP Officers should review the application and other documents submitted by an employer to gain an understanding of the nature of the job duties as well as the employer's requirements. Once this has been done, the TFWP officer can assign a NOC code based on the main duties and educational requirements. It is assumed that employers know their business requirements and the duties they require employees to perform. In cases, however, where the duties do not appear to constitute a coherent job description, the employer should be asked for clarification.

Classifying under NOC:

The TFWP Officer must classify the occupation for which the employer has made the job offer using the NOC system. In classifying positions under NOC, the 4-digit code found in the 2006 version of the NOC, should be used, as the bulk of the information regarding occupations (e.g. job duties, educational and professional experience requirements, etc.) to assess the request is accessible by this code. Information relating to the NOC 2006 version is available at: http://www5.hrsdc.gc.ca/NOC/English/NOC/2006/Welcome.aspx

Position has duties of 2 or more NOCs

Some jobs are not easily categorized by a NOC code, and in some cases the job may involve duties found under different NOC codes. Where a job involves duties found under different NOC codes but within the same skill level, the TFWP Officer should select the NOC code that most closely corresponds to the predominant duties (more than 50%) in terms of level of responsibility, recognizing that it will be an approximation. Should the position contain duties of different NOCs at different skill levels, the Officer chooses the code at the highest level. TFWP Officers should not refuse a request on the basis that it entails "more than one job". The intent is not to force the employer to re-describe the job duties or change the position requirements to conform to the typical duties of the selected NOC. The determination of the NOC code is important to the assessment of the LMO or AEO application as this will determine the skill type/level of the position, whether the wages and salaries offered are consistent with the prevailing wage for that occupation; and whether the working conditions meet generally accepted Canadian standards.

To illustrate:

- An administrative position that entails reviewing real estate contracts for legal soundness should not be refused because the position involves both administrative duties and legal duties. TFWP Officers should determine the main duties and education requirements of the job (e.g. law degree and/or background in law) and classify the position accordingly. TFWP Officers are encouraged to contact the employer to determine this information.

- A job as a guest ranch manager includes duties in accommodation management and duties relating to the operation of the ranch. TFWP Officers should determine the main duties and educational requirements of the job and classify it accordingly.

In assessing the job requirements, TFWP Officers must contact employers to understand their needs. In addition to assisting in identifying the appropriate NOC code, this information will serve CIC in assessing the foreign national's ability to perform the job. The employer has a right to provide services that respond to the expectations of his/her target clientele.

For example:

- Where an employer has included a particular language skill as a job requirement, a TFWP Officer generally must not consider the requirement as optional if the foreign national would be dealing with clientele from a linguistic group (e.g. tour operators, sales and export occupations with clientele overseas).

- Although the NOC description may cite a Bachelor's degree as the usual requirement for a management position, the duties of a particular organization may require someone with a doctorate in a scientific discipline in order to effectively deal with matters of scientific policy.

Section 3.2.6.5.2 – Number of Foreign Workers Requested Under this Job Title

This is a mandatory field in the FWS and must be filled in. If it is not completed, the information must be obtained from the employer and verified. If there is no name on page 3 of the LMO application under FOREIGN WORKER INFORMATION, the TFWP officer must contact the employer or their authorized representative. If the name(s) of the TFW(s) is not known at the time of LMO assessment, an unnamed LMO can be issued. The employer will have six months from the date the unnamed LMO is issued in which to confirm the name(s) of the TFW(s) to Service Canada. This is consistent with the six-month validity period of the LMO: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/communications/whatsnew6month.shtml

The role of HRSDC is to provide an LMO on the likely impact of hiring a foreign worker to work in Canada. While the number of foreign workers recruited assists an officer in making a decision on an LMO, the identity of the foreign worker is no relevant to the assessment of an LMO.

For more information, you can also refer to the information posted on our Website regarding unnamed LMOs:
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/unnamed_lmo.shtml.

Section 3.2.6.5.3 – Expected duration of employment

TFWP guidelines state that up to 3 years can be given for NOC skill levels O, A, and B and 24 months for NOC skill levels C & D. TFWP Officers may reduce these timeframes based on their assessment. Generally, LMOs are issued for a period of twelve months for low skilled positions (NOC C & D).

Background:

The labour market is the key consideration when determining an appropriate duration of employment for confirmation purposes. With the current instability in the economic climate, it is very difficult to predict labour market conditions for the medium and the long term. In most instances, the LMO should be issued with a twelve-month job duration.

In reviewing an application, an Officer may identify extenuating circumstances or specialized conditions which would support the decision to allow a duration other than the norm.

Instruction:

With few exceptions, confirmations are to be issued with job duration of twelve months or less. This direction applies to new applications and name submissions against unnamed LMOs. Consideration may be given to issuing confirmations for two to three years for applications for occupations in the health sector (doctors, nurses, degree professionals). Under certain circumstances (NOC 0 or A occupations only), a longer duration may be considered if the employer indicates on the application that the job offer is "intent to permanent". The Officer must confirm with the employer their understanding of “intent to permanent” and provide a rationale for his/her decision in the FWS.

Applications for seasonal work are to be given a shorter duration, based on the employer’s request and the length of the season. The specified end date should not extend past the end of the season and the start and end dates of the job must be stated in a CIC note. If the employer requests a job duration of more than twelve months and the confirmation is being limited to twelve months, the employer will be advised that the contract is to be amended accordingly. A revised contract will not be required to be submitted at this time.

Note: Entertainment applications are exempt.

Labour Market Opinion - Related

Arranged Employment Opinion - Expiry Policy

The maximum expiry date of a positive AEO is two years minus a day from the date the decision is rendered. However, the employer may state his own validity date for the job offer. Should this date be less than the maximum of two years minus a day, then it is to be used as the expiry date.

Duration of employment (region specific directives listed below)

Section 3.2.6.5.4 – Expected start date of employment, if any

Employers always fill this field, either with a date that has already passed, a few weeks after the application has been received by our office, "immediately", or "as soon as possible". Knowing that the date will also help TFWP Officers prioritize the analysis of the file. The employer should indicate the expected date that the foreign worker will have all the immigration paperwork processed by the consulate and to arrive in Canada to work. It is currently not a mandatory field in the FWS but TFWP Officers are cautioned to add that, and always check with the employer when in doubt.

Note: In the future, this may change due to LMO Limited Validity.

This field should have a start date in it only for emergency repair workers, entertainment (movies, etc.) or helicopter, agricultural aerial spray, forest-fire or aerial survey Pilots etc. If it's not for one of the job titles above, Officers are generally not required to pay much attention to it.

Section 3.2.6.5.5 – Location of Job

Context

When assessing the application, it is **very important** to verify this field. Work permits are location-specific. When multiple locations are listed, the clerical staff will enquire where the work will first take place. This is where the LMO will be initiated. When other provinces are mentioned, a **CONCURRENCE** will be required. Concurrence is sought from other TFWP units across Canada when multiple locations are listed in this field. TFWP Officers may require a timetable/calendar with the **dates, times, Cities and Provinces**. An email must be sent to the provinces concerned with a summary of the LMO and a timetable/calendar of the work to be done.

Online-applications: the location automatically goes to the first province listed in this field. It's important to confirm with the employer which province will the foreign worker be working in first.

Note: When an offer of employment involves more than one region or province, HRSDC/Service Canada must ensure that the LMO application is based on a sound analysis of the labour market situation in all regions or provinces where the work will occur.

Point to consider: Tripartite agreements

TFWP Officers require the street address & postal code of the location where the foreign worker will be physically working or reporting for work. Often, in rural areas where there is no address, there will be a map location/land description (this can be seen in rural telephone books) or, if the town is very small, the name of the town will do. Again, TFWP Officers are to verify with the employer if this field is blank, or if a box number appears. This field will pre-fill on the FWS, and quite often there is a different address than the employer address listed at the top of the page.

CIC, or the CBSA, always verify, at the Port of Entry, the location of the job, which appears at the very bottom of the Annex (the attachment to a Confirmation Letter). If this field has not been changed and a box number appears, a work permit may be refused both by CIC and CBSA.

Exceptions:

In the case of the Midway, and any other job that does not have a fixed place of employment (i.e. work occurs over a geographic location); TFWP Officers should put “Winnipeg & environs”. For example, “Churchill and Environs” in the case of filming or other activities that is outdoors.

If this information is not attached to the application, the TFWP Officer will telephone, e-mail or Fax, and ask for it. If it cannot be provided because it is not yet complete, the Officer will do the LMO for his/her province only and inform the employer to apply to the TFWP units in the other provinces where the activity will be taking place.

Since these Concurrence applications are usually flagged “Urgent” by the clerical support staff, the employer may ask to hold it until the timetable is complete and they can send it to the Officer.

Note: If there are different wages for each province, it is important to inform the employer that all other provinces will want to work on separate applications.

Remember that on e-applications, the location automatically goes to the first province listed in this field. On Tripartite Employment Agreements, the actual locations of all the jobs should appear here.

Section 3.2.6.5.6 – Province

The application should be sent to the TFWP unit in the appropriate province. Clerical support staff will usually screen these out and send them to the appropriate province.

Section 3.2.6.5.7 – Main duties of the job

TFWP Officers should encourage the employers to provide as many details as possible on the job description. The NOC will be determined based on the job description.

Service Canada and CIC use the NOC system to categorize the job based on the duties of the position. Where a job involves duties found under two or more NOC codes, the Officer will select the NOC job code that best corresponds to the predominant duties in terms of level of responsibility. Service Canada also uses the NOC occupation to determine the appropriateness of the wages and identify other labour market trends when assessing the job offer.

TFWP Officers should not accept a word-by-word description from the NOC. It is always best to verify the actual job and obtain details from the employers. However, there will always be some employers who are unable to describe the job duties in anything other than one or two sentences. If the job is straight-forward, such as the trades and other NOC Skill C & D descriptions, it is acceptable for TFWP Officers to interpret what those duties are from the NOC, and confirm them with the employer. As often as possible, Officers will encourage the employers to provide details on the job description.

It may occur that the job duties do not match the job title. A thorough check of the large NOC “Occupational Descriptions” manual sometimes clears this up. A request to the Labour Market Unit in determining job titles and duties can make the defining difference.

Section 3.2.6.5.8 – Educational requirements of the job

This field is required. TFWP Officers are to check against the NOC Occupational Descriptions (LMI and Emploi Quebec LMI where applicable):

- NOC: http://www5.hrsdc.gc.ca/NOC/English/NOC/2006/SearchIndex.aspx
- LMI: http://labourmarketinformation.ca
- Emploi Quebec LMI: http://imt.emploiquebec.net/mtg/inter/noncache/contenu/asp/mtg121_rechrprofs_01.asp?lang=ANGL&Porte=1

The employer must specify the educational requirements of the job that he is offering to the foreign worker, **NOT** the educational credentials of the foreign worker.

Note: It is important to understand that embassies assess educational requirements the same as HRSDC/Service Canada does, against the NOC requirements. If it is not in line with the NOC, it can be cause for refusal of a work permit, even if an LMO is confirmed.

Examples:

In the case of provincial mega-projects, requests for carpenter/concrete workers for which the employer may argue is high skill, but in fact turns out to be NOC 7611 - concrete former helper (the only other NOC code is 7215 - Concrete form builders foreman/woman carpentry). The only way to be able to correctly assign a NOC to this occupation is through the educational requirements in the NOC manual. NOC 7611 has no educational requirements, so if the employer has none, or very little requested, this is the correct NOC and Job Title. If the educational requirements require completion of secondary school and journeyman/woman trade certification in a relevant trade, but the employer says differently, the NOC prevails and it is high-skill; therefore those are the educational requirements a TFWP Officer would enter into the FWS.

Section 3.2.6.5.9 – Experience/skills requirements of the job

This field is required. Again, it is important to note that often, embassies assess experience/skills requirements of the job against the NOC descriptions. If they are not inline with the NOC, it can be cause for refusal of a work permit, even when a LMO is confirmed.

The employer must specify the experience and skills required to perform the job, **NOT** the experience and skills that the foreign worker possesses. The job offer must not have been designed for the foreign worker, making it inaccessible for Canadians and permanent residents. If the employer has listed skills that differ from what the province requires, the province's skills and years of experience prevail. Please refer to **3.2.6.5.8** for additional information.

Section 3.2.6.5.10 – Language Requirements

This field is required. The employer must indicate the language requirement that is needed for this position.

Note: It is important to understand that embassies assess educational and language requirements the same as we do, against the printed NOC requirements. If it is not in line with the NOC, it can be cause for refusal of a work permit, even a LMO is confirmed.

For most work permits to be issued, CIC requires the foreign workers to have basic English and/or French language skills. If the employer does not request at minimum basic English and/or French language skills, TFWP Officers are to request a written rational from the employer requesting an exemption to the basic English and/or French language skill requirement.

Examples:

In the case of restaurants we insist that the foreign nationals are able to speak basic English and/or French. The employers may also provide basic ESL instruction – ask for the cost of this ESL instruction and where it will take place. In other words, ask the employer to explain what their plan is for English and/or French training.

In the case of Large bulk requests (in excess of 50) for example, Maple Leaf Fresh Foods/Springhill Farms Ltd and Palliser's, there is an established ESL program for all foreign workers, and that has been ascertained and provided during assessment with the application and HR plan.

Section 3.2.6.5.11 – Position is part of a union

If not part of a union, then this is not applicable.

If yes, employers are responsible for providing necessary documentation on the position of the union. TFWP Officers are to attach all documentation to file.

Service Canada does not expect union concurrence, but does expect union documentation confirming that it has been advised that the position is being filled by a foreign worker and not by a Canadian or permanent resident. If the employer has not contacted the union, they must explain why they have not done so. Service Canada Officers have the discretion to consult with unions for the specific information needed to assess the application. They may require input or clarification on matters such as the status of a labour dispute, the wage rates for a particular occupation, the terms of a contract or broader LMI.

3.2.7 - Rendering a decision and post-decision process

Procedural Guidance - Cancellation/Closure of Applications/Positions

Background:

The role of Service Canada is to provide an opinion on the likely impact on the Canadian labour market if a foreign national were to fill a position. Upon receipt of a positive LMO confirmation, the employer forwards the confirmation letter to the foreign worker to enable the foreign worker to apply for and receive a work permit.

Situations arise whereby it is necessary to withdraw or cancel the job offer made to the foreign worker. To prevent the LMO from being used to support an application for a work permit for a position that is no longer available, employers are now submitting requests to cancel a LMO and/or workers named on a LMO.

Situations also arise during the employer of record reviews where the pending SF needs to be closed as the employer ID has been made inactive and a new employer ID has been created.

Guidelines:

Verbal or written requests to cancel LMOs or named workers on LMOs are to be action by updating the SF in the FWS and by documenting the changes in notes to file and CIC notes. TFWP wants to ensure that the action taken by Service Canada in response to the information received from employers is updated in the records in a timely manner and shared with CIC/CBSA as appropriate.

If the pending SF is to be closed due to the employer ID being made inactive SF and CIC notes are required referencing the newly created SF number.

To determine what action is required, it is first necessary to search the FWS to confirm the status and location of the application/SF. If the application/SF is in pending status, the SF will be closed. If the confirmation has already been issued, the SF or the positions will need to be cancelled.

Instructions:

1. Application/SF pending

- pull application/name request;
- close file in the FWS:
  - Reason stated is “withdrawn by employer”
  - Reason stated is “inactive employer ID#”
- if withdrawn by employer, issue FYI letter confirming application has been closed (Script available);
- complete note to file:
  - “YYYYMMDD SF closed per ER request/FYI letter sent/PA”
- if SF closed due to an inactive employer ID create SF and CIC notes:
  - “YYYYMMDD SF closed, inactive employer ID, see new SF #______ issued under employer ID #____.
- Correspondence is added to the file.

2. Application/SF Confirmed

A. All named foreign workers on SF to be cancelled

- Cancel SF in FWS (Cancel after Confirmation)
- Issue FYI letter confirming application has been cancelled
- Complete note to file:
  - "YYYYMMDD SF cancelled per ER request/FYI letter sent/"
- Complete CIC note:
  - "YYYYMMDD SF cancelled per ER request"
- The letter from the employer is scanned and uploaded into FWS and is shredded after verifying the upload was successful.

B. Certain named workers to be cancelled – LMO still active - If the confirmation has been issued with multiple names listed on the annex, and not all names are to be cancelled, the LMO cannot be cancelled in its entirety as described above.

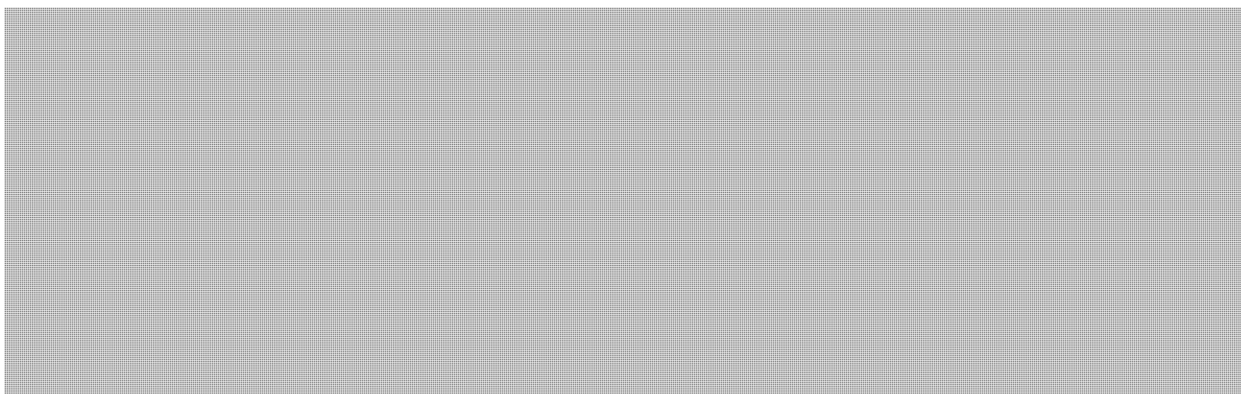
- The word "REMOVED" is inserted into the family name text box in FWS, after the surname - the name would then appear as follows: Last Name: Surname REMOVED First Name: XX
- The CIC/HRSDC note would state, "YYYMMDD Names removed from SF per employer request"
- Thus when a foreign worker presents his copy of the original LMO to the visa post abroad or to the port of entry, CIC Officers would be able to see that the foreign worker's name had originally appeared on the LMO, and that the name had subsequently been removed (the information in the system would be the most current). The number of positions originally listed on the confirmation would also remain unchanged
- Name cancellation requests are to be action on a daily basis to ensure that the information available to our CIC colleagues is as up-to-date as possible.

Instructions for Transmitting the LMO Confirmation Letter and Annex to Employers

Background:

All Service Canada offices are instructed to send the LMO Confirmation Letter and all Annexes (refer to section 3.2.5.1) to employers in all cases. HRSDC is authorized under section R203(2) of the IRPR to provide an opinion upon the request of an employer or GoE. Section 3.2.5.1 of the TFW Manual discusses the issuance of the LMO Confirmation Letter and associated Annexes in support of issuing an opinion under R203(2).

s.16(2)



Guidelines:

In issuing an opinion under R203(2), all HRSDC/Service Canada staff must ensure that an employer always receives a copy of the LMO Confirmation Letter and all associated Annexes.

The LMO Confirmation Letter and all associated Annexes must be sent to the employer for all LMO applications pertaining to Occupations Requiring Post-Secondary Education/Training (NOC 0, A, B); Academics; Low Skilled Occupations - Pilot Project; the Agricultural Stream of the Pilot Project; SAWP; Exotic Dancers, and Live-in Caregivers.

The LMO Confirmation Letter and all Annexes must be sent directly to the employer regardless of whether a third party has been appointed.

In addition to being sent to the employer, the LMO Confirmation Letter and Annexes must also be sent to third parties when there is a third party identified on an LMO application.

Page 136
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16(2)

of the Access to Information Act
de la Loi sur l'accès à l'information

Page 137

is withheld pursuant to section

est retenue en vertu de l'article

16(2)

of the Access to Information Act

de la Loi sur l'accès à l'information

Section 3.5.2.1 – Step 1(b): Section 91 of IRPA and Eligibility Status of Representative

Purpose:

The purpose of this directive is provide guidance for Service Canada Officers on how to determine if a paid individual is authorized under section 91 of the IRPA to represent an employer in LMO or AEO applications.

Authority:

Section 91 of IRPA makes it an offence for anyone other than an authorized individual to "represent or advise a person for consideration – or offer to do so – in connection with a proceeding or application under this Act." Because both LMOs and AEOs may result in a work permit or permanent residency application, they are considered to be a part of an immigration proceeding. The term consideration should be interpreted as compensation in the form of money, goods, or services.

Guidelines:

With respect to HRSDC/Service Canada, the law applies to representatives used by employers in the LMO/AEO application process, and distinguishes between individuals who charge a fee for their services and those who do not. Unpaid representatives are not required to be authorized under s.91, however, paid representatives are prohibited from representing employers in the LMO/AEO application process unless they are:

- a member in good standing of a Canadian provincial or territorial law society or students-at-law under their supervision, or the *Chambre des notaires du Québec*; or
- a paralegal in the Province of Ontario's law society; or
- a member in good standing of the Immigration Consultants of Canada Regulatory Council (ICCRC).

HRSDC/Service Canada will not conduct business with an individual who charges a fee in assisting or advising employers in their LMO/AEO application if this individual is not authorized under s.91 of IRPA.

Employers who wish to be represented by an individual to HRSDC/Service Canada during the LMO/AEO application process are obligated to submit a completed "Appointment of Representative" form as well as the "Annex to the Appointment of Representative" form. Recruiters who are not representing an employer in their LMO/AEO application do not need to be acknowledged in the "Appointment of Representative" form and annex, unless they are recruiters operating in the province of Manitoba.

Employers in Manitoba who use the services of a recruiter to recruit foreign workers must continue to submit a completed "Appointment of Representative" form and annex, regardless of whether or not their recruiter is representing them to HRSDC/Service Canada.

Types of Individuals Affected by Section 91:

Paid representatives

A paid representative is an individual who collects compensation (i.e. money, goods or services) in exchange for representing an employer in the LMO/AEO application process.

A paid representative who wishes to conduct business with HRSDC/Service Canada on behalf of an employer must be authorized under s.91 of IRPA as detailed above.

Unpaid representatives

An unpaid representative is an individual who represents an employer in the LMO/AEO application process and does not collect a fee or other forms of compensation for rendering services.

As per CIC's Operational Bulletin 317, unpaid representatives can represent, consult and provide immigration advice at any stage of the LMO/AEO application process. The following are examples of unpaid groups of individuals that may represent an employer to HRSDC/Service Canada:

- family, friends, domestic/international agencies, religious organizations and non-governmental organizations who do not charge fees for providing immigration advice; or
- international organizations who do not collect compensation from employers for rendering assistance or advice regarding the LMO/AEO application process; or
- unpaid representatives or lawyers, notaries or ICCRC members in good standing who would normally be paid, but are volunteering/performing *pro bono* work.

Recruiters

In certain cases, employers may pay for the services of individuals or agencies for the sole purpose of recruiting foreign workers. Some examples of activities that do not require the recruiter to be authorized under s.91 include the following:

- providing advice exclusively related to foreign worker recruitment matters and/or services, including providing basic assistance such as directing someone to HRSDC's website to find information on the TFWP or to access LMO/AEO application forms; and
- advertising, job application filing and collection, processing, pre-screening interviews, testing or analysis of skills or knowledge, arrangement of formal interviews with workers, making offers of employment, making travel arrangements, confirming the worker meets program criteria and negotiating a wage or salary on the employer's behalf that is in line with the employer's and TFWP requirements.

Recruiters who wish to also represent the employer in an LMO/AEO application must be authorized under s.91 and acknowledged in the "Appointment of Representative" form and annex.

Note: All recruiters operating in Manitoba must continue to abide by the regulations and procedures outlined under WRAPA and the WRAPA operational directive.

Live-in caregiver agents

A paid live-in caregiver agent who also represents employers in their LMO/AEO application must be authorized under s.91 and listed on the "Appointment of Representative" form and annex.

Agricultural employer organizations

At this time, the guidelines exclude FARMS, FERME, and the administrators under the GoE initiative.

Application Processing:

Service Canada will continue to follow the current Application Assessment Process when processing an LMO application. After an application has been registered and assigned a SF number, the employer's eligibility to participate in the TFWP will be determined via CIC's ineligibility list as Step 1(a). If the employer is eligible to participate in the program and wishes to have an individual represent them, then the eligibility of the representative will be assessed as Step 1(b).

Assessing the Appointment of Representative form and annex for completeness

Employers that use representatives, paid or unpaid, must complete and submit the "Appointment of Representative" form and annex. If information is missing or the annex has not been submitted, Service Canada will follow the procedures outlined in the Missing Information Directive and contact the employer to inform them that their application can not be processed until a completed copy of each form has been received. As per the directive, the employer has approximately five business days in which to submit the requested information; otherwise, a negative opinion will be issued.

Determining representative eligibility under section 91 of IRPA

On the "Annex to the Appointment of Representative" form, employers are asked to indicate what type of individual was consulted in relation to their LMO/AEO application.

If the employer selects one of the options under the "unpaid" category, processing of the application will continue as per the Application Assessment Process.

If the employer selects one of the authorized options under the "paid" category, the Service Canada Officer will process the application. In the event the membership ID field is blank, the Service Canada Officer will treat the application as incomplete and follow the procedures outlined in the Missing Information Directive.

If the employer selects the option of "other" under the "paid" category, the Service Canada Officer will contact the employer via telephone and reiterate that HRSDC/Service Canada cannot conduct business with a representative unless they are authorized under s.91 of IRPA. The Officer is encouraged to clarify with the employer whether or not the identified individual is representing them, or just providing recruitment services.

	Does not require authorization	**Requires authorization**
Service Provided for Compensation	Directing someone to the TFWP website to access LMO/AEO application forms	Representing someone in an LMO/AEO application to HRSDC/Service Canada
	Recruiting or performing activities listed under the recruitment section of this directive	Communicating with HRSDC / Service Canada on someone's behalf in relation to a LMO/AEO application
	Directing someone to an immigration consultant	Advising the employer about the LMO/AEO process and the legislative requirements.
	Providing translation services	
	Providing or arranging for medical services (e.g. medical testing)	

<u>Procedures for when a representative is not authorized</u>

If it is determined that an employer is using an unauthorized representative, Service Canada will not correspond with that representative unless or until they become compliant with s.91. The employer's application will continue to be processed and the representative's information will be forwarded to CIC for their consideration.

1. The Officer will send the attached letter (Annex A) to the employer informing him/her that they cannot be represented by that representative, but that their application will continue to be processed and HRSDC/Service Canada will correspond directly with them. A copy of the letter will also be mailed to the representative.

2. The Officer will remove the representative from the FWS electronic file and make a note in the "Notes to File" section of the application, stating the representative name, third party ID #, address, and that they have been removed from the application because they are not authorized to represent under s.91.

3. The Officer will make a "Note" on the Third Party profile in FWS stating that they are not eligible to represent under s.91.

4. The Officer will then proceed to the next step of LMO/AEO assessment.

5. Each Service Canada region will collect the unauthorized representative information in the "Unauthorized Representative Tracking" chart (Annex B). The chart will be sent to TFWP-NHQ on the last Friday of every month via the Service Canada inbox.

6. TFWP-NHQ will forward the representative information monthly to CIC for their consideration.

The letter to the employer will inform him/her that they have the option to complete the application process on their own. However, if they wish to use the services of a different representative, they must submit:

- a signed letter stating that they will no longer use the unauthorized representative;
- a new "Appointment of Representative" form; and
- a new "Annex to the Appointment of Representative" form.

If the employer chooses to proceed with completing the application process on their own, it is not a requirement for him/her to send a letter indicating that they will no longer use the unauthorized representative. Service Canada will continue to process the application and contact the employer directly for information/clarification, if required.

Complaints:

Service Canada may receive complaints from employers regarding the new program requirements or alleging misconduct of their representative. HRSDC/Service Canada does not have the mandate or legislative authority to investigate, police, or penalize any individuals who may be potentially contravening s.91 of IRPA.

If an employer has objections stemming from the implementation of the amendments to s.91 by the TFWP, they should be made aware that they always have the option to apply to the TFWP using the services of an authorized paid representative, an unpaid representative or apply without assistance. Employers can also forward their concerns regarding s.91 to mailto:SecretariatonConsultants@cic.gc.ca.

If an employer has a complaint about the actions of their, he/she should be advised that HRSDC/Service Canada will not mediate in such disputes, nor will they communicate complaints to a regulatory body on an employer's behalf. All complaints should be handled according to the Information and Complaints Directive. Employers always have the option to terminate the appointment of their representative by submitting a signed letter or fax to Service Canada to that effect. Employers should be encouraged to contact the respective regulatory body on their own by referencing CIC's website for contact information at: http://www.cic.gc.ca/english/information/representative/verify-rep.asp

The following table lists some of the possible scenarios and recourses available to Service Canada:

Complaint from an employer about…	Action to be taken by Service Canada…
Section 91 and the eligibility criteria for representatives	Direct employer to forward complaint to SecretariatonConsultants@cic.gc.ca
Non-ICCRC immigration consultants/consulting firm.	Direct employer to: • inform the ICCRC (for future reference in case the individual eventually applies for membership); • file a complaint with the Canadian Council of Better Business Bureaus (http://www.ccbbb.ca/); • forward complaint to OMC at SecretariatonConsultants@cic.gc.ca; and • contact local law enforcement, if necessary.
A lawyer, ICCRC member or Quebec notary, and a student-at-law	Direct employer to the contact the regulatory body to which the representative belongs (e.g., a Canadian provincial/territorial law society, the Chambre des notaires du Québec or the ICCRC): http://www.cic.gc.ca/english/information/representative/verify-rep.asp

ANNEX A

Letter to the Employer: Use of unauthorized representative

To be used when notifying employers that their representative is not authorized under section 91of IRPA to conduct business on their behalf with HRSDC/Service Canada. The employer is advised that their application will be processed with all future communication will be directed to them, and not the representative.

Dear *[employer]*,

This letter refers to your application for a *[labour market opinion/arranged employment opinion]* number *[SF #]*, which was received on *[date]*. We regret to inform you that you have hired an individual to represent you in your *[LMO/AEO]* application who is not authorized to conduct business with HRSDC/Service Canada under section 91 of the *Immigration and Refugee Protection Act (IRPA)*.

As of August 2, 2011, HRSDC/Service Canada will only conduct business with employer representatives who are authorized as per s.91(2) of the *IRPA*. This means that the person you are *paying* to assist you must be a member in good standing of a provincial or territorial law society, a paralegal in the Province of Ontario's law society, a member of the *Chambre des notaires du Québec*, or a member of the Immigration Consultants of Canada Regulatory Council (ICCRC).

HRSDC/Service Canada will continue to process your application; however, all future communication, inquiries, and requests for documentation will be directed to you and not your representative.

If you wish to utilize the services of a different representative, you must acknowledge in writing that you are no longer using the unauthorized representative and will employ the services of an authorized paid or unpaid representative for the identified LMO/AEO application(s) process, by submitting:

- a new "Appointment of Representative" form;
- a new "Annex to the Appointment of Representative" form; and
- a signed letter stating that you will no longer use the unauthorized representative.

To learn more about the types of authorized representatives, please visit Citizenship and Immigration Canada's Web site at http://www.cic.gc.ca/english/information/representative/verify-rep.asp.

Yours sincerely,

[Officer's Name, Title]

[Copy to representative]

ANNEX B

Unauthorized Third Party Representative Tracking

Region:

From-To Date:

TP Name (last, first)	**Business Name** (if applicable)	**Province**	**Address**	**System File Number**

Section 3.5.3 – Step 2: Consistency with Federal/Provincial Agreements

The second step of the LMO assessment process involves checking that the job offer is consistent with the terms of any TFW annexes to the Canada-Provincial/Territorial Immigration Agreements.

Led by CIC, these Annexes are negotiated under the umbrella of CIC's Immigration Agreements with the provinces and territories. The Annexes support F-P/T cooperation in responding to province's labour market needs through innovative pilot projects and the possible use of subsection 204(c) of the IRPR, exempting the need for a LMO.

Officers should keep up-to-date on exemptions or pilot project requirements flowing from these agreements by checking regularly.

Should an employer apply for an LMO for an occupation exempted by one of these agreements, the Officer must advise the employer that an LMO is unnecessary and recommend that the application be withdrawn. If the employer refuses to withdraw their application, the Officer must issue a negative LMO.

Similarly, should an employer fail to comply with any additional requirements included in a pilot project, the Officer would issue a negative LMO based on the fact that the job offer is not consistent with the F-P/T agreement.

However, should the job offer be consistent with R204(c), the Officer would proceed to the third step of the LMO assessment process: the assessment of Genuineness and where applicable, LCP factors.

Recording assessment outcomes

At the end of each step, Officers must document the outcome of their assessment in the 'notes to file' field. Should the assessment decision or issues with the particular file impact the assessment of future LMO applications received from that employer, it should be put in the 'employer notes' field, referencing the SF number for which there were issues.

Following the assessment of step 2, the following notes should be put in the 'notes to file' field:

- job offer consistent; **or**
- job offer is inconsistent and employer referred to Province/Territory.

Any interaction that took place with the employer to arrive at the assessment outcome should also be noted in the 'notes to file' field. For instance:

Employer interactions: employer informed that LMO is unnecessary but refused to withdraw application.

Seeing as this would not necessarily impact the assessment of future applications received by this employer, no notes would be put in the 'employer notes' field for this step.

Section 3.5.4.1 – Genuineness

The purpose of this Directive is to provide guidance to Employment and Social Development Canada (ESDC)/Service Canada staff when assessing the genuineness of an employer's job offer as part of the labour market opinion (LMO) application process.

The Temporary Foreign Worker Program (TFWP) operates under the authority of the *Immigration and Refugee Protection Act* (IRPA) and the *Immigration and Refugee Protection Regulations* (IRPR). In accordance with the April 1, 2011 amendments to the IRPR, all new and returning employers seeking to hire temporary foreign workers (TFW) must meet the regulatory requirements for the genuineness assessment of a job offer to a TFW.

Authority

Section 200(5) of the IRPR provides the authority to assess the genuineness of an employer's job offer. When assessing an LMO application, ESDC/Service Canada staff is mandated under this section to base the opinion on the following four factors:

(a) whether the offer is made by an employer, other than an employer of a live-in caregiver, that is actively engaged in the business in respect of which the offer is made;
(b) whether the offer is consistent with the reasonable employment needs of the employer;
(c) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and
(d) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work.

Approach to assessing Genuineness

s.16(2)

Pages 147 to / à 150

are withheld pursuant to section

sont retenues en vertu de l'article

16(2)

of the Access to Information Act

de la Loi sur l'accès à l'information

Annex A

s.16(2)

- **Business licence or permit –** Since not all municipalities require a business licence/permit to operate, new employers may also submit specified Canada Revenue Agency (CRA) documentation (T4 Summary, T2 schedules 100/125, T2125), business contract(s) for work in Canada or an attestation by a lawyer, notary public or chartered accountant. Information such as business name, number, address and type of business should be checked for consistency with information provided on/with the application, including the employer's description of their business activities.

- ***T4 Summary of Remuneration paid (only applies to the Federal Skilled Worker Program) –*** provides a summary of employment income paid out by the employer in the previous taxation year. The absolute amount of income paid (see line 14 of the T4 – Employment Income) will reveal the general size of the business, which gives an indication of whether that business can easily absorb the salary to be paid to a TFW. For instance, an employer that paid out millions of salary dollars the previous year would normally be able to absorb the salary of an additional worker; one that paid out $100,000 in income the previous year and wishes to hire additional workers should have their financials scrutinized further. In these cases, ESDC/Service Canada staff will also look at T2 Schedule 125 Income Statement Information and T2 Schedule 100 Balance Sheet Information, where applicable.

- ***T2 Schedule 125 Income Statement Information and T2 Schedule 100 Balance Sheet Information (if employer is a corporation) –*** provides information on operating income and profits of a business. As a general rule, operating income and/or retained earnings (profits) should be great enough to support TFWP-related financial obligations. This includes the salary listed on the current application, and any other salary in relation to previous confirmations for TFWs that have not yet commenced employment. Operating income is listed on line 9970 of schedule 125. Should that line not be listed, ESDC/Service Canada staff must obtain this information by adding lines 9369 and 9899. Retained earnings (profits) are listed on line 3849 of the schedule 100.

- ***Workers' compensation clearance letter –*** declares that the employer is registered with the appropriate workers' compensation board and has an account in good standing. This would only be asked for when there is an indication that the employer did not comply with programmatic requirements to register the workers in the provincial or territorial workers' compensation scheme in provinces/territories where it is not mandatory. If this registration is mandatory under provincial/territory legislation, the employer would be failing to comply with section *200(5)(d)* of the IRPR detailed in section 3.5.2.5. of the TFWP Manual.

- ***An attestation by a lawyer, notary public or chartered accountant who are members in good standing within their respective professional bodies –*** attests that the employer is engaged in a legal business that provides a good and/or a service in Canada, is in good financial standing, and will be able to continue to adhere to his/her financial obligations to the TFW (template to be provided to the employer).

- ***A commercial lease agreement –*** provided that any financial information is redacted.

- ***A formal letter from a legal company confirming the existence of a new contract for a good and/or a service with the employer applying for an LMO –*** provided that the company entering into a contractual agreement with the employer offering a job to a TFW, agrees to provide this letter and that the company itself is legal and a bonafide employer known to the public.

Page 152

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16(2)

of the Access to Information Act

de la Loi sur l'accès à l'information

Annex B

Federal and Provincial/Territorial Laws

1. Relevant federal legislation includes, but not limited to, the following:

- *Immigration and Refugee Protection Act (IRPA)*
  laws.justice.gc.ca/en/I-2.5/index.html
- CIC: Cracking Down on Crooked Consultants Act
  www.cic.gc.ca/english/department/media/backgrounders/2010/2010-06-08.asp

2. Relevant provincial legislation includes, but not limited to, the following:

- Alberta: *Fair Trading Act*
  www.qp.alberta.ca/1266.cfm?page=2012_045.cfm&leg_type=Regs&isbncln=9780779763900
- Manitoba: *Worker Recruitment and Protection Act (WRAPA)*
  web2.gov.mb.ca/laws/statutes/2008/c02308e.php
- Ontario: *Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others)*
  www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_09e32_e.htm
- Quebec: The province pre-published a regulation "Règlement sur les consultants en immigration" that would require, any representative filing an application to its provincial immigration program, to fulfil certain criteria (including having an office in Quebec) and be registered with the government
  www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/I_0_2/I0_2.html
- Nova Scotia: The province has developed new legislation to regulate the employment of temporary foreign workers
  www.gov.ns.ca/lwd/employmentrights/ConsultationonTemporaryForeignWorkers.asp

3. Any other federal and provincial/territorial legislation related to employment standards or occupational health and safety as deemed applicable.

Section 3.5.4.2. – Directives for the Implementation of the Amendments to the *Immigration and Refugee Protection Regulations*: Live-in Caregiver Program Applications

The following directives are to be used to issue a Live-in Caregiver Program (LCP) Labour Market Opinion (LMO) under s.203 of the Immigration and Refugee Protection Regulations (IRPR) effective April 1, 2011 and are complemented by existing LCP directives.

1. Preamble

These directives apply to LCP LMO applications. In addition to assessing the three genuineness factors in Section 200(5)(b) through (d), the consistency with Federal/Provincial-Territorial Agreements – Section 203(1)(c), officers must assess three additional LCP-specific factors – section 203(1)(d)(i) through (iii) and the Substantially the Same Factor – Section 203(1)(e).

2. Authority

The amendments to IRPR brought new authorities to the assessment of all streams of the Temporary Foreign Worker Program (TFWP), including the LCP. Below are sections of the amended IRPR, including paragraph 203(1)(d), which applies specifically to the LCP.

Genuineness of the Job Offer

Section 200(5) states that a determination of whether an offer of employment is genuine shall be based on the following factors:

(a) whether the offer is made by an employer, other than an employer of a live-in caregiver, that is actively engaged in the business in respect of which the offer is made (not applicable to LCP*);*

(b) whether the offer is consistent with the reasonable employment needs of the employer;

(c) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and

(d) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruitment of employees, in the province in which it is intended that the foreign national will work.

Consistency with Federal/Provincial-Territorial Agreements

Section 203(1) states that on application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(*c*)(i) to (ii.1), an officer shall determine, on the basis of an opinion provided by the Department of Human Resources and Skills Development, if

(c) the issuance of a work permit would not be inconsistent with the terms of any applicable federal-provincial agreement that apply to the employers of foreign nationals";

LCP Specific Factors

Section 203(1)(d)(i) states that

(d) in the case of a foreign national who seeks to enter Canada as a live-in caregiver,

> *(i) the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision,*

Section 203(1)(d)(ii) stipulates that

> *(ii) the employer will provide adequate furnished and private accommodations in the household.*

Section 203(1)(d)(iii) states that

> *(iii) the employer has sufficient financial resources to pay the foreign national the wages that are offered to the foreign national.*

Substantially the Same (STS)

Section 203(1)(e) states that

> *During the period beginning two years before the day on which the request for an opinion under subsection (2) is received by the Department of Human Resources and Skills Development and ending on the day that the application or the work permit is received by the Department,*

(i) *the employer making the offer provided each foreign national employed by the employer with wages, working conditions and employment in an occupation that were substantially the same as the wages, working conditions and occupation set out in the employer's offer of employment, or*

(ii) *in the case where the employer did not provide wages, working conditions or employment in an occupation that were substantially the same as those offered, the failure to do so was justified in accordance with subsection (1.1).*

3. GENUINENESS OF THE JOB OFFER UNDER LCP

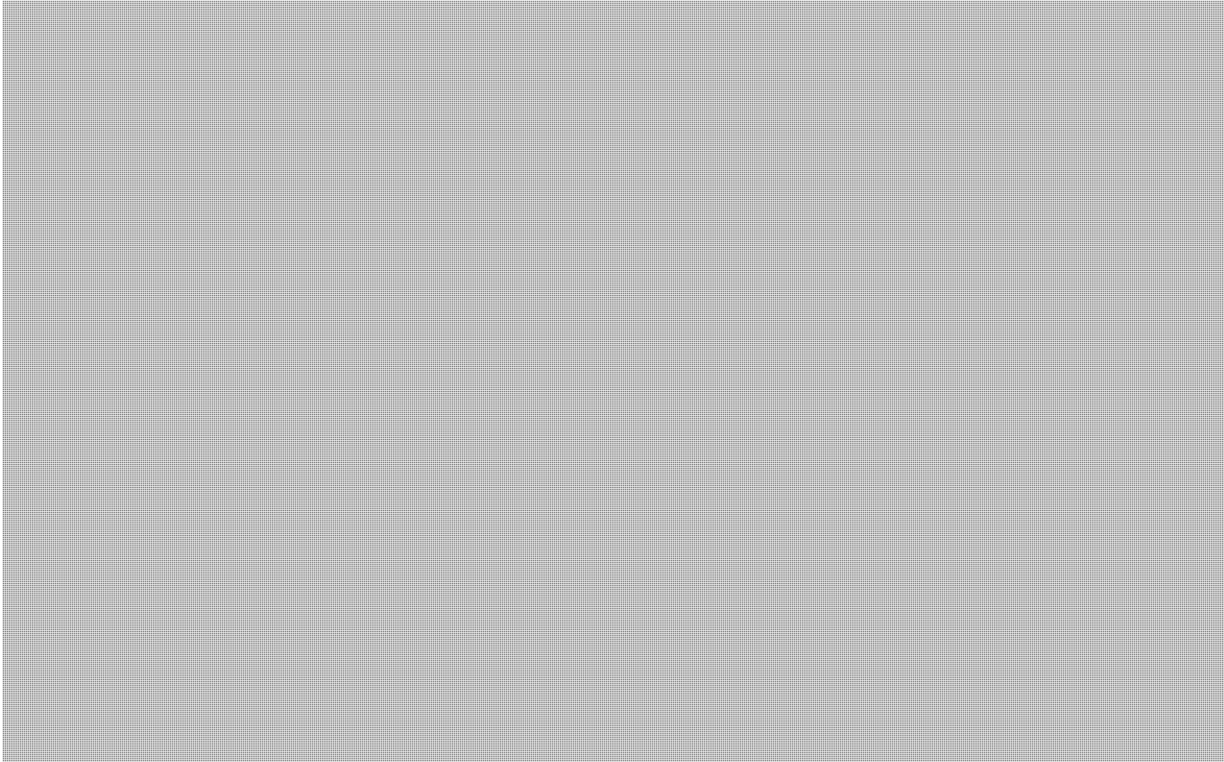
3.1 Reasonable Employment Needs of the Employer - section 200(5)(b)

Under the amended IRPR, officers must assess the employer's need for a live-in caregiver (i.e., is the job offered to a live-in caregiver responding to a reasonable employment need of the employer). This is determined by an assessment of the employer's need for providing care within a private household, the description of the job offer on the LMO application and the mandatory LCP employment contract. All the information required to assess this genuineness factor is provided in the LMO application and in the employment contract.

Reasonable employment need under LCP is defined as care for a child, a senior person or a person with a disability. In addition, the duties associated with the care required by the employer must be performed in the private household where care is needed. In the LMO application, employers are required to provide details to explain the need for care in the household, the name of the individual(s) for whom care will be

provided, to indicate whether the individual(s) in needs of care is (are) children, seniors or disabled and, to describe the tasks to be performed by the live-in caregiver in response to the need.

s.16(2)



3.2 Reasonably Able to Fulfill the Terms of the Offer - section 200(5)(c)

Ability to fulfill the terms of the job offer relates to all terms of the contract. The LCP LMO application includes several attestations regarding the work terms and conditions that the employer must abide by to participate in the program. For example:

> *I/we will provide any temporary foreign worker employed by me with wages, working conditions and employment in an occupation that are substantially the same as the wages, working conditions, and occupations as described in the LMO confirmation letter and annex.*

Additionally, the employer must attest that they will abide by other programmatic requirements such as providing one-way transportation from the country of origin to the location of work, enrolling the live-in caregiver into the provincial workplace safety insurance and providing interim medical coverage until the worker is eligible to participate in the provincial health plan. LMO applications missing this or any other signed employer attestation are considered incomplete and the officer must call the employer to advise them that their LMO will be refused unless they submit the necessary attestations.

Officers must also compare the LMO application with the employment contract to ensure that there are no inconsistencies

Assessment of the employer's ability to pay wages is more extensively covered under section 203(1)(d)(ii) which is detailed in section 6.3. For this reason, this genuineness factor will be assessed by reviewing the application and its attestations, along with the contract, to ensure that the employer has committed to fulfilling the terms of the job offer.

3.3 Past Compliance with Federal or Provincial/Territorial Employment and Recruitment Laws - section 200(5)(d)

Under the LCP, this factor is the only one that may receive a level 2 assessment.

Under section 200(5)(d), officers must be satisfied that the employers and recruiters of live-in caregivers are compliant with federal and/or provincial/territorial laws regulating employment/recruitment.

The term "past compliance" refers to both the employer's past and continued compliance with relevant federal or provincial/territorial laws regulating employment and recruitment.

For the purpose of this assessment, "federal and provincial/territorial laws**"** are defined as *laws governing the regulation of employers, employer consultants and/or recruiters, as well as the employment of TFWs, Canadians and permanent residents*. As per the third-party authorization form and the TFWP's directives governing third-parties (*see section 2.6.5*), employers are held responsible for the actions of any person that recruited a live-in caregiver on behalf of the employer. These laws include, for instance, Manitoba's *Worker Recruitment and Protection Act* (WRAPA) and Ontario's Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others), 2009 ([1]). Some provinces, such as Manitoba, require registration under WRAPA in order to hire foreign workers; this registration should accompany the LMO application.

Violations by employers and/or third-parties reported by federal and/or provincial/territorial authorities are considered in the assessment of this factor, whether the violations involved the employment of Canadians, permanent residents or TFWs. The violations must be linked to the employer of record that would be employing the live-in caregiver (usually an individual or a household) and could relate to the previous employment of live-in caregivers or the employment of any other workers in the household (e.g., a gardener). However, if the employer of record also maintains a separate business that employs other staff under other occupations, then previous violations under that business name would not normally be factored into the LCP assessment. For example, if the employer (or one of the employers) ran an electrician business and had a poor past compliance record with hiring workers in that line of business, then those results would be less relevant. In this situation, officers should consult their Business Expertise Advisor.

The LMO application form includes an attestation that the employer is currently in good standing with all legislation regulating the employment and recruitment of workers in the province(s) or territories of employment. Officers must ensure that the employer attests to this requirement.

The employer's attestation, which will need to be accompanied by proof of any registration requirements, where applicable, states the following:

[1] Province of Alberta Employment Standards
Province of British Columbia Employment Standards
Province of Manitoba Employment Standards
Province of New Brunswick Employment Standards
Province of Newfoundland and Labrador Employment Standards
Province of Nova Scotia Labour Standards Code
Ontario Employment Standards
Province Prince Edward Island Employment Standards
Quebec Employment Standards
Saskatchewan Labour Standards Act
Northwest Territories Employment Standards Act
Nunavut Labour Standards Act
Yukon Employment Standards Act

I am compliant with, and agree to continue to abide by provincial and federal legislation related to employment and recruitment applicable in the jurisdiction where the position is located. All recruitment/employment done or that will be done on my behalf by a third-party, was or will be done in compliance with federal and provincial laws governing employment and recruitment. I am aware that I will be held responsible for the actions of any person who recruited foreign nationals on my behalf.

s.16(2)

The directive on genuineness provides detailed information on the comprehensive assessment process for this factor (*see section 3.5.2*).

Many provinces maintain websites that contain information on employers/businesses that have committed employment/work place infractions which the officers should consult when conducting a comprehensive assessment.

Program officers should also request workers' compensation clearance letters from employers to ensure their employees are adequately protected and that they are respecting their obligations.

For provinces that regulate recruitment, (e.g. Alberta, Manitoba, Ontario and Québec), employers are responsible to ensure that the third-parties they are using are compliant with provincial legislation. In situations where officers have compelling reasons, contracts between the employer and the third-party could be requested to ensure stipulations outlined within are compliant with the laws of the province.

Required documentation and tools:

- ***workers' compensation clearance letter*** **–** declares that the employer is registered with the workers' compensation board and has an account in good standing. Program officers should ensure that the employers account is up-to-date and in good standing.
- ***contract with third-party*** **–** Program officers should ensure that provisions stipulated in the contract are compliant with federal/provincial legislation. For instance, recruiters should not be charging a fee to the TFW for recruitment.
- ***provincial websites on violations*** **–** program officers can verify to see if the employer's name/business is included. If so, program officers should determine whether the infraction is in any way related to occupation/sector the TFW would be working in.
- ***information from provincial contacts (in cases where LOU permits sharing of information)***

Acceptable documentation:

- ***attestations by a lawyer, notary public or chartered accountant*** **–** may be used when no other documentation is available and would need to attest to the fact that the employer is cognizant of his/her legal responsibilities as per provincial legislation and that he/she is compliant.

4. Consistency with Federal-Provincial/Territorial (FPT) Agreements

FPT agreements are more formally known as Temporary Foreign Worker Annexes to the Canada-provincial/territorial Immigration Agreements.

These annexes allow provinces and territories to respond to and manage their own labour market needs through innovative pilot projects and possibly granting occupational or sector-based LMO exemptions under section 204(c) of.

Under the amended IRPR, officers must assess whether the employer of any temporary foreign worker, including live-in caregivers, and the job offer listed on the LMO application comply with terms of any FPT agreement.

Officers can only assess the part of the Temporary Foreign Worker Annexes that address actions/activities related to the employer and the live-in caregiver job offer.

In doing so, officers must consider information from The Temporary Foreign Worker Annexes.

Temporary Foreign Worker Annexes

Officers must consult the appropriate agreement, which are available on HRSDC's intranet site, and determine if any clauses or sections apply to the LMO being assessed.

http://intracom.hq-ac.prv/hrib-dirh/fw/common/fpt-agreements/fpt-agreements.shtml

If the officer determines that the job offer is not consistent with the terms of a Temporary Foreign Worker Annex, a negative LMO decision under section.203(1)(*c*) must be issued.

Note: To date, no annex has identified the live-in caregiver occupation for a possible FPT pilot or exemption. NHQ will inform the Centre of Specialisation (CoS) should there be a change.

5. LCP-SPECIFIC FACTORS

5.1 The foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision - section 203(1)(d)(i)

Definitions

- A **child** is defined as being a person **under 18 years of age (i.e., before he/she reaches the age of 18)**.
- A **senior** is defined as being a person **65 years of age or older**.
- A **disabled person** is a person who is physically or mentally impaired, or is lacking one or more physical or mental capacities, as per the attestation of a medical doctor.

As per the IRPR, officers must also ensure that the live-in caregiver resides in a private home (i.e., the household(s) where care is to be provided). In addition, they must ascertain that there is a designated individual(s) for whom the caregiver will provide care who is a child, a senior or a disabled person. If these two criteria are not met, the job offer would not meet the regulatory definition of a live-in caregiver and the employer(s) must instead apply for an LMO under the *Pilot Project for Occupations Requiring Lower Levels of Formal Training.*

An LMO application form missing such information is considered incomplete and the officer must contact the employer(s) to determine the type of care and obtain associated proof (see below).

Officers are reminded that the *type* of care permitted under IRPR (i.e. child, senior and disabled) is specific and inflexible. Employers of live-in caregivers are required to detail the duties of the position on the LMO application and the employment contract.

In their assessment, officers must pay particular attention to the “nature/type of care” on the LMO application and the duties associated with the position, and compare them with any other documents submitted by the employer (e.g. contract, advertisement’s job description).

Care which does not obviously fall under one or more of the three legislated categories of care (i.e., child, senior and disabled) should be refused/issued a negative LMO.

Proof of Care

All LCP employers are required to submit proof to substantiate the criteria under section 203(1)(d)(i). This is a mandatory requirement that must accompany all LMO applications under LCP. Regular (uncertified) photocopies will be accepted as proof.

Child Care

Biological or adoptive parents in need of live-in child care must submit one of the following with their LCP application:

- A *Certificate of Live Birth* or a *Long-Form Birth Certificate* (not the wallet sized Birth Certificate) for each child for whom child care is sought. The birth certificate or live birth document must show the date of birth of the child and the names of the parent(s). **The name of one of the parents must match the name of the employer(s) on the LMO application**.

- Official adoption documents showing the name of the adoptive parent(s) who has (have) parental custody of the child. The name of the parent(s) must correspond with the name of the employer(s) on the LMO application.

- Official proof of guardianship. (e.g., letter from a Provincial agency or a notarized letter are examples of official documents)

- If none of the above documents are available, the employer must provide another official government issued document demonstrating the relationship of child to parent (e.g. original Birth Certificate for children abroad).

- If the chid is not born a medical doctor's note confirming the pregnancy and due date of the child.

- If the employer submits a document in a language other than French or English, he/she must submit a certified translation.

As noted above, a child is defined as being a person under 18 years of age. Officers must ensure that the duration of the LMO and the contract are in line with this requirement and officers are advised to provide this information to CIC through FWS. For example, parents requesting an LMO for only one child who is 16 years old (and not disabled), should be issued an LMO for a 2-year duration maximum. After that time, this individual will be an adult and not meet this LCP factor.

An expecting woman, or a couple expecting, a child intending to hire a live-in caregiver may initiate the process and apply for an LMO before the birth of the child. However, the expecting mother must submit a medical doctor’s note confirming the pregnancy and expected **due date** of the child to satisfy the criterion obligated under IRPR. And, the pregnant mother must submit a long form birth certificate once the child is born. Officers are advised to inform CIC through the FWS (CIC Notes) that a birth certificate has been

required, and whether or not the parents have submitted it after the child's birth. Failure by parents to do so may result in a refusal by CIC to issue a work permit.

Disability Care

Employers are required to submit a medical doctor's note. This Medical Disability Certificate, signed by a Canadian medical doctor, should constitute *proof* that the individual (themselves or a family member) for whom the employer(s) requires a live-in caregiver is a disabled person. This Medical certificate should not specify the nature of the disability, but rather should serve as an official attestation from a medical doctor that the person requiring care is disabled. A doctor's note could be accepted instead of the Medical Certificate template provided all relevant information is included in it.

Officers should not evaluate the nature of the disability but rather accept the medical note as sufficient to satisfy the requirement for care under subparagraph 203(1)(d)(i).

Senior Care

Under this criterion, employers are required to demonstrate that the live-in caregiver will provide senior home support care. Employers must provide documentary proof with one of the following:

- A government-issued senior citizen card proving that the recipient of care is 65 years of age or older at the time of application;
- A birth certificate showing the date of birth of the senior person for whom care will be provided;
- A passport issued by the Government of Canada or another foreign government. If the passport is not in either official language, it must be accompanied by a certified translation;
- An Old Age Security card (which does not have the date of birth on it, but the process to obtain one is sufficiently rigorous to ensure that the person is 65 and over); OR
- Any other official government document showing the date of birth of the senior in need of care.
- Only one type of care needs to be proven in a case of a child/senior with a disability.

5.2 The employer will provide adequate furnished and private accommodations in the household - section 203(1)(d)(ii)

This section provides guidance to officers on how to assess the requirement of accommodations required under LCP.

Accommodations, for the purpose of this directive, are a suitable private, furnished, habitable room in the home where care takes place. Such accommodations are used for living and sleeping purposes, and exclude bathrooms, toilet compartments, halls, hallways, storage or any utility spaces and similar areas. In most jurisdictions, accommodations under LCP are governed by standards related to "room & board". Provincial regulations vary concerning the maximum rate that can be charged to a live-in caregiver for room and for board.

The primary intent of an accommodations assessment is to confirm the employer's ability to meet the minimum accommodations requirements under LCP.

Accommodations provisions under LCP must be above and beyond temporary accommodations arrangements. They must allow a caregiver to comfortably perform his/her duties and to live in a manner in keeping with generally accepted Canadian standards. Therefore, officers must ensure that the accommodations provisions are permanent in nature for the duration of the job offer.

In cases of child care where parents are separated or divorced and where custody of the children is shared, officers must assess both parents' ability to meet the minimum accommodations requirements under LCP if the caregiver will be required to perform duties in both locations. In such cases, both parents will have to fill-in the template Live-in Caregiver Room (Bedroom) Description and this even if

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only one of the parents is acting as the employer (i.e., in situations where only one parent is signatory to the LMO application and to the contract).

Note: As part of the assessment of the work permit of the live-in caregiver, CIC verifies that the address and accommodations provided by the employer to the Caregiver have not changed since the time of the employer's LMO application.

In assessing accommodations under LCP, officers must ensure that the accommodations meet the requirements below. If any of these requirements are not fulfilled, the officer must issue a negative LMO.

1. **"Accommodations in the Household"**: As per the amended IRPR, the accommodations provided *must* be *inside* the premises where the caregiver will work. This is a regulatory requirement HRSDC cannot waive. Accommodations provisions outside of the home (e.g. a trailer, a heated garage or a shed adjacent to the employer's house) *do not* satisfy the accommodations requirement under LCP.

2. **"Adequate Accommodations"**: Employers of live-in caregivers must ensure that the accommodations provided are adequate, which is defined as "the availability of room space for sleeping purposes".

   The basic test for adequate accommodations is that the employer's dwelling must allow for the living arrangements of an additional person. In other words, no overcrowding should be generated after an employer provides a caregiver with accommodations. If the description of the accommodation provided by the employer does not seem adequate, Officer must seek clarification from the employer.

3. **"Furnished Accommodations"**: Employers of live-in caregivers must provide accommodations containing basic furnishings that allow for human habitation (i.e. bed and linens, closet and other storage, finished walls and floor, etc). The basic test for assessing furnished accommodations is to distinguish between an essential furnishing and one that is nice–to-have. For example, a bed is an essential furnishing, finished walls and floor are essential; however, a TV set or internet connection is not. If in doubt about the employer's furnished accommodations, officers must conduct further fact-finding with the employer.

4. **"Private Accommodations"**: Employers of live-in caregivers must provide safe accommodations with securable window(s) and door(s) that can be locked from inside.

Officers must assess the contract and the Live-in Caregiver Room (Bedroom) Description. They must also ensure that the employer attested in the LMO application to providing accommodations that are private, adequate, furnished and in the household. An employer's attestation, which has been added in the LMO application, states the following:

> *I/we will provide a suitable furnished private room with a lock that provides adequate and suitable living and sleeping facilities*

Officers should come to a decision on the accommodations requirement through an application-based assessment and the mandatory phone call. If these requirements are not met, a negative opinion should be issued.

- Employer(s) with more than One Residence

In cases where an employer has more than one residence (e.g. cottage), the same accommodations requirements above apply to each residence.

5.3 The employer has sufficient financial resources to pay the foreign national the wages that are offered to the foreign national - section 203(1)(d)(iii)

Under the amended IRPR, officers have the authority to assess the ability of the employer(s) to pay the caregiver wages for the duration of the work contract. This financial assessment is designed to prevent employer(s) who are obviously unable to meet the financial obligations of the LCP from using the program. Officers must ensure that their assessment yields a clear picture of the finances of the employer(s) to be able to render an objective and defendable decision.

In order to determine whether or not the employer(s) has the financial resources to fulfill their contract with the live-in caregiver, the officer must:

- evaluate the mandatory employer-employee contract and ensure that the attestation is signed;
- use the before-tax declared income of the employer(s) as reported in the Notice of Assessment (see below). When there is more than one employer, add the individual before-tax declared income, and use this total for the calculation of the financial capacity of the employer(s);
- build a valid estimate on the yearly wages the caregiver will make, using the hourly wage rate and the number of hours of work per week indicated on the contract. Officers must take into account provincial labour standards, when applicable, to ensure the information provided meet the provincial requirements;
- Determine the Low before-tax Income Cut Off (LICO) for the family size (the contract provides information on the number of household members) and location (see Annex 1 for LICO table)

Documents required for the assessment of the financial ability to hire a full-time caregiver

Employer(s) must submit financial proof to demonstrate the ability of the household to pay the wages of the live-in caregiver at the time of the LMO application. In some situations, such as separate/divorced parents or family members looking after their senior parents, two individuals might be acting as employers, both signing the LMO application form and the employment contract. In these situations, both employers (e.g., the combined salary of siblings or close relatives) must submit financial documents demonstrating their capacity to pay the wages of the worker.

Proof of financial ability to hire a full-time live-in caregiver refers to declared income for the last year of the private household/employers or in other cases the declared income of the person(s) paying the wages of the live-in caregiver. Any LMO applications missing this documentation will be considered incomplete **and failure on the part of the employer(s) to satisfy this request will result in a negative LMO.**

Employer's income can come in several forms such as employment earnings, investment income, disability benefits, pension income, employment insurance benefits, CPP/QPP/OAS benefits, social assistance, financial assistance from family members or some combination of the above. It is important to include all sources of income of the employer(s) when evaluating their capability to pay live-in caregiver wages. The mandatory "Notice of Assessment", a document provided by the Canada Revenue Agency (CRA), gives information on any tax payer's declared income for the previous year. Additional document(s) may be requested during mandatory phone call if the Notice of Assessment does not show a high enough income (e.g. bank statement, recent pay stubs, employment contract, etc.).

- **Notice of Assessment**

Caregiver employers must submit the Notice of Assessment, which is a taxation document issued automatically by the Canada Revenue Agency (CRA) to any person who files Canadian taxes. The Notice of Assessment provides information on declared income from a variety of sources, e.g., employment, interest from personal savings, EI, CPP/QPP, CCTB, student loans, declared investment, Old Age Security, social assistance, and pension income. It reflects an individual's, name, social insurance number (which must be blackened out by the employer) and current address on file with CRA as of that tax year.

Providing a Notice of Assessment with the LMO application is mandatory for all employers who are eligible to have filed Canadian taxes for the previous tax year. However, there might be employers who cannot obtain the Notice of Assessment for the previous tax year (e.g., new resident in Canada, diplomats, etc). If an employer has not filed taxes during a previous calendar year, he/she should be asked to provide bank statements but as it may not be sufficient to prove his/her financial resources, any other official proof of income to substantiate being able to pay the caregiver's wages (such as pay stubs, employment contract, etc.) may be required.

- **Personal Savings**

Employers who have a low income (e.g., CPP) but who can rely on personal savings will need to provide other documentation establishing their capacity to hire a live-in caregiver for the duration of the employment (as per contract). These employers must submit bank-stamped statements, financial certificates or other sources of income (e.g. investment, rental) as proof of their ability to pay their caregivers. As a general rule, only available funds at the time of assessment will be considered. "Locked-in" investments cannot be taken into consideration to determine the employer's ability to pay. Nevertheless, in the case of an elderly person that relies on "locked-in" investments (RRSP) becoming available to pay for live-in caregiver wages, these could be taken into consideration to determine financial capacity.

Social Assistance, Self-managed Care, Disability Assistance

Social assistance generally refers to financial benefits provided to a person by a government authority under a provincial/territorial or federal programs.

The definition of a home care dwelling is an independent living or care facility, where home care is "self-managed." At times, an employer receives funds directly from external sources (sometimes a provincial government) for the purchase of home support services (e.g. seniors or disabled persons), including hiring home support workers.

Disability assistance means any benefit received through Canada's Pension Plan, private disability pensions and/or long or short-term disability insurance benefits.

The financial proof of an employer living in a self-care facility and who is on financial assistance from an external source (e.g. provincial/municipal agency), or an employer on disability assistance must be assessed in the same manner as any other employer.

Note: *The live-in caregiver Labour Market Opinion Application reminds employers that their financial information regarding proof of financial ability is treated with the utmost confidentiality and is not shared with the prospective caregiver.*

Employers are also advised to blacken out their Social Insurance Number (SIN) or any account number or identifier from the personal financial documents submitted to HRSDC/Service Canada. Should employers not blacken out this information, it is program officers' responsibility to do so.

Calculating the Financial Ability of the Employer(s) to Pay Caregiver Wages

To calculate the financial ability of the employer to pay caregiver wages, officers should use the before-tax Low Income Cut-Off (LICO) as a benchmark to determine the minimum required income level for employers wishing to hire live-in caregivers. LICO is supplied and updated by Statistics Canada.

LICO is the income threshold where a family is likely to spend 20% more of its income on food, shelter and clothing than the average family, leaving less income available for other expenses such as health, education, transportation and recreation. LICOs are calculated for families and communities of different sizes. It varies with the number of family members, capped at seven. It also distinguishes among five

different-sized urban and rural communities. See the table (also copied in Annex A) "**Low income before tax cut-offs (1992 base) 20010**" on Statistics Canada Website at the following address: http://www.statcan.gc.ca/pub/75f0002m/2011002/tbl/tbl02-eng.htm

LICO is a useful tool to assist Officers in evaluating the financial capacity of the employer(s) to pay the wages to the live-in caregiver. It does not however provide the complete information on the financial capacity of the employer(s) wishing to hire a caregiver, as it is does not take into account details regarding their level of expenses (e.g. mortgage or renting or debts, etc.). It should be used as a guide for assessing this factor, and Officers should complement the information, when necessary, during the mandatory phone call.

The assessment of the financial capacity of the employer(s) compares the combined before-tax income of the employer(s) with the Statistics Canada LICO information according to the family size (adults and any family dependents in the household) and the location of the household (rural, small, medium or large urban areas), using this information to evaluate whether the employer(s) has the financial capacity to pay the expected annual earnings of the live-in caregiver

The purpose of doing this assessment is to evaluate if the employer(s) has an income that allows them to pay the wages of a live-in caregiver without having their own revenue falling below the Low-Income Cut-Off. Officers must be satisfied that the employer(s) have an income that allows them to pay the wages of the live-in caregiver while meeting (but not falling below) the "Low-Income before tax Cut-Offs" for their family size and location. However, if an officer determines that the remaining income of an employer (i.e., once the wages paid to the live-in caregiver are deducted from their income) falls below the LICO for their family size and location, then a negative LMO should be issued. In this type of situations, it would appear that the employer(s) cannot afford to pay the wages of a full time live-in caregiver.

After deducting the annual salary of the caregiver and deducting the allowable LICO for the number of persons in the family from the declared income of the household/employer(s), the resulting sum **MUST NOT be negative.** (*See examples below*).

"Example 1"

TOTAL declared combined income of employer(s), based on Notice of Assessment…$107,970
MINUS Current LICO for 5 (i.e. number of persons in the employer's household, large urban area)…$47,710
MINUS Projected annual salary of caregiver based on LMO and contract………….$20,592

EQUALS Surplus (or Shortfall) ……………………………… Surplus: + $39,668

The "surplus" should satisfy an officer that the employer has the financial capacity to pay the wages of the live-in caregiver

"Example 2"

TOTAL declared combined income of employer(s), based on Notice of Assessment .$62,550
MINUS Current LICO for 5 (i.e. number of persons in the employer's household, large urban area)…$47,710
MINUS Projected annual salary of caregiver based on LMO and contract………….$20,592

EQUALS Surplus (or Shortfall) …………………………………Shortfall: - $5,752

The "shortfall" indicates that the employer(s) does not appear to have the financial capacity to pay the wages of the live-in caregiver, as their income is not sufficient to afford the payment of a salary to the caregiver.

"Example 3"

TOTAL declared combined income of employer(s), based on Notice of Assessment….$69,500
MINUS Current LICO for 5 (i.e. number of persons in the employer's household, large urban area)…$47,710
MINUS Projected annual salary of caregiver based on LMO and contract………….$20,592

EQUALS Surplus (or Shortfall) …………………………………Surplus: + $1,198

In this situation, the "surplus" is rather weak which may bring one to question the employer(s)' capacity to pay the wages of the caregiver.

In situations where the surplus is low (e.g. less than $10,000), Officers should seek clarification during the mandatory phone call with the employer(s) to get a better idea of his financial situation. There might be situations where, despite a low annual income, employers (senior people for example) have a low level of expenses (e.g. mortgage paid, no debts, no car, etc.) This combined with the fact that the live-in caregiver would pay for her accommodations, might indicate that the employer(s) has an income that is sufficient to pay the annual salary of a live-in caregiver.

ANNEX A

Table 2

Low income cut-offs (1992 base) before tax (2010)[2]

Modified on December 9, 2011

Size of family unit	Community size				
	Rural areas	Urban areas			
		Less than 30,000[1]	30,000 to 99,999	100,000 to 499,999	500,000 and over
	Current dollars				
2010					
1 person	15,583	17,729	19,375	19,496	22,637
2 persons	19,400	22,070	24,120	24,269	28,182
3 persons	23,849	27,132	29,652	29,836	34,646
4 persons	28,957	32,943	36,003	36,226	42,065
5 persons	32,842	37,363	40,833	41,086	47,710
6 persons	37,041	42,140	46,054	46,339	53,808
7 or more persons	41,240	46,916	51,274	51,591	59,907

[2] Source: Statistics Canada http://www.statcan.gc.ca/pub/75f0002m/2011002/tbl/tbl02-eng.htm

Section 3.5.5.1 – Step 4 (a): Assessing the six labour market impact factors on LMO applications

When assessing an application for a LMO, TFWP officers consider six labour market factors, identified in Section 203(3) of the IRPR, to determine what impact the employment of the foreign worker is likely to have on the Canadian labour market. Service Canada officers should not consider the individual factors in isolation when forming their opinions. An employer can receive a neutral or positive LMO even if not all factors are positive or neutral.

The six factors are as follows:

1. Whether the employment of the foreign worker is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;
2. Whether the employment of the foreign worker is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;
3. Whether the employment of the foreign worker is likely to fill a labour shortage;
4. Whether the wages offered to the foreign worker are consistent with the prevailing wage rate for the occupation and region(s) where the worker will be employed and the working conditions meet generally accepted Canadian standards;
5. Whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents; and
6. Whether the employment of the foreign worker is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute.

TFWP officers assess both straightforward, measurable criteria such as wages and working conditions and harder-to-measure benefits such as skills transfer and job retention for Canadians. Within the assessment of the six labour market factors, there may be a logical sequence as some factors may be simpler to assess than others. However, if the employer fails to meet the requirements of the labour dispute factor, the wages/working conditions factor, or the recruitment factor (advertising); generally a negative opinion will be issued.

The assessment of the six labour market factors differs from the assessment of genuineness and STS. Unlike the six labour market factors, a failure of only one of the factors of genuineness [section 203(1)(a)] or of STS [section 203(1)(e)] will result in a negative opinion.

Section 3.5.5.1.1 – Direct job creation or retention of Canadians/permanent residents

Direct job creation or retention of Canadians/permanent residents means if you bring in this foreign worker it will directly increase the number of new jobs or retain Canadians/permanent residents who otherwise would be laid off or dismissed.

If applicable, employers who had previously indicated on an LMO (or, in some cases, submitted an HR Plan) that the hiring of a TFW would result in job creation and/or retention could be asked to demonstrate whether the hiring of the TFW did, in fact, create job opportunities and/or whether the number or nature of the jobs to be created was met.

Section 3.5.5.1.2 – Transfer of skills and or knowledge

When it has been identified on a LMO application that the job offer will create a transfer of skills and/or knowledge to Canadians/permanent residents, then the Program Officer will have to note it in the FWS.

If applicable, employers who had previously indicated on an LMO (or, in some cases, submitted an HR Plan) that the hiring of a TFW will result in a transfer of skills and/or knowledge could be asked to demonstrate whether this transfer actually occurred and if the TFWs unique skills/knowledge did, in fact, benefit the company, as well as why that TFWs continued presence is required.

Section 3.5.5.1.3.1 – Assessment of the Record of Employment Factor on Labour Market Opinion Applications

Purpose:

The purpose of this directive is to provide guidance to Human Resources and Skills Development Canada (HRSDC)/Service Canada staff on the assessment of the Record of Employment (ROE) when issuing a labour market opinion (LMO).

Employer information from the ROE will be provided to the Temporary Foreign Worker Program (TFWP) to help indicate to staff possible patterns of when employers are laying off Canadians and attempting to hire TFWs for the same job in the same location.

NOTE:
This directive does not apply to LMO applications assessed under the Live-in Caregiver Program (LCP), the Seasonal Agricultural Worker Program (SAWP), or for positions located in the province of Quebec.

Authority:

The TFWP operates under the authority of the *Immigration and Refugee Protection Act* (IRPA) and the *Immigration and Refugee Protection Regulations* (IRPR). The authority relevant to this directive is found in Section 203(3)(c) of the IRPR:

> *An opinion provided by the Department of Human Resources and Skills Development with respect to the matters referred to in subsection (1)(b) shall be based on the following factors:*
>
> > *(c) whether the employment of the foreign national is likely to fill a labour shortage;*

Background:

To meet obligations of the Connecting Canadians with Available Jobs (CCAJ) initiative, there is a requirement for the TFWP to ensure that employers are making efforts to hire Canadians before hiring temporary foreign workers (TFWs).

The purpose of the CCAJ initiative is to support the goals and objectives outlined in the Economic Action Plan 2012 (Budget 2012) of ensuring jobs, growth and long-term prosperity. To ensure that the Employment Insurance Program (EIP) remains effective and efficient in support of job creation and economic growth, the CCAJ initiative contains a number of targeted changes to make Employment Insurance (EI) a more efficient program that promotes job creation, provides incentives to work, supports unemployed Canadians and quickly connects people to jobs.

Guidelines:

Section A - Operational ROE Assessment Instructions

The ROE check for LMO applications under the Stream for Higher-skilled Occupations is part of the triage process which helps filter the applications into the appropriate assessment stream.

Under the Stream for Lower-skilled Occupations (with the exception of requests under the LCP and the SAWP), the ROE check must take place during Step 4 *R203(1)(b) – Labour market impact: Assess existing 6 factors*.

Step 1: Verify if the employer has any recent ROE activity

HRSDC/Service Canada staff must refer to the *'Record of Employment/Employment Insurance/EI Interface' page* in the Foreign Worker System (FWS), to check if the employer listed on the LMO application, has issued any ROEs in the 90 days prior to submitting their application. Any ROEs issued by an employer 90 days prior to the date the LMO application is submitted to Service Canada will not be considered as part of the LMO assessment.

The staff will then be able to click on the *'Check ROE'* button, in the FWS. This action will produce a page with fields where the user can enter the date limits to query the ROE database for possible records. The look back date entered should be 90 days prior to the date the LMO application was received by Service Canada.

The FWS will display a maximum of 10 ROEs, along with an indication of the total number of ROEs for the time period specified (up to a maximum of 200 records). To verify all ROE activity for the employer, HRSDC/Service Canada staff must select the *'Display all'* button in the system.

- If no ROEs are found for higher-skilled positions, continue with the triage process for the LMO application.
- If no ROEs are found for lower-skilled positions, proceed to Step 4 of the Labour Market Assessment for the LMO application.
- If ROEs are identified for the employer, proceed to Section A - Step 2.

Step 2: Verify if the ROE includes the occupational title

HRSDC/Service Canada staff must review the occupation title field to confirm whether or not it was included in the ROE. Staff should note that the occupation title field on the ROE is optional, and therefore not always available.

- If the occupation title is included on the ROE and that the occupation referred to is NOT the same as or similar to the one identified on the LMO application, proceed to Section A - step 5.
- If the occupation title is included on the ROE and that the occupation referred to is the same as or similar to the one identified on the LMO application, proceed to Section A - Step 3.
- If no occupation title is included on the ROE, proceed directly to Section B.

The occupation title on the ROE, if included, will not be based on National Occupational Classification (NOC) codes, but simply on a job title. However, the NOC coding system will be used to determine if the occupation is similar to that requested on the LMO – if it falls within skill level D, a match would be considered at the NOC 3-digit level. The reason for considering level D occupations at the NOC 3-digit level is because there is minimal formal training required and workers can easily transfer from job to job at that skill level. For NOC skill type 0, and skill levels A, B and C, the occupation on the ROE has to be the same as on the LMO (NOC 4-digit level).

Step 3: Verify if the employer's address on the LMO application and ROE match

HRSDC/Service Canada staff must verify whether the employer's mailing address indicated on the ROE matches the location of work specified on the employer's LMO application form.

To do so, staff must cross reference the employer's name, mailing address and postal code of the location of work, as specified on the LMO application, with the employer's name, mailing address and postal code indicated on the ROE.

These addresses often do not match (e.g. the employer's mailing address on the ROE often represents the HR location of an organization that uses one business number across multiple divisions). In addition, the employer may have multiple work locations which may explain a discrepancy in addresses.

- If the employer's mailing address on the ROE does NOT match the location of work on the LMO application, proceed directly to Section B.

- If the employer's mailing address on the ROE matches the location of work as indicated on the LMO application, proceed to Section A - Step 4.

Step 4: Verify if the employer has an acceptable reason for issuing an ROE

HRSDC/Service Canada staff must determine the rationale as to why the employer has ROE activity by reviewing the reason provided on the ROE. For more information on reasons for issuing an ROE, visit: http://www.servicecanada.gc.ca/eng/ei/employers/roe_guide_chp2.shtml#block-16

If the employer issued an ROE to a worker for one of the following reasons, proceed to Section A - Step 5.

- Quit
- Retirement

If the employer issued an ROE to a worker for one of the following reasons, proceed directly to Section B.

- Shortage of work
- Strike
- Lockout
- Work Sharing
- End of Season
- End of contract
- End of casual/part-time work
- End of school year
- Temporary shutdown of operations
- Permanent shutdown of operations
- Position eliminated/redundant
- Company restructuring
- Employer bankruptcy or receivership
- Dismissal
- Maternity
- Leave of absence
- Apprenticeship training
- Return to school
- Illness or injury
- Parental

- Compassionate care
- Other

Step 5: Proceed with LMO assessment

For higher-skilled occupations, continue with the triage process.

For lower-skilled occupations, continue with the LMO assessment.

Section B - Contacting Employers to Verify ROE Activity

At this point, additional information from the employers is required regarding their ROE activity in order to proceed with the LMO assessment.

HRSDC/Service Canada staff should contact the employer to obtain any ROE information that may be missing and/or has raised additional concerns. If during this conversation, staff receive unsolicited information from the employer, which conflicts with information provided on the LMO application form, the new information may be used in the LMO assessment and recorded in the FWS.

Step 1: Occupational title verification

Scenario A - If the occupation title is included on the ROE and that the occupation referred to is NOT the same as or similar to the one requested on the LMO application, proceed to Section B - Step 4.

Scenario B - If the occupational title is included on the ROE and that the occupation referred to is the same as or similar to the one requested on the LMO application, proceed to Section B - Step 2.

Scenario C- If the occupation is NOT included on the ROE, HRSDC/Service Canada staff must contact the employer to seek clarification regarding the occupation.

- If the ROE does NOT pertain to the same or similar occupation as requested on the LMO application, proceed to Section B - Step 4.
- If the ROE pertains to the same or similar occupation as requested on the LMO application, proceed to Section B - Step 2.

Step 2: Work site verification

Scenario A - If the employer's mailing address on the ROE matches the location of work as indicated on the LMO application, proceed to Section B - Step 3.

Scenario B - If the work location indicated on the LMO application is different from the mailing address identified on the ROE, HRSDC/Service Canada staff must contact the employer to determine to what work location the ROE pertains.

- If the ROE record pertains to the same work site as indicated on the LMO application form, proceed to Section B – Step 3.
- If the ROE record pertains to a different work site than that indicated on the LMO application, proceed to Section B – Step 4.

Step 3: Verify if the employer has an acceptable reason for issuing an ROE

Scenario A - If the employer issued an ROE to a worker for one of the following reasons proceed to Section B - Step 4.

- Quit
- Retirement

Scenario B - If the employer issued the an ROE to a worker for any of the following reasons, HRSDC/Service Canada staff must contact the employer to seek clarification as to why a TFW is required, given the fact that an ROE has been issued by the employer.

- Shortage of work
- Strike
- Lockout
- Work Sharing
- End of Season
- End of contract
- End of casual/part-time work
- End of school year
- Temporary shutdown of operations
- Permanent shutdown of operations
- Position eliminated/redundant
- Company restructuring
- Employer bankruptcy or receivership
- Dismissal
- Maternity
- Leave of absence
- Apprenticeship training
- Return to school
- Illness or injury
- Parental
- Compassionate care
- Other

- If HRSDC/Service Canada staff is satisfied with the employer's explanation for the issuance of an ROE, (e.g. TFWs will not be replacing Canadians), proceed to Step 4.

- If HRSDC/Service Canada staff has a reason to believe the employer issued an ROE in order to replace a Canadian worker with a TFW, a negative LMO must be issued under 203(3)(c) of the IRPR.

Considerations for Scenario B:

<u>Shortage of Work</u>

An employer, who issues an ROE indicating a "shortage of work", will be asked by HRSDC/Service Canada staff to provide more information to better determine the specific reason for issuing an ROE to a worker. The "shortage of work" indicator could include the following sub-categories:

- Strike
- Lockout
- Work Sharing
- End of contract

- End of casual/part-time work
- End of school year
- Temporary shutdown of operations
- Permanent shutdown of operations
- Position eliminated/redundant
- Company restructuring
- Employer bankruptcy or receivership

If the reason for “shortage of work” is strike, lockout or Work Sharing, HRSDC/Service Canada staff must ask the employer for the current status, and ask whether or not efforts were made to rehire the Canadian worker laid off or other Canadian workers.

Maternity Leave, Leave of Absence, Parental or Compassionate Care

An employer issuing an ROE for the purposes of maternity leave, leave of absence, parental or compassionate care, will be asked by HRSDC/Service Canada staff if whether the Canadian worker intends to return to the same work location. If so, the staff must ensure that the duration of employment on the LMO application matches the amount of time the Canadian worker is away on leave.

Step 4: Proceed with LMO assessment

For higher-skilled occupations, continue with the triage process.

For lower-skilled occupations, continue with the LMO assessment.

NOTE:

Recording Information in the Foreign Worker System

Only employer information from the ROE used as part of the rationale for issuing a negative LMO can be documented in the FWS. The reason for the refusal must be recorded in the *'Notes to file'* field in the FWS. In particular, the ROE serial number or the ROE serial number amended or replaced must be recorded to link the specific ROE used in the decision of issuing a negative LMO.

Employer information from the ROE will not be permanently transferred from the ROE database to the FWS. Due to the privacy limitations of the ROE information sharing agreement, there are no authorities to disclose this information to any other internal, federal, provincial/territorial partners with whom the Program has information sharing agreements.

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Section 3.5.5.1.5.1 – Process for Requesting an Advertising Requirement Variation

The Minimum Advertising Requirements policy which came into effect on January 1, 2009, provides that limited variations may be made to reflect specific regional and/or occupation specific circumstances. The variation in advertising requirements can range from complete exemption (i.e. no advertising required) to differences in the duration and/or location of the advertisement (e.g. advertising for three weeks instead of two, advertising in locations other than job bank). Circumstances under which the advertising requirements may differ from the general Minimum Advertising Requirements policy are discussed below.

Recognized Situational Advertising Variations

Regional Request from Service Canada to NHQ

If a Service Canada Region wishes to request a variation from the minimum advertising requirements, the Service Canada region must provide, in writing, a specific description of the proposed variation, a rationale for the request and identify any negative labour market impacts that a variation may have in the region as well as any negative impacts that may occur if the variation is not made (see Advertising Variation Request Form).

Please Note: Variations will only be considered to address specific occupational and/or regional circumstances. Changes will not be made for employer convenience.

To request a variation from the minimum advertising requirements, a Regional Consultant/Manager from the Service Canada region making the request must complete the Advertising Variation Request Form template. Once completed, the form must be sent to the NHQ Inbox (NC-TFWP_PTET-INBOX-GD) with "Advertising Variation Request for 'Name of Region'" in the subject line (e.g. Advertising Variation Request for Saskatchewan).

A decision on the variation request will be made by the Director of PDI and/or the Director of PPD (as appropriate), and will be sent to the Service Canada region within 10 business days. A copy of the decision will be filed by NHQ for documentation purposes. The approved variations will be listed on the TFWP Internet site (Temporary Foreign Worker Program). HRSDC reserves the right to review and change any variations, as needed.

For reporting purposes, NHQ will create a "Regional Indicator" on the FWS to track the files to which advertising variations are being applied (i.e. Ad Variation). It will be the responsibility of each region to ensure that the Foreign Worker Officers attach the indicator to the appropriate files and to monitor results, for future reporting and tracking purposes.

Requesting an Advertising Variation – Things to Consider

When developing the case to request a variation from the Minimum Advertising Requirements policy, the Regional Consultant/Manager must provide a detailed description of the situation and the variation being requested. The request should be developed taking the following items into consideration:

a) solid evidence/objective data (labour market information at the local, regional or national level, including employer/sectoral surveys, employer-based research, provincial gov. studies/policy documents;

b) relevant contextual information such as:
- Any known past history of alternative recruitment requirements in the requested area and/or occupation and the reasons provided at the time.
- Existence of related policies at the federal, provincial, or municipal level.
- Program integrity considerations in light of documented evidence/known events.
- Federal, provincial and municipal political considerations.
- Have particular stakeholders made representation on a preferred approach? Who and what are they proposing as the ideal outcome?

c) potential labour market impact of not granting the variation whether in quantitative and/or qualitative terms, its relative importance in the region, stakeholders' reactions, etc.;
d) description of the proposed recruitment requirements and how it would be assessed, if the variation were granted;
e) how is the proposal adequately addressing the identified needs? and
f) any other relevant information the region considers important to be considered.

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Section 3.5.5.1.5.3 – Training Canadians/permanent residents for the position to be filled by the foreign worker

s.16(2)

Section 203(e) of the Regulations allows for HRSDC/Service Canada to take into account efforts the employer has made or will make to train, in arriving at a LMO.

Although there may be instances in which it is appropriate to require an employer to agree to undertake training of Canadians as a condition of issuing a confirmation, resolving the problem of systemic shortages in certain occupations does not usually lie within the control of individual employers. Such labour market problems require the involvement of a range of interveners, including governments and training and educational institutions, as well as the personal decisions of individuals. The TFWP is not an instrument for resolving such systemic problems.

Officers can encourage employers to train Canadians, but can only make this an absolute requirement in situations where there is structural support available to employers (such as a provincial government sectoral strategy for training).

In the absence of a clear coordinated strategy involving all the parties who have a role in addressing skills shortages, an individual employer should not be required to attempt to remedy a broad labour market problem as a condition of being able to hire a foreign worker.

In deciding whether to require an employer to undertake training of Canadians or to agree to train Canadians as a condition of issuing a confirmation, Advisors should take account of a number of considerations:

- the urgency of filling the position: if it has been established that there are no qualified Canadians readily available, an employer should not be required to delay filling the position in order to train a Canadian;
- the duration of the job: it is not reasonable to expect an employer to undertake to train Canadians for a short-term job. If the work recurs regularly the possibility of requiring training can be considered in light of the other factors discussed below; and
- whether it is within the capacity of an individual employer to provide or support the required training, including:
    - the nature and duration of the training or education required;
    - whether the employer can provide the training in the workplace;
    - the size of the business (businesses with fewer employees cannot afford to have people on training for extended periods; and
    - whether it is possible for an industry group to support employers in providing training opportunities for Canadians and permanent residents (bearing in mind that industry groups, sector councils, or unions are not themselves the employers and cannot make commitments on behalf of individual employers).

In conclusion, Officers should exercise caution in making a confirmation contingent on the employer's undertaking to provide training.

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Section 3.5.5.1.6 – Labour Dispute

Service Canada will not under any circumstances become involved with Labour Disputes.

A variety of situations may constitute a labour dispute. These situations, which often arise during collective agreement/contract negotiations between an employer and a union, may include: work stoppage, strikes, refusal to work, picketing, refusal to serve customers, a slowdown of work, demonstrations, withdrawal of services, strategic shutdown of premises, and lockouts.

The existence of a grievance between a union and an employer does not necessarily constitute a labour dispute, since many collective agreements contain provisions that allow their members to submit grievances against their employer to the union, and to have them dealt with in arbitration.

Employers are prohibited from using foreign workers to circumvent a legal work stoppage or to influence the outcome of a labour dispute. Therefore, if the entry of a foreign worker could reasonably be expected to affect the course or the outcome of a labour dispute, a negative LMO must be issued. In this case, the employer would be encourage to apply again once the dispute is resolved.

When assessing a LMO application, TFWP Officers consider whether:

- the foreign worker would be doing work that would normally be done by a striking employee;
- the foreign worker would be hired to replace a worker who is on strike; and
- the entry of the foreign worker would have an adverse affect on the settlement of the labour dispute.

Section 3.5.5.2 – Step 4 (b): Substantially the Same

Purpose:

The purpose of this directive is to define and to outline how HRSDC and Service Canada will assess whether or not a returning employer, in the two-year period preceding the request for a new LMO, provided wages, working conditions, and an occupation that were STS as the wages, working conditions, and occupation originally offered by the employer to the TFW.

STS ECR assessments are conducted at Step 4 (b) of the LMO process.

Step 1 – Verification that employer is not on CIC Ineligibility List
Step 2 – Verification of consistency with F-P/T agreements
Step 3 – Assessment of Genuineness
Step 4 – (a) Assessment of the six labour market factors
Step 4 – (b) STS ECR for returning employers – by attestation (Level I) or in-depth, document-based (Level II)

Authority:

The IRPR describes the three factors that HRSDC/Service Canada and CIC will consider in assessing whether the wages, working conditions, and occupation provided to the foreign national were STS as those originally offered by the employer and confirmed by HRSDC/Service Canada in the LMO Confirmation Letter and associated Annex and/or the work permit issued by CIC.

HRSDC/Service Canada's authority is found in section 203(1) (*e*):

> **203**. (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(*c*)(i) to (ii.1), an officer shall determine, on the basis of an opinion provided by the Department of Human Resources and Skills Development, if:
>
> (*e*) during the period beginning two years before the day on which the request for an opinion under subsection (2) is received by the Department of Human Resources and Skills Development and ending on the day that the application for the work permit is received by the Department,
>
> (i) the employer making the offer provided each foreign national employed by the employer with wages, working conditions and employment in an occupation that were substantially the same as the wages, working conditions and occupation set out in the employer's offer of employment to the foreign national, or
> (ii) in the case where the employer did not provide wages, working conditions or employment in an occupation that were substantially the same as offered, the failure to do so was justified in accordance with subsection (1.1).

The degree to which employers will be asked to demonstrate each factor (wages, working conditions and occupation) will depend on past history with the program and other risk factors.

Section 3.5.5.2.1 - Attestations

HRSDC/Service Canada recognizes that many employers will return with future LMO applications and would like to ensure that there is a quick and efficient way to identify those employers who have had previous LMOs. The LMO application form includes an attestation which reads:

> *Only answer this question if you employed a temporary foreign worker in the last two years. Did you provide all temporary foreign workers employed by you in the last two years with wages, working conditions and employment in an occupation that were substantially the same as those that were described in the job offer(s)?*
>
> *[ ] Yes, I have provided all temporary foreign workers employed by me in the last two years with substantially the same wages, working conditions, and occupation as described in the job offer(s).*
>
> *[ ] No, I have not provided all temporary foreign workers employed by me in the last two years with substantially the same wages, working conditions, and occupation as described in the job offer(s).*

This attestation is intended to serve as an operational indicator for Service Canada officers looking to establish whether the application is from a new or returning employer. By answering this question, the employer is indicating that they are indeed a returning employer.

For the purposes of STS, a returning employer is an employer who has employed TFWs during the two years leading up to their new LMO application.

Important note: According to HRSDC authority, documents may be requested from an employer **only for the period beginning two years before the day on which the request for an opinion is received**. Also, where required, the employer need only demonstrate justification or compensation for the same two year period.

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Section 3.5.5.2.6.2 - Dealing with Third Parties

During the course of conducting an STS ECR, a Service Canada officer should communicate with the employer to request documentation. First contact will always be made to the employer.

The Service Canada officer, however, may contact the third party to acquire documentation when directed to do so by the employer. Regardless of communications with a third party, the employer shall remain accountable for the findings of the STS ECR.

HRSDC and Service Canada reserve the right to contact an employer for additional fact-finding when the answer to a question cannot be obtained, or adequately obtained, by means of contacting the third party.

For more information, please see the operational directive pertaining to section 91 of the IRPA dealing with employer representation by a third party individual.

Section 3.5.5.2.6.3 - Employer Withdrawals

An employer may elect to withdraw their current LMO application.

s.16(2)

If the employer does withdraw their current LMO application the following notation should be made in the Notes to File field:

> "Employer selected for STS ECR pertaining to SF # XXXXXXX. Employer notified on (Year/Month/Day) and withdrew application on (Year/Month/Day)."

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Section 3.5.5.2.7.2 - Working Conditions

Service Canada officers are to request documentation to satisfy that working conditions were STS as per the LMO Confirmation Letter and associated Annex. A comprehensive list of working conditions to be assessed and documentation to be requested is found in section 3.5.5.2.13.1.

An employer should not alter working conditions as prescribed by legislation or regulations. However, changes to working conditions identified on the LMO Confirmation Letter and associated Annex that are not prescribed by law may be permitted if the employer can justify the change.

s.16(2)

The employer may not substitute any condition of employment required either by the TFWP or relevant legislation and regulations for another form of compensation. For instance, the substitution of worker transportation costs paid by the employer for free accommodation is not permitted.

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Section 3.5.5.2.8.1 - Justification

Where documents submitted by the employer indicate they have not fully respected the terms identified in a previous LMO Confirmation Letter and associated Annex, HRSDC/Service Canada must provide the employer with an opportunity to justify why they did not provide STS wages, working conditions or occupation detailed on previous LMOs before a negative LMO can be issued. The Service Canada officer must raise the opportunity to present justification to the employer and should not rely on the employer to raise a justification on their own.

A negative LMO would be issued if an employer is not willing to provide justification within the allotted time.

A list of acceptable justifications is found in section **203** (1.1) of IRPR:

(*a*) a change in federal or provincial law;

(*b*) a change to the provisions of a collective agreement;

(*c*) the implementation of measures by the employer in response to a dramatic change in economic conditions that directly affected the business of the employer, provided that the measures were not directed disproportionately at foreign nationals employed by the employer;

(*d*) an error in interpretation made in good faith by the employer with respect to its obligations to a foreign national, if the employer subsequently provided compensation - or if it was not possible to provide compensation made sufficient efforts to do so - to all foreign nationals who suffered a disadvantage as a result of the error;

(*e*) an unintentional accounting or administrative error made by the employer, if the employer subsequently provided compensation - or if it was not possible to provide compensation made sufficient efforts to do so - to all foreign nationals who suffered a disadvantage as a result of the error; or

(*f*) circumstances similar to those set out in paragraphs (*a*) to (*e*).

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Section 3.5.5.2.8.1.1 - Change in federal or provincial law

A change in federal or provincial law, including any changes in regulations, may explain why an employer is not providing STS wages, working conditions or occupation. The justification provided by the employer should take into account how that change has altered the provision of wages, working conditions and occupation.

The employer should be asked to provide reference to the specific law that altered the requirement currently being assessed as well as a narrative explaining the impact.

A change in law may explain a particular disadvantage to the TFW in comparison to the wages, working conditions or occupation initially offered. For instance, a change in the provincial minimum wage rate would justify a change in wages compared to those identified on the LMO Confirmation Letter and associated Annex.

Section 3.5.5.2.8.1.2 - Change in the provisions of a collective agreement

A change in a collective agreement may explain why an employer is not providing STS wages, working conditions or occupation. The justification provided by the employer should take into account how that change altered the provision of wages, working conditions and occupation.

The employer should be asked to provide reference to the provisions of the collective agreement that altered the requirement currently being assessed as well as narrative explaining the impact. For example, employers may provide a wage that varies from the wage detailed on the LMO Confirmation Letter and associated Annex if that wage is defined in an applicable collective agreement. Therefore, if the wages in a collective agreement changed after the opinion and/or work permit were issued, the employer would be justified in paying the TFW the wage according to the collective agreement.

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Section 3.5.5.2.8.1.3 - Implementation of measures due to change in economic conditions

A dramatic change in economic conditions that impact the employer's business may explain why an employer is not providing STS wages, working conditions or occupation. The justification provided by the employment should take into account how the change in economic conditions economic conditions altered the provision of wages, working conditions and occupation.

The employer should be asked to provide an explanation of which measures were undertaken and to what extent to explain variation in the wages, working conditions or occupation provided compared to those identified in the LMO Confirmation Letter and associated Annex.

For example, an employer experiencing declining business during poor economic conditions may need to reduce the pay and/or hours of its staff in order to remain financially viable. A change in economic conditions may also be industry specific. For example, implementation of new taxes or other administrative rules concerning a particular industry may have negative economic consequences for some employers. An employer that raises this argument in light of a finding that they did not provide STS wages, working conditions or occupation would be required to demonstrate that measures undertaken to address the economic situation were applied equally to TFWs and to Canadians/permanent residents.

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Section 3.5.5.2.11 - Ineligibility

A negative LMO based on a negative STS finding that the employer did not provide wages, working conditions, or employment in an occupation that are STS as offered and without justification or compensation, may result in CIC making a determination that the employer is ineligible to access the TFWP for two years.

If a finding of failure to provide wages, working conditions, or occupation that were STS is made, the authority to publicly identify the employer as ineligible to access the TFWP is found in section 203(5) and (6):

> 203(5) If an officer determines under subparagraph 200(1)(*c*)(ii.1) or paragraph (1)(*e*) that, during the period set out in paragraph (1)(*e*), an employer did not provide wages, working conditions or employment in an occupation that was substantially the same as offered and that the failure to do so was not justified in accordance with subsection (1.1), the Department shall notify the employer of that determination.
>
> 203(6) A list shall be maintained on the Department's website that sets out
> (a) the names and addresses of employers referred to in subsection (5); and
> (b) the date on which an employer was notified of the officer's determination under that subsection.

If HRSDC/Service Canada's determination is confirmed by CIC then the employer's name, address and period of ineligibility will be published as part of a list of ineligible employers posted on CIC's website. The purpose of this list is to notify TFWs, recruiters, and temporary residents on open work permits that an employer is not eligible to employ a foreign worker for a two year period. The information to be provided will be limited to that needed by foreign nationals to avoid accepting employment with that employer, including name, business address and the ineligibility start and end dates.

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Section 3.5.5.2.12 - Regional Considerations

A returning employer's previous offers of employment may not have the same province of job location as the new LMO application. In cases where the previous offer of employment involves an opinion issued by another Service Canada region, and thereby a different province or territory of job location, the officer should consult with the region that issued the previous opinion. As the officer conducts an STS ECR they may require the expertise of the region that issued the previous opinion in instances where the officer may not be familiar with the particular employment standards of that region.

A previous offer of employment may have had several work locations for a TFW. If locations are indicated in more than one province or territory, then the employer must demonstrate compliance in each of the provinces or territories in which the foreign national has worked.

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Section 3.5.5.2.13.2 – Information Sharing Agreements

Agreement	Status	Permissible	Non-permissible
CIC – Memorandum of Understanding	Signed in 2005 and updated in November 2009	Work permit information, ECR results, incoming complaints, revocations, and fraudulent activity.	Unsolicited information (i.e., complaints received by HRSDC), nor any info except where the issuance of an LMO is affected.
CRA – Memorandum of Understanding	Signed November 12, 2008	Verifies valid business number and employer/location details.	HRSDC does not share information around contributions owed to CRA.
Province of Alberta – Letter of Understanding	Signed February 28, 2009	Permits exchange of personal information, complaints, third party info, and administrative information for labour and immigration authorities.	ECR results unless an employer application is pending. Limited exchange of provincial compliance histories due to system issues.

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Section 3.5.5.2.13.3 – Federal/Provincial Employment Information

Jurisdiction	Minimum Wage	Standard Hours	Periods of Rest	Overtime	Time off in Lieu of Overtime	Averaging Agreements	General and Public Holidays	Vacation	Unpaid Leave	Record keeping
Federal	The minimum wage rate applicable in regard to employees under federal jurisdiction is the general adult minimum rate of the province or territory where the employee is usually employed.	8 in a day; 40 in a week 48 in a week maximum	1 day per week	1 ½ times reg. rate	No	Yes	9 public holiday days per year. Holiday pay is regular rate of wages + 1½ times regular rate for time worked. Must meet eligibility requirements.	2 weeks; 3 weeks after 6 consecutive years of employment. Vacation pay is 4% of annual wages; 6% after 6 years. (s.183) (s.184)	Maternity - 17 weeks Parental - 37 weeks Adoption - 37 weeks Family Responsibility – N/A Sick Leave – 12 weeks Bereavement – 3 days Compassionate Care – 8 weeks Reservist – N/A	
Alberta	$8.80 /hour effective 01-Apr-2009 ESR (s.9(c))	8 in a day; 44 in a week 12 consecutive hours in a day ESC (s.16)	8 hours between shifts. 1 day per week. ESC (s.17)(s.19)	1 ½ times reg. rate ESC (s.22)	Yes, overtime hours to be 'banked' and later taken off with pay, hour for hour, during regular working hours. Overtime hours can be banked for a period of up to 3 months. 'Banked' time not taken within the 3 month period must be paid out at a rate of 1.5 times the employees hourly wage rate. ESC (s.23)	Yes. ESC (s.20)	9 public holiday days per year. Holiday pay is average daily wage + 1½ times regular rate for hours worked; or regular rate for hours worked + paid day off Must meet eligibility requirements. ESC (s.25)(s.26)	2 weeks; 3 weeks after 5 consecutive years of employment. Vacation pay is 4% of annual wages; 6% after 6 years. Some exemptions do apply. ESC (s.34) (s.40)	Maternity - 15 weeks Parental – 37 weeks Adoption – 37 weeks Family Responsibility – N/A Sick Leave – N/A Bereavement – N/A Compassionate Care – N/A Reservist – N/A ESC (s.46) (s.50) (53.2)	Must be kept for a minimum 3 years from the date the record is made. In addition to keeping an employees name, address and date of birth, every employer must keep a record of an employees regular wage rate, overtime hours, earnings for each pay period (statement), deductions, vacation pay and holiday pay. ESC (s.14-15)
British Columbia	$8.00/hour effective 01-Nov-2001	8 in a day; 40 in a week	8 consecutive hours between shifts. 32 consecutive hours in a week. (s.36 (1)(2))	1 ½ or 2 times reg. rate (s.40)	Yes, employers and employees may create their own written overtime agreements. This agreement allows overtime hours to be 'banked' and later taken off with pay for a mutually agreed upon period, hour for hour, during regular working hours rather than being paid out in the regular pay period in which the hours are earned. Upon an employees request	Yes, to meet the need for flexibility in the workplace , the Employment Standards Act also allows employers and employees to enter into Averaging Agreements which permit hours of work to be averaged over a period of one, two, three or four weeks. In this case, employees may agree to work up to 12 hours in a day, averaging 40 hours a	9 public holiday days per year. Holiday pay is 1½ times regular wage for first 11 hours and 2 times regular wage for each additional hour as well as a paid day off. Must meet eligibility requirements.	2 weeks; 3 weeks after 5 consecutive years of employment. Vacation pay is 4% of total wages earned in the year of employment (if employee has completed at least 5 calendar days of employment); 6% after 5 consecutive years of employment. (s.57(1)) (s.58(1))	Maternity – 17 weeks Parental – 37 weeks Adoption – 37 weeks Family Responsibility – 5 days Sick Leave – N/A Bereavement – 3 days Compassionate Care – 8 weeks Reservist – N/A (s.50)(s.52) (s.52.1-2) (s.53)	Must be kept for a minimum of 2 years after the employment terminates. The employee's name, date of birth, occupation, telephone number and residential address; the date employment began; the employee's wage rate, whether paid hourly, on a salary basis or on a flat rate, piece rate, commission or other incentive basis; the hours worked by the employee on each day, regardless of whether the employee is paid on an hourly or

					the 'bank' may be closed and the employer must pay the outstanding balance to the employee. (s.42)	week, without being paid overtime. (s.37)	(s.45)			other basis: the benefits paid to the employee by the employer; the employee's gross and net wages for each pay period; each deduction made from the employee's wages and the reason for it; the dates of the statutory holidays taken by the employee and the amounts paid by the employer; the dates of the annual vacation taken by the employee, the amounts paid by the employer and the days and amounts owing; and how much money the employee has taken from the employee's time bank, how much remains, the amounts paid and dates taken. (s.28 (1)(2))
Manitoba	$9.00/hour effective 01-Oct-2009	8 in a day; 40 in a week (s.10)	24 consecutive hours in a week (s.45)	1 ½ times reg. rate	Yes, Employers and employees may create their own written overtime agreements which allow employees to 'bank' their overtime hours. In such a case, the employee is entitled to 1 ½ hours off work with regular pay during regular working hours. The 'banked' hours must be taken within 3 months of being earned. An employee may also request in writing that their employer close the 'bank' at which time the employer must pay the outstanding balance to the employee. (s.18 (1)(2)(3))	Yes, with a permit, the Manitoban Employment Standards Code allows employers to enter into Averaging Agreements which permit hours of work to be changed. Permits may be granted to qualified businesses but are not generally given to individual employees to accommodate "flex-time". Employers may apply to increase the daily hours in a 40-hour work week or to average the hours across a longer period. Under such an agreement an employee would only qualify for overtime pay if the average hour's worked per week during the Averaging Agreement exceeded 40	7 public holiday days per year. Holiday pay is regular wages plus 1½ times regular rate for hours worked. (s.23.1)	2 weeks; 3 weeks after 5 consecutive years of employment. Vacation pay is 2% of wages earned in the year of employment for each week of vacation. (s.34.1) (s.39.2)	Maternity – 17 weeks Parental – 37 weeks Adoption – 37 weeks Family Responsibility – 3 days Sick Leave – N/A Bereavement – 3 days Compassionate Care – 8 weeks Reservist – N/A (s.54.1)(s.58.1)(s.59.2(1)) (s.59.3(1))(s.59.4(1)) (s.59.5(1))	Must be Kept for a minimum of 3 years from the date the record is made. Employers must keep records for all employees that show an employees name, address, date of birth and occupation; date the employee starts work; regular wage and overtime wage when employment starts, the dates of changes to the wage and the new wage; regular and overtime hours of work, recorded separately and daily; dates wages are paid and the amount paid on each date; deductions from wages, dates and reasons for each deduction; dates of time off taken instead of overtime wages; dates each general holiday is taken; dates and wages paid for hours worked or required to be worked on a general holiday; start dates of annual vacations, dates work resumes, period of employment in which it is

						hours. (s.12.1)				earned, amount of vacation allowance paid and date paid; amount of outstanding vacation allowance paid upon termination, and payment date; copies of documents on maternity leave, parental leave, compassionate care leave or other leaves, including dates and number of days taken as leave; and dates of termination of the employment
New Brunswick	$ 8.50/hour effective 01-Apr-2010 $9.00/hour effective 01-Sep-2010 $9.50/hour effective 01-Apr-2011 $10.00/hour effective 01-Sep-2010 ESR (s.5(1))	44 in a week ESR (s.4)	24 consecutive hours in a week ESC (s.17(1))	1 ½ times min. wage ESR (s.6)	No time off may be taken in lieu of overtime.	No averaging agreements are permitted.	6 public holiday days per year. Holiday pay is regular wages plus 1½ times regular rate for hours worked. Must meet eligibility requirements. (s.19 (1)(2))	2 weeks or 1 day per month worked during vacation pay year (whichever is less); 3 weeks or 1¼ days per month worked during vacation pay year (whichever is less) after 8 consecutive years of service. Vacation pay is 4% of wages earned in the vacation pay year; 6% after 8 consecutive years of employment. (s.24) (s. 25(1)(b))	Maternity – 17 weeks Parental – 37 weeks Adoption – 37 weeks Family Responsibility – 3 days Sick Leave – 5 days Bereavement – 5 days Compassionate Care – 8 weeks Reservist – 18 months (s.44.021(1)) (s.44.022(1)) (s.44.024(2)) (s. 44.03(2)) (s.44.031(1))	Records must be kept for a minimum of 3 years from the date the record is made. Employers are required to keep payroll records for each employee showing the employees name, address, date of birth and social insurance number; date the employment began; number of hours worked each day and each week; wage rate and gross earnings for each pay period; amount and reason for each deduction from gross earnings; other payment to which the employee is entitled, amount of any living allowance and the dates of payment; vacation dates, vacation pay due or paid, and the dates of payment; public holiday pay due or paid, and the dates of payment; net amount of money paid; dates and reason the employee was on a leave of absence and any document or certificate relating to a leave of absence; and date of any dismissal, suspension or layoff, and the dates of the notices thereof.
Newfoundland and Labrador	$9.50/hour effective 01-Jan-2010 $10.00/hour effective 01-Jul-2010	40 in a week Maximum of 14 hour in a day.	8 consecutive hours in a 24-hour period.	1 ½ times min. wage	Yes, employers and employees may create their own written overtime agreements which allow employees	No averaging agreements are permitted	5 public holiday days per year. Holiday pay is regular	2 weeks; 3 weeks after 15 years of continuous employment.	Maternity - 17 weeks Parental – 35 weeks Adoption – 52 weeks Family Responsibility – 1 week Sick Leave – 7	Records must be kept for a minimum of4 years from the date of the last entry.

			24 consecutive hours in a week.		to 'bank' their overtime hours. In such a case, the employee is entitled to 1 ½ hours off work with regular pay during regular working hours. The 'banked' hours must be taken within 3 months of being earned. An employee may also request in writing that their employer close the 'bank' at which time the employer must pay the outstanding balance to the employee.		wages plus normal wages, a paid day off within 30 days or one additional day of vacation.	Vacation pay is 4% of total wages earned during 12-month period; 6% after 15 years of continuous employment. (s. 8(1),(1.1))	Bereavement – 3 days Compassionate Care – 8 weeks Reservist – N/A	Every employer must keep payroll records for each employee showing an employees name, address and birth date of the employee; date of the start of the employment and the dates of a temporary lay-off or termination; rate of wages, number of hours worked in each day, the amount paid showing all deductions made from wages paid; the date of annual vacation and the amount of vacation pay paid; and the dates on which each 24 hour rest period is given.
Nova Scotia	$9.20/hour effective 01-Apr-2010 $9.65/hour effective 01-Oct-2010	48 in a week	24 consecutive hours in a 7 day period	1 ½ times reg. rate	No, time off may not be taken in lieu of overtime.	Yes, to meet the need for flexibility in the workplace, the Nova Scotia Employment Standards Act allows employers and employees to enter into Averaging Agreements which permit hours of work to be averaged over a period of one, two, three or four weeks. Under such an agreement an employee would only qualify for overtime pay if the average hour's worked per week during the Averaging Agreement exceeded 48 hours.	5 public holiday days per year. Holiday pay is regular pay plus 1½ times regular rate for time worked. Must meet eligibility requirements.	2 weeks; 3 weeks after 8 continuous years of employment. Vacation pay is 4% of wages; 6% after 8 continuous years of employment. (s. 32(1)(a)(c))	Maternity - 17 Parental - 52 Adoption – 52 Family Responsibility – 3 days Sick Leave – N/A Bereavement – 3 days Compassionate Care – 8 Reservist – 18 months	Must be kept for 1 year after the employment terminates. In the case of vacation pay, the employer must be able to show payroll records going back 28 months. Employers must keep the following information for each employee, a list of the names of all employees, showing the employees' age, sex, and last known home address; a record of the rates of wages, hours of work, vacation periods, leaves of absence, pay, and vacation pay each employee received; a record of the date each employee began work and, if the employee no longer works for that employer, the last day he was employed; a record of when employees were laid off or fired and the dates when those employees received notice of the end of their jobs; and a record of how much each employee has been paid.
Ontario	$10.25/hour effective 31-Mar-2010	8 hours in a day; 44 in a week.	8 hours between shifts.	1 ½ times reg. rate	Yes, employers and employees may create their own written	Yes, to meet the need for flexibility in the workplace, the Ontario	8 public holiday days per year.	2 weeks Vacation pay is 4% of	Maternity – 17 weeks Parental – 37 weeks Adoption – 37 weeks	Records must be kept for a minimum of 3 years after the

		Maximum of 48 hours in a week.	11 consecutive hours in a day. 24 consecutive hours in a week or 48 consecutive hours in a 2-week period.		overtime agreement. This agreement allows overtime hours to be 'banked' and later taken off with pay, hour for hour, during regular working hours. Overtime hours are 'banked' instead of being paid-out in the regular pay period in which they are earned. An employee may also request time off with pay for some mutually agreed period or request in writing that the bank be closed at which time the employer must pay the outstanding balance to the employee.	Employment Standards Act also allows employers and employees to enter into averaging agreements which permit hours of work to be averaged over a period of one, two, three or four weeks. Under such an agreement an employee would only qualify for overtime pay if the average hour's worked per week during the averaging agreement exceeded 44 hours.	Holiday pay is the total amount of regular wages in 4 work weeks preceding week of holiday divided by 20 plus 1½ times regular rate for hours worked or regular rate for hours worked plus a paid day off Must meet eligibility requirements.	wages earned in the applicable period (normally a 12-month period). (s.33(1)) (s. 35)	Compassionate Care – 8 weeks Reservist – N/A *Personal emergency leave:* 10 days/year (combined) for personal medical reasons, the death, illness or injury of a child, spouse, same-sex partner, parent, grandparent, grandchild, or sibling, or an "urgent matter" involving any of these relatives	employment terminates. Every employer must keep payroll records for each employee showing an employees name, address and starting date of employment; hours worked by the employee each day and week; written agreements to work excess hours or average overtime pay; vacation time records; vacation pay records; information contained in an employee's wage statement; and documents relating to an employee's pregnancy, parental, family medical, organ donor, personal emergency, declared emergency, or reservist leave.
Prince Edward Island	$9.00/hour effective 01-Oct-2010	48 in a week	24 consecutive hours in a 7-day period	1 ½ times reg. rate	No, time off may not be taken in lieu of overtime.	No, averaging agreements are not permitted.	7 public holiday days per year. Holiday pay is one day's pay plus 1½ times regular rate for time worked or regular rate for time worked plus a paid day off Must meet eligibility requirements.	2 weeks Vacation pay is 4% of wages. (s. 11(1)(a)(c))	Maternity - 17 Parental - 35 Adoption – 52 Family Responsibility – 3 days Sick Leave – N/A Bereavement – 3 days Compassionate Care – 8 weeks Reservist – N/A	Must be kept for a minimum of 3 years from the date the record is made. Every employer must keep payroll records for each employee showing an employees name and address and Social Insurance Number; date of birth; wage rate and actual earnings; number of hours worked in each day and week; gross earnings per pay period; deductions from gross earnings and nature of each deduction; starting date of employment and date of termination; type of work performed by the employee; period in which employee received vacation with pay; and amount of vacation pay paid to the employee in lieu of vacation.
Quebec	$9.00/hour effective 01-May-2009 $9.50/hour effective	40 in a week	32 consecutive hours in a week	1 ½ times reg. rate	Yes, employers and employees may create their own written overtime agreements	Yes, to meet the need for flexibility in the workplace employers and employees may	8 public holiday days per year.	2 weeks; 3 weeks after five years of uninterrupted service.1 additional week of *unpaid* annual leave	Maternity - 18 Parental - 52 Adoption – 52	

	01-May-2010				which allow employees to 'bank' their overtime hours. In such a case, the employee is entitled to 1 ½ hours off work with regular pay during regular working hours. The 'banked' hours must be taken within 3 months of being earned. An employee may also request in writing that their employer close the 'bank' at which time the employer must pay the outstanding balance to the employee.	enter into Averaging Agreements which permit hours of work to be averaged over a period of one, two, three or four weeks.	Holiday pay is wages for work done, plus an average daily wages or a paid day off. Must meet eligibility requirements.	may be taken in certain cases. Employees with less than one year of uninterrupted service are entitled to one day per month of uninterrupted service during reference year (2 weeks maximum). 4% of gross wages during the reference year; 6% of gross wages for employees entitled to three weeks of annual leave; special provisions apply to employees who are absent because of sickness, accident or maternity leave. (s. 67-69) (s.74)	Family Responsibility – 10 days Sick Leave – 26 weeks Bereavement – 5 days Compassionate Care – 12 weeks Reservist – 18 months	
Saskatchewan	$9.25/hour effective 01-May-2009	8 in a day; 40 in a week. Maximum of 44 hours in a week.	8 consecutive hours in a 24-hour period 24 or 48 consecutive hours in a 7-day period	1 ½ times reg. rate	No, time off may not be taken in lieu of overtime.	Yes, to meet the need for flexibility in the workplace, the Saskatchewan Labour Standards Act allows employers and employees to enter into Averaging Agreements which permit hours of work to be averaged over a period of one, two, three or four weeks. Under such an agreement an employee would only qualify for overtime pay if the average hour's worked per week during the Averaging Agreement	9 public holiday days per year. Holiday pay is regular wages (or pro-rated amount) in addition to 1½ times the regular rate for time worked.	3 weeks; 4 weeks after 10 years of employment. Vacation pay is 3 / 52 of total wages earned in year of employment and 4 / 52 of total wages for employees entitled to 4 weeks of annual holidays. (s. 30) (s.33(1))	Maternity – 18 weeks Parental – 37 weeks Adoption – 52 weeks Family Responsibility – 3 days Sick Leave – 12 days Bereavement – 5 days Compassionate Care – 12 weeks Reservist – N/A	Records must be kept for a minimum of 5 years after the employment terminates. All employers must keep payroll records for each employee, including the employees name and address; brief job description; start and end dates of employment; hours at which work begins and ends each day; times for breaks; total number of hours worked each day and each week; regular rate of wages; total wages paid; dates on which each holiday is taken; total wage and annual holiday pay for any period of employment; and, all deductions from wages and the reason for each deduction.

						exceeds 40 hours.				

Federal: *Canada Labour Code, Part III; Canada Labour Standards Regulations*

Alberta: *Employment Standards Code*

British Columbia: *Employment Standards Act*

Manitoba: *Employment Standards Code*

New Brunswick: *Employment Standards Act*

Newfoundland: *Labour Standards Act*

Nova Scotia: *Labour Standards Code*

Ontario: *Employment Standards Act, 2000*

Prince Edward Island: *Employment Standards Act*

Quebec: *Act respecting labour standards*

Saskatchewan: *Labour Standards Act*

Section 3.5.6.1.1 – Tripartite Employment Arrangements

A tripartite employment arrangement is when an employer retains the services of a third-party representative to **find, recruit, supply and pay** TFWs to meet their labour requirements.

The third-party representative **assumes some of the responsibilities and obligations of the employer such as issuing pay cheques, accreditation of workers, etc**. The company who hired the representative is the employer for the purposes of an LMO; he/she benefits from the services provided by the foreign worker, gives direction and controls the on-site work to be performed, sets the working conditions, and ultimately pays the TFW through a contract with the third-party representative. This ensures that the foreign worker cannot be moved from one employer to another and location once the worker enters Canada, thereby changing the basis under which the LMO was provided. Employers intending to hire workers in NOC skill level C and D must meet all the requirements under the Pilot project for occupations requiring lower levels of formal training including an employer-employee contract.

For example, FFF Electrical hires the employment agency BBB Select to supply electricians on an as need basis and to issue pay cheques for all of its workers. FFF Electrical needs five electricians to complete a project within six months. BBB advertises for electricians in Canada without success, BBB Select decides to find, recruit and hire electricians through the TFWP.

In this situation, BBB Select and FFF Electrical share attributes of the employer; BBB Select recruits workers and issues the pay cheques and, FFF Electrical controls the on-site work. BBB Select can not be the "employer" for the purposes of an LMO since it does not benefit directly from the services provided by foreign electrical workers and work is controlled by FFF Electrical. The employer, FFF Electrical, must apply for an LMO or authorize BBB Select to apply on its behalf by filling out the relevant section on the foreign worker application form.

The TFWP Officer could request additional information to clarify the relationship between:

a) BBB Select (employment agency) and FFF Electrical;
b) BBB Select and the foreign workers; and
c) BBB Select and FFF Electrical.

LMO application when a tripartite employment arrangement exists

When a request for an LMO is made by a third-party representative, the employer must fill out the relevant section of the application form that authorizes the third-party representative to act on his/her behalf.

TFWP Officers identify in the "CIC Notes Section" that a tripartite employment arrangement exists. Information provided includes the name of the third-party representative, and other information such as the organization that will be issuing pay cheques to foreign workers.

In addition to the information that is normally required from employers when they apply to HRSDC/Service Canada for an LMO, the employer (or third-party representative) must provide the following:

- the name of the employment agency and a description of the agency's primary business;
- a copy of an agreement or contract between the company and the employment agency that relates to the hiring of the foreign worker;
- a copy of an agreement or contract between the agency and the foreign worker;

- a copy of the letter of offer to the foreign worker (if it has already been issued);
- If not included under 2, 3 and 4, the:
  - name of the organization that will be issuing the payment for the remuneration of the worker;
  - information regarding the wages, benefits and working conditions applicable; and
  - confirmation that no placement fees have been/will be charged to the worker for employment in British Columbia, Alberta, Saskatchewan and Manitoba, and that the third-party representative complies with applicable provincial laws regarding licensing.

The TFWP Officer advises the employer (or authorized third-party representative) that the foreign worker must provide the above mentioned documentation to the CIC visa office along with the work permit application in order for a work permit to be processed. Failure to provide information or documents that establish a line of accountability between the worker and the employer who will benefit from the worker's services may result in immediate refusal of the application or substantial delays in processing at the visa office. Further, CIC visa officers cannot contact agencies or companies about the details and requirements of work permit applications. HRSDC/Service Canada is not required to contact visa officers on behalf of employers.

Temporary Foreign Worker Program Manual

Section 3.5.6.1.3 - Clarification on Labour Market Opinions for Owner/Operators of a Business

Purpose:

To provide guidance in addressing situations where a Temporary Foreign Worker (TFW) is an owner/operator of a business and is applying for a Labour Market Opinion (LMO) through Human Resources and Skills Development Canada (HR SDC)/Service Canada.

Authority:

The Temporary Foreign Worker Program (TFWP) operates under the authority of the *Immigration and Refugee Protection Act* (IRPA) and the *Immigration and Refugee Protection Regulations (*IRPR).

The IRPR prescribes the factors that HRSDC/Service Canada is to consider in forming an opinion on the labour market impact of hiring a foreign national. Section 203 of the IRPR outlines the authorities of HRSDC/Service Canada:

203. (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(*c*)(i) to (ii.1), an officer shall determine, on the basis of an opinion provided by the Department of Human Resources and Skills Development, if:

(*a*) the job offer is genuine under subsection 200(5);

[200 (5) A determination of whether an offer of employment is genuine shall be based on the following factors:

(a) whether the offer is made by an employer, other than an employer of a live-in caregiver, that is actively engaged in the business in respect of which the offer is made;

(b) whether the offer is consistent with the reasonable employment needs of the employer;

(c) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and

(d) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work.]

(*b*) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada;

[*203(3) An opinion provided by the Department of Human Resources and Skills Development with respect to the matters referred to in subsection (1)(b) shall be based on the following factors:*

(a) whether the employment of the foreign national is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;

(b) whether the employment of the foreign national is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;

(c) whether the employment of the foreign national is likely to fill a labour shortage;

(d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards;

(e) whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents; and

(*f*) whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute.]

(*c*) the issuance of a work permit would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals;

(*d*) in the case of a foreign national who seeks to enter Canada as a live-in caregiver,
(i) the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision,
(ii) the employer will provide adequate furnished and private accommodations in the household, and
(iii) the employer has sufficient financial resources to pay the foreign national the wages that are offered to the foreign national; and

(*e*) during the period beginning two years before the day on which the request for an opinion under subsection (2) is received by the Department of Human Resources and Skills Development and ending on the day that the application for the work permit is received by the Department,
(i) the employer making the offer provided each foreign national employed by the employer with wages, working conditions and employment in an occupation that were substantially the same as the wages, working conditions and occupation set out in the employer's offer of employment, or
(ii) in the case where the employer did not provide wages, working conditions or employment in an occupation that were substantially the same as those offered, the failure to do so was justified in accordance with subsection (1.1).

Sections 200 and 205 of the IRPR outline factors for Citizenship and Immigration Canada (CIC) to consider, when determining whether to issue a work permit without an LMO:

200. (1) Subject to subsections (2) and (3), an officer shall issue a work permit to a foreign national if, following an examination, it is established that

(a) the foreign national applied for it in accordance with Division 2;

(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

(c) the foreign national
(i) is described in section 206, 207 or 208,
(ii) intends to perform work described in section 204 or 205, or
(iii) has been offered employment and an officer has determined under section 203 that the offer is genuine and that the employment is likely to result in a neutral or positive effect on the labour market in Canada; and

(d) [Repealed, SOR/2004-167, s. 56]

(e) the requirements of section 30 are met.

205. A work permit may be issued under section 200 to a foreign national who intends to perform work that

(*a*) would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents.

Background:

For the purpose of the TFWP, owner/operators are defined as foreign nationals who hold a share in a business located in Canada, and are classified under a National Occupational Classification (NOC) 0, A or B occupation. Please note that a business owner/operator is not required to be hands-on with the day-to-day operations of the company.

All owner/operators must apply to HRSDC/Service Canada for an LMO, except for those who are determined to be exempt by CIC.

LMO exemptions are determined by CIC under the authority of Section 205*(a)* of the IRPR. CIC **may** issue a work permit without an LMO, if it is determined that the foreign national would create or maintain significant social, cultural or economic benefits or job opportunities for Canadian citizens or permanent residents. Examples of “significant benefits” include general economic stimulus (such as job creation, development in a regional or remote setting, or expansion of export markets for Canadian products and services), and advancement of Canadian industry (such as technological development, product or service innovation or differentiation, or opportunities for improving the skills of Canadian citizens or permanent residents).

This exemption usually applies if the owner/operator owns at least 50 percent of a business. If there are multiple owners, only one owner would be eligible to apply for a work permit under this LMO exemption, unless exceptional circumstances can be demonstrated. Any further work permit applicants require an LMO, including owner/operators who own less than 50 percent of the business.

Please note that simply by owning shares in a business, does not mean that the owner/operators will meet the LMO exemption requirements. If CIC determines the applicant does not qualify for an exemption, the owner/operator will be required to apply for an LMO at HRSDC/Service Canada before applying for a work permit at CIC.

Guidelines:

HRSDC/Service Canada is required to assess all LMO applications. Although an employer-employee relationship is generally required in order to provide an LMO, there are certain situations, such as the owner/operators, where the principal owner would also serve as the worker.

Multiple Owners:

In cases where there are multiple owners, the principal owner must be designated as the "employer".

1) Principal Owner (Employer)

The principal owner is the person who has the largest share in the business or, in the case of multiple owners of equal shares, it is the person designated as "the employer" for the purpose of applying for an LMO.

The principal owner **may** be eligible for an LMO exemption. To check if they qualify for an LMO exemption, the principal owner must contact a TFW Unit at CIC. If CIC determines the applicant does not qualify for an exemption, the owner/operator will be required to apply for an LMO at HRSDC/Service Canada before applying for a work permit at CIC. Please note that self-employed physicians do not qualify for an LMO exemption.

a) LMO standard application:
When applying for an LMO for themselves, principal owners should submit the standard application for an LMO to HRSDC/Service Canada.

b) Neutral LMO:
HRSDC/Service Canada will assess the LMO application for a neutral effect on the Canadian labour market.

c) Assessment emphasis:
For the purposes of this assessment, more emphasis should be placed on labour market factors such as job retention and job creation.

d) Other factors:
Certain labour market factors will not be assessed for the principal owner, such as the wages, working conditions or recruitment efforts. See the variations to minimum advertising requirements, exempting owner/operators from submitting proof of recruitment efforts.

2) Principle Owner (Employer) applies for co-owners as "workers"

In cases where there are multiple owners of a business, the principal owner (e.g. the largest shareholder or the equal shareholder who has been designated as the "employer") must act as the "employer" and apply for LMOs to HRSDC/Service Canada for the other co-owners as "workers"..

a) LMO standard application:
When applying for LMOs to HRSDC/Service Canada for the co-owners, the principal owner should submit the standard application.

b) Neutral LMO:
HRSDC/Service Canada will assess the LMO application for a neutral effect on the Canadian labour market.

c) Assessment emphasis:
For the purposes of this assessment, more emphasis should be placed on labour market factors such as job retention and job creation.

d) Wages and working conditions should be assessed for the co-owners but recruitment efforts should be waived for LMO applications. See variations to minimum advertising requirements exempting owner/operators from submitting proof of recruitment efforts.

3) Owner/Operator hiring temporary foreign workers who are **not** co-owners

Owner/operators looking to hire foreign nationals as employees for their business in Canada must apply for an LMO for each employee. They must submit the standard application for an LMO to HRSDC/Service Canada and meet all of the usual LMO requirements.

Considerations:

1) In the case of equal shareholders, where one person is designated as the “employer”, another shareholder can assume this role in subsequent LMO applications.
2) Businesses can be completely foreign-owned as long as the work takes place in Canada.
3) Owner/operators are restricted to NOC 0, A and B occupations.
4) In the case of self-employed physicians with no employer, they should be assessed as the “principal owner”.

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Section 3.5.8 – Provincial/territorial/federal certification, licensing, or registration requirements of the job and regulated occupations

It is the Employer's responsibility to provide proper territorial/federal certification, licensing, or registration required for the position they are seeking to fill.

Advisors may consult with professional groups as part of their assessment process. It is left to the Program Officer's discretion to determine if this field is required to be filled in (depending on the NOC assigned to the job title).

Regulated Occupations

Regulated occupations are those jobs that "require a special license or certification before you can begin work. Most regulated occupations require that you have specialized education and experience before receiving your licence."

Consideration #1: Assessment of Qualifications

- LMO's are assessed on factors in IRPR 203(3) regardless of any regulatory requirements that are associated with the occupation/position.
- **The employer is responsible to ensure the selected applicant is/will be meeting the requirements of the position, including any licensing/certification requirements.**
- CIC/CBSA assesses the foreign national's qualifications with reference to the characteristics of the job/position to be filled.

Consideration #2: Duration of Employment Period

- The duration of employment on the LMO is labour market-based. It cannot be set to accommodate time necessary to meet the regulatory requirements.
- The discretion that HRSDC/Service Canada can exercise in regard to the LMO's duration of employment relates to the likely impact this job offer will have on the Canadian labour market.

Consideration #3: Flagging a Regulated Occupation to CIC

- As per box 48 of the LMO application (EMP 5239), the employer is asked to indicate if the occupation is subject to any regulatory requirements.
- Occupational regulatory requirements are to be noted in the "Notes to CIC" section of the LMO confirmation.

Consideration #4: Regulatory Requirements not Identified by Employer in LMO Application

- Ensure that the employer has not forgotten to identify occupational regulatory requirements.
- Verify with LMI to ensure whether or not the occupation is subject to any regulatory requirements.
- When the employers seem to be unaware that the occupation is regulated, Program Officer will contact them to ensure that they are aware that the occupation is regulated, particularly if the requirement is mandatory in the province/territory (e.g. licensing requirements are always mandatory while certification requirements can be voluntary).

What do the expected changes mean for foreign worker Officers?

- LMO applications are assessed as usual as per factors in IRPR 203(3). Regulated occupations will continue to be flagged to CIC through Notes to CIC.
- Assessments of LMOs are conducted without any notification from occupational regulatory bodies.
- The duration of employment determined on the LMO is not varied on the basis of any occupational regulatory conditions.
- The employer is made aware of regulatory requirements if not identified in LMO application and directed to the regulatory body.

CIC/CBSA and the employer can directly seek information from the regulatory body.

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Section 3.6 – Academic Occupations

Canadian universities and university colleges will be permitted to advertise simultaneously in Canada and abroad for foreign academics.

The term "academics" applies to individuals with at least one postgraduate degree (following a Bachelor's degree) who earn the majority of their income from teaching or conducting research as employees at universities and university colleges in Canada. When the majority of the job duties is other than teaching or research (i.e. management, financial or administrative, etc.) the regular HRSDC foreign worker process applies.

This policy does not apply to community colleges unless they are affiliated with a university and their students can obtain degrees, nor does it apply to the Collèges d'enseignement général et professionnel (Cégep) in Quebec. Regions may use their discretion when applying this policy for teaching positions at summer schools at universities and university colleges.

Universities/university colleges are responsible for ensuring that all conditions in the applicable collective agreements are met. Joint approval with the Government of Quebec is required for requests for validations of employment for universities/university/colleges located in that province.

Section 3.6.1 – Exclusion from LMO process

The directive described above applies only to positions that require a labour market opinion from HRSDC. As is currently the case and as outlined in the Foreign Worker Manual (FW1) issued by CIC, LMOs are not required in the following situations:

- post-doctoral fellows;
- research award recipients;
- eminent individuals-leaders in various fields;
- guest lecturers;
- visiting professors;
- Canada Research Chair Positions;
- the temporary appointment of citizens from the United States or from Mexico as professors at the university, college and seminary levels as allowed by the North America Free Trade Agreement; and
- the temporary appointment of citizens from Chile as allowed by the Canada Chile Free Trade Agreement.

Section 3.6.2 – Recruitment of Foreign Academics

Hiring Steps

Educational institutions hiring foreign academics for Canadian positions must :

1. Submit their application form and the Foreign Academic Recruitment Summary (PDF 127 KB) - HTML Version to:
   - Service Canada
     Temporary Foreign Worker - Centre of Specialization
     1 Agar Place, PO Box 7000
     Saint John, NB E2L 4V4
     Fax: 1-866-585-7524 (toll free)
   - For Quebec, applications must be sent to:
     Service Canada
     Temporary Foreign Workers
     715 Peel Street
     Montréal, QC H3C 4H6
     Fax: 514-877-3680

A Quebec Acceptance Certificate issued by the province is also required for jobs in Quebec. A Certificate of Registration from the Government of Manitoba is required for employers in Manitoba. The employer can register online with the province. For more information on the Manitoba's new WRAPA, consult the Questions and Answers.

2. Once HRSDC/Service Canada has approved the job offer, the employer sends a copy of the HRSDC/Service Canada confirmation letter to the foreign academic.

3. The employer tells the foreign academic to apply for a work permit from CIC.

Assessment of Recruitment Efforts

Advertising

Advertisements are to provide broad exposure of the vacancy to Canadian and permanent residents who would be potential candidates for the position. Consistent with the TFWP directive relating to minimum advertisement requirements for NOC "0" and A occupations (http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/communications/advertrecrutment.shtml) HRSDC will not specify the medium to be used for advertising (web, print, electronic etc.); however universities must be able to demonstrate the medium chosen is appropriate for the specific discipline/ sub-discipline.

Universities/university colleges are to advertise for a reasonable time to allow broad exposure. This would normally be for a minimum of 14-day period.

Positions advertised abroad are to be advertised in Canada. Canadian universities and university colleges will be permitted to advertise simultaneously in Canada and abroad for foreign academics.

Selection

All Canadian citizens and permanent residents who meet the advertised requirements of the position are to be invited to participate in the selection process, i.e. interviews, tests, etc.

Reporting

The university/university college is to provide HRSDC specific information on the recruitment and selection process when requesting a LMO for an academic position, including an explanation of the reason the position is being offered to a foreign candidate, with a report on the top three Canadian candidates. The Vice-President (Academic) or other senior academic official of the university/university college will certify the information in these reports. See the Foreign Academic Recruitment Summary.

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of the Access to Information Act

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Section 3.7.2 – Assessment for First Assistant Directors for Feature Films

The hiring of First Assistant Directors for Feature Films is taking place in a context quite different from the one of First Assistant Directors for Commercial Productions. Generally, when American feature films are shot in Canada, Directors bring their own First Assistant Director or want to hire a specific person as their vision of the film is intrinsically linked to the creative process. First Assistant Directors are considered to be part of this process. Furthermore, production of feature films in Canada creates a significant number of new employment opportunities.

When assessing LMOs, TFWP officers base their assessment on the six factors identified under Section 203 (3) of the IRPR with emphasis on factor (a) which states that the "employment of the foreign national is likely to result in direct job creation or job retention for Canadian citizens and permanent residents". Shooting an international feature film has a highly positive labour market impact for the region involved. Directors who bring their own First Assistant Director provide employment to second and third Canadian Assistant Directors and opportunities for hundreds of Canadian actors, technicians, technical personnel, as well as jobs in the hospitality sectors.

TFWP Officers should weigh the net labour market benefits to Canada versus the adverse effects that hiring a foreign First Assistant Director could have on the Canadian labour market. As indicated in IRPA, it is important to balance the general availability of Canadians with labour market benefits that hiring a TFW can bring such as direct job creation and /or retention. When assessing a LMO application, emphasis should be put on the resulting overall likely impact that hiring a foreign national would have on the labour market.

Section 3.7.3 – Assessment for First Assistant Directors for Commercials

Not represented by a union

When LMO applications are received for First Assistant Directors for Commercial Productions (for feature films, see section 14.4) in provinces where they are not represented by a union, such as in Ontario and British Columbia, TFWP Officers are encouraged to consult, based on the labour market conditions of the industry, the Association representing them. This consultation should provide information (e.g., availability of Canadians and permanent residents and wages paid) to better assess recruitment efforts and the likely impact hiring foreign workers would have on the labour market.

Represented by a union

American producers/employers, who work in a province where First Assistant Directors for Commercial Productions are represented by a union, are subject to the Directors' Guild of America (DGA). Producers/employers must consider the availability of unionized Canadians and permanent residents, therefore reducing the likelihood of applying for a LMO. However, should an application be made, it must be assessed as per the regular process including the possibility of consulting the union to obtain information.

Section 3.7.5 – Camera Operators for World Wrestling Entertainment

Directive:

Until further notice, the World Wresting Entertainment (WWE) is not required to conduct recruitment efforts for camera operator positions because it has established the need to employ its own camera operators to ensure the success of its shows, since these operators are uniquely trained by the WWE and continually rehearse as part of the show and with the other performers.

This decision is in keeping with section 203 of the IRPR and the LMO Directives, which allow the regions and NHQs to determine what if any recruitment efforts are necessary.

In accordance with HRSDC's obligations under s. 203 of IRPR, requests for WWE camera operator positions are to be treated on a case-by-case basis: Officers are required to ensure that the wages being offered by the WWE are consistent with the prevailing wage rate for the occupation in Canada, and that working conditions being offered meet generally accepted Canadian standards.

Background:

WWE wrestlers, and their staff who are integral to the live performances, are exempt from the need to obtain a LMO from HRSDC pursuant to Regulation 186(g) of IRPR. WWE camera operator positions are not exempt since they are not considered essential to the live performance of WWE productions, but rather, are required for broadcasting and filming purposes, which are generally taped and/or broadcast live. Therefore, camera operator positions with WWE productions require a labour market opinion from HRSDC.

Each year, the WWE submits applications for labour market opinions to HRSDC/Service Canada requesting to employ their own camera operators, for a series of short-term engagements within Canada.

Subsequent to consultations with WWE and the International Alliance of Theatrical Stage Employees and Moving Picture Technicians for Canada (IATSE) has reaffirmed its position that WWE camera operators are uniquely trained and an integral part to both the live and broadcast elements of WWE productions. WWE camera operators rehearse with the show and the performers, and choreograph their movements to be carefully coordinated with the other camerapersons, and others in the production. As a result, HRSDC continues to be of the opinion that it is not feasible to assume Canadians could be readily trained or hired to work on a few select dates in any given tour, since all WWE camera operators are uniquely trained for the productions.

In April 2005, HRSDC informed IATSE of their decision that the WWE would not be required to recruit Canadians for camera operator positions, and indicated that HRSDC will continue to monitor the situation in order to ensure the directive remains applicable.

Section 3.7.6 – Exemption for concurrence from other regions in the Art and Entertainment sector

Usually, when an offer of employment involves more than one region or province, Service Canada must ensure that the labour market opinion (LMO) issued is based on a sound analysis of the labour market situation in all the regions or provinces where the work will occur.

To accomplish this, the assessing officer must seek concurrence from the Temporary Foreign Worker Program (TFWP) offices in each region where the temporary foreign worker (TFW) will also be employed.

Concurrence is not required from other Regions in cases where the individual member of an artistic group, a theatre company or a dance group is performing across Canada on a tour and when the TFW is considered an inherent part of the artistic group. These artists are uniquely trained by the artistic group or circus and the show cannot recruit someone locally for a performance in the various regions of Canada. These artists have to rehearse on a regular basis as part of the show and with the other performers of the group. These tours could be either for short term or long term engagement.

Concurrence is also not required from other Regions in cases such as Bar Bands and DJ's and musicians as these people perform for a very short period of time, sometimes it can be as little as one evening in each Region.

Even if concurrence is not required in these cases other Regions where the show will take place have to be kept informed that a group will be performing in certain towns or cities and that some temporary foreign workers will be part of that show. The Service Canada Region where the LMO application has initially been made will inform other Regions through the Regional Inbox and will indicate in it's e-mail the date, venue and city (when available) where the show will take place.

NOTE:
In the Foreign Worker System (FWS) in the note to CIC box, the various employers and/or locations should be indicated and on the LMO only the first employer should appear. The LMO should also indicate under location: multiple locations.

Temporary Foreign Worker Program Manual

Section 3.8.1.1 – History and Pilot Objectives

History

Prior to 2002, the TFWP was primarily focussed on the entry of high-skilled labour into Canada. In fact, the Seasonal Agricultural Worker Program was the only stream of the TFWP that allowed the entry of lower- skilled workers and it was limited to workers from specific Caribbean countries and Mexico, and to seasonal workers within certain commodities of the agricultural sector. The NOC C&D Pilot was established in order to facilitate the entry of TFWs to fill labour shortages in any lower-skill occupations (NOC codes C&D) and from any source country.

HRSDC and CIC roles with regards to the entry of TFWs to Canada are defined by the IRPR. When employers are unable to fill job vacancies with Canadians or permanent residents due to a labour market shortage, they can apply to hire a TFW. HRSDC's role is to respond to employers' requests for TFWs by issuing LMOs. Service Canada (the service delivery arm of HRSDC) evaluates LMO applications to determine if the entry of a TFW will have a negative, neutral or positive effect on the Canadian labour market, resulting in the issuance of either a negative or positive LMO. CIC evaluates the work permit applications for prospective TFWs to ensure that they meet all eligibility requirements for working temporarily in Canada. Together, the two departments also ensure that both employers and TFWs are aware of their rights and responsibilities related to their participation in the program.

Objectives

The goals of the NOC C&D Pilot Project are:

- to protect the Canadian labour market by ensuring that Canadians and permanent residents are able to access employment opportunities;
- to protect the rights of TFWs by making sure they are treated like their Canadian and permanent resident counterparts; and
- to protect the Canadian economy by making sure employers have access to a competent foreign labour force when there is a shortage of Canadians and permanent residents.

Under the NOC C&D Pilot Project, employers may be allowed to hire TFWs for a maximum of 24 months through the Pilot Project for Occupations Requiring Lower Levels of Formal Training (Pilot Project) (NOC C and D) when there is a demonstrable shortage of Canadians citizens and permanent residents.

Section 3.8.1.2 – National Occupation Classification

The NOC is the system used by the Government of Canada to code and describe the work performed in Canada's labour market. The NOC is developed in collaboration with StatsCan and updated according to five-year Census cycles.

HRSDC/Service Canada and CIC use the NOC system to categorize the jobs employers are filling based on the majority of duties employers identify. HRSDC/Service Canada also uses the NOC to identify wages and labour market trends when assessing the job offer.

From an employer perspective, the NOC can help employers more accurately describe the duties and identify the occupation that the foreign worker is expected to perform. From a Service Canada Officer perspective, the NOC is used as a reference to provide a code and title according to the job description provided by the employer.

The system classifies every occupation according to skill type and level. Skill type is based on the work performed (there are nine occupational categories) and skill level corresponds to the training or education typically required to work in the occupation (there are five skills levels; O, and A through D).

In Canada, lower levels of formal training are defined as usually requiring at most a high school diploma or a maximum of two years of job-specific training according to the NOC Classification system. These occupations are coded at the NOC C or D skill level. See NOC job descriptions.

NOC C and D skill level positions usually require a high school diploma or job-specific training:

- **C skill level positions** usually require secondary school and/or occupation-specific training, or up to two years of on-the-job training or specialized training courses, or specific work experience; and
- **D skill level positions** generally require on-the-job training, short work demonstrations or no formal education requirements in order to perform the job.

Section 3.8.2.1 – Advertising and Recruitment

The following is specific to NOC C&D applications

Employers will have conducted the minimum advertising efforts required if they:

- advertise on the national Job Bank (or the equivalent in Newfoundland and Labrador, Saskatchewan, Quebec, or the Northwest Territories) for a minimum of 14 calendar days during the three months prior to applying for an LMO; **and**
- conduct recruitment activities consistent with the practice in the occupation.

Advertisement must be for a minimum of 14 days, choosing one or more of the following options:

- advertise in weekly or periodic newspapers, journals, newsletters, national/regional newspapers, ethnic newspapers/newsletters or 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; or
- advertise on Internet sites e.g., posting during 14 days/two weeks on recognized Internet job sites (union, community resource centres or ethnic sites).

The advertisement must include:

- the company operating name;
- job duties (for each position, if advertising for more than one vacancy);
- wage range (i.e. an accurate range of wages being offered to Canadians and permanent residents). The wage range must always include the prevailing wage for the position – see "wage rate" below;
- the location of work (local area, city, or town); and
- the nature of the position (i.e. project based, or permanent position).

In addition to the advertisement efforts mentioned above, all employers are also encouraged to conduct ongoing recruitment efforts, including among under represented groups that face barriers to employment (e.g., Aboriginal Peoples, older workers, immigrants/newcomers, people with disabilities and youth). Advertisement could be on recognized Internet job sites, in local and regional newspapers, at community resource centres and local regional employment centres.

For the **Province of Quebec** the advertisement criteria (**including live-in caregivers and seasonal agricultural workers**) vary slightly. For further information, consult Hiring Temporary Foreign Workers in Quebec.

Employers will have conducted the minimum recruitment efforts required if they:

- advertise on the Emploi Quebec Online Placement for a minimum of fourteen (14) calendar days during the three (3) months prior to applying for a LMO; **and**
- conduct similar recruitment activities consistent with the practice within the occupation (e.g., advertise on recognized Internet job sites, in journals, local and regional placement centres, community resource centres, newsletters, national newspapers, by consulting unions or professional associations).

Section 3.8.2.1.1 – Additional Advertisement Requirements

HRSDC/Service Canada reserves the right to require alternative or additional recruitment efforts (i.e., increased duration [length of time] or broader advertisement [whether local, regional, or national]) if, it believes that additional efforts would yield qualified Canadian citizens or permanent residents who are available to work in the occupation and region.

For all occupations, employers are invited to contact their Service Canada Centre.

Section 3.8.2.1.2 – Proof of Advertisement

Employers must be prepared to demonstrate that they meet the advertising requirements by providing proof of advertisement and the results of their efforts to recruit Canadians or permanent residents as part of the LMO process (e.g., information on the qualifications of Canadian applicants and why they were rejected). Records of employers' efforts should be kept for a minimum of six years, as stipulated in other federal and provincial legislations, such as the *Income Tax Act*.

Section 3.8.2.1.5 – Wage Rate Identified in the Advertisement

The wage range identified in the **advertisement** must represent an accurate range of wages being offered to Canadians and permanent residents, working in the same occupation and geographical area, and include reference to benefit packages being offered. The wage range must always include the prevailing wage for the position. For purposes of the TFWP, the prevailing wage is identified as the average hourly wage for the occupation and region where the worker will be employed.

HRSDC/Service Canada reviews the wages that employers are offering to the foreign worker, and compares them to wages paid to Canadians in the same occupation based on labour market information from StatsCan, HRSDC/Service Canada, provincial ministries, and other reliable sources. If employers are offering wages below rates paid to Canadians in the same occupation and region, HRSDC/Service Canada will not issue a positive LMO in response to employers' request to hire a foreign worker.

Employers are required to offer a temporary foreign worker working in a unionized environment the same wage rate as established under the collective bargaining agreement. In addition, benefits provided to Canadian workers or permanent residents must be extended to the foreign worker.

In order to address unique circumstances, HRSDC/Service Canada maintains the discretion to set the prevailing wage rate that an employer must offer a TFW whether or not the position is covered by a collective agreement.

Employers must ensure that the working conditions that they are providing are consistent with federal and/or provincial standards; for the occupation and workplace.

Section 3.8.2.2 – Consultation with the Local Union

Occupations at level C&D are often unionized work environments

If the position being filled by the foreign worker is part of a bargaining unit, the following factors, although not determinative, will support a positive HRSDC/Service Canada decision and will reduce delays in the recruitment of the foreign worker especially in NOC C and D occupations.

Employers will need to:

- conduct union consultations before applying to hire the foreign worker(s);
- actively work with union officials to recruit unemployed Canadians; and
- confirm that the conditions of the collective agreement (e.g. wages, working conditions) will apply to the foreign worker.

HRSDC/Service Canada reserves the right to contact union representatives when reviewing employers' applications.

Section 3.8.2.3 – Coverage of all recruitment costs related to the hiring of the foreign worker

Employers have to pay for all recruitment costs related to the hiring of a foreign worker and these costs can not be recouped, directly or indirectly from the foreign workers.

Section 3.8.2.4.1 – Purpose of the employment contract

The purpose of an employment contract is to:

- have a written, detailed description of the job;
- describe the terms and conditions of employment. It includes for example, the maximum number of hours of work per week, wage rate and after what period of time the overtime rate will be paid;
- covers the TFWP requirements such as the transportation cost, accommodation, health and occupational safety of the foreign worker;
- articulates the employer's responsibilities and the worker's rights;
- helps ensure that the worker gets fair working arrangements; and
- for the purpose of its validity, the contract must be signed by both the employer and employee.

In the event differences arise between the employer and the foreign worker, the contract will guide the resolution of disputes. In cases of demonstrable breaches of the employment contract, where no reparations have been made, HRSDC/Service Canada reserves the right to discontinue service for the hiring of foreign workers.

Section 3.8.2.4.2 – Content and changes to the employment contract template

An employer may provide his/her own contract, however, the terms of the contract must include all of the provisions outlined in the sample contract on the HRSDC internet site. Any additions, deletions and/or changes to the sample contract must not change the intent of the provisions nor conflict with program requirements.

Section 3.8.2.4.2.1 – Contract Subject to Provincial Labour and Employment Legislation and Applicable Collective Agreements

The employer is obliged to abide by the standards set out in the relevant provincial labour standards act and, if applicable, the terms of any collective agreement in place.

In particular, the employer must abide by the standards with respect to how wages are paid, how overtime is calculated, meal periods, statutory holidays, annual leave, family leave, benefits and recourse under the terms of the provincial labour standards act and, if relevant, collective agreement.

Any terms of this contract of employment less favourable to the employee than the standards stipulated in the relevant labour standards act are null and void.

Section 3.8.2.4.3 – Third-party /Tripartite Representatives and the employment contract

A third-party or tripartite representative/recruiter can not be party to or sign the employment contract on behalf of the employer or otherwise.

Any agreement respecting employment validations between HRDSC/Service Canada and the employer is contingent on the employer being a party to the contract.

Section 3.8.2.4.4 – Provincial labour and safety legislation

The employment contact must respect provincial labour laws that establish minimum employment standards such as the minimum wage.

In addition to the employment contract, foreign workers, like Canadians, are covered by provincial labour and workplace safety legislation.

Section 3.8.2.4.6 – Procedures related to the employment contract

The employer must:

- fill-in and sign the HRSDC-TFWP sample employment contract - (PDF 54 KB);
- a signed copy must be attached to the employer's LMO application;
- upon receipt of a letter of confirmation from HRSDC/Service Canada, the employer must send a copy of the signed contract and the HRSDC/Service Canada confirmation letter to the foreign worker; and
- the worker will need to submit a copy of the employer LMO confirmation letter and a signed employment contract, signed by both parties, to CIC when applying for a work permit.

New-Brunswick: Employers are not obligated to forward a copy of the contract signed by the foreign worker to Service Canada.

Section 3.8.2.7– Transportation Costs for the worker to travel from his/her country of permanent residence to the location of work in Canada and for the return to the country of permanent residence

When hiring a foreign worker under the *Pilot Project for Occupations Requiring Lower Levels of Formal Training*, employers must always pay the round trip transportation costs for the foreign worker to travel to the location of work in Canada and return to his/her country of permanent residence. These costs cannot be passed on to the foreign worker (i.e., the worker pays for transportation costs and is reimbursed at a later date). Under no circumstances are transportation costs recoverable from the foreign worker.

TFWs who change jobs must ensure that their work permits are modified accordingly and EMPLOYERS who hire TFWs already in Canada must apply to HRSDC/Service Canada for a LMO and obtain a neutral or positive LMO.

Section 3.8.2.7.1 – Transportation Clauses

Use the appropriate no. 13 clause according to the situation.

13. The EMPLOYER agrees to assume the transportation costs of the round trip travel of the EMPLOYEE between his/her country of permanent residence and place of work in Canada, i.e. ______________________ (specify the country of permanent residence and the place of work in Canada). It is the EMPLOYER'S obligation and responsibility to pay for the transportation costs and they cannot be passed on to the foreign worker (i.e. the EMPLOYEE pays for the transportation costs on behalf of the employer and is reimbursed at a later date). Under no circumstances are transportation costs recoverable from the EMPLOYEE.

Or

13. Since the EMPLOYEE is currently in Canada, the EMPLOYER agrees to pay the costs of transporting the EMPLOYEE from his/her current Canadian address to the EMPLOYER'S location of work in Canada, i.e. _______ (specify the EMPLOYEE'S current Canadian address and the place of work) and one-way transportation back to the EMPLOYEE'S country of permanent residence i.e. ________ (specify the EMPLOYEE'S country of permanent residence). It is the EMPLOYER'S obligation and responsibility to pay for the transportation costs and they cannot be passed on to the EMPLOYEE (i.e. employee pays for his/her own transportation on behalf of the EMPLOYER and is reimbursed at a later date). Under no circumstances are transportation costs recoverable from the EMPLOYEE.

14. If there is a termination of the employer-employee relationship and the EMPLOYEE is hired by a NEW EMPLOYER who has a neutral or positive LMO under the Pilot Project for Occupations Requiring Lower Levels of Formal Training (NOC C & D) of the TFWP, the EMPLOYEE shall release the ORIGINAL EMPLOYER from the obligation of his/her return transportation cost to his/her country of permanent residence. The NEW EMPLOYER is responsible for the EMPLOYEE’s transportation costs to the new location of work in Canada and back to the EMPLOYEE’s country of permanent residence. The EMPLOYER is obligated to and responsible for paying the transportation costs (i.e. the ORIGINAL EMPLOYER pays incoming transportation costs and the NEW EMPLOYER pays for the return transportation costs to the country of permanent residence). These costs cannot be passed on to the EMPLOYEE (i.e. EMPLOYEE pays for transportation on behalf of the EMPLOYER and is reimbursed at a later date). Under no circumstances are transportation costs recoverable from foreign workers.

TFWs that change jobs must ensure that their work permits are modified accordingly and EMPLOYERS who hire TFWs already in Canada must apply to HRSDC/Service Canada for a LMO and obtain a neutral or positive LMO.

Section 3.8.2.7.2 – Transportation Costs Q&A's

1. What is included under transportation costs?

Under the Pilot Project, transportation costs cover the purchase of tickets for a worker to travel by plane, train, boat or bus from his/her country of permanent residence to the location of work in Canada and the return to his/her country of permanent residence.

If a foreign worker is already in Canada, transportation costs include the worker's travel to the location of work and the return to his/her country of permanent residence.

The select mode of transportation must have the least negative impact on the foreign worker in terms of travel time, expenses and inconvenience.

Transportation costs do not include for example:

- hotels, meals and miscellaneous expenses during the worker's travel to Canada and return to his/her country of permanent residence;
- day-to-day transportation to and from the location of work; nor
- vacations, emergency trips, etc.

1.1. How are transportation costs calculated if a foreign worker uses his/her private vehicle?

They are calculated by multiplying the number of kilometres the worker travels to reach the place of work by the price of gasoline. The amount should be sent to the worker before his/her arrival (direct deposit, cheque or other means). The foreign worker is to keep all gasoline receipts.

The foreign worker's return to his/her country of permanent residence should be calculated the same way and the foreign worker should provide a receipt. Employers should inform Service Canada, the CBSA and CIC of the date and time of departure.

2. Should I purchase round trip transportation when I hire a foreign worker?

A lot can happen between the moment a worker arrives in Canada and returns to his/her country of permanent residence (i.e., worker can quit, be fired or change employer). It is strongly recommended that you do not purchase the return ticket when you hire the worker; it should be purchased at a later date.

3. Should I keep documents to prove that transportation costs have been paid?

Records of all transportation costs (i.e., invoices, receipts, copies of flight itineraries/ tickets/ boarding passes) should be kept for a minimum of six years, as stipulated in other provincial and federal legislations, such as the *Income Tax Act*.

4. How do I make return transportation arrangements if the foreign worker no longer works for me (quit, resigned, was laid off, etc.)?

You should make reasonable efforts to reach the worker and inform him/her of the arrangements you will be making (location, date, time, etc.). You could for example, send a registered letter to his/her mailing address in Canada, send an e-mail to the union representative informing him/her

that you need to contact the worker about the return travel arrangements or communicate with the worker's emergency contact.

You are responsible for the return transportation costs until the worker's work permit expires.

5. If a worker quits without giving notice, do I still have to pay his/her return transportation costs?

Yes, you must pay return transportation costs as long as his/her work permit has not expired. There are only two exceptions:

- the foreign worker is employed by another employer who has a positive or neutral LMO under the Pilot Project for Occupations Requiring Lower Levels of Formal Training. In these circumstances, the new employer must pay transportation costs to the new location of work and for the return to the country of permanent residence; or
- the worker is employed in a NOC O, A or B occupation (skilled occupation) by an employer who received a positive or neutral LMO. In these circumstances, the worker is responsible for transportation costs.

6. Are there situations when I am not obligated to provide return transportation?

There are only two exceptions:

- the foreign worker is employed by another employer who has a positive or neutral LMO under the Pilot Project for Occupations Requiring Lower Levels of Formal Training. In these circumstances, the new employer must pay transportation costs to the new location of work and for the return to the country of permanent residence; or
- the worker is employed in a NOC O, A or B occupation (skilled occupation) by an employer who received a positive or neutral LMO. In these circumstances, the worker is responsible for transportation costs.

7. Am I responsible for return transportation even if I do not know where the worker is?

Yes, you are responsible until the worker's work permit expires. The only exceptions are listed under Q6. It is recommended that you keep records of efforts you made to reach the worker to demonstrate that you made appropriate efforts.

You should make reasonable efforts to reach the worker and inform him/her of the arrangements you will be making (location, date, time, etc.). You could for example, send a registered letter to his/her mailing address in Canada, send an e-mail to the union representative informing him/her that you need to contact the worker about the return travel arrangements or communicate with the worker's emergency contact.

8. What steps should I take if I do not know where the worker is?

You must make reasonable efforts to reach the worker and keep documents that support your efforts. You could for example, send a registered letter to the worker's mailing address in Canada, send an e-mail to the union representative informing him/her that you need to contact the worker about the return travel arrangements or communicate with the foreign worker's emergency contact.

If you can not reach him/her, you should contact the CBSA immediately to request an investigation. You should also inform Service Canada and CIC.

9. What steps should I take if a worker does not pick-up his/her travel documents or show-up when it is time to leave Canada?

You should contact the CBSA immediately and request an investigation. You should also inform Service Canada and CIC.

10. What should I do if I suspect a worker is working illegally or for another employer?

HRSDC/Service Canada and CIC are not authorized to disclose information regarding foreign workers. If you suspect he/she is working for another employer (legally or illegally), you should contact the CBSA immediately and request an investigation. You should also contact Service Canada and CIC.

11. Can I get reimbursed for return transportation costs when a worker goes to work for another employer before the end of his/her contract?

It is strongly recommended that you do not purchase round trip transportation at the beginning of an employer-employee relationship. Return transportation should be purchased at a later date.

HRSDC/Service Canada does not have the mandate to limit the mobility of TFWs in Canada or force a new employer to reimburse you for return transportation costs.

Under the Pilot Project, the new employer, who must have received a positive or neutral LMO from HRSDC/Service Canada under the Pilot Project and signed an employment contract, is responsible for transportation costs to the new location of work in Canada and for the foreign worker's return to his/her country of permanent residence. On the other hand, the new employer is not obligated to reimburse you for the costs you incurred. You should speak to the new employer and see if he/she agrees to reimburse you.

12. Am I still responsible for the return transportation costs if a foreign worker goes to work for a new employer in a "high-skill" position?

As indicated under A5 and A6, you are not required to provide return transportation as long as the new employer received a positive LMO.

13. What steps should I take if a worker refuses to return to his/her country of permanent residence?

You should contact the CBSA immediately and request an investigation. You should also inform Service Canada and CIC.

14. What should I do if a worker asks me for cash in lieu of return transportation?

Under the Pilot Project, transportation costs cover the purchase of a ticket for workers to travel by plane, train, boat, car or bus to their country of permanent residence.

When using a private vehicle, return transportation costs are calculated by multiplying the number of kilometres traveled for the worker to return home by the price of gasoline. The amount should be sent (by direct deposit, cheque or other means) to the worker before he/she arrives in his country of permanent residence. You should ask the worker for a receipt.

It is recommended that you inform the CBSA and CIC of the date and time of the foreign worker's departure.

Section 3.8.2.8.1 – Accommodation clause in the employment contract

The EMPLOYER agrees to ensure that reasonable and proper accommodation is available for the EMPLOYEE, and shall provide the EMPLOYEE with suitable accommodation, if necessary. If accommodation is provided, the employer shall recoup costs as outlined below. Such costs shall not be more than is reasonable for accommodations of that type in the employment location.

The EMPLOYER _____ will / ______will not provide the EMPLOYEE with accommodation (mark X beside appropriate box)

If yes, the EMPLOYER will recoup the costs at an amount of $_______ per ______ (month, two-week period etc.) through payroll deductions.

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Section 3.8.2.9 – Medical Coverage

Employers must provide medical coverage until the worker is eligible for provincial health insurance coverage.

As outlined in the employment contract, employers must ensure that the foreign worker is covered by private or provincial health insurance at all times. If private health insurance must be provided, employers must pay for the insurance and these costs cannot be recovered from the worker.

Section 3.8.2.9.1 – Hospital and Medical Care Insurance Clause in the employment contract

The EMPLOYER agrees to provide health insurance at no cost to the foreign worker until such time as the worker is eligible for applicable provincial health insurance.

Section 3.8.2.10 – Registration of the temporary foreign worker under the appropriate provincial workers compensation/ workplace safety insurance plans

The employer has to register foreign workers under the appropriate provincial workers compensation board/workplace safety insurance plans.

Section 3.8.2.10.1 – Workplace Safety Insurance (Worker's Compensation) clause in the employment contract

The EMPLOYER agrees to register the EMPLOYEE under the relevant provincial government insurance plan. The EMPLOYER agrees not to deduct money from the EMPLOYEE'S wages for this purpose.

Section 3.8.9.2.1 – Seasonal Agricultural Workers Program commodity or Labour Market Integration

Under the new proposed agricultural stream, workers would be paid the same rate of pay as SAWP workers, regardless of methodology in determining those wages.

When a commodity is not a SAWP commodity, the LMI will dictate the wage.

Section 3.8.9.2.2 – Collective Agreements

Employers are required to offer a TFW working in a unionized environment the same wage rate as established under the collective bargaining agreement. In addition, benefits provided to Canadian workers or permanent residents must be extended to the foreign worker.

Section 3.8.9.3.3 – Transportation

When hiring a foreign worker under the Agricultural stream of the Pilot Project, employers must always pay the round trip transportation costs for the foreign worker to travel to the location of work in Canada and return to his/her country of permanent residence. These costs cannot be passed on to the foreign worker (i.e., the worker pays for transportation costs and is reimbursed at a later date). Under no circumstances are transportation costs recoverable from the foreign worker.

Section 3.8.9.4.1 – Advertising

Employers will have conducted the minimum advertising efforts required if they:

- advertise for a minimum of 14 days on the national Job Bank (or the equivalent in Saskatchewan, Quebec or the Northwest Territories) during the three months prior to applying for a LMO; and
- conduct recruitment activities consistent with the practice in the occupation. 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 during 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; and/or
  - advertise on Internet sites e.g., posting during 14 days/two weeks on recognized Internet job sites (union, community resource centres or ethnic sites).

The advertisement must include the company operating name, business address, wage range (i.e. an accurate range of wages being offered to Canadians and permanent residents) and reference to benefit packages being offered. The wage range must always include the prevailing wage for the position.

In addition to the advertisement efforts mentioned above, employers are also encouraged to conduct ongoing recruitment efforts, including communities that face barriers to employment (e.g., Aboriginal Peoples, older workers, immigrants/newcomers, people with disabilities and youth). Advertisement could be on recognized Internet job sites, in local and regional newspapers, at community resource centres and local regional employment centres.

Advertisement criteria vary slightly in the province of Quebec. For further information, consult Hiring Temporary Foreign Workers in Quebec.

***NOTE: cost of recruitment cannot be paid by employee.**

Section 3.8.9.5 – Worker's Compensation

It is a requirement of the SAWP that all workers be enrolled in the applicable provincial workers' compensation program. However, not all provincial programs have mandatory enrolment for all workers in the province. In some provinces, agricultural employers are specifically exempted from the requirement to participate in workers' compensation programs.

In such cases where participation in workers' compensation schemes is not mandatory, it is still a requirement of the SAWP that these TFWs be enrolled in the applicable program. Furthermore, **in all regions where enrolment in workers' compensation is not mandatory, the employer must provide proof of the enrolment** of his/her workers **prior** to the processing of an LMO request.

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Section 3.8.9.6 – Transfer of Workers

Unlike under the SAWP, transfer of workers is not permitted under the Agricultural Stream of the Pilot Project. If a TWF wants to seek other employment opportunities after the termination of his/her contract, he/she must find an employer with a valid LMO under which all the positions are not yet filled or an employer who seeks a new LMO. The foreign worker is then to go to a CIC office with the LMO confirmation letter and apply for a new work permit/visa.

Note also that transfers of workers are not permitted between the SAWP and the Agricultural stream of the Pilot Project. For example, a Mexican worker coming under the Agricultural stream of the Pilot Project cannot be transferred to a SAWP employer and vice-versa.

Section 3.8.9.7 – Bilateral Agreements

There are different bilateral agreements between private parties under the Agricultural stream of the Pilot Project. The first one was signed between FERME and International Organization for Migration (IOM) Guatemala. Since then, other private agreements were or are in the process of being signed. It is important to note that the Government of Canada is not a party to those agreements and those agreements must comply with the TFWP policies.

Section 3.8.9.8 – Comparative table between Seasonal Agricultural Workers Program and NOC C&D Agriculture

Criteria	Harmonization	
	SAWP	**Agricultural stream of NOC C&D**
Bilateral Agreement	Canada to source country MOU	Source country/ IOM to NGO, but not required
Contract	Employer-Employee-Government Agent	Employer-Employee
Transportation	Employer paid, partial recoupment from Employee* ≤ $550 – Mexico ≤ $492 – Caribbean	Employer pays
Accommodations	Employer provided & free to Employee* Must pass provincial, municipal or private inspection	Employer provided; set maximum that can be charged to Employee with methodology for annual increases. Must pass provincial, municipal or private inspection
Wages	Must pay higher of SAWP wage set by HRSDC based on StatsCan survey (CPI increases since 2009), provincial minimum wage or rate being paid to Canadian workers	Adopt SAWP wage if commodity currently included in SAWP. If not, prevailing wage would apply (some regional variance).
Unionization	When farm is unionized, collective agreement prevails re: wages and working conditions	When farm is unionized, collective agreement prevails re: wages and working conditions
Recognition payment[1]	$4/week ≤ $128	None required
Cost recovery	Caribbean. - $2/work day Mex. – n/a	None allowed
Recruitment	Provided by source country. No cost for Employee.	Provided by private recruiters, Employers themselves or source countries. No cost for Employee.
Forced savings	Mexico – n/a Caribbean – Employer submits 25% to source country, 4-6% of this is held back for admin purposes	None required.
Provincial Health Insurance	ON & QC – eligible from date of entry Rest of Canada – may or may not be eligible ; Employers required to register TFWs if eligible	QC – eligible from date of entry (Guatemala) Employers required to register TFWs if eligible. Employer responsible for interim health insurance
Supplemental health insurance	Mexico. – RBC Ins Caribbean – self insured or private insurance	No requirement
Workers comp.	Mandatory enrolment; Employer must provide proof where not mandatory by provincial legislation	Mandatory enrolment; Employer must provide proof where not mandatory under provincial legislation
Premature repat.	Section X of both Mexico & Caribbean. contract have provisions re: who pays	Employer pays, regardless

[1] Applicable after five or more consecutive years of employment with the same employer.

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Section 3.9 – Live-in Caregiver Program

The LCP facilitates the entry of qualified temporary foreign live-in caregivers to Canada when there is a shortage of Canadians or permanent residents to fill available live-in caregiver positions. The LCP supports Canadians who need someone to live and work in their homes to help care for children, elderly persons or persons with disabilities.

LCP differs from other TFW programs. Under Section 110 of the IRPR, foreign live-in caregivers can apply for permanent residence after working 24 months or a total of 3,900 hours (as live-in caregivers) within four years/48 months of their arrival in Canada.

Some background information

In 1955, the Caribbean Domestics Scheme Program began Canada's formal import of domestic workers, under an agreement between the Governments of Canada, Jamaica and Barbados. It permitted single, childless women to enter Canada to work as live-in domestics. The Foreign Domestic Movement Program (FDMP), instituted by the Canadian government and which ran from 1981-1992, was the next version of this movement of domestic workers. The FDMP began to enable domestics to apply for landed immigrant status after living in their employers' houses for a minimum of two years. The current LCP, which was established in 1992, is a variation of the FDMP.

In 2008, HRSDC received 47,969 live-in caregiver LMO applications of which 36,359 were approved. On the basis of its own criteria, CIC issued approximately 7,600 work permits to LCP participants, of which 90% originated from the Philippines. The number of work permits issued to live-in caregivers rose from 1,985 in 2002 to 7,600 in 2008.

The following sections provide a detailed description of the different aspects to be assessed to determine if the employer meets the requirements stated in the IRPR and Program requirements.

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Section 3.9.1.1.1 – Definition

The IRPA defines a live-in caregiver as follows: “A live-in caregiver means a person who resides in and provides child care, senior home support care and care of the disabled without supervision in the private household in Canada where the person being cared for resides”. Different from the TFWs who come to Canada to work in occupations requiring lower levels of formal education (NOC C & D skill levels), live-in caregivers are a class of foreign nationals who may become permanent residents. They are eligible to apply for permanent residence in Canada after they have gained enough work experience as a live-in caregiver.

In the case of a foreign national who seeks to enter Canada as a live-in caregiver, paragraph 203(1)(d) of the IRPR must be respected. The NOC C & D Pilot is not to be applied to live-in caregivers.

Consequently, the following criteria must be applied:

(i) the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision,
(ii) the employer will provide adequate furnished and private accommodations in the household, and
(iii) the employer has sufficient financial resources to pay the foreign national the wages that are offered to the foreign national.

Applications for caregivers who will not reside in the private household (ie. live-out caregivers), or others performing live-out functions for a private household (e.g. gardener) can continue to be processed under the NOC C&D pilot.

Changes were introduced on April 1, 2010, in the LCP section of the IRPR, providing live-in caregivers increased opportunities to reach eligibility for permanent residence. Live-in caregivers have up to four years from the date of their arrival in Canada to complete the employment requirement to be eligible for permanent residence under the live-in caregiver class. And, they may choose between two options for calculating their employment requirement for permanent residence:

- 24 months of authorized full-time employment, **or**
- 3,900 hours (within a minimum of 22 months which may include a maximum of 390 hours of overtime) of authorized full-time employment.

Education and Training Requirements

A CIC officer assessing the application for a work permit will assess whether the live-in caregiver meets these requirements. In general, to be accepted under the LCP, live-in caregivers must:

- have successfully completed the equivalent of Canadian high school education (secondary school);
- demonstrate that they have done at least six months of full time training or at least one year of full-time paid work experience as a caregiver or in a related field or occupation (including six months with one employer) in the past three years;
- speak, read and understand either English or French, so that they can function on their own in the employer’s home.

Note that HRSDC/Service Canada does not assess the foreign worker's credentials and language level. The link is for your information:
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lcpdir/lcpdir-2.shtml

Section 3.9.1.1.2 – LCP National Occupation Classification

The Live-in caregiver occupation falls under NOC 6474 - Babysitter, Nannies and Parents Helpers. This NOC is referenced by employers in LCP LMO requests and is used correspondingly by Service Canada to assign a NOC when issuing LMOs (it is understood that NOC 6474 makes no reference to job duties that relate to senior or disabled care). Please note that the NOC team (in the LMI Division, NHQ) is undertaking a major revision of the duties of NOC 6474 (as part of the 2011 revisions to NOC).

In the meantime, the practice is for the Service Canada officer to check the job duties indicated by the employer on the application form against the job duties listed under NOC 6474 and against Program requirements. It is understood that many live in caregivers are trained as nurses in their home country however this is not relevant for the administration of the LCP.

Important link:
Profile for NOC 6474 (NOC 2006)

Section 3.9.1.2 – The Employer

Under the LCP, determining who the employer is easier than in other types of employer-employee relationships because in most cases, the employer is living in the same private household as the foreign live-in caregiver.

In some cases, mainly involving elderly care, the employer may be an adult daughter or son (or a relative such as brother or sister) who does not live in the same household as the person receiving care (and the live-in caregiver), and who is authorized to act as an employer on behalf of the person receiving the care.

Under the North American Industry Classification System (NAICS), employers of live-in caregivers would fall under the category 8141 - Private Households. This NAICS sub sector comprises private households engaged in employing workers, on or about the premises, in activities primarily concerned with the operation of the household. These private households may employ individuals such as cooks, maids and butlers, and outside workers, such as gardeners, caretakers and other maintenance workers. The services of individuals providing baby-sitting or nanny services are included.

Section 3.9.2.1 – Citizenship and Immigration Canada

CIC is responsible for issuing work permits to foreign live-in caregivers, allowing them to work in Canada. It makes the final decision as to whether a foreign worker will be allowed to work and reside in Canada. CIC will issue a work permit to a foreign live-in caregiver when they have a job offer from an employer in Canada and when the employer has received a positive LMO from HRSDC/Service Canada.

With regard to permanent residence, it is CIC's responsibility to assess live-in caregivers' applications and determine whether they have gained enough work experience as a live-in caregiver. HRSDC is not involved in this process.

Section 3.9.2.2 – Human Resources and Skills Development Canada

HRSDC is responsible to provide CIC with a LMO on the likely impact on the Canadian labour market if a foreign live-in caregiver were to fill a position. As part of this LMO, HRSDC/Service Canada works case-by-case and considers the factors identified in Section 203(3) of the IRPR, namely whether the employer is offering the prevailing wage rate and acceptable working conditions to the live-in caregiver.

HRSDC/Service Canada's assessment of the offer of employment ensures that:

- employers offer wages at prevailing rates as well as acceptable working conditions;
- the foreign worker provides care in a home environment, in the private residence where he/she lives; and
- the stated duty of the caregiver is to provide full-time care to an individual or individuals under one of the following categories: child (18 or under); elderly (65 or older); person with a disability.

The PDI Division of the TFWP is responsible for the development of communication materials to inform employers (and the public in general) on the program requirements for employers who wish to hire foreign live-in caregivers. The Program Development and Implementation (PDI) Division is also responsible for the development of LCP operational directives and for providing guidance to the LCP CoS, the Service Canada office located in Ontario responsible for the delivery of the program.

Section 3.9.2.3 – Service Canada – Centre of Specialization

A National CoS for the LCP was established at the Service Canada Toronto Foreign Worker Office in April 2007. All LCP applications in Canada are processed through this office.

Contact information:
Service Canada
Temporary Foreign Worker Program
P.O.Box 6500, Station A
Downsview, Ontario
M3M 3K4
Fax: 416-954-3107 or 1-866-720-6094 (toll free)
Phone: 1-877-227-4577.

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Section 3.9.3.1 – LCP requirements of employers and of live-in caregivers

The first determination to be made by an officer is whether the application has been submitted under the correct stream. It is essential that the criteria for LCP are met in order for an LMO application to be eligible under the LCP. There are occasions where an employer wishes to hire a live-out caregiver, or a housekeeper who happens to live on the premises of the employer's residence, but the primary duties are not care-giving. In these instances, the officer would need to advise the employer to re-apply under the NOC C and D Pilot Project stream.

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Section 3.9.3.1.2 – Live-in caregivers

To be eligible for the LCP, a live-in caregiver must:

- work for the employer in a private home;
- live in the household where care is to be provided;
- be provided with a private, furnished room within the home;
- be employed on a full-time basis;
- have a work permit before entering Canada. The live-in caregiver will need a copy of the positive LMO issued to his/her employer and a written contract signed by him/herself and the employer; and
- meet the requirements set by CIC for the LCP.

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Section 3.9.3.2.1 – Emergency processing

It is important to note that “emergency processing” is different from “urgent processing” (see section 3.9.3.2.2)

The administrative changes, introduced in the Spring of 2010, included implementing, in collaboration with HRSDC, CIC and MICC, concurrent emergency processing of LCP work permit applications, CAQ applications where applicable, and LMO applications in cases where live-in caregivers must change employers on an emergency basis due to an abusive situation at their current or most recent workplace.

Live-in caregivers who are victims of abuse by their employer or someone in the employer’s home may be eligible for emergency processing of their LCP work permit application. CIC will determine whether the live-in caregiver is eligible for emergency processing. In these cases, concurrent processing of the prospective new employer’s LMO application by HRSDC/Service Canada, CAQ application by MICC where applicable, and the LCP work permit application by CIC on an emergency basis will facilitate the quickest possible transition to a new employer.

Abusive situations, for the purpose of emergency work permit processing under the LCP, would include any intentional physical contact that causes harm or physical violence such as assault, sexual assault and/or psychological abuse such as threats or intimidation.

To be eligible for emergency processing, a live-in caregiver must, as part of their application for a new LCP work permit, provide documentation from a credible third party (e.g. doctor, medical professional, police officer, shelter worker, social worker, psychiatrist, psychologist) substantiating that the caregiver must change employers urgently due to an abusive situation at their current or most recent workplace.

Please refer to: Emergency processing of in-Canada work permits applications under the LCP as of May 31, 2010

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Section 3.9.3.2.2 – Urgent Processing (other situations)

The CoS Team Leader can elect to expedite the processing of an LCP application on a case-by-case basis. Situations that may warrant expedited processing of an LCP application include: urgently needed care for the elderly or disabled.

Section 3.9.3.3 – Multiple Caregivers

The requirements for two (or three) caregivers in the same household should be considered if the employer can demonstrate need (e.g., need for 24-hour care, senior care, etc). In these situations, duplicate LMO requests (one for each foreign live-in caregiver) should be submitted by the employer. The officer should ensure that the care for multiple caregivers is genuine. The employer should generally confirm the need for the number of caregivers requested in writing, specifically: what hours will the caregivers be working; what will be the specific duties for each caregiver; and the confirmation of private accommodation for each caregiver.

If the request for multiple caregivers is approved, the officer must indicate, in both CIC Notes and Notes to File, the fact that the employer is requesting "multiple live-in caregivers" and the rationale for the request.

Section 3.9.4.1 – Employer Application process

Important to note: Although employer applications are screened for completeness by the Program and Service Delivery Committee (PSDC) group (the Clerks), FWOs must ensure all documents are present and completed correctly. FWOs must ensure application forms/supporting documents completed by the employer are the most current versions – confirm with website/BEA. FWOs should aim to contact the employer for missing information once. Therefore, FWOs should take note of all missing documents as well as obvious program discrepancies (i.e wages, contents of contract) so that the initial call is as thorough as possible.

Please refer to Annex 6.4.1.10 for the "TFWP Client Application Process" Chart, to Annex 6.4.1.9 for the "On-Line PSDC Incomplete Application Process Map" and to Annex 6.4.1.8 for the "Anatomy of a File Docket Chart".

This section outlines what the employer needs to submit when applying for an LCP LMO.

Section 3.9.4.1.1 – Paper Applications

Required documents/items:

- Current application form (signed & dated);
- Third Party Declaration (signed & dated) if applicable ;
- CRA Business Registration Number;
- Copy of Advertising (minimum requirement Job Bank ad); and
- Employment Contract (signed by the Employer and dated).

Paper Application methods:
Fax: 1-866-720-6094 or 416-954-3107
Mail: FOREIGN WORKER PROGRAMS - Operations - RC3166; P.O. Box 6500, Toronto LCD Downsview A, Toronto, ON M3M 3K4

Section 3.9.4.2.1 – Verification procedures (communication methods)

In an effort to improve service to employers, regarding the LCP, a variety of communication methods (e.g. telephone, fax, email, mail) are used to get in touch with employers. It is important to negotiate with employers, so that the missing information is provided to our office as soon as possible.

Initially, an Officer will attempt to contact an employer by phone. If the first attempt is successful, the Officer will now be able to negotiate a time frame with the employer (depending on the situation) for submitting any missing documentation. If the documentation is not provided following the established deadline, a last call will be placed to the employer advising him/her that a refusal will be rendered as the application is incomplete.

The following applies in cases when the first attempt is not successful:

- 24 hours after the first call, the employer will be contacted in writing (fax or email). Should a fax number or email address not be available, a letter will be mailed to the employer. All written notices will request that the employer contact the Officer as soon as possible (maximum 15 days). If an Officer is able to leave a voicemail, this one will indicate that a written notice will follow. The Officer will also attempt to advise the third party of his/her need to contact the employer;
- an Officer will make 2 more attempts to contact the employer by phone after having sent the written notice. Each phone call will be made after a 24 hour interval; and
- if no contact is made by the established deadline, a last call will be placed to the employer advising him/her that a refusal will be rendered as the application is incomplete.

Please remember that each of the above steps will have to be documented in Notes to File.

Important points:

- The employer verification call is an opportunity to engage the employer in explaining the program requirements as well as a means of authenticating genuineness and obtaining missing information. This call should be service-oriented and not confrontational.
- Prior to speaking with the employer, FWOs should search by employer phone numbers and name in the Foreign Worker System (FWS) for employer history. Should any employer IDs appear with similar phone numbers and different employer names, this should be noted and actioned accordingly (i.e. may be an integrity issue).
- FWOs must use multiple methods of communication (i.e phone, email, fax) to contact employers
- If the FWO is unable to reach the employer after several attempts to contact, the FWO should contact the third-party (if applicable) and request that the employer contact the Project Officer.
- Each attempt to contact the employer must be documented in the electronic Notes to File. This is important for client service at the LCP Call Centre level as well as file management.
- FWOs can exercise discretion when deciding on the method of communication with the employer. Changes to the application (i.e. wages, contract details) must be obtained in writing. However, a missing CRA Business Number, for example, can be taken over the phone.
- See Documents, section 3.9.5: look up “Attempts to contact employers (LCP) - Templates included” and refer to “Regional Missing Info template” and “BF note for file (LCP)”. These are templates that FWOs can use when contacting an employer.

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Section 3.9.4.2.4 – Shared Custody

There are situations where a live-in caregiver is required to travel with the children between two homes (for example in cases where parents are divorced). In these situations, both parents should sign the application as employers, to ensure that both parents agree to all of the conditions of the program, including a confirmation that private, furnished accommodations are available in both locations. An accompanying letter should provide details about the accommodations to be provided in each location, and as well, a schedule of when caregiver/children will be at each job location (i.e. Mon – Thursday = Job location 1, Friday – Sunday = Job Location 2).

Section 3.9.4.3.1 – Third-parties

Third-party representatives may include family members, individuals, persons with a valid Power of Attorney or organizations such as recruitment agencies. Canadian recruitment agencies are subject to the same provincial and federal laws as any other Canadian business (e.g., employment standards legislation, *Employment Insurance* (EI) *Act*, human rights legislation, Criminal Code).

If a third-party representative is acting on behalf of an employer for this employer's request of an LMO, the signed Appointment of Representative must accompany the application form and remain in the employer's file. The signed "Appointment of Representative (PDF 236 KB)" sheet is evidence that the employer has appointed someone to act on his/her behalf for the purpose of requesting an LMO. The employer is responsible for ensuring that all the information provided to HRSDC/Service Canada by a third-party representative is accurate. Not all third-party representatives are recruiters or involved in the recruitment of the caregiver.

It is important to note that the LMO decision/letter will only be sent to the employer. The agent/third-party will receive a letter notifying them that an LMO decision was issued to the employer.

An employer can elect to remove a third-party representative at any time before and after the issuance of an LMO. This request for removal must be obtained in writing, signed by the employer and included in Notes to File.

Verification of Information provided

HRSDC/Service Canada officers must routinely contact employers when **LMO** applications are received from third-party representatives to:

- ensure employers requested live-in caregivers;
- confirm that employers signed the "Appointment of Representative" sheet; and
- verify that the information provided is accurate.

Duly appointed third-party representatives have legal authority to act on behalf of the employer with respect to the LMO application. The Project Officer's interaction with the third-party must respect this authority. Third-parties can be contacted by the Project Officer prior to the authentication conversation with the employer in the event that the employer is unreachable. Information updates may also be provided if requested. However, this call should be limited in detail.

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Section 3.9.4.3.2 – Family members as Third Parties Representatives

An elderly person and/or a person mentally incapacitated is often identified as the "employer" when a family member is acting as third-party representative. There may be instances when the HRSDC/Service Canada Officer:

- is unable to contact the employer in spite of reasonable efforts; or
- believes that the employer has difficulty understanding the questions asked.

In these instances, the Officer should contact the family member acting as third-party representative to inform him/her that:

- the LMO application can not be processed;
- a new "Appointment of Representative (PDF 236 KB)" signed in the presence of a family member and family physician who knows the employer must be submitted; and
- he/she will contact the witnesses to verify that the employer understood what he signed.

The HRSDC/Service Canada Officer who is satisfied that the employer understood what he/she signed, processes the LMO application and contacts the third-party representative, when applicable, when further information is required.

The Officer who has reason to believe that the employer did not understand what he/she signed, advises the third-party representative (family member) that the LMO application can not be processed. The Officer may propose that:

- A family member act on the employer's behalf pursuant to a POA that clearly authorizes him/her to hire a live-in caregiver; or
- A new LMO application must be submitted by a family member who agrees to be the "employer" and sign the application form.

Section 3.9.4.3.3 – Power of Attorney

The above guidelines (3.9.4.3.2) do not apply when the employer is clearly incapacitated due to mental illness and the person applying for a LMO (usually a family member) has a valid POA. For example, it is valid even if the employer becomes incapacitated and it gives clear authority to hire a live-in caregiver. In these instances, the person applying for a LMO must include a copy of the valid POA document. The POA document has a date of expiry which should be verified before speaking to the POA on the file. When in doubt, seek guidance from a BEA.

The HRSDC/Service Canada Officer should contact the applicant to verify that the information provided is accurate. The presence of a POA on the file should be noted in an employer note on FWS. This will ensure that the document will be considered if subsequent applications are received.

Section 3.9.4.3.4 – Alternative payment arrangements

On occasion, other government bodies will have initiatives to fund home support services. These alternative arrangements may be acceptable under the LCP. In such cases, the application must be assessed in light of the LCP program requirements and not automatically deemed ineligible. When in doubt, seek guidance from a BEA.

For example, in BC, Choice in Supports for Independent Living (CSIL) is an alternative system for home support. In such situations, it would be important for the officer in charge to clearly indicate to the employer that the live-in caregiver must provide care and reside in the private household where he/she resides and for a minimum of 30 hours per week. The caregiver must not be switched around between employers within the Client Support Group. This is also an absolute condition that cannot be waived. Also, the officer handling such a case should comment under "Notes to CIC" to indicate that the employer falls out of the mainstream/usual private employer (i.e., couples with children or seniors, etc). It would be up to CIC then to further judge the merits/genuineness of the case and advise the Foreign Worker on all work permit issues.

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Section 3.9.4.4.1 – Expected duration of employment

As of April 1, 2010, a LMO may be issued for a maximum of four years of full time employment to a live-in caregiver employer. The duration will be specified on the employment contract. The work permit issued by CIC to live-in caregivers under the LCP allows them to work in Canada for up to four years plus three months.

Section 3.9.4.4.2 – Working Conditions

Live-in caregivers working conditions are set by provincial or territorial governments. In provinces where caregivers are excluded from the legislation, working conditions should be equivalent to the provincial standards for the occupations that are covered by the legislation.
A table with regional wages and working conditions is available on the HRSDC website at:
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/advertReq/wageadreq.shtml#il

Wages

Live-in caregivers must be offered wages that are equal to or higher than those offered to Canadian live-in caregivers in their region. This requirement is in place to ensure that it is not more attractive to hire a foreign live-in caregiver and that it will not put downward pressure on Canadian wages. It also guarantees that foreign live-in caregivers are compensated in an equitable and adequate manner for their work in Canada.

In most Canadian provinces and territories, caregivers are covered by provincial and territorial labour standards. The wages should be at least as high as those in the prevailing wage information on the HRSDC website to ensure that wages offered are equitable to Canadians and are not lower than the minimum wage set by provincial labour standards legislation.

Employers of live-in caregivers must agree to regularly review and adjust the wages to ensure they meet or exceed the prevailing wage rate requirements for live-in caregivers in the region where the caregiver is employed as per the HRSDC website. In the event that the foreign live-in caregiver works less than full time hours in any particular week, he/she must be compensated for full-time work. A foreign live-in caregiver is considered to be working if required to be in the employer's home.

Working Hours

The job must be full-time to ensure live-in caregivers can financially support themselves while in Canada. In some provincies and territorries, full-time work is defined in labour standards legislation. Where provincial labour standards do not specify full-time work, full-time work should be defined as 30 hours per week or more for the purpose of the LCP.

The employer must indicate on the foreign live-in caregiver application form, the total hours of work required by the caregiver per day and per week, as well as the number of days off per week. The work schedule is to be indicated in the employment contract, including breaks, days off per week, overtime and days of annual paid vacation and sick leave per year. The work schedule cannot be flexible to the point that the caregiver is on call 24 hours per day. The maximum acceptable number of hours can be found in the relevant provincial labour standards as the maximum differ by region.

Room and Board

Live-in caregivers should be provided with suitable, private, furnished accommodation in the employer's home. Suitable accommodation is private accommodation with a lock on the door and that meets municipal building requirements and health standards set by the provincie where care takes place. It provides living and sleeping facilities intended for human habitation with no visible

or structural repairs required. Accommodation details such as a description of the room and furnishings are to be indicated in the live-in caregiver employment contract.

After careful assessment, an Officer is confirming that employers demonstrate the availability of private furnished accommodation at the initial stage of LMO application. Otherwise, hypothetical situations vis-à-vis accommodations may simply open the doors to more fraud.

LCP LMOs can't be confirmed based on hypothetical situations where an employer intends to make necessary provisions to accommodate a live-in caregiver in the future. When issuing LMOs, HRSDC/Service Canada require clarity with respect to the requirements set out in the guidelines for LCP applications. Since the live-in caregiver is expected to provide care in the private household in which he/she resides, part of that explicitly requires employers to agree to the condition of providing private accommodation at the initial stage of application

Project Officers processing LCP files for the province of Quebec can recommend a visit by MICC to the caregiver's accommodations if deemed necessary.

Accommodation charges must show in the foreign caregiver application form and on the employment contract. They cannot exceed the maximum allowable by the province where applicable. Meal charges if not already included under accommodation charges are to be indicated in both the application form and employment contract as well. They cannot exceed the maximum allowable by the province where applicable.

Whether employers may deduct room and board directly from their caregivers pay cheques may be governed by provincial standards legislation. Employers are required to use the HRSDC wages and working conditions table for pay and deductions for room and board.

Section 3.9.4.4.3 – Foreign Live-in Caregiver Information

The name and other mandatory information required on the foreign worker must be submitted before the finalization of the LMO; un-named LMOs are not a possible option with the LCP.

Mandatory information required on the FW from the employer includes:

- family name;
- given name;
- country of residence;
- date of birth;
- citizenship;
- gender; and
- the immigration status if the live-in caregiver is in Canada at the time the application is made.

Section 3.9.4.5.3 – Recruitment exemptions

Live-in caregivers who are victims of abuse by their employer or someone in the employer's home may be eligible for emergency processing of the new employer's LMO and the LCP work permit application to facilitate the fastest possible transition to a new employer.

Abusive situations, for the purpose of the LCP emergency processing, would include physical violence, such as any intentional physical contact that causes injury (i.e., assault or sexual assault as well as psychological abuse such as threats or intimidation). To be eligible for emergency processing, a live-in caregiver must present documentation from emergency professionals (i.e. doctor, medical professional, police officer, shelter worker, psychiatrist, psychologist, social worker) indicating abuse.

For live-in caregivers who are victims of abuse, the advertising and recruitment requirement is waived, and this is applicable in all provinces.

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Section 3.9.4.6.1 – Employer-Employee Contract

Employers must submit to HRSDC/Service Canada an employment contract with the LMO application to hire a foreign live-in caregiver. Please refer to section 3.9.5.2 for a copy of the contract template.

The employment contract must include the duration of the contract; duties of the position; wages; hours of work (including overtime, holidays, and sick leave); accommodation arrangements, as per provincial and municipal standards; transportation costs; health insurance; terms of resignation and termination; and registration for provincial workplace safety insurance. These clauses/points are mandatory for insertion into the contract, but as of yet, FWOs are not required to assess the information to see if it meets a certain minimum (provincial) standard. This may change after PDI updates the wage table online, and/or after Integrity and Horizontal Coordination (IHC) completes their work on LCP standards for the purposes of monitoring. As of right now, FWOs should ensure the clauses related to provincial standards meet a certain minimum of the standard and if something jumps out at them (e.g. “zero breaks”, “zero sick leave”, etc) they should raise it with employer.

The contract allows for a second employer, but only when applicable. For example, there are situations where two children would want to act as employers for an incapacitated parent. The contract template is designed to allow for the information and the signature of the two children who wish to act employers. It is important to note that a second employer is not required to make an application under the LCP, but the provision is there only for situations where it applies.

- The information presented in the contract and the LCP application should mirror each other.
- Should an employer submit a contract different from the template provided on the HRSDC/CIC websites, the FWO must ensure that all mandatory clauses are present.
- Contracts for LCP Quebec files are the MICC contract. Employers in this province must use the template available on the MICC/CIC website.
- When the revised LCP application form is released, FWOs must include the contents of the mandatory contract clauses in the LMO application fields so that they appear in the confirmation letter annex. This will be used for monitoring and compliance purposes.

Section 3.9.4.6.2 – Breakdown of employment relationship

Although HRSDC/Service Canada's mandate with respect to the LCP only involves providing a LMO, HRSDC/Service Canada officers are sometimes approached by either live-in caregivers or their employers in situations where employment relationships break down.

HRSDC/Service Canada has no authority to intervene in the employer/employee relationship or to enforce the terms and conditions of the contract. If a breach of contract occurs, parties are afforded the same legal protections as other employers and employees engaged in an employment relationship in Canada. Should an employer call a Project Officer for guidance regarding a caregiver that has left without warning, Project Officers are advised to have the employer notify Service Canada in writing and make a Note to File.

Under the provisions of the EI Act, all employers are required to provide a ROE when an interruption of earnings occurs for an employee. This requirement applies whether the employee is a Canadian or a foreign worker, including live-in caregivers. The ROE indicates the number of weeks the live-in caregiver worked and the wages paid. Live-in caregivers eventually require the ROE as proof that they have worked the necessary length of time to qualify and apply for permanent residency. They also require the ROE to apply for EI benefits. For more information regarding the ROE refer to Service Canada website:

Records of Employment

For information on their eligibility to EI Benefits, FWs should call 1-800-206-7218

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Section 3.9.4.7.1 – Québec/Ministère de l'Immigration et des Communautés culturelles

In cases where the foreign live-in caregiver's job location is in the province of Quebec, the employer must apply for a Quebec Certificate of Acceptance (CAQ) from the MICC and submit the employment contract required by MICC. The maximum duration of the LMO and of the contract in Quebec should be four years.

Service Canada cannot issue unilateral decisions on LCP Quebec files. All confirmations and refusals are to be made in collaboration with MICC. Should an employer decide to cancel or withdraw an application, MICC should be notified once the request has been actioned.

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Section 3.9.4.7.2 – Manitoba's Worker Recruitment and Protection Act

If the job is located in the province of Manitoba, the employer must apply for a Certificate of Registration from the Government of Manitoba's Employment Standards Division before applying for an LMO. Consult the Questions and Answers for more information about Manitoba's new WRAPA.

Please refer to the internal bulletin below for more information on the Operational Response to the Implementation of Manitoba's WRAPA.

HRSDC/Service Canada Operational Response to the Implementation of Manitoba's Worker Recruitment and Protection Act (WRAPA):

1. Purpose

The purpose of this bulletin is 1) to inform you of registration and licensure requirements for employers and third-parties under Manitoba's new *Worker Recruitment and Protection Act (WRAPA)*; and 2) to provide guidance on resulting changes to the Labour Market Opinion (LMO) and Arranged Employment Opinion (AEO) processes for applications for workers to be employed in Manitoba.

2. Background and HRSDC/Service Canada Response

To protect foreign nationals destined to work in Manitoba, recruited as temporary workers or permanent immigrants and vulnerable to exploitation, the Government of Manitoba has enacted new provincial labour legislation: the WRAPA.

The Act came into force on April 1, 2009, and requires all employers and third-parties that engage in recruitment of foreign workers to Manitoba, to first obtain a provincial Certificate of Registration (employers) or a provincial license (third-parties).

HRSDC/Service Canada has worked with the Government of Manitoba and supports the objectives behind this legislation – carefully managing access to foreign workers to fill labour/skill shortages on a temporary basis or to support permanent residence, while proactively responding to issues of worker vulnerability – and has proposed an interim measure to support its implementation.

Starting on April 1, 2009, all employers wanting to recruit foreign nationals to work in Manitoba will be required to register with the Government of Manitoba's Employment Standards Division, before applying for an AEO or LMO through HRSDC/Service Canada's Temporary Foreign Worker Program (TFWP). An LMO or AEO application will not be processed by HRSDC/Service Canada until such time that a valid Certificate of Registration is secured and included as part of the application package. Furthermore, in the case of applications for AEO, if after Service Canada informs employer that WRAPA registration is required to process the AEO application, and the employer does not provide evidence of registration, then the AEO application should be refused.

Longer term, HRSDC is exploring possible regulatory changes that would be required to support a refusal to process a LMO request from an employer who is not registered under a provincial law like the WRAPA.

3. Scope and Guiding Principles

Effective April 1, 2009, all AEO and LMO applications originating from employers/third-parties requesting foreign nationals to work in Manitoba, on a temporary or permanent basis, must be accompanied by a Certificate of Registration from the Government of Manitoba.

This will affect all LMO applications processed by the Manitoba Region, the Centres of Specialization (in Ontario and New Brunswick) and AEO applications (in New Brunswick), and when other regions require inter-regional concurrence for an offer of employment involving the Manitoba Service Canada Region.

This requirement applies to all program areas including: Regular LMO stream (high and low-skilled workers); Seasonal Agricultural Workers Program (SAWP); Live-In Caregiver (LCP) Program; and Arranged Employment Opinion (AEO) stream.

Employers will not be provided with a transitional period to adjust to the WRAPA as targeted outreach efforts by both the Government of Manitoba and HRSDC/Service Canada have been made to inform them of these operational changes. The Government of Manitoba has advised that they will be looking to provide, at most, a two-week service standard for employers to receive their Certificate of Registration (contingent on employer providing the Government of Manitoba with a complete application form and any supplemental information that is requested throughout their registration application). The Government of Manitoba's feeling is that the majority of applications will take less than two weeks to process. Please note that third-party licensing will also benefit from a two-week service standard from the Government of Manitoba.

Following confirmation of employer registration under WRAPA, LMO applications will continue to be assessed against the six factors enumerated in S. 203(3) of the Immigration and Refugee Protection Regulations (IRPR) and other TFWP operational directives. In the case of AEO applications, following confirmation of employer registration under WRAPA, AEO applications will continue to be processed under IRPR S. 82(2). Receipt of a Certificate of Registration from Manitoba does not determine whether an employer is eligible to receive a positive or neutral LMO or AEO from HRSDC/Service Canada. This decision is solely determined by HRSDC/Service Canada in accordance with S. 82(2) and S. 203(3) of the IRPR.

Provincial exclusions under WRAPA are aligned with those employers/jobs exempted from a LMO/Work Permit by the IRPR (SOR/2002-227). Therefore, any employer and job that requires an LMO from HRSDC/Service Canada, will require a provincial Certificate of Registration.

4. Key Elements of the Worker Recruitment and Protection Act (WRAPA)

Following is a brief summary of key elements of Manitoba's WRAPA. Should you wish to view the Act in detail, it is available through the following link: http://web2.gov.mb.ca/bills/39-2/pdf/b022.pdf

A) Regulating Employers that Directly Recruit Foreign Workers

Registering employers:
Employers recruiting a foreign national on a temporary or permanent basis to work in Manitoba are required to register with the Government of Manitoba's Employment Standards Division prior to applying to HRSDC/Service Canada for an AEO or LMO.

In the registration process, employers must identify the name and address of every third-party who will be engaged, directly or indirectly, in the recruitment of the foreign national on their behalf.

Approval, and issuance of a Certificate of Registration to an employer, is based on compliance with labour legislation and the use of an approved third-party. A Certificate of Registration is LMO (or AEO)-specific, and is traditionally valid for the six (6) month period from date of issuance to time of application for an LMO (or AEO) from HRSDC/Service Canada. In certain circumstances, exceptions will be made by the Government of Manitoba on the length of time the Certificate of Registration will be valid (e.g. extending the validity to a period of one-year for certain medical occupations). Information relating to these exceptions, whenever possible, will be conveyed to HRSDC/Service Canada by the Government of Manitoba.

The Certificate of Registration will contain the following information:
- Number of workers approved;
- Occupation title(s);
- Source country(ies);
- Approved Foreign Worker Recruiter (Third-Party); and
- Certificate of Registration Expiry.

If there are any material variations from the LMO (or AEO) application submitted to HRSDC/Service Canada, an employer's Certificate of Registration will need to be amended and re-issued by the province.

B) Regulating Third-Parties

Licencing:
All individuals and entities acting as third-parties involved in bringing foreign nationals to work in Manitoba, on a temporary basis through the LMO process and on a permanent basis through the AEO process, must obtain a licence, which will identify them for monitoring, compliance and enforcement under the WRAPA. Please note, however, that HRSDC/Service Canada will not be asking third-parties to present documents confirming their licensure as part of the LMO (or AEO) application process. In fact, HRSDC/Service Canada's role will be restricted to confirming that an employer is registered and that no material variations exist between the Certificate of Registration and the LMO (or AEO) application.

Membership criteria:
The Government of Manitoba, as part of their licencing process, has requested that all third-parties involved in bringing foreign worker to the province must be a member in good standing of one of the following:

1. The Law Society of Manitoba, a bar of another province or the Chambre des notaries du Quebec; or
2. The Canadian Society of Immigration Consultants (CSIC)

** A person who receives no fee to find employment for their family member does not require a licence under WRAPA.

License Fee and Security:
The fee for a licence is $100 to the Government of Manitoba. Third-parties must also provide additional monetary security, as laid out in the Employment Standards Code, to the Government of Manitoba.

Before an individual or agency is licenced to engage in foreign worker recruitment, they must provide the following:

- An irrevocable letter of credit in the amount of $10,000, from a financial institution that carries on business in Manitoba; or

- A deposit of cash or securities acceptable to the Director, Employment Standards in the amount of $10,000.

A licence is valid for one year from the date it is issued. It is not transferable or assignable.

A listing of licenced Third-parties will be posted on the Employment Standards Branch Website: http://www.gov.mb.ca/labour/standards/. As previously noted, HRSDC/Service Canada will not verify whether a third-party is licensed by the Government of Manitoba as part of the LMO (or AEO) application process.

C) Penalties for Non-Compliance

Employers and third-parties are liable for violations of the WRAPA. The Director, Employment Standards has the authority to refuse to issue or revoke a licence; refuse to register or cancel a registration of an Employer who intends to employ a foreign worker; and investigate and recover monies on behalf of foreign workers from employers and third-parties:

1. In the case of an individual, to a fine of not more than $25,000; and
2. In the case of a corporation, to a fine of not more than $50,000.

5. LMO/AEO and WRAPA Framework

The following is guidance to Coordinators and Officers on the framework for processing LMO applications (or AEO) for foreign workers to Manitoba, as it relates to Manitoba's WRAPA.

As an overriding principle, an employer's LMO (or AEO) application for a foreign national to work in Manitoba, will not be processed by HRSDC/Service Canada unless a Certificate of Registration is secured from the Government of Manitoba.

The following critical path and decision points correspond to the LMO (or AEO)-WRAPA process map.

- LMO (or AEO) applications submitted by employers or third-parties for foreign nationals to work in Manitoba, must be accompanied by a provincial Certificate of Registration [step 3]
- The Certificate of Registration is issued by the Manitoba Employment Standards Divison, and is LMO (or AEO)-specific. The paper document will identify the employer, licenced third-party (if applicable), information respecting the position to be filled by the foreign worker, and the source country for recruitment.
- For employers submitting an on-line LMO application, an original and valid Certificate of Registration is to be remitted to Service Canada with the required thank you page and signed on-line application Employer Declaration. For employers submitting a paper LMO application, it must be accompanied by an original Certificate of Registration.
- FW Officers are to confirm submission of an original, valid Certificate of Registration [step 4]

Key Decision Point #1

If the employer is registered under WRAPA [step 5], the FW Officer can proceed to [step 6].

If the employer is not registered under WRAPA [step 5(a)], the FW Officer should contact the employer within seven business days (regional discretion) to inform them verbally that their LMO (or AEO) application will not be processed until a valid and original Certificate of Registration is provided by the Government of Manitoba. The FW Officer is also asked to provide the relevant contact information for employer registration with the Government of Manitoba. Should the employer fail to comply with the verbal request and not produce a Certificate of Registration within 14 business days, the FW Officer is instructed to send the appropriate letter. All efforts to inform the unregistered employer are to be documented in the FW System.

Key Decision Point #2

The FW Officer should ensure the LMO (or AEO) application and terms and conditions of the Certificate of Registration are the same [step 6]. If there are any material variations between the LMO (or AEO) and Certificate of Registration (i.e. different occupations, numbers of workers requested on the LMO exceeds the number of workers approved on the Certificate of Registration, third-party is present but not listed or different on the Certificate of Registration, Certificate of Registration is expired), the employer should be advised verbally within seven business days by the FW officer to apply to the province to amend their Certificate of Registration so that their LMO (or AEO) application is processed [step 6(a)]. The FW Officer is also asked to provide the relevant contact information for employer registration with the Government of Manitoba. Should the employer fail to comply with the verbal request and not produce a Certificate of Registration without material variations within 14 business days, the FW Officer is instructed to send the appropriate letter. All efforts to inform the employer of their obligations under WRAPA are to be documented in the FW System.

Although the NOC provided on the Certificate of Registration should be the same as the NOC determined by the FW Officer on the LMO (or AEO) application, there is a possibility that minor differences may occur as a result of officer interpretation. In those circumstances, and on a case-by-case basis, the FW Officer is not required to redirect the employer back to the Government of Manitoba if it is clear that the NOC presented by the Government of Manitoba was intended to be similar.

- The LMO (or AEO) shall not be processed until an original and valid Certificate of Registration is provided.
- With an original, valid Certificate of Registration, the FW Officer can proceed to process the LMO application according to the IRPA R.203 factors or the AEO application according to the IRPA R 82 factors [step 7].

6. Other considerations:

A) Third-Party Licensing:

HRSDC/Service Canada does not require third-parties to submit a copy of their license with the LMO (or AEO) application. Where a family member is acting as a third-party, they will not appear on the Certificate of Registration issued by Government of Manitoba. Please note that a family member who receives no fee to find employment for their family member (e.g. LCP) does not require a license under WRAPA. This considered, a FW officer may, at their discretion, still contact an employer directly to clarify aspects of the LMO (or AEO) application. If, during this discussion with an employer, a FW officer discovers that the acting third-party is not eligible for exemption of a license (e.g. not a family member, known third-party recruiter, disclosure of fee

being charged by third-party to employer), they may determine that a material variation exists between the Certificate of Registration and the LMO (or AEO) application. Please note that the Government of Manitoba determines a family member according to the Government of Canada's Employment Insurance Compassionate Care Benefits definition.

B) Service Standards and Processing Statistics:

In the interests of protecting service standards and to ensure that LMO (or AEO) applications received are clearly documented in the FW System, FW officers are directed to enter all LMO (and AEO) applications for workers coming to Manitoba in the FW System upon receipt. Please note that all LMO (and AEO) applications for workers coming to Manitoba include those applications received without a valid Certificate of Registration or those which may have a material variation present (once observed by the FW officer when cross-referencing the LMO (or AEO) application and the Certificate of Registration).

In circumstances where no valid Certificate of Registration has been presented or material variations exist, FW officers are requested to assign the "Request for Information" (RFI) indicator to the LMO (or AEO) application in question to pause the processing clock and protect speed of service statistics. The RFI is to be removed only when one of the following follow-up actions occur: i). the employer provides a valid Certificate of Registration; ii). The employer provides an amended Certificate of Registration free of material variations; or, iii). The employer requests that the LMO (or AEO) application be closed by HRSDC/Service Canada. Under no circumstances will HRSDC/Service Canada "refuse" an LMO for non-compliance with WRAPA or "close" an LMO without a request from the employer.

For on-line applications, however, the processing of the LMO application should not start until the standard documents requested (e.g. completed signature page, proof of advertising, etc.) are received and the valid "Certificate of Registration" document is received (along with confirmation that the LMO application and terms and conditions of the Certificate of Registration are the same). In addition, for online LMO applications, FW officers are asked to assign the RFI indicator once it has been determined that the Certificate of Registration is missing or that material variations exist.

As noted in the LMO/AEO and WRAPA Framework (key decision points #1 and #2), FW officers are asked to inform employers verbally within seven business days of their WRAPA obligations and, should employer be non-compliant with that request, send out the corresponding appropriate letter. In the absence of the employer providing the necessary documents to be compliant with WRAPA obligations or requesting that the LMO application be closed, outstanding LMO applications will be forced to remain in a pending state indefinitely with the RFI indicator applied. As it relates to AEO applications, **in the absence of the employer providing the necessary documents to be compliant with WRAPA obligations or requesting that the AEO application be closed, HRSDC/Service Canada may consider the offer of employment as not meeting the genuineness factor under S. 82(2) of the IRPR and refuse outstanding AEO applications.**

C) Multiple Certificates of Registration

The Government of Manitoba has noted that their employer registration application allows for multiple occupations to be requested. Therefore, the Government of Manitoba has agreed to issue multiple Certificates of Registration (in accordance with the number of occupations applied for) in order to ensure that HRSDC/Service Canada always receives an original copy of the employer registration. The additional copies of the Certificate of Registration will: contain the

same registration number; be identified as an "Original Copy"; and, be sealed with the Government of Manitoba Employment Standards Division seal.

D) Emergency Contact with the Government of Manitoba

HRSDC/Service Canada recognizes that situations will occur when, for example, an employer will require an expedited LMO (or AEO) since a temporary foreign worker wishing to work in the Province of Manitoba will be at the border. In those circumstances, FW Officers still needs to ensure that the employer is registered with the Government of Manitoba. FW Officers are asked to first refer these employers to the following emergency contacts below for expedited employer registration with the Government of Manitoba and await confirmation of employer registration before processing the linked LMO (or AEO). Please note that it is the responsibility of the employer to initiate the call to the emergency contact with the Government of Manitoba.

Karen Sharma
A/Manager - Business Registration Unit
5th Floor, 213 Notre Dame Avenue
Phone: 204-945-4404
Cellphone: 204-228-3884
Karen.Sharma@gov.mb.ca

Tanya Despres-Balan
Employer Registration Officer
5th Floor, 213 Notre Dame Avenue
Phone: 204-945-6127
Tanya.Depres-Balan@gov.mb.ca
FAX Number: 948-2148

In emergency situations, the Government of Manitoba will request that employer's permission to share the Certificate of Registration directly with the appropriate HRSDC/Service Canada office by fax. In these cases, the Certificate of Registration will be sent to HRSDC/Service Canada from a Government of Manitoba fax number (204-948-2148) with a cover sheet signed by a Government of Manitoba staff member. This scenario represents the only situation where an original Certificate of Registration is not required. No other exceptions exist.

E) Inter-regional Concurrence

When an offer of employment involves more than one Region or Province, HRSDC/Service Canada must ensure that the LMO application is based on a sound analysis of the labour market situation in all Regions or Provinces where the work will occur. In the case of Manitoba, and as a result of the WRAPA, the additional requirement of a Certificate of Registration is required.

Inter-regional concurrence can be requested by sending an email to the following inbox: fwp-pte.mb@servicecanada.gc.ca. The e-mail should include: the FW system file number; and, an overview of the request to provide context that may not be captured in FW system including the whether a valid **ORIGINAL** Certificate of Registration from the Employment Standards Division of Manitoba has been submitted with the LMO application. It would then be the responsibility of the Manitoba Region to contact the employer directly and inform them of the WRAPA requirements.

A situation requiring inter-regional concurrence is when, for example, a LMO for an Operator of Amusement Rides (NOC 6671) is submitted to a Service Canada Centre in Alberta for a carnival that will begin in Edmonton (Alberta), make stops in Regina (Saskatchewan) and Winnipeg (Manitoba), before ending in Toronto, (Ontario). Above and beyond ensuring that the LMO factors

listed in IRPR. 203 are respected in each jurisdiction, there is also an additional requirement bestwoed on the FW Officer at the Service Canada Centre in Alberta to ensure that the employer has secured a “Certificate of Registration” from the Government of Manitoba.

F) Employer Challenge

It is important to note that this proposal is not without risk. Employers could challenge HRSDC/Service Canada’s refusal to process their LMO (or AEO) requests in court. In those circumstances, please contact the TFWP’s Program Development and Implementation Division, National Headquarters (NHQ), to discuss next steps. In keeping with the spirit of the WRAPA, please note that the assessment of an LMO (or AEO) application from an unregistered Manitoba employer will only commence after NHQ concurrence has been provided.

G) Employer’s Certificate of Registration is Revoked

Upon formal notification by the Government of Manitoba to NHQ, HRSDC/Service Canada would instruct the affected HRSDC/Service Canada office to not process the LMO (or AEO) in cases where a decision had not been rendered on the file. Where a positive LMO (or AEO) has already been issued, the provincial revocation of the employer’s Certificate of Registration should be documented in the Foreign Worker System through “Notes to File” and in “CIC Notes”. Please note that HRSDC/Service Canada is under no obligation to cross-reference the names of third-parties against the provincial member in good standing list.

H) Communications and Outreach

Along with a targeted outreach initiative initiated by the TFWP to inform employers wishing to recruit foreign workers to Manitoba of the WRAPA requirements, the following reference will be added to the TFWP Internet site:

A Certificate of Registration from the Government of Manitoba is required for employers in Manitoba. Please visit www.manitoba.ca/labour/standards.

This reference will be included in sections of the Internet next to information about the Quebec Acceptance Certificate (CAQ) and on Internet pages for all affected program areas, including the LCP.

Key contacts:

James Sutherland (819) 953-8635
Ken Shimizu (204) 984-4793

Temporary Foreign Worker Program Manual

Section 3.9.4.7.3 – British Columbia

If the job is located in British Columbia, the employer must register the foreign live-in caregiver with the BC Ministry of Skills Development and Labour.

Section 3.9.4.7.4 – Ontario

Ontario introduced LCP legislation this year but it doesn't affect processing of LMO applications.

Under the *Ontario Employment Protection for Foreign Nationals Act*, the province is providing expanded protections for some of Ontario's most vulnerable workers. New protections for workers include:

- a ban on all fees charged to live-in caregivers by recruiters, either directly or indirectly, or by anyone on behalf of a recruiter;
- preventing employers from recovering, directly or indirectly, recruitment and placement costs from live-in caregivers;
- prohibiting the practice of taking a caregiver's personal documents such as a passport and work permit; and
- prohibiting reprisals against caregivers for exercising their rights under the legislation.

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Section 3.9.4.8.1 – Notes to File

Notes to file serve as the key component for all work completed on a file. Clear, concise and objective Notes to File are fundamental throughout all stages of the LMO (i.e. LCP call centre, assessment, files reviews, integrity, ATIP, Quality Monitoring, etc.). As per direction from Official Languages, the language of work for the CoS is English. Therefore, all Notes to File/Employer notes/Third Party notes are to be completed in English.

Section 3.9.5.3 – File Construction

The flow chart contained in the document: *Anatomy of a file docket* explains the steps that are taken to create an official file once an application is received at the CoS.

Mandatory file contents

Verification of complete/incomplete files received:
There is now a pre-assessment stage before files are passed to a FWOs. Clerical staff will ensure the file is complete before it is assigned to an Officer. This benefits the Officers (greater work efficiency) and benefits employers as they will get a response immediately if something is missing from their application.

For a thorough review of the steps that Clerks take to ensure the file is complete, refer to the following two flow charts: Incomplete Online Process Map and TFWP Client Application Process

Temporary Foreign Worker Program Manual

Section 3.9.5.4 – Retention/Returns/Destruction of Documents

Documentation that is not required for the assessment of an LMO application should be returned to the employer. Please return the documents (photocopies) via mail, with the decision letter, and notate in 'Notes to File' what has been returned to the employer (e.g. Birth Certificates, Social Insurance Number Cards, Resumes, etc).

Temporary Foreign Worker Program Manual

Section 3.9.6 – Decision Options – Pre and Post LMO

A Flow Chart of Recommended Action (Decision Tree) has been developed by NHQ and can be found in the Annex section (Annex 6.4.1.3)

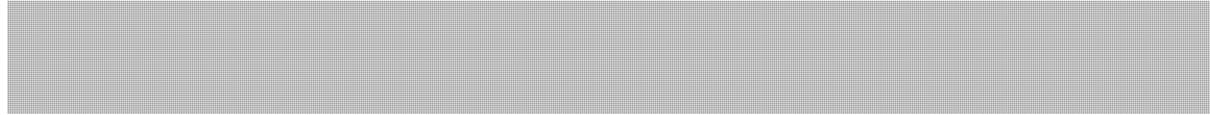
The majority of decisions entered should either be Confirmed or Refused. Withdrawn, Cancelled, Revoked and Closed should only be used in exceptional circumstances. For all decisions, the Officer's notes to file must support the rationale.

Section 3.9.7 – Integrity

Project Officers are encouraged to speak to a BEA when in doubt about the genuineness of a file.

Project Officers should encourage employers to submit concerns/complaints regarding third-parties in writing. Should a Project Officer identify suspicious and/or potentially fraudulent information pertaining to an LCP LMO application, the steps prescribed in the applicable process map must be followed.

s.16(2)



Section 3.10.1 – Goal

Since the late 1960's, the Canadian government has implemented a temporary employment movement authorizing agricultural workers from the Caribbean and later from Mexico (1974) to work in Canada.

Canada's SAWP began as an international agreement between Canada and Jamaica in 1966. It expanded to include Mexico, Barbados, Trinidad & Tobago, and the Eastern Caribbean States of Anguilla, Antigua and Barbuda, Dominica, Grenada, St.Kitts/Nevis, St. Lucia and St. Vincent & the Grenadines and Montserrat.

The SAWP facilitates temporary migration from Caribbean & Mexican agricultural workers into Canada to meet seasonal agricultural needs. The rationale was to support efforts by individual farmers to meet their short-term, peak season labour needs. The SAWP represents an increasingly important complement to the Canadian labour force. It currently operates in Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia and British Columbia.

Section 3.10.3 – Roles and Responsibilities

HRSDC/Service Canada assesses what impact the entry of foreign workers would have on Canada's labour market or, in other words, how the entry of foreign workers would affect Canadian jobs. It issues LMOs.

CIC makes the final decision as to whether individual foreign workers will be allowed to enter and work in Canada. It issues work permits and visas. For further information visit CIC's Website.

The CBSA screens foreign workers at border crossings and airports. It can deny entry to foreign workers if it believes they do not meet the requirements of the Immigration and Refugee Protection Act and Regulations.

Foreign governments assist in the recruitment and selection of foreign workers, make sure workers have the necessary documents, maintain a pool of qualified workers and appoint representatives to assist workers in Canada.

The MICC of the Quebec province makes decisions on the potential impact the entry of TFW will have on the labour market. When submitting an LMO request to Service Canada, employers also have to submit an application for a QAC, a document required by the province to allow a foreign worker to work in Quebec. This request can be approved or refused. If approved, the QAC will be issued to the foreign worker.

For the purpose of the SAWP, the Centre d'emploi agricole (CEA) assists employers from the province of Quebec in the process of requesting TFWs, provides information to the employers about the programs and quality proofs application forms prior to sending them to Service Canada and the MICC. It also follows-up on modification requests for substitution, addition and cancellation of workers.

Section 3.10.6 – Determining Prevailing Wage Rate

HRSDC/Service Canada sets the prevailing wage rate that you must offer based on labour market information from StatsCan, HRSDC/Service Canada, provincial ministries and other reliable sources. The rate is consistent with wages being paid to Canadians and permanent residents in the occupation and region where the worker will be employed. An employer's request for a LMO will not be confirmed if the employer offer wages below rates paid to Canadians in a similar position and region.

Benefits provided to Canadian workers and permanent residents must be extended to foreign workers. Employers are required to offer TFWs working in a unionized environment the same wage rate as established under the collective bargaining agreement.

In order to address unique circumstances, HRSDC/Service Canada maintains the discretion to set the prevailing wage rate that an employer must offer a TFW whether or not the position is covered by a collective agreement. The prevailing wage is the average hourly wage paid to Canadians working in an occupation in a specific geographical area.

Methodology

The SAWP operates within specific guidelines set out in bilateral MOUs signed between Canada, Mexico and several Caribbean countries. Under the terms of the MOUs, employers are required to pay TFWs the higher of: the provincial minimum wage, the prevailing wages as determined annually by HRSDC, or the rate being paid by the employer to his Canadian workers performing the same type of agricultural work.

The TFWP reviews SAWP wages on an annual basis to ensure that the wages being paid to TFWs are consistent with the wages paid to Canadian agricultural workers performing comparable tasks. The annual wage review is calculated by adjusting the previous SAWP wage rates effective January 1st by an inflation rate (CPI, All-Items, year-over-year, January to June, 6-month average).

In cases where the adjusted SAWP wages do not equal or exceed the expected provincial minimum wage, the revised SAWP wage defaults to the expected minimum wage for the province.

The CPI is used as an escalation tool, by which a wage to be paid to a SAWP worker is adjusted by changes in inflation. Indexing wages to inflation is a commonly used approach for adjusting pensions and unionized wages to maintain the purchasing power of wages through time. Applying the same approach to SAWP wages ensures a worker's standard of living remains relatively constant from the previous year.

SAWP WAGES FOR 2011:

British Columbia:
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/SAWPSheets/BC.shtml

Alberta:
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/SAWPSheets/AB.shtml

Saskatchewan:
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/SAWPSheets/SK.shtml

Manitoba:
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/SAWPSheets/MB.shtml

Ontario:
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/SAWPSheets/ON.shtml

Quebec:
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/SAWPSheets/QC.shtml

New Brunswick:
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/SAWPSheets/NB.shtml

Nova Scotia:
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/SAWPSheets/NS.shtml

PEI:
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/SAWPSheets/PEI.shtml

Section 3.10.7 – Recognition Payment

The recognition payment is a supplement to the worker's salary that was negotiated between the employers and the foreign governments. It is applicable for both Caribbean and Mexican workers coming under the SAWP only.

The clause in the contract reads as follows:

> *That a recognition payment of $4.00 per week to a maximum of $128.00 will be paid to WORKERS with 5 or more consecutive years of employment with the same EMPLOYER, and ONLY where no provincial vacation pay is applicable. Said recognition payment is payable to eligible WORKERS at the completion of the contract.*

Note that this clause does not apply in Quebec province since the labour legislation provides for vacation pay for all workers, i.e. 4% of the wage earned during the year and 6% for the workers with 5 or more consecutive years of employment with the same employer.

Section 3.10.8.3 – Transportation

Under the SAWP, employers must arrange and pay for two-way airfare for the worker to travel from his/her source country to the location of work in Canada and for the return to the source country. Part of the cost of the airfare may be recouped through payroll deductions in all provinces except British Columbia. Employers must also pay for the worker's CIC work permit fees ($150) that can be deducted from the worker's wages.

Section 3.10.9 – Health Insurance

Under the SAWP, the employer is never responsible for finding or providing coverage (or paying for it).

With the Mexico SAWP workers, the employer pays the RBC insurance fees upfront and then deducts them from the worker's pay. This insurance includes supplemental coverage (drug plan, etc.) as well as coverage of workers in cases where there is a waiting period or they are never eligible to participate in the provincial scheme. Note that neither Quebec nor Ontario has waiting periods.

With the Caribbean SAWP workers, the source country is responsible for the worker's coverage. Employers do not make any deductions from pay for health coverage, but they collect the 25% forced savings and give it back to the consulates.

Section 3.10.10.1 – Advertising

Employers must conduct the minimum advertising efforts required as follows:

- advertise for a minimum of 14 days on the national Job Bank (or the equivalent in Saskatchewan or the Northwest Territories) during the three months prior to applying for a LMO; and
- conduct recruitment activities consistent with the practice in the occupation. 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 running for two-three weeks in journals, newsletters, national/regional newspapers, ethnic newspapers/newsletters or 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; and/or
  - advertise on Internet sites e.g., posting during 14 days/two weeks on recognized Internet job sites (union, community resource centres or ethnic sites).

The advertisement must include the company operating name, business address and wage range (i.e. an accurate range of wages being offered to Canadians and permanent residents). It must always include the wage rate set by HRSDC/Service Canada and reference to benefit packages being offered. A worker in a unionized environment must receive the same wage rate as established under the collective bargaining agreement.

In addition to the advertisement requirements mentioned above, employers are encouraged to conduct ongoing recruitment efforts, including communities that face barriers to employment (e.g., Aboriginal Peoples, older workers, immigrants/newcomers, youth and persons with disabilities). Advertisement could be on recognized Internet job sites, in local and regional newspapers, at community resource centres and local regional employment centres. Advertisement criteria vary slightly in the province of Quebec from those mentioned above. For further information, consult Hiring Temporary Foreign Workers in Quebec.

Proof of Advertisement

Employers must be prepared to demonstrate that they meet the advertising requirements by providing proof of advertisement and the results of their efforts to recruit Canadians or permanent residents as part of the LMO process (e.g., information on the qualifications of Canadian applicants and why they were rejected). Records of their efforts should be kept for a minimum of six years, as stipulated in some federal and provincial legislations, such as the *Income Tax Act*.

Section 3.10.11 – Compensation

It is a requirement of the SAWP that all workers be enrolled in the applicable provincial workers' compensation program. However, not all provincial programs have mandatory enrolment for all workers in the province. In some provinces, agricultural employers are specifically exempted from the requirement to participate in workers' compensation programs.

In such cases where participation in workers' compensation schemes is not mandatory, it is still a requirement of the SAWP that these TFWs be enrolled in the applicable program. Furthermore**, in all regions where enrolment in workers' compensation is not mandatory, the employer must provide proof of the enrolment** of his/her workers **prior** to the processing of an LMO request.

Section 3.10.12 – Transfer of Workers

Under the SAWP, employers can transfer a worker from one farm to another with the worker's consent and prior written approval from HRSDC/Service Canada and the foreign government representative in Canada, providing that the new employer is a SAWP employer.

Mexican workers: this provision is included in the Mexican contract.

Caribbean workers: the employer and worker must sign a transfer contract.

Note also that transfers of workers are not permitted between the SAWP and the Agricultural stream of the Pilot Project. For example, a Mexican worker coming under the Agricultural stream of the Pilot Project cannot be transferred to a SAWP employer and vice-versa.

Section 3.10.13 – Premature Repatriation

Under the SAWP a premature repatriation mechanism exists. It provides different arrangements for different circumstances.

The clause in the contract reads as follow:

1. Following completion of the trial period of employment by the **WORKER**, the **EMPLOYER**, after consultation with the **GOVERNMENT AGENT**, shall be entitled for non-compliance, refusal to work, or any other sufficient reason, to terminate the **WORKER'S** employment hereunder and so cause the **WORKER** to be repatriated. The cost of such repatriation shall be paid as follows:

   i) if the **WORKER** was requested by name by the **EMPLOYER**, the full cost of repatriation shall be paid by the **EMPLOYER**;
   ii) if the **WORKER** was selected by the Government of Mexico and 50% or more of the term of the contract has been completed, the full cost of returning the **WORKER** will be the responsibility of the **WORKER**;
   iii) if the **WORKER** was selected by the Government of Mexico and less than 50% of the term of the contract has been completed, the cost of the north-bound and south-bound flight will be the responsibility of the **WORKER**. In the event of insolvency of the **WORKER**, the Government of Mexico, through the **GOVERNMENT AGENT** will reimburse the **EMPLOYER** for the unpaid amount less any amounts collected under Clause VII - "The **WORKER** Agrees to".

2. If it is the opinion of the **GOVERNMENT AGENT** that personal and/or domestic circumstances of the **WORKER** in the home country warrant, the **WORKER** shall be repatriated with full cost of the repatriation paid by the **WORKER**.

3. If the **WORKER** has to be repatriated due to medical reasons, which are verified by a Canadian doctor, the **EMPLOYER** shall pay reasonable transportation and subsistence expenses. The **EMPLOYER** cannot continue recovering the costs incurred through the cheques issued to the **WORKERS** by the insurance companies. The Government of Mexico will pay the full cost of repatriation when it is necessary due to a physical or medical condition, which was present prior to the **WORKER'S** departure from Mexico.

4. That if it is determined by the **GOVERNMENT AGENT**, after consultation with **HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA**, that the **EMPLOYER** has not satisfied his obligations under this agreement, the agreement will be rescinded by the **GOVERNMENT AGENT** on behalf of the **WORKER**, and if alternative agricultural employment cannot be arranged through **HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA** for the **WORKER** in that area of Canada, the **EMPLOYER** shall be responsible for the full costs of repatriation of **WORKER** to Mexico City, Mexico; and if the term of employment as specified in Clause I - 1., is not completed and

employment is terminated under Clause X - 4., the **WORKER** shall receive from the **EMPLOYER** a payment to ensure that the total wages paid to the **WORKER** is not less than that which the **WORKER** would have received if the minimum period of employment had been completed.

5. That if a transferred **WORKER** is not suitable to perform the duties assigned by the receiving **EMPLOYER** within the seven days trial period, the **EMPLOYER** shall return the **WORKER** to the previous **EMPLOYER** and that **EMPLOYER** will be responsible for the repatriation cost of the **WORKER**.

Section 3.10.14 – Seasonal Agricultural Workers Program Process

Program Support

- Receipt
  - Date stamp
- Registration
  - FWS input;
  - send FYI acknowledgement letter;
  - set up Docket and create label;
  - prepare SAWP Receipt;
  - photocopy payment (certified cheque, money order or bank draft) onto the completed SAWP receipt and upload into FWS (SF); and
  - cheque forwarded to Finance for deposit (See Payment Transfer Process).

Foreign Worker Representative

- Review application – ensure application is complete
- signed Application form;
- signed contract;
- two sources of advertising;
- WCB form;
- Housing Authority letter; and
- confirm payment was received.
- Assess Application
- Confirmation of Application
  - the expiry date listed on the confirmation must allow sufficient time for the workers to clear immigration. In most cases, the expiry date should not exceed three months from the entry of the last worker;
  - the job duration cannot exceed 8 months and in any event cannot extend past December 15;
  - paste SAWP script into confirmation letter;
  - annex not used for SAWP applications;
  - create Job Order in FWS, and using the fax template cover sheet for Mexico or Tinidad/Tobago , fax the job order to the appropriate consulate; and
  - fax LMO confirmation to the employer.

For Mexico Only

- Send an email to Vacation World Travel and RBC (vacationworldtravel@shaw.ca and penny.cleary@rbc.com with a cc to ruth.alexis@rbc.com)
- The email is to contain the following information:
  - 2010 SAWP Opinion Number;
  - SF Number;

- Company Name;
- Address;
- Phone Number;
- Fax; and
- Number workers and expected arrival date.

- **Make sure to request a delivery receipt and a read receipt for the email (Options menu).** Delivery and read receipts are to be uploaded into FWS.

Transfer of SAWP Workers

When employer requests workers to be transferred from one employer to another we need the following:

- written request / agreement from employers;
- confirmation of housing, etc from the new employers; and
- written approval from the consulate.

(Input from region)

Pages 341 to / à 342

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of the Access to Information Act

de la Loi sur l'accès à l'information

Pages 343 to / à 358

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16(2)

of the Access to Information Act

de la Loi sur l'accès à l'information

Pages 359 to / à 376

are withheld pursuant to section

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16(2)

of the Access to Information Act

de la Loi sur l'accès à l'information

Pages 377 to / à 379

are withheld pursuant to section

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16(2)

of the Access to Information Act

de la Loi sur l'accès à l'information

Pages 380 to / à 381

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Pages 382 to / à 384

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Pages 385 to / à 387

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Pages 395 to / à 397

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Pages 398 to / à 400

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Pages 405 to / à 407

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Section 5.1 – Quality Assurance Framework: Vision, Mission and Goals

Vision

The QA Framework ensures that the TFWP is responsive to changing labour market conditions and client needs; is delivered in a consistent manner across the country; and LMOs are defensible.

Mission

The QA Team at TFWP NHQ develops and delivers tools to support consistent development and application of program policy, service delivery, training, risk assessment and risk management. The Team works in partnership with policy development and service teams both at NHQ and in the regions. It is committed to transparent processes focused on practical applications and results.

Goal

Challenges related to consistent development and application of program policy have been identified as an important area of risk by NHQ and regional staff, as well as by the Office of the Auditor General (OAG) in a current audit. This QA Framework addresses these concerns.

The TFWP QA Framework will provide a platform (process & tools) for ongoing analysis of TFWP service delivery against policy objectives, directives and guidelines contributing to responsive development, implementation, assessment and reporting of policy & program quality improvement initiatives. The Framework provides for risk assessment and risk management across the policy-service delivery spectrum. The process will also lead into ongoing training of service delivery agents. Ultimately, the QA Framework aims to strengthen "defensibility" of LMOs.

The QA Framework differs from Evaluation or Audit initiatives in that it does not directly assess program effectiveness or efficiency, but rather compliance with program policy, directives and guidelines. National in scope and focused on systemic issues, the QA Framework will not measure individual performance, though it may contribute to management control and evaluation and audit exercises through complementary initiatives.

Principles

Reflecting a Values-based approach, the QA Framework is based on a set of four principles. These establish a foundation for the QA Framework, providing a guide for all activities to encourage buy-in across all levels of the program and ensure effective program-wide progress on defined goals.

1. Consistency: Addressing the OAG's findings, the QA Framework is oriented towards establishing a unique set of tools to ensure development and implementation of a comprehensive, coherent policy direction, without gaps or inconsistencies, and ensuring consistent application of that policy across the program's Policy-Service Delivery Continuum. The QA Framework envisions a one-stop catalogue of program direction accessible to all program staff.

2. Transparency: Commitment to transparency is imperative for addressing anxiety associated with change processes. The Framework's development and implementation plan provides for program-wide dialogue through personal visits to regions, regular telephone conferences, unfettered email access to Framework architects and through broad sharing of this document as well as a summary of the work plan and timelines and regular updates on progress. Methodologically, it relies on opportunities for concrete input into the development of program tools, through the establishment of an electronic Forum dedicated to dialogue on policy and program direction proposals.

3. Partnerships: Consistent development and application of program policy requires broad commitment to the QA Framework irreconcilable with an exclusive focus on unit-based interests. Recognizing that the issues addressed by the Framework span the scope of the TFWP and are of a shared responsibility, its success relies on spreading the work required for change broadly. Leading that change process requires effective dialogue, presented in direct opposition to consultation. Where consultation may be perceived as regions providing input into NHQ decision-making processes focused on NHQ-centric needs, dialogue relies on ongoing back-and-forth sharing of positions to identify and act on common interests.

4. Pragmatism: The Framework is focused on the achievement of concrete, measureable activities, outputs and outcomes. Client-centric and addressing the needs of all staff across the Policy-Service delivery spectrum, the Framework links its activities to shared interests, goals and objectives. Products pursued by the Framework include a central, accessible catalogue of comprehensive and consistent program direction, including NHQ Program Policy, Interpretive Guidelines, Operational Directives and Service Standards, as well as training material and data collection, analysis and reporting tools.

Section 5.4 – Quality Standards

Quality is linked to providing credible opinions: we need to be able to show proof that our opinions result from consistent processes, and are based on credible sources of information.

Timeliness: Files processed in as short a time as possible. Comparison to baseline standard.

Accuracy: Files must be complete, correct, factual and supported by appropriate documentation.

Clarity of communication: Communications should be clear, concise and concrete. Information should reflect Accuracy as defined above. Written communication should reflect professional standards **and use templates to the extent possible.**

Fairness: Decisions must demonstrably be consistent with standards of Natural Justice and Administrative Fairness. In the words of the Alberta Ombudsman: “natural justice is to administrative fairness what due process is to criminal law.” For example, fairness means giving opportunity to employer to respond to potential negative LMO or AEO before final decision. The decision and reasons must be rationally connected, communicated clearly and the decision-maker identified. A brief overview of process may show that standard procedures were followed, especially if the decision is negative. A reasonable decision shows how the decision-maker considered and assessed information and arguments.

Section 5.5 – Risk Management Framework

TFWP Program Policy Quality Assurance Framework: Risk Assessment and Risk Management

Rationale

Development and implementation of program policy comprise risks that threaten delivery of desired outputs and achievement of outcomes. Consideration and development of options for management of these risks is a critical component of program policy development.
This Risk Assessment Framework provides a platform and tools for assessing risks during the development and ongoing implementation of program policy initiatives. It should be used for each new program policy initiative and should form part of any of new program policy proposal, as well as any revision or assessment of existing program policy.

Authority

The Treasury Board Secretariat requires consideration of Risk Assessment and Management through the Results-based Management and Accountability Framework and Risk-Based Audit Framework (RMAF-RBAF) for TB Submissions. The TFWP RMAF/RBAF of August 2008 contains the most recent, program-wide Risk Assessment and Risk Management Strategy, based on the Logic Model. It provides a useful model for assessment of program policy initiatives.

Risk Assessment and Risk Management Strategy

The RMAF/RBAF groups key risks influencing the achievement of program outcomes according to:

- strategic risks;
- stewardship risks;
- relationship management risks;
- infrastructure risks; and
- delivery risks.

A Risk Assessment and Management Strategy for program policy development based on these groupings facilitates contiguous analysis and mitigation of risks across the policy – service delivery continuum. Comprehensive risk assessment and management can be informed by discussion with program policy development and program delivery agents, clients and stakeholders and consideration of program policy, including material such as interpretive guidelines and operational directives. In the present case, it is recommended that risk assessment and management proceed in two phases: initially, internal consideration of risk be contained within the TFWP NHQ in consultation with key informants in Service Canada Regions, CIC and CBSA, and then in step two, consultation with other key stakeholders occur on refined drafts.

Risk Assessment Mapping

The TFW RBAF provides a commonly used risk management actions model, or “Heat Map” for identifying and analysing risk in terms of impact and probability, as well as leading discussion

towards risk mitigation or management strategies. The Heat Map is used to guide group discussions involving policy developers, clients and stakeholders.
The first stage in constructing the Heat Map involves cataloguing:

- a description of each risk categorized according to the 5 aforementioned groups;
- current mitigation/management strategies;
- ownership of the risk;
- assessment of likelihood and impact of each risk (low, medium or high);
- additional mitigation/management strategies; and
- risk management responsibility.

Based on the data gathered, a summary table can be constructed showing risk clusters requiring management focus. The following pages provide templates for constructing a Heat Map and summary table, as well as a discussion guide for identifying and addressing risks.

Risk Assessment and Mitigation/Management Table

Risks	**Current Mitigation/management Strategies**	**Ownership of Risk**	**Assessment**		**Additional Mitigation/management Strategies**	**Risk Management**
Strategic Risks						
Stewardship Risks						
Relationship Risks						
Infrastructure Risks						
Delivery Risks						

Working Definitions

Strategic Risks: refers to consideration of program authorities, and governmental or departmental priorities. For example, is the proposed policy consistent with the Budget commitments; does it comply with program authorities described in the PAA, TB Submission or RMAF/RBAF; does it advance the department's goals as described in the RPP or business plan?

Stewardship Risks: refers to consideration of the ability for sustained activity in the direction proposed. In other words, is the proposed policy viable within current resource allocation and program infrastructure? For example, does the program have the resources to maintain service standards through the course of implementing the proposed policy; does NHQ have clear communications infrastructure in place to ensure consistent application; how will monitoring and reporting on results occur?

Relationship Management Risks: refers to consideration of partners' and key stakeholders' interests. Will they buy-in to the proposed policy; have mutual benefits been identified; have potential impacts on their business activity been considered; have they been consulted throughout the process; how will the policy be communicated?

Infrastructure Risks: considers current organizational capacity, including governance and management protocols, and practices, service delivery agent competencies, resources and communications platforms. Questions such as the following provide guidance on Infrastructure Risks considerations: do service delivery agents have the ability or capacity to deliver on the proposed change; is there an intranet platform for communicating policy; how will managers monitor compliance; through what media will clients be guided through the change?

Delivery Risks: Ultimately, the best policy fails if it does not consider implementation issues at the service delivery stage. How will NHQ provide consistent advice to service delivery agents; how will managers ensure consistent application across regions; how will resources be allocated to ensure that timely delivery occurs; how will managers monitor policy implementation and compliance; how will service delivery data be collected for reporting?

Risk Management Actions Model – Heat Map

	PROBABILITY			
	High			
IMPACT	**Medium**			
	Low			
		Low	**Medium**	**High**

Ideally, most risks will be clustered within the bottom left-hand corner of the Risk Management Actions Model, considering mitigation/management strategies.

Discussion Guide: Risk Identification, Assessment, and Management

This Discussion Guide[1] can serve as a tool for generating information on risks during the policy development process. Ideally, it supports policy development at three key stages:

- identification of issue;
- development of options; and
- implementation strategy.
-

The overall goal of this exercise is to ensure that risks are considered throughout the course of developing operational policy, before investment in options precludes discussion of alternatives. Sound consideration of risks supports decision-making by providing a comprehensive valuing of options. Building on the Working Definitions of the different characterisations of risks presented above, the following questions can provide a guide to initiate and lead discussion of risks associated with TFWP policy development processes. For each risk identified, participants should develop mitigation strategies to situate the risks appropriately within the Heat Map.

[1] This proposal expands on material from four sources: the August 2008 TFWP RMAF/RBAF, the HRSDC Policy Development Guide, CSPS G195 Course material (La Gestion du risque dans la fonction publique) and a "Development of Policy and Procedures in the TFWP" guide developed within the PDI Division.

1. Identification of Issue

a. What problem or opportunity is this policy addressing? (Strategic Risks).
b. What is the history of current policy relating to this initiative? (Strategic, Relationship Management, Infrastructure and Delivery Risks).
c. Are there related policies already in place? (Strategic Risks).
d. How does it relate to Governmental or departmental priorities? (Strategic Risks).
e. How does it relate to statutory or regulatory authorities – does it require changes? Is it consistent with the role of the department/program? (Strategic Risks).
f. How does it relate to Service Canada, CIC or CBSA policies? (Strategic, Relationship Management, Infrastructure and Delivery Risks).
g. Is the issue focused on strategic considerations, operational directives or interpretive guidelines? (Strategic, Relationship Management, Infrastructure and Delivery Risks).
h. How does the definition of the issue relate to the program logic model? Does it describe activities that link to outputs and outcomes? (Strategic, Stewardship, Infrastructure and Delivery Risks).

2. Development of options

a. What is the evidence-base of the discussion? Are there gaps in the evidence? Is the evidence complete, comprehensive and credible? (Strategic Risks).
b. What are the determinants of outcomes? (Stewardship, Relationship Management, Infrastructure and Delivery Risks).
c. What factors could positively or negatively affect the implementation of each option? Are the benefits worth the risks? Is there sufficient information to make informed judgement about risks? Are there legal risks? Have risk assessment results been integrated into the decision-making process? Can mitigation strategies reduce the risks to acceptable levels? Will due diligence expectations be met, should a serious impact occur? (Strategic, Stewardship, Relationship Management, Delivery Risks).
d. Applying different lenses to the policy analysis: Privacy, Gender, Diversity issues. Do the options consider impact on different groups; or involve third parties? Do the options vary considerably from existing policy? Is there provision for collecting personal information, unmasked personal identifiers? (Strategic, Relationship Management and Infrastructure Risks)
e. Have internal stakeholders been consulted? Is there scope for external consultations? Are there Federal/Provincial/Territorial relationship considerations? (Strategic, Relationship Management and Delivery Risks).
f. Are the options legal, ethical, consistent and acceptable to partners and stakeholders? Have potential impacts on horizontal policy been considered? (Strategic, Relationship Management, and Delivery Risks).
g. Are the options practical; can they be implemented quickly and with minimal disruption to established procedures? (Relationship Management, Infrastructure and Delivery Risks).
h. Are the options costed? Is there an objective determination of costs associated with each option, considering infrastructure and training, monitoring and reporting? Are the costs sustainable within current program authorities? (Stewardship, Relationship Management, Infrastructure and Delivery Risks).
i. Is there a strategy outlined for evaluating results? How will success/progress be measured? Is there a source of data in place, or will new data capture infrastructure be required? How will performance data be analysed to support decision-making? Are the expected outputs and outcomes unambiguous, concrete and concise? (Strategic, Stewardship, Infrastructure and Delivery Risks).

3. Implementation Strategy

a. Do the options presented include consideration of implementation issues? Will implementation require changes to delivery or performance measurement infrastructure, new data capture or analysis? (Strategic, Relationship Management, Infrastructure, Delivery Risks).
b. Does the implementation plan include consideration of current workloads? (Relationship Management, Infrastructure, Delivery Risks).
c. Does the implementation plan coincide with business cycles; will training occur before peak workload periods? (Infrastructure, Delivery Risks).
d. How will implementation be supported; how/from whom will front-line delivery staff acquire timely information? (Relationship Management, Delivery Risks).
e. Does current IT/IS infrastructure support the options presented? If changes are required, how do they fit within the IT/IS business plan? (Stewardship, Relationship Management, Infrastructure, Delivery Risks).

Accountability for Policy Instruments

In order to ensure that policy proposals have undergone the Divisional policy development quality assurance process, the Director, PDI Division will require attestation/sign-off from the Team Leader presenting the proposal, on the following criteria:

- The issue or policy objective addressed by the proposal has been validated by the Director.
- Impacts on current business practices or operational policy have been considered; risks have been identified and addressed. This includes current IT/IM platforms and business plans.
- Key partners have been consulted in the course of development of options and their views considered; a record of their views is available for review. Justification for the recommended course of action addresses divergent views.
- Data considered in the course of developing options are available for review.
- Options have been costed; and are within current resource allocations, or provisions for alternate sources of funding are identified.
- The proposal provides for impact/performance measurement and reporting, and regular review/revision.
- The proposal contains a Communications Plan for service delivery agents, key partners and stakeholders. The Plan provides for clear, concrete, concise and consistent presentation of the policy objective, method or practice, performance measurement strategy and accountability for results.
- The proposal provides an Implementation Plan identifying key milestones, concrete deliverables and responsibility for each deliverable. The Implementation Plan includes provision for training service delivery agents, and for posting of appropriate communications for key stakeholders/partners.
- Process measures allow for compliance assessment and for accommodating exceptional circumstances; approval/process for deviation from established procedures is described.

Section 5.5.1 – When to assess Risk

TFWP Risk Assessment and Risk Management Guidelines[1]

Risk: Risk refers to the uncertainty that surrounds future events and outcomes. It is the expression of the likelihood and impact of an event with the potential to influence the achievement of an organization's objectives. (TBS Integrated Risk Management Framework, April 2001)

Risk Management: Developing skills and capacity to formally identify significant risks, assess the efficacy of existing measures and strategies, and develop additional strategies, where warranted, to bring the risk to more acceptable levels. 'A systematic approach to setting the best course of action under uncertainty by identifying, assessing, understanding, acting on, and communicating risk issues'.

Intuitive Risk Management: Since risks arise constantly, intuitive ability throughout an organization helps keep programs and services on track. Low and medium risks are appropriately managed using informal methods – inaccurate intuitive assessment would not generate significant impacts, and the investment in more formal methods could be cost-prohibitive in comparison to potential impacts. The intuitive method is also useful where significant impacts require immediate decisions.

Problems vs. Risks: The definition of risk refers to 'future events'. However, both problems and risks can be future events – the distinction is that future events with certainty are problems, while those with uncertainty are risks.

Value drivers: The 'Value Proposition' for strengthening risk management builds from explicitly demonstrating responsiveness in addressing the drivers, and from realizing distinct benefits in doing so.

Key Drivers	Key Benefits
Demands for accountability	Ability to demonstrate explicitly due diligence.
More surprise events.	Better planning, preparedness and timeliness of response.
Pace of change.	More pro-active decision making.
Restrained resources.	Better allocation of resources.

[1] Based on Risk Management Handbook, HRSDC, June 2008, available on HRSDC Intranet

Time horizon: The further one tries to look into the future, the more difficult it is to be precise and to identify relevant and credible risks. Focus should be on near-term risks, with ongoing monitoring for new or ascendant risks.

Communication: Communication is the most powerful influence on people's risk decision making and behaviour.

Risk Tolerance: Consideration of risks must include reasonable acceptance or tolerance of risk, with effective monitoring to track development of risks. The Risk Tolerance Model includes three zones:

- risks in the green zone are generally not a concern, are well managed and can be handled through routine operations;
- risks in the yellow area are in a cautionary zone and are usually addressed by assigning a specific resource or strategy for managing the risk, with clear accountability and reporting measures. These could morph into more important risks, if not managed effectively; and
- risks in the red zone are generally of greater concern and specific action plans to address them should be part of the policy

Section 5.5.2 – Risk Workshops-process and report

TFWP Risk Assessment and Risk Management Workshop Discussion Drivers

1. Authority
    - Where does authority for policy come from? – Legislation, regulations, central agency, departmental or program policy.
    - What are the limits to that authority?
    - Who else shares in that authority?
    - What are the attendant reporting or accountability measures?
2. Issue
    - What is this policy trying to accomplish?
    - Why?
    - Who else will be involved?
    - What are their goals, objectives and interests?
3. Context
    - Does this policy replace another, earlier version?
    - How does this policy coherently tie forward and tie back to other policies in the Policy to Service Delivery spectrum?
    - How does this policy tie into CIC and or CBSA policies?
    - How does this policy tie into other legislation or policies?(e.g. Labour Codes)
    - How does this policy reflect employer/TFW realities?
    - What is the evidence base considered in developing this policy?
4. Monitoring and Reporting
    - How will progress be monitored and measured? How will it be communicated?
    - Is data infrastructure in place?
    - How will corrective measures be identified and communicated?
    - Who is accountable? To whom? How?

Section 5.6 – policy to Service Delivery Continuum

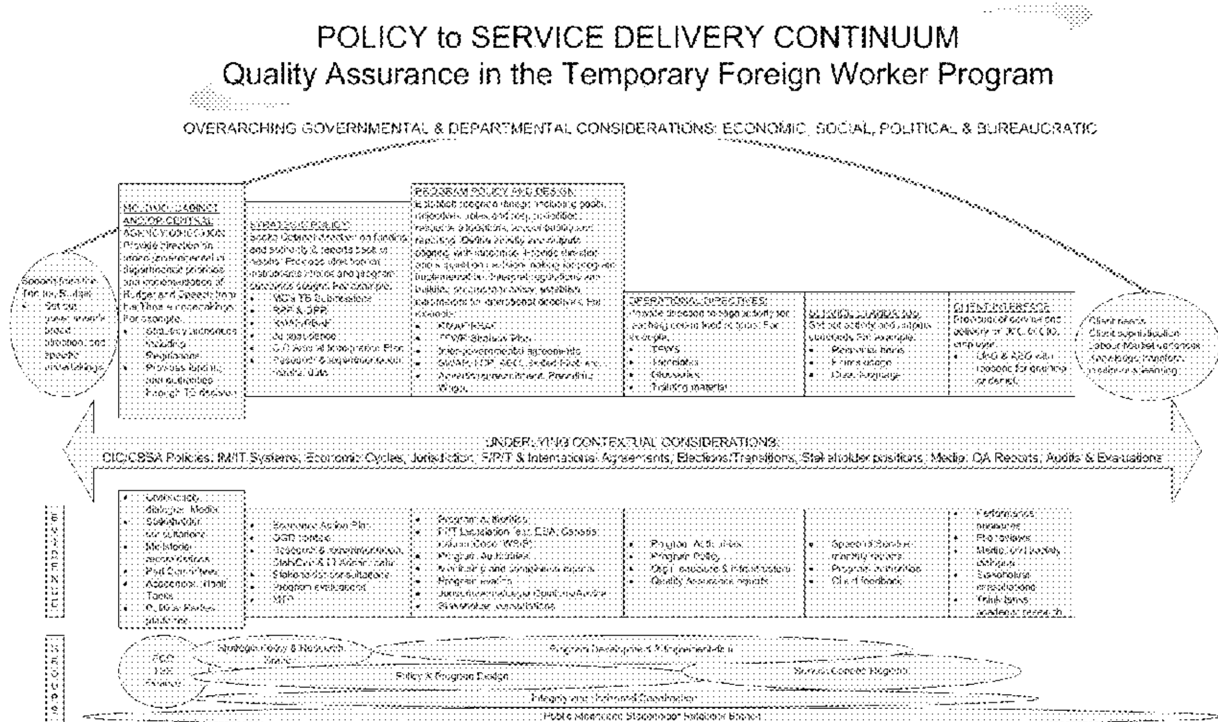
English Text	Texte français
POLICY TO SERVICE DELIVERY CONTINUUM Quality Assurance in the Temporary Foreign Worker Program OVERARCHING GOVERNMENTAL & DEPARTMENTAL CONSIDERATIONS: ECONOMIC, SOCIAL, POLITICAL & BUREAUCRATIC	LIGNE DE CONDUITE LIÉE À LA POURSUITE DES MESURES DE PRESTATION DE SERVICES Assurance de la qualité dans le Programme des travailleurs étrangers temporaires CONSIDÉRATIONS GOUVERNEMENTALES ET MINISTÉRIELLES PRIMORDIALES : ÉCONOMIQUES, SOCIALES, POLITIQUES ET BUREAUCRATIQUES
Speech from the Throne, Budget • Set out government's broad direction, and specific undertakings	Discours du Trône, budget • Établir la direction générale du gouvernement et les engagements précis
MO, DMO, CABINET AND/OR CENTRAL AGENCY DIRECTION Provide direction on broad governmental or departmental priorities and implementation of Budget and Speech from the Throne undertakings. For example; • Statutory authorities including Regulations • Provides funding and authorities through TB decision	DIRECTION DU CM, DU CSM, DU CABINET OU DE L'ORGANISME CENTRALE Fournir des consignes pour les priorités gouvernementales ou ministérielles générales et la mise en œuvre du budget et des engagements du Discours du Trône. Par exemple : • Autorisations légales, y compris les règlements • Fournir les fonds et les autorisations par la décision du CT
STRATEGIC POLICY Seeks Cabinet direction on funding and authority & reports back on results. Provides direction on instruments choice and program	POLITIQUE STRATÉGIQUE Consulte la direction du cabinet quant aux fonds et à l'autorité et établie un rapport sur les

outcomes sought. For example: • MC's TB Submissions • RPP & DPR • RMAF/RBAF • Jurisprudence • CIC Annual Immigration Plan • Research & experimentation results, data	résultats. Fournir une direction sur le choix d'instruments et les résultats visés par le programme. Par exemple : • Soumissions des MC au CT • RPP et RMR • CGRR ou CVAR • Jurisprudence • Plan annuel d'immigration du CIC • Résultats des recherches et des essais, données
PROGRAM POLICY AND DESIGN Establish program design, including goals, objectives, roles and responsibilities, resource allocations, accountability and reporting. Define activity and outputs aligning with outcomes. Provide direction and support on decision-making for program implementation. Interpret regulations and building on program policy, establish parameters for operational directives. For example: • RMAF/RBAF • TFWP Strategy/Plan • Inter-governmental agreements • SWAP, LCP, AEP, Skilled Pilot, etc... • Advertising/recruitment, Prevailing Wage,	CONCEPTION DE POLITIQUES ET DE PROGRAMMES Établir la conception des programmes, y compris les objectifs, les rôles et responsabilités, l'allocation des ressources, l'imputabilité et la préparation de rapports. Définir les activités et les extrants qui s'alignent avec les résultats. Fournir une orientation et un soutien à la prise de décision pour la mise en œuvre des programmes. Interpréter les règlements et établir les paramètres des directives opérationnelles en fonction de la politique relative aux programmes. Par exemple : • CGRR ou CVAR • Stratégie ou plan du PTET • Ententes intergouvernementales • PVT, PAFR, PEA et Pilote qualifié, entre autres • Publicité et recrutement, salaire courant
OPERATIONAL DIRECTIVES: Provide direction to align activity for reaching determined outputs. For example;	DIRECTIVES OPÉRATIONNELLES : Fournir une orientation pour aligner les activités en vue d'obtenir les résultats

• TFWS • Templates • Glossaries • Training material	prédéterminés. Par exemple : • STET • Gabarits • Glossaires • Matériel de formation
SERVICE STANDARDS Set out activity and outputs standards. For example: • Response times • Forms usage • Clear language	NORMES DE SERVICE Établir les normes pour les activités et les extrants. Par exemple : • Délais de réponse • Utilisation de formulaires • Langage clair
CLIENT INTERFACE Provision of service and delivery of LMO to CIC employer. • LMO & AEO with reasons for granting or denial	RELATION AVEC LE CLIENT Prestation de service et émission d'AMT aux employeurs de CIC • AMT et AER avec les raisons de l'approbation ou du refus
Clients needs Client sophistication Labour Market variances Knowledge transfers, continuous learning	Besoins des clients Sophistication du client Écarts dans le marché du travail Transfert des connaissances, Acquisition continue du savoir
UNDERLYING CONTEXTUAL CONSIDERATIONS: CIC/CBSA Policies, IM/IT Systems, Economic Cycles, Jurisdiction, F/P/T & International Agreements, Elections/Transitions, Stakeholder positions, Media, QA Reports, Audits & Evaluations	CONSIDÉRATIONS CONTEXTUELLES SOUS-JACENTES : Politiques du CIC et de l'ASFC, systèmes GI et TI, cycles économiques, juridiction, ententes fed., prov., terr. et internationales, élections et transitions, positions des intervenants, média, rapport d'AQ, vérifications et évaluations
EVIDENCE	PREUVE
• Civil society dialogue, Media • Stakeholder consultations • Ministerial recom'dations • Parl Comm'tees • Academics, Think Tanks	• Dialogue entre les sociétés civiles, média • Consultations avec les intervenants • Recommandations ministérielles • Comités parlementaires

• Political Parties' platforms	• Universitaires, groupes d'analystes • Plateformes des partis politiques
• Economic Action Plan • OGD context • Research & experimentation, StatsCan & EI Admin. Data • Stakeholder consultations • Program evaluations • MTP	• Plan d'action économique • Contexte des autres ministères • Recherche et essais, StatCan et administration des données de l'AE • Consultations avec les intervenants • Évaluations des programmes • Planification à moyen terme
• Program authorities • FPR Legislation (e.g. ESA, Canada Labour Code, WSIB) • Program Authorities • Monitoring and compliance reports • Program eval'ns • Jurisprudence/Legal Opinions/Advice • Stakeholder consultations	• Responsables des programmes • Législation féd., prov. et reg. (p.ex. ESE, Code canadien du travail et CSPAAT) • Responsables des programmes • Rapports de surveillance et de conformité • Évaluations des programmes • Jurisprudence, avis juridiques et conseils • Consultations avec les intervenants
• Program Authorities • Program Policy • Org'n structure & infrastructure • Quality Assurance reports	• Responsables des programmes • Politique relative aux programmes • Structure et infrastructure de l'org • Rapports sur l'assurance de la qualité
• Speed of Service monthly reports • Program authorities • Client feedback	• Rapports mensuels sur la rapidité du service • Responsables des programmes • Rétroaction du client
• Performance measures • File reviews • Media, civil society dialogue • Stakeholder consultations • Think tanks, academic research	• Mesures de rendement • Examens de dossier • Dialogue entre les sociétés civiles et les médias • Consultations avec les intervenants

	• Groupes d'analystes et recherche universitaire
GROUPS	GROUPES
PCO TBS Finance	BCP SCT Finance
Strategic Policy & Research Branch	Direction générale de la politique et de la recherche stratégique
Program Development & Implementation	Élaboration et mise en œuvre de programmes
Policy and Program Design	Conception de politiques et de programmes
Service Canada Regions	Régions de Service Canada
Integrity and Horizontal Coordination	Intégrité et coordination horizontale
Public Affairs and Stakeholder Relations Branch	Direction des affaires publiques et Direction des relations avec les intervenants



Section 5.6.1 – The TFWP Policy to Service Delivery Continuum

A New Program Policy Architecture

A common terminology for supporting policy discussion

The Policy to Service Delivery Continuum was developed by the TFWP QA Team to support discussion and analysis of program policy material through a comprehensive QA lens. It presents a snapshot view of the different types of policy and program direction and decision-making at all levels ultimately leading to the issuance of a LMO or AEO.

Not to be confused with HRSDC's PAA, which establishes the department's strategic outcomes, the Policy to Service Delivery Continuum is focused on a description of different types or groupings of policy products, material or outputs, and not on activities, or outcomes.

The Continuum and accompanying descriptions provide a shared terminology for different types of policy, and a diagram demonstrating the linear relationship between them. It outlines the types of evidence used to develop different types of policy and external or underlying considerations which put results at risk. At a very basic level, it presents a conceptual model for understanding and discussing distinctions between types of policy. At a higher level it provides a framework for discussion of authorities, roles and responsibilities. And at a practical level it provides for consideration of document design appropriate for different types of policy direction.

Expanding the paradigm, blowing apart the dichotomy

Ultimately, the Continuum architecture moves program staff members away from a binary model distinguishing only between "Policy" and "Operations" with minimal recognition of any overlap between them. A binary model presents risks of overlooking gaps in policy direction while a more structured, more detailed model increases chances of a comprehensive process considering a greater number of factors before release of a policy direction or position.
While the nomenclature facilitates analysis, it should be understood that the typification is not exclusive: distinction between types of policy should not be seen as impermeable. On the contrary, as the diagram demonstrates, singular policy products frequently overlap descriptions of policy types.

The same is true of the underlying considerations, the evidence listed, and the reach or scope of the groups identified below the main row of policy types. The delineations are not etched in stone, they are meant to be drivers for discussion, rather than definite portrayals of distinct groupings.

A Framework for Quality Assurance analysis

This policy architecture also provides an analytical framework for assessing Quality in the development and application of program policy direction. Where Quality is defined as congruence (consistency and continuity) with established positions, gathering data on decision-making will allow Quality assessment of policy direction and application, whether an element of program design, an operational directive, or service delivery. QA then, uses the Policy to Service Delivery Continuum to assess congruence between the policy-based products which guide activities for decision-making across the program.

TFWP Policy to Service Delivery Continuum Building Blocks

The Policy to Service Delivery Continuum is constructed along the following lines:

1. Governmental and Departmental Considerations: It is important to underline that all policy and program decisions are aimed at improving the lives of Canadians and residents, considering economic, social, and political realities, within the capacity of the Public Service of Canada and the Department's bureaucratic values, processes and authorities. The government relies on public servants within the department to address the needs of Canadians and residents in a responsive manner, reflecting their level of sophistication and labour market needs.

2. Democratic Foundations of Public Service: At the far left of the Continuum, the democratic values at the foundation of public service are reflected in consideration of Parliamentary, Government, Cabinet and Treasury Board positions, as outlined in key documents such as the Speech from the Throne, Budgets, Economic Action Plans and Updates, legislation and program or departmental budgets. These establish priorities and parameters for concerted action, as well as financial authorities and resources. Central agencies such as the Treasury Board Secretariat, the Privy Council Office and the Department of Finance as well as departmental authorities such as the Minister and her office and the Deputy Minister and her office provide first steps in policy direction, and delegation of authority required for execution of governmental and departmental plans.

3. Strategic Policy: At the beginning of the departmental policy to service process, Strategic Policy channels authorities, financial and statutory, for instrument choice and program design and a framework for monitoring activities and evaluating results. Memoranda to Cabinet, Treasury Board Submissions, RMAF/RBAF, Management Accountability Frameworks, Departmental Reports on Plans & Priorities, Departmental Performance Reports and Departmental, Branch and Directorate Business Plans are some of the documents that broadly prescribe ultimate outcomes and accountabilities. Strategic Policy provides grounding for exercising the broad financial resources required for program delivery. While Policy staff should be familiar with Strategic Policy material, Operational staff should be aware of a few main strategic policy positions.

4. Program Policy & Design: Building on the direction provided by Strategic Policy material, Program Policy narrows the broad direction towards more defined activities, outputs, goals and objectives, thereby "designing" the program. Linking back to the RMAF/RBAF (which defines Program-wide objectives) for example, it can establish regional and NHQ responsibilities and activities. Program Policy also monitors program pressures to vary priorities and focus for activity, defining Program positions on issues facing the Program. Program Policy interprets research findings, environmental scans, and program authorities including legislation and regulations to establish program directions and parameters for Interpretive Guidelines and Operational Directives. Operational managers should be familiar with program policy positions in order to guide decision-making in service delivery. Interpretive Guidelines developed in the course of program policy and design provide substantive direction to guide implementation of regulations, reflecting jurisprudence, administrative standards (natural justice and administrative fairness, as opposed to service standards), and program policy positions. They serve as the basis for prescriptive Operational Directives, and as a reference to guide activity within "grey areas" either broadly defined or

unspecified in Operational Directives. Policy and Operational staff should be familiar with the guidelines in order to ensure consistency with program policy, when they exercise discretion and judgement in decision-making for service delivery. Examples could include formulae for calculating relevant Labour Market Information quantitative data, measures for assessing minimum recruitment efforts, and direction for substantiating argument for deviating from prescriptive policy directives.

5. Operational Directives: The first-order basis for daily service delivery activities, this class of directives provides clear direction for Program Officers' activity, as well as the tools required for direct service delivery. They may include, for example, directives on how to use the information management infrastructure, templates for client communications, as well as direction on file management and recording of relevant information considered in reaching a decision.

6. Service Standards: Client expectations may vary broadly resulting in more frequent dissatisfaction, if service standards are not explicit, clear and consistent. Realistic service standards define expectations and serve as benchmarks for monitoring program service delivery.

7. Evidence: Policy positions or directions are only as good as the evidence on which they are based. A thorough review of the scope of available evidence allows for a comprehensive analysis, and development and assessment of varying options for response to issues presented. Inadequate analysis or consideration of insufficient evidence can lead to unforeseen or perverse effects in application or implementation. Different types of policy will be based on different types of evidence. Ideally, development of policy products will as much as possible, consider evidence of direct application of similar options or proposals in similar contexts. Quantifiable and repeatable data offer more confidence generally, although anecdotal or qualitative data can be persuasive.

8. Contextual Considerations: In the same way that policy should be evidence-based in order to manage risks and increase probability of effectiveness, it must also consider external factors which risk influencing conduct or impacting on results. Contextual Considerations are those factors which are tangential, or only indirectly tied to the Program. In the first order, all programs need to gauge impacts on targeted populations, as well as scan environmental trends in order to respond adequately to changes in the context in which they operate. For example, the rise of the Canadian dollar increases the costs of goods manufactured in Canada for foreign consumers. Thus, a rising dollar may force marginally profitable manufacturers to reduce production, resulting in reduced demand for workers. The Temporary Foreign Workers Program would take into account or consider the rise or fall of demand pressures for workers in the decision to grant or deny a positive Labour Market Opinion.

Accountability and Authorities

The Policy to Service Continuum also provides a framework for discussion for defining relative authorities and accountability.

For example, Program Officers are authorized to act on the basis of Operational Directives, and where these leave room for interpretation, they are accountable for consulting Interpretive Guidelines (probably in concert with their Team Leaders and/or managers or Business Expertise Consultants) in order to respond to operational issues arising in the course of their daily activities.

Managers are accountable for managing program officers, ensuring consistent application of Operational Directives as well as for the provision of advice consistent with Interpretive Guidelines and Program Policy positions.

NHQ Policy Units are authorized to provide direction or advice to regional service delivery units on the basis of Strategic Policy, Program Policy, Program Design, Interpretive Guidelines and Operational Directives. They are accountable for ensuring that advice and direction are consistent with Program positions enunciated in Strategic and Program Policy material.

Other Applications

As stated at the outset, the primary purpose for the TFWP Policy to Service Delivery Continuum is to serve as a shared platform for discussion of different types of policy products, and for moving these discussions away from a “policy wonks” vs. “service providers” binocular view of the work of the Program. Recognizing multiple types of policy along a continuum highlights the need for continuity and consistency across the spectrum, highlights any incongruence or gaps that need to be addressed and broadens considerations.

The Policy to Service Delivery Continuum also demonstrates the value of each member of the team involved in ultimately providing a service, whether from left to right along the Continuum to the public, or from right to left to the Minister and her office.

The TFWP will incorporate the Continuum in training new staff, in support of discussions on How Government Works.

Other HRSDC units are invited to adopt the TFWP Policy to Service Delivery Continuum for their own purposes, in support of similar objectives. Any comments on the Continuum itself, its component parts, or uses are welcome. Please communicate either with René Maillet at 819-934-6162 or rene.maillet@hrsdc-rhdcc.gc.ca or David McCluskey at 604-854-5852 (extension 264) or david.mccluskey@servicecanada.gc.ca, both part of the TFWP of the Skills and Employment Branch.

Directive – Assessment of the Wage Factor when Processing Labour Market Opinion Applications

Purpose:

The purpose of this directive is to provide guidance to Employment and Social Development Canada (ESCD)/Service Canada staff on the wage assessment factor when processing labour market opinion (LMO) applications for:

- higher-skilled occupations (National Occupational Classification (NOC) skill type 0, and skill levels A and B); and
- lower-skilled occupations (NOC skill levels C and D).

This directive does not include information on the wage assessment for LMO applications under the:

- Live-in Caregiver Program (LCP);
- Seasonal Agricultural Worker Program (SAWP);
- Agricultural Stream.

Note:
This directive does not include the wage assessment requirements for applications submitted for positions located in Québec.

Background:

The following information is intended to provide ESDC/Service Canada staff with a consistent, transparent and standard process to follow when assessing prevailing wages for temporary foreign workers (TFW) in accordance with the available labour market information. This information will also help ensure that the wage offered to TFWs reflects the standards by which Canadians and permanent residents working in the same occupation and work location are paid.

Authority:

The Temporary Foreign Worker Program (TFWP) operates under the authority of the *Immigration and Refugee Protection Act* (IRPA) and the *Immigration and Refugee Protection Regulations* (IRPR). The authority relevant to this directive is found in Section 203(3)d of the IRPR.

> [203(3) An opinion provided by the Department of Human Resources and Skills Development with respect to the matters referred to in subsection (1)*(b)* shall be based on the following factors:
>
> (d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards.]

Guidelines:

Wage Assessment Considerations

Determining the prevailing wage:

- ESDC/Service Canada staff must refer to the median wage, as determined by the Labour Market Information (LMI) Service, for the occupation and geographic region where the job will be located in order to establish the prevailing wage rate. Wage information can be found on the Working in Canada (WiC) website at: www.workingincanada.gc.ca

- ESDC/Service Canada staff only assesses the base wage offered that is guaranteed income to the TFW. The Program does not consider:
  - overtime hours;
  - tips;
  - benefits;
  - profit sharing;
  - bonuses;
  - commissions; and
  - other forms of compensation.

Note:
Employers who pay commissions, in addition to an hourly base wage, must use the same commission scheme for TFWs as for Canadian and permanent resident workers doing the same work in the same work location. When an employer is paying a commission, over and above the base wage offered, ESDC/Service Canada staff should add a "Note to File" in the Foreign Worker System.

When wages are not available for the specific geographic region:

- In some instances, wage information may not be available on the WiC website for the specific geographic region. In these cases, ESDC/Service Canada staff should consult the information at the provincial/territorial level, and then at the national level. If there is a significant difference between the wage information posted on the WiC website and the wage offered by the employer, staff should send an email to the TFWP Inbox to request the appropriate prevailing wage rate.

When payroll information is provided without being requested:

- In the event that an employer voluntarily provides information demonstrating that Canadian or permanent resident workers are being paid at a wage rate that is above the posted prevailing wage, the employer must offer the same wage to the TFWs working in the same occupation and work location.

Collective Bargaining Agreements:

- For unionized positions, employers must offer their TFWs the same wage rate as established under the collective bargaining agreement.
- If the wage offered to a TFW is below the posted prevailing wage, ESDC/Service Canada staff must request a copy of the collective bargaining agreement from the employer. If the wage meets the collective bargaining agreement pay scale for the occupation and work location, the wage offered should be accepted.

Provincial/territorial minimum wage:

- The wage offered to a TFW cannot be below the provincial/territorial minimum wage. This requirement applies to all wage assessments.

Provincial/territorial government established wage schedules:

- In instances where provincial/territorial governments have established wage schedules (e.g. *Construction Industry Wages Act* in Manitoba), the LMO application will be assessed using the greater of the:
  - posted prevailing wage for the occupation; or
  - wage set by the provincial/territorial legislation.

Industry-specific wages:

- To address the unique circumstances of certain occupations, industry-specific wage rates have been identified as the prevailing wage rate which should be offered to TFWs.

General:

- Employers must offer a minimum of 30 hours of work per week.
- Wage information is available on the ESDC website for the following specific programs:
  - LCP;
    www.hrsdc.gc.ca/eng/jobs/foreign_workers/caregiver/index.shtml#tab3
  - SAWP; and
    www.hrsdc.gc.ca/eng/jobs/foreign_workers/agriculture/seasonal/index.shtml#tab3
  - Agricultural Stream.
    www.hrsdc.gc.ca/eng/jobs/foreign_workers/agriculture/general/index.shtml#tab3

Wage Assessment Final Review

Wage offers equal to or above the posted prevailing wage will be accepted

- Employers must offer TFWs:
  - at a minimum, the posted prevailing wage; or
  - the same wage they are paying Canadians and permanent resident employees working in the same occupation and same work location ONLY if this rate is higher than the prevailing wage.

Wage offers below the posted prevailing wage will be denied

- Employers who advertised and offer TFWs a wage that is below the posted prevailing wage rate or the established wage rates will be issued a negative LMO.

Annex A

Prevailing Wage Policy – Scenarios

These scenarios are fictitious for the purposes of illustration.

Higher-skilled occupations:
National Occupational Classification (NOC) skill type 0, and skill levels A and B

The median wage (prevailing wage) for welders, a higher-skilled occupation, in Fort McMurray is $35/hour.

1. I employ 10 Canadian welders at $33/hour. Can I pay my foreign welders $33/hour? If no, why not?
   - No, you are required to pay your foreign welders a minimum of $35/hour because that is the published prevailing wage rate for the occupation in Fort McMurray where the work is located.
2. I employ 10 Canadian welders at $40/hour. How much do I have to pay my foreign welders, and why?
   - You are required to pay your foreign welders $40/hour because you must pay temporary foreign workers the same wage that you pay your Canadian and permanent resident workers if it is higher than the median wage. This is to ensure that it is not more attractive for employers to hire temporary foreign workers instead of Canadian or permanent resident workers, and that the entry of temporary foreign workers does not put downward pressure on market-driven Canadian wages.
3. I do not employ Canadian welders. Can I pay my foreign welders $33/hour? If so, how?
   - No, you are required to pay the foreign welders at least the median wage of $35/hour.
4. I employ 10 Canadian welders at $40/hour under a collective bargaining agreement. How much do I have to pay my foreign welders, and why?
   - For unionized positions, you are required to pay your foreign welders the same wage rate, as established under the collective bargaining agreement, that is paid to your Canadian and permanent resident employees working in the same occupation and geographic area. The wage paid to temporary foreign workers will depend on the provisions of the collective bargaining agreement with respect to experience, etc.

Lower-skilled occupations:
National Occupational Classification (NOC) skill levels C and D (excluding occupations under the Live-in Caregiver Program, the Seasonal Agricultural Worker Program, and the Agricultural Stream)

The median wage (prevailing wage) for a food counter attendant, a lower-skilled occupation, in the Athabasca–Grande Prairie–Peace River area in Alberta is $11.71/hour.

1. I employ 10 Canadian food counter attendants at $10.71/hour. Can I pay my foreign food counter attendants$10.71/hour? If no, why not?
   - No, you are required to pay your foreign food counter attendants a minimum of $11.71/hour because that is the published prevailing wage rate for that occupation in that work location.

2. I employ Canadian food counter attendants at $12.50/hour. Can I pay my foreign food counter attendants $11.71/hour? If no, why not?
   - No, you must pay the temporary foreign workers $12.50/hour because you must pay temporary foreign workers the same wage that you pay your Canadian and permanent resident workers if it is higher than the median wage. This is to ensure that it is not more attractive for employers to hire temporary foreign workers instead of Canadian or permanent resident workers, and that the entry of temporary foreign workers does not put downward pressure on market-driven Canadian wages.

Temporary Foreign Worker Program Bulletin

Date: 2013-10-09 (revised)

To: All TFWP Staff (Managers, Consultants, Officers, etc.)

From: Alexis Conrad, Director General, Temporary Foreign Worker Directorate, NHQ

Subject: Assessing Prevailing Wage Rates for Ski and Snowboard Instructor Positions in the Provinces of British Columbia, Alberta, Saskatchewan and Manitoba - 2013/2014 Season

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Purpose:

The purpose of this Bulletin is to provide guidance to Employment and Social Development Canada (ESDC)/Service Canada staff when assessing prevailing wage rates for Ski and Snowboard Instructors (National Occupational Classification (NOC) code 5254) as part of the labour market opinion (LMO) application process.

Background:

The prevailing wage rate for ski and snowboard instructor positions is based on the Canada West Ski Areas Association (CWSAA) wage survey and other labour market information (e.g. Statistics Canada's Labour Force Survey, provincial/territorial surveys, administrative data or other recognized sources).

This prevailing wage rate is the minimum wage paid to the temporary foreign worker (TFW) for each hour employed, regardless if the worker is teaching or performing some other duty associated with the ski and snowboard school (e.g. registering clients for classes, working in the ski shop, etc.).

Authority:

The Temporary Foreign Worker Program (TFWP) operates under the authority of the *Immigration and Refugee Protection Act* (IRPA) and the *Immigration and Refugee Protection Regulations* (IRPR).

Section 203 of the IRPR indicates that upon reviewing a work permit application, Citizenship and Immigration Canada (CIC) officers are to determine, on the basis of the LMO provided by ESDC/Service Canada, whether the job offer is genuine and the employment of the TFW is likely to have a neutral or positive impact on the Canadian labour market.

ESDC/Service Canada is mandated to base an opinion on the following factor as stated under section 203(3) of the IRPR:

> ***(d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally acceptable Canadian standards;***

Guideline:

Employers must agree to pay at least the hourly base wage rates for the corresponding certification levels as indicated in the table below:

Ski and Snowboard Instructor Certification	Vancouver Island	BC Coast	BC Interior	Alberta	Saskatchewan/ Manitoba
Level 1 CSIA/CASI	$12.00	$12.63	$11.25	$13.50	$12.13
Level 2 CSIA/CASI	$13.50	$15.30	$13.25	$14.98	$13.00
Level 3 CSIA/CASI	$15.00	$17.64	$16.66	$17.20	$14.38
Level 4 CSIA/CASI	$18.00	$20.30	$20.75	$20.72	$15.63

CSIA – Canadian Ski Instructor's Association
CASI – Canadian Association of Snowboard Instructors

As part of the prevailing wage assessment, ESDC/Service Canada staff only assesses the base wage offered that is guaranteed income to the TFW. The Program does not consider:

- overtime hours;
- tips;
- benefits;
- profit sharing;
- bonuses;
- commissions; and
- other forms of compensation.

Employers who pay commissions, in addition to an hourly base wage, must use the same commission scheme for TFWs as for Canadian and permanent resident workers doing the same work in the same work location. When an employer is paying a commission, over and above the base wage offered, ESDC/Service Canada staff should add a "Note to File" in the Foreign Worker System.

Operational Procedures:

Other Occupations under NOC code 5254

ESDC/Service Canada staff should use labour market information data for wages, such as information on the Working in Canada website, when assessing LMO applications from employers requesting to hire a TFW under NOC code 5254 - Program Leaders and Instructors in Recreation, Sport and fitness, in positions other than a ski or snowboard instructor.

Temporary Foreign Worker Program Bulletin

Date: 2013-10-09 (revised)

To: All TFWP Staff (Managers, Consultants, Officers, etc.)

From: Alexis Conrad, Director General, Temporary Foreign Worker Directorate, NHQ

Subject: Assessing Prevailing Wage Rates for Pharmacy Students

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Purpose:

The purpose of this Bulletin is to provide guidance to Employment and Social Development Canada (ESDC)/Service Canada staff when assessing prevailing wage rates for pharmacy students as part of the labour market opinion (LMO) application process.

A pharmacy student is considered to be an individual currently enrolled in a pharmacy program at a Canadian university, but has not yet graduated. An intern pharmacist, in contrast, is an individual who has graduated from a pharmacy program at a Canadian university and who is currently obtaining work experience as part of the licensing process for the applicable provincial/territorial pharmacy regulatory authority.

Background:

In order to become a fully certified pharmacist (National Occupational Classification (NOC) code– 3131), all pharmacy students in Canada must complete a studentship while completing their degree program.

Canadian and permanent resident pharmacy students usually complete the studentship throughout their degree program (e.g. often completing short-term studentships in-between their classroom studies during the summer months). However, the process is different for foreign pharmacy students who generally undertake the studentship over an uninterrupted period of approximately 16 weeks (depending upon the university they are enrolled in) only after they have completed their classroom studies.

After the foreign pharmacy student has completed the studentship, the individual must then complete an internship. The duration of an internship may vary between one month and two years, depending on the province/territory, and in some instances, on the previous work experience of the foreign student in the occupation.

While pharmacy students and interns perform some similar types of duties (e.g. dispense, sell and compound drugs), pharmacy students must always be under the direct supervision of a certified pharmacist. In contrast, pharmacy interns do not require direct supervision to perform these duties.

Accordingly, given that pharmacy students perform different duties with significantly less responsibility than intern pharmacists, they are often paid a lower wage. According to the pharmaceutical industry, Canadian and permanent resident pharmacy students earn on average one-third the hourly wage of licensed pharmacists - NOC code 3131.

Authority:

The Temporary Foreign Worker Program (TFWP) operates under the authority of the *Immigration and Refugee Protection Act* (IRPA) and the *Immigration and Refugee Protection Regulations* (IRPR).

Section 203 of the IRPR indicates that upon reviewing a work permit application, Citizenship and Immigration Canada (CIC) determines, on the basis of an LMO issued by ESDC/Service Canada, whether the job offer is genuine and the employment of a temporary foreign worker (TFW) is likely to have a neutral or positive effect on the Canadian labour market.

When assessing an LMO application, ESDC/Service Canada staff is mandated under section 203(3) of the IRPR to base the opinion on the following factor:

> ***(d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation, and whether the working conditions meet generally acceptable Canadian standards;***

Guideline:

NOC Code

When assessing LMO applications for foreign pharmacy students who are completing their studentships, ESDC/Service Canada staff must classify the position under the NOC code 3131. This position should be assigned a job title of "Pharmacy Student". In the CIC Notes section of the Foreign Worker System, it should be noted that the:

1. position is for a pharmacy student, and therefore, the foreign student does not yet have the credentials to work as a fully certified pharmacist; and
2. foreign pharmacy student must be working under the direct supervision of a fully licenced pharmacist at all times.

Prevailing Wage Rates

To ensure foreign pharmacy students are paid the same wages as Canadian and permanent resident pharmacy students, the prevailing wage rate for studentship positions should be considered **to be the highest of**:

- one-third (33.3%) of the median wage as posted on the Working in Canada website for NOC code 3131 - Pharmacists for the location where the TFW will be employed; or
- the wage paid by the employer to their currently employed Canadian and permanent resident pharmacy students completing their studentship at the same location as where the foreign student will be employed **and** who have the same level of pharmacy related experience as the foreign student.

For example, fourth-year foreign pharmacy students should be paid the same rate as paid to fourth-year Canadian and permanent resident pharmacy students.

ESDC/Service Canada staff may issue a positive LMO for student pharmacy positions with wages that go below the low-end of wage range under NOC code 3131. However, positive LMOs for these positions must not be issued if the wages go below the provincial/territorial minimum wage rate.

If the employer does not employ a Canadian or a permanent resident pharmacy student, with or without the same level of experience as the foreign student at the time the LMO application is being processed, the prevailing wage rate for the position is to be considered one-third the median wage for NOC code 3131.

Documentation

The ESDC/Service Canada staff can request payroll and time sheet information to verify the wage being paid.

From Pharmacy Student to Pharmacy Intern

To hire foreign students as pharmacy interns after they have completed their studentships, employers must apply for a new LMO that reflects the change in the foreign student's status.

Temporary Foreign Worker Program Bulletin

Date: 2013-10-09 (revised)

To: All TFWP Staff (Managers, Consultants, Officers, etc.)

From: Alexis Conrad, Director General, Temporary Foreign Worker Directorate, NHQ

Subject: Assessing Prevailing Wage Rates for Pharmacists (NOC 3131) Working Towards Full License

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Purpose:

The purpose of this Bulletin is to provide guidance to Employment and Social Development Canada (ESDC)/Service Canada staff when assessing prevailing wage rates for intern pharmacist positions as part of the labour market opinion (LMO) application process.

An intern pharmacist is considered to be an individual who has graduated from an accredited post-secondary institution with a degree in pharmacy but does not have the formal credentials to be recognized as a fully licensed pharmacist in Canada.

Note:
This directive does not apply to the pharmacy assistant position, classified under the National Occupational Classification (NOC) code 3414 - Other Assisting Occupations in Support of Health Services.

Background:

The occupation of pharmacists (NOC code 3131) is a regulated higher-skilled occupation. The worker dispenses prescribed pharmaceuticals and provides consultative services to both clients and health care providers.

Pharmacists are regulated in all provinces/territories in Canada. In order for a Canadian, a permanent resident, and/or a temporary foreign worker (TFW) to become licensed in the occupation, the individual must complete an internship. The duration of an internship may vary between one month and two years, depending on the province/territory, and in some instances, on the previous work experience of the TFW in the occupation. The main duties of intern pharmacists are quite distinct from those of pharmacy assistants or technicians.

While the Labour Market Information (LMI) Service does not collect compensation data for unlicensed pharmacists, wage information collected by representatives from the Canadian pharmaceutical industry indicates that Canadians and permanent residents working towards full certification earn on average two-thirds the hourly wage of licensed pharmacists - NOC code 3131.

Authority:

The Temporary Foreign Worker Program (TFWP) operates under the authority of the *Immigration and Refugee Protection Act* (IRPA) and the *Immigration and Refugee Protection Regulations* (IRPR).

Section 203 of the IRPR indicates that upon reviewing a work permit application, Citizenship and Immigration Canada (CIC) determines, on the basis of an LMO issued by ESDC/Service Canada, whether the job offer is genuine and the employment of a TFW is likely to have a neutral or positive effect on the Canadian labour market.

When assessing an LMO application, ESDC/Service Canada staff is mandated under section 203(3) of the IRPR to base the opinion on the following factor:

> ***(d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation, and whether the working conditions meet generally acceptable Canadian standards;***

Guideline:

When assessing the wage factor, ESDC/Service Canada staff must ensure it is consistent across regions and that it is reflective of the wages being paid to Canadians and permanent residents. The prevailing wage rate for intern pharmacists (or similarly related positions where the TFW is working towards full licensing as a pharmacist), must be **equal to or above two-thirds** (66.7%) of the median hourly wage, as posted on the Working in Canada website, for NOC code 3131 for the location where the TFW will be employed.

Once the TFW has successfully obtained Canadian licensure and is registered as a practicing pharmacist, the employer will need to apply for new LMO that reflects the change in the TFW's status (e.g. expanded scope of practice and wage adjustment).

Temporary Foreign Worker Program Bulletin

Date: 2012-06-21

To: All TFWP Staff (Managers, Consultants, Officers, etc.)

From: Andrew Kenyon, Director General, Temporary Foreign Workers and Labour Market Information Directorate, NHQ

Subject: Assessing Wages in Cold Lake Region, Alberta

Purpose:

The purpose of this Bulletin is to provide guidance to Human Resources and Skills Development Canada (HRSDC)/Service Canada staff on how to assess wages in the Cold Lake region of Alberta.

Background:

A new methodology to calculate wages was introduced in May 2012 by HRSDC's Labour Market Information Service (refer to TFWP Bulletin – New Wage Methodology on the Working in Canada Web Site). As part of the methodology, Statistics Canada's Standard Geographical Classification structure was adopted to provide a more consistent reporting structure for information published on the Working in Canada (WiC) Web site.

However, as a result of the new structure, wages for Cold Lake and the surrounding communities have increased as a consequence of now being included in the same economic region as Fort McMurray which generally has higher wages.

Guideline:

To address the discrepancy, HRSDC/Service Canada staff must assess wages for:

- Fort McMurray according to the posted wage for Wood Buffalo-Cold Lake region; and
- Cold Lake and surrounding communities according to the Alberta provincial wage.

To verify whether or not the employer's postal code corresponds with Cold Lake and surrounding communities, HRSDC/Service Canada staff must consult the Postal Code Reference Guide (refer to Annex A). If the postal code corresponds, wages should be assessed using the provincial wage for Alberta as posted on the WiC Web site.

A map representing the Cold Lake region is also attached as Annex B.

Key Information:

Approved by:	Andrew Kenyon, DG
Division:	Policy and Program Design Althea Williams, Director Mike T. Perry, Manager NC-TFWP_PTET-INBOX-GD

ANNEX A

Postal Codes Reference Guide for Cold Lake and Surrounding Communities

Postal Code	CSD Name
T0A0B0	Bonnyville No. 87
T0A0C0	St. Paul County No. 19
T0A0J0	Smoky Lake County
T0A0N0	St. Paul County No. 19
T0A0R0	Lakeland County
T0A0T0	Bonnyville No. 87
T0A0Z0	Vilna
T0A1A0	St. Paul County No. 19
T0A1C0	Kehewin 123
T0A1E0	St. Paul County No. 19
T0A1H0	Bonnyville No. 87
T0A1M0	Unipouheos 121
T0A1P0	Bonnyville No. 87
T0A1R0	White Fish Lake 128
T0A1S0	Bonnyville No. 87
T0A1X0	St. Paul County No. 19
T0A1Z0	Lac la Biche
T0A2A0	Bonnyville No. 87
T0A2B0	Smoky Lake County
T0A2C0	Lac la Biche
T0A2C1	Lakeland County
T0A2C2	Lakeland County
T0A2E0	Bonnyville No. 87
T0A2G0	St. Paul County No. 19
T0A2J0	St. Paul County No. 19
T0A2K0	St. Paul County No. 19
T0A2L0	St. Paul County No. 19
T0A2T0	Lakeland County
T0A2Y0	Smoky Lake County
T0A2Z0	St. Paul County No. 19
T0A3A0	St. Paul
T0A3A1	St. Paul
T0A3A2	St. Paul
T0A3A3	St. Paul
T0A3A4	St. Paul
T0A3B0	St. Paul County No. 19
T0A3C0	Smoky Lake County

Postal Code	CSD Name
T0A3E0	Smoky Lake County
T0A3G0	Bonnyville No. 87
T0A3L0	Smoky Lake County
T0A3M0	Lakeland County
T0A3N0	Smoky Lake County
T0A3P0	Smoky Lake County
T0A3T0	St. Paul County No. 19
T9M0A1	Cold Lake
T9M0A2	Cold Lake
T9M0A3	Cold Lake
T9M0A4	Cold Lake
T9M0A5	Cold Lake
T9M0A6	Cold Lake
T9M0A7	Cold Lake
T9M0A8	Cold Lake
T9M0A9	Cold Lake
T9M0B1	Cold Lake
T9M0B2	Cold Lake
T9M0B3	Cold Lake
T9M0B4	Cold Lake
T9M0B5	Cold Lake
T9M0B6	Cold Lake
T9M0B7	Cold Lake
T9M0B9	Cold Lake
T9M0C1	Cold Lake
T9M0C2	Cold Lake
T9M0C3	Cold Lake
T9M0C4	Cold Lake
T9M0C5	Cold Lake
T9M0C6	Cold Lake
T9M0C7	Cold Lake
T9M0C8	Cold Lake
T9M0C9	Cold Lake
T9M0E1	Cold Lake
T9M0E2	Cold Lake
T9M0E3	Cold Lake
T9M0E4	Cold Lake

Postal Code	CSD Name
T9M0E5	Cold Lake
T9M0E6	Cold Lake
T9M1A1	Cold Lake
T9M1A2	Cold Lake
T9M1A3	Cold Lake
T9M1A4	Cold Lake
T9M1A5	Cold Lake
T9M1A6	Cold Lake
T9M1A7	Cold Lake
T9M1A8	Cold Lake
T9M1A9	Cold Lake
T9M1B1	Cold Lake
T9M1B2	Cold Lake
T9M1B3	Cold Lake
T9M1B4	Cold Lake
T9M1B5	Cold Lake
T9M1B6	Cold Lake
T9M1B7	Cold Lake
T9M1B9	Cold Lake
T9M1C1	Cold Lake
T9M1C2	Cold Lake
T9M1C3	Cold Lake
T9M1C4	Cold Lake
T9M1C6	Cold Lake
T9M1C8	Cold Lake
T9M1C9	Cold Lake
T9M1E1	Cold Lake
T9M1E2	Cold Lake
T9M1E3	Cold Lake
T9M1E4	Cold Lake
T9M1E5	Cold Lake
T9M1E6	Cold Lake
T9M1E7	Cold Lake
T9M1E8	Cold Lake
T9M1E9	Cold Lake
T9M1G1	Cold Lake
T9M1G2	Cold Lake
T9M1G3	Cold Lake
T9M1G5	Cold Lake
T9M1G6	Cold Lake
T9M1G7	Cold Lake
T9M1G8	Cold Lake

Postal Code	CSD Name
T9M1G9	Cold Lake
T9M1H1	Cold Lake
T9M1H2	Cold Lake
T9M1H3	Cold Lake
T9M1H4	Cold Lake
T9M1H5	Cold Lake
T9M1H6	Cold Lake
T9M1H7	Cold Lake
T9M1H8	Cold Lake
T9M1H9	Cold Lake
T9M1J1	Cold Lake
T9M1J2	Cold Lake
T9M1J4	Cold Lake
T9M1J5	Cold Lake
T9M1J6	Cold Lake
T9M1J7	Cold Lake
T9M1J8	Cold Lake
T9M1J9	Cold Lake
T9M1K1	Cold Lake
T9M1K2	Cold Lake
T9M1K3	Cold Lake
T9M1K5	Cold Lake
T9M1K6	Cold Lake
T9M1K7	Cold Lake
T9M1K8	Cold Lake
T9M1K9	Cold Lake
T9M1L1	Cold Lake
T9M1L2	Cold Lake
T9M1L3	Cold Lake
T9M1L4	Cold Lake
T9M1L5	Cold Lake
T9M1L6	Cold Lake
T9M1L7	Cold Lake
T9M1L8	Cold Lake
T9M1L9	Cold Lake
T9M1M1	Cold Lake
T9M1M2	Cold Lake
T9M1M3	Cold Lake
T9M1M5	Cold Lake
T9M1M6	Cold Lake
T9M1M7	Cold Lake
T9M1M8	Cold Lake

Postal Code	CSD Name
T9M1M9	Cold Lake
T9M1N1	Bonnyville No. 87
T9M1N2	Bonnyville No. 87
T9M1N3	Cold Lake
T9M1N4	Cold Lake
T9M1N5	Cold Lake
T9M1N6	Cold Lake
T9M1N7	Cold Lake
T9M1N8	Cold Lake
T9M1N9	Cold Lake
T9M1P1	Bonnyville No. 87
T9M1P2	Bonnyville No. 87
T9M1P3	Bonnyville No. 87
T9M1P4	Bonnyville No. 87
T9M1P5	Cold Lake
T9M1P7	Cold Lake
T9M1P8	Cold Lake
T9M1P9	Cold Lake
T9M1R1	Cold Lake
T9M1R2	Cold Lake
T9M1R3	Cold Lake
T9M1R4	Cold Lake
T9M1R5	Cold Lake
T9M1R6	Cold Lake
T9M1R7	Cold Lake
T9M1R8	Cold Lake
T9M1R9	Cold Lake
T9M1S1	Cold Lake
T9M1S2	Cold Lake
T9M1S3	Cold Lake
T9M1S4	Cold Lake
T9M1S5	Cold Lake
T9M1S6	Cold Lake
T9M1S7	Cold Lake
T9M1S8	Cold Lake
T9M1S9	Cold Lake
T9M1T1	Cold Lake
T9M1T2	Cold Lake
T9M1T3	Cold Lake
T9M1T4	Cold Lake
T9M1T5	Cold Lake
T9M1T6	Cold Lake

Postal Code	CSD Name
T9M1T7	Cold Lake
T9M1T8	Cold Lake
T9M1T9	Cold Lake
T9M1V1	Cold Lake
T9M1V2	Cold Lake
T9M1V3	Cold Lake
T9M1V4	Cold Lake
T9M1V5	Cold Lake
T9M1V7	Cold Lake
T9M1V8	Cold Lake
T9M1V9	Cold Lake
T9M1W1	Cold Lake
T9M1W2	Cold Lake
T9M1W3	Cold Lake
T9M1W4	Cold Lake
T9M1W5	Cold Lake
T9M1W6	Cold Lake
T9M1W7	Cold Lake
T9M1W8	Cold Lake
T9M1W9	Cold Lake
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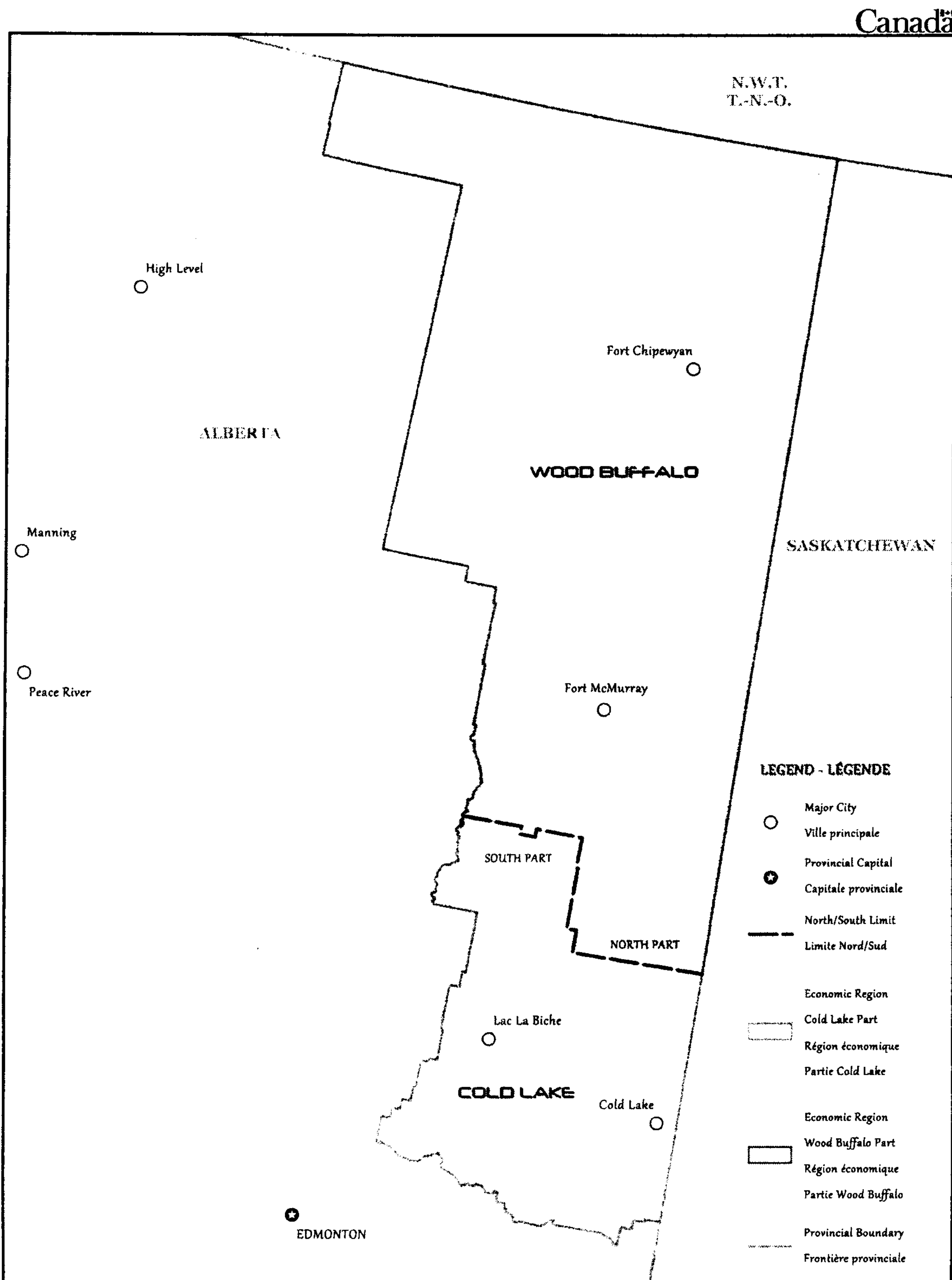
ANNEX B

Reference Map for Wood Buffalo and Cold Lake Region



Temporary Foreign Worker Program Bulletin

Date: 2010-12-01

To: All TFWP Staff (Managers, Consultants, Officers, etc.)

From: Andrew Kenyon, Director General, Temporary Foreign Workers and Labour Market Information Directorate, NHQ

Subject: Reducing Wages of Temporary Foreign Workers from those Confirmed in the Original Labour Market Opinion

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Purpose:

This Policy Bulletin is issued for the purpose of providing guidance to Service Canada (with the exception of Quebec region) on the process to follow when requests are made by employers to reduce temporary foreign workers (TFWs) hourly wage from the wages which were initially confirmed on the employer's labour market opinion (LMO).

Authority:

The Temporary Foreign Worker Program (TFWP) operates under the authority of the *Immigration and Refugee Protection Act (IRPA)* and the *Immigration and Refugee Protection Regulations (IRPR)*.

Section 203 of the *IRPR* indicates that upon reviewing a work permit application, a Citizenship and Immigration Canada (CIC) officer is to determine, on the basis of the LMO provided by Human Resources and Skills Development Canada (HRSDC)/Service Canada, whether the job offer is genuine and employment of a foreign worker is likely to have a neutral or positive effect on the Canadian labour market.

HRSDC/Service Canada officers are mandated to base an opinion on the following six factors as stated under section 203(3) of the *IRPR*:

a. whether the employment of the foreign national is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;

b. whether the employment of the foreign national is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;

c. whether the employment of the foreign national is likely to fill a labour shortage;

d. **whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally acceptable Canadian standards;**

e. whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents; and

f. whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute.

Background:

TFWs have the same rights as Canadian citizens and permanent residents, and as a result, the TFWP expects employers to increase wages of TFWs when they increase wages of their Canadian employees. Similarly, when the wages of Canadian employees are being reduced, employers are expected to reduce the wages of TFWs by the equivalent amount.

The rationale for allowing an employer to reduce a TFW's wage after the issuance of the LMO and after the worker has entered Canada is to ensure that:

- TFWs are being treated the same as Canadian and permanent resident employees; and
- all employees working in the same location and employed in the same position are paid a similar wage.

Guideline:

The employer notifies Service Canada about wanting to reduce their TFW(s) wages.

Step 1: Service Canada informs the employer that wage reductions will only be permitted in instances where a wage decrease is being applied to all employees (e.g. Canadian citizens and permanent residents) who are working in the same position and work site as the TFW.

Step 2: If the employer indicates that the wage reduction is being applied to all employees who are working in the same position and work site as the TFW, Service Canada notifies the employer to provide them with the following information:

A. a written rationale as to why they want to reduce the TFW's wages;
B. the new hourly wage they want to offer to the TFW;
C. the number of hours of work the TFW is expected to work each week after the wage reduction has taken effect;
D. employer contact information;
E. the Foreign Worker System (FWS) file number of their LMO whose wage they are wanting to alter; and
F. the name of the TFW who will receive a wage reduction.

Step 3: The employer sends the requested information to their regional Service Canada Office. (Please refer to **Annex A** for a template on the type of information that must be submitted to the national headquarters (NHQ) for consideration).

Step 4: Service Canada sends the wage reduction request and supporting documentation as provided by the employer through the use of the NHQ inbox (NC-TFWP_PTET-INBOX-GD), for approval. The subject header on the e-mail to NHQ must indicate that the inquiry pertains to a wage reduction request, as well as whether it is a high or low skilled occupation.

Step 5: NHQ makes their assessment of whether to allow the wage to be reduced, based on the following **criteria:**

A. The wage reduction must have been applied to Canadian citizens and permanent residents who are working in the same position and work site as the TFW whose wage is being considered for a reduction.

B. The TFWP is satisfied that the rationale, as provided by the employer, for wanting to lower the wage of their Canadian, permanent resident, and TFW employees, is acceptable.

If the explanation is not clear and/or NHQ has concerns regarding the validity/credibility of the request, additional information may be sought from the employer to better support NHQ's decision.

For example, in those instances where the employer is requesting to reduce a TFW's wage due to a claim that:

- a work site wide wage reduction is taking place, NHQ may request payroll information from the employer for their entire staff who are employed in the same position and work site location as the TFW. This information can be used to help determine if the wage reduction is being applied to all employees; and
- the work site has recently become unionized, NHQ can request a letter from the union which indicates the newly agreed upon wages for the position which the TFW is employed. This information can be used to help determine if the new wage being offered is in line with the rates as identified by the union.

C. The TFW(s) is currently employed by the employer.

Wage reductions should only be permitted if the TFW(s) has already been issued a work permit.

In those instances where a request is made by an employer to reduce a TFW's wage on an approved LMO and the TFW has not yet applied for a work permit at CIC the LMO in the FWS should be cancelled and the employer should apply for a new LMO. When assessing the new LMO application, TFWP officers should verify that the employer's new advertisement efforts include the reduced wage.

D. Any documentation which may have been submitted to Service Canada for consideration must not contain complete social insurance numbers (SIN).

Under no circumstance is the TFWP permitted to collect an individual's full SIN. The Program is permitted, however, to collect the first three digits of an individual's SIN, in order to help make the determination about the status of the individual in Canada (e.g. a Canadian citizen or a TFW).

If an employer is planning to submit documentation which contains SIN information, the SIN needs to be blacked out by the employer prior to submitting to HRSDC/Service Canada.

If a document which contains a complete SIN is submitted to Service Canada, the entire document must be returned to the employer and he/she should be informed to black out all but the first three digits of the SIN.

Documentation which contains complete SINs will not be considered by NHQ as part of the assessment of whether to allow the reduction of the TFW's wage.

Please note that SINs that start with the number 9 (nine) belong to TFWs.

Step 6: The TFWP Senior Management at NHQ will make the final determination as to whether allow the employer to reduce the wage of the TFW.

Step 7: If the decision is made to confirm the wage reduction request, NHQ will contact the employer (either by facsimile or by telephone) on the day the decision is made to allow a wage reduction.

The employer can only reduce the TFW's wages on or after the date in which the employer received confirmation from the Program to allow a TFW's wage reduction. Employers who imposed a wage reduction on their Canadians citizen and/or permanent resident employees prior to the date in which the TFWP confirmed the employer's TFW wage reduction request are prohibited from retroactively applying the reduced wage to TFW's salary to the date in which the Canadians' wages were reduced.

Step 8: A wage reduction confirmation or refusal letter will be sent from the Director General of the TFWP to the employer which outlines NHQ's decision as to whether a TFW's wage reduction may be permitted. The confirmation letter must indicate the newly approved reduced wage, as well as the date in which the employer may reduce the wages of their TFWs.

Step 9: If the decision is made by the TFWP Senior Management to allow a wage reduction for a TFW who is employed in a National Occupational Classification (NOC) C or D skilled level occupation, the letter being sent to the employer must also indicate that the employer must send a copy of the revised employee/employer contract to their regional Service Canada office.

The contract must:

1) be signed by both the employer and the employee;
2) indicate the new confirmed wage; and
3) indicate that the newly approved reduced wage may only come into effect either on or after the date in which the TFWP approved the employer's TFW wage reduction request.

Step 10: NHQ will notify Service Canada of the decision, and Service Canada will update the FWS to reflect the decision made.

Confirmations:

If NHQ decides to allow the employer's TFW wage reduction request, Service Canada must:

1. scan a copy of the confirmation letter and attach it into the FWS within the employer's profile; and
2. indicate in the "Notes to File" field of the FWS, the wage offer that was initially approved on the LMO; the approved reduced wage, and; the date of the approval by NHQ to allow the employer to reduce the TFW wage.

Refusals:

If the decision is made by NHQ to refuse the employer's request to reduce the TFW wage, Service Canada must scan a copy of the refusal wage reduction letter into the FWS and attach it to the employer's profile.

Step 11: NHQ will notify Service Canada on how to proceed with the assessment of any future LMO applications which may be received from an employer who has been permitted to reduce the wages of their TFWs.

Key Information:

Approved by: Andrew Kenyon, DG
Division: Policy and Program Design
Althea Williams, Director
Mike Perry, Manager
NC-TFWP_PTET-INBOX-GD

ANNEX A

TFW Wage Reduction Information

The following information must be sent to the TFWP (NHQ) through the use of the NHQ inbox.

Contact Information		
Name of the employer requesting a wage reduction		
Telephone Number ( ) -	Fascimile Number ( ) -	
Mailing Address	E-mail Address	
I have attached a copy of the written rationale (as provided by the employer) as to why they want to reduce their TFW(s) wage		
For unionized work environments, I have attached a copy of the letter received from the union which indicates the newly agreed upon wages for the position.		
Wage Reduction Information		
Foreign Worker System file number of the labour market opinion (LMO(s)) that is being requested to be altered.		
Name(s) of temporary foreign worker(s) who may receive a wage reduction.		
Wage initially confirmed on the employer's LMO application. $__________/hr	New wage the employer wants to offer to the TFW(s) $________ /hr	Number of hours of work the TFW(s) is expected to work each week after the wage reduction has taken effect ______________ /week
Please include any other information that could be pertinent in deciding whether to allow a TFW wage reduction.		

Temporary Foreign Worker Program Bulletin

Date: 2013-11-15

To: All TFWP Staff (Managers, Consultants, Officers, etc.)

From: Alexis Conrad, Director General, Temporary Foreign Worker Directorate, NHQ

Subject: Recruitment and Advertisement Requirements – Concession Booth Owners/Operators Associated with Major Touring Productions/Shows

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Purpose:

The purpose of this Bulletin is to provide guidance to Employment and Social Development Canada (ESDC)/Service Canada staff on how to assess labour market opinion (LMO) applications for concession booth owners/operators (National Occupational Classification (NOC) code 0621), within the specific context of major touring productions/shows.

As these occupations fall under the category of "owner/operator", the variation to the recruitment or advertisement requirements applies, which means that no recruitment or advertisement is required.

Authority:

The Temporary Foreign Worker Program (TFWP) operates under the authority of the *Immigration and Refugee Protection Act* (IRPA) and the *Immigration and Refugee Protection Regulations* (IRPR). The authority relevant to this Bulletin is found in Section 203(3)e of the IRPR, which states:

> *An opinion provided by the Department of Human Resources and Skills Development with respect to the matters referred to in paragraph (1)(b) shall be based on the following factor:*
>
> *e) whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents;*

Background:

Concession booth owners, within the specific context of major touring productions/shows (e.g. Disney on Ice, Monster Jam, Ringling Brothers) are classified as NOC code 0621 – Retail Trade Managers. The job titles associated with this NOC code include concession booth owners/operators/managers.

As retail and wholesale trade managers, these individuals are responsible for planning, organizing, directing, controlling and evaluating the operations of establishments that sell merchandise or services on a retail or wholesale basis. Retail and wholesale trade managers are employed by retail or wholesale sales establishments, or they may own and operate their own store.

In the case of concession booth owners/operators/managers working in conjunction with major touring productions/shows, the foreign workers own and operate concession booths as sub-contractors of the production company. They are trained in accordance with specific contractual standards on a range of topics (e.g. product knowledge, sales techniques, security) and may be required to purchase minimum quotas of licensed products. At these events, concession sales represent a significant revenue stream which supports the viability of the main production/show.

In the assessment of LMO applications for concession booth owners/operators/managers, within the context of major touring productions/shows, consideration should be given to demonstration by the applicant (owner/operator) that his/her entry would result in the creation or retention of employment opportunities for Canadians and permanent residents (e.g. employment by host venues of local staff in roles such as ticket takers, security, parking lot attendants, maintenance staff, food/beverage vendors, employment and revenues by hotels, restaurants, transportation companies and print media).

Guidelines:

No recruitment or advertisement is required. This is equally applicable in all provinces/territories.

Note:
This variation to the recruitment and advertisement requirements does not apply to concession booth owners/operators within the context of a mid-way, travelling carnival/festival, or event other than a major touring production/show.

In the event that other scenarios are identified involving concession booth owners/operators that may qualify under this recruitment and advertisement variation, Service Canada staff is requested to get guidance by contacting NHQ.

OPERATIONAL BULLETIN

Ministerial Instruction April 24, 2014
'Refusal to Process' LMO Applications in the Food Services & Drinking places industry

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Purpose:

The purpose of this bulletin is to provide operational guidance to Employment and Skills Development Canada (ESDC)/Service Canada (SC) staff regarding labour market opinion (LMO) applications following Ministerial Instructions to not process specific files in the above-noted sector.

Operational Guidance:

This guidance applies to applications where the industry is classified by the 2002 North American Industrial Classification System (NAICS 2002) in "Food Services and Drinking Places" (NAICS subsector 722). Specifically with respect to occupations classified by the National Occupational Classification (NOC 2006) as in sales and service and sales and service management occupations.

Refer to Annex A for specific NOC codes impacted by this bulletin.

Officers will confirm the NAICS code for the Employer and the NOC of the position requested. If the NAICS code begins with 722, and the NOC is listed in Annex A, the application will not be processed or will be suspended if any unused positions remain.

This Bulletin will remain in effect until further notice.

Operational Procedures:

For applications in NAICS 722 and on the list of NOC codes on Annex A, specific procedures will apply for the following situations:

I. **Applications pending where a fee has been collected**
II. **Applications pending or received where a fee has not been collected**
III. **LMO is confirmed where unused positions remain, suspended as a result of the moratorium**

I. Applications pending where a fee has been collected

Final lists of pending LMOs have been provided to Regions.

Regional Service Managers are instructed to contact each employer by telephone (suggested speaking points attached) to advise them that their application will not be processed, the fee will be refunded and if an ECR is underway, it will be stopped.

- Following Employer contact, officers will place a note in the Employer Notes section of the Foreign Worker System with the following script:

  ER contacted on** <date> **re: SF#** (list all SFs in process, impacted by the 'refusal to process' where a refund will be issued)**, impacted by the Ministerial Instructions regarding the Food and beverage Service industry. The employer was advised that the application(s) will be closed, a refund will be processed** (if applicable '**, the current ECR underway will stop**') **and they will be sent a letter to confirm.

NHQ will begin processing refunds. Once the refund has been processed, a letter confirming that the refund has been processed will be sent to the employer (see attached template).

- The regions will send the following documents back to the employer:

  - If no ECR is underway: The **LMO application** and **any supporting documents** and a **letter** confirming that a full refund has been processed.

  - If an ECR in underway: The **LMO application** and **any supporting documents**, all **documents received by ISB in support of the ECR** and a **letter** confirming that a full refund has been processed.

Regions will need to coordinate with ISB to receive ECR-related documents prior to sending the confirmation of refund letter. ISB has been instructed to send these materials to the attention of Regional Service Managers.

II. Applications pending or received where a fee has not been processed

Paper applications: Enter enough information into the Foreign Worker System to generate a System File # (up to and including the 1st page of the Job details which includes the NOC)

Online applications: Upload the application to the Foreign Worker System.

Do not proceed with assessment and **do not collect a processing fee.**

- In FWS 'Notes to file' and 'CIC Notes to file', **enter the following rationale** and **close the file**:

  The Employer has been identified as being in the food services Industry. In accordance with section 30(1.43) (c) of the Immigration and Refugee Protection Act, the minister of ESDC has announced a refusal to process applications in this industry. Service Canada has ceased processing the application prior to collecting the processing fee. The payment or payment information is being returned to the employer.

- Generate an FYI letter indicating that the file has been closed and the application will not be processed. Please include the following wording;

  Effective April 25, 2014 until further notice, in accordance with section 30(1.43) (c) of the Immigration and Refugee Protection Act, the Honourable Jason Kenney, Minister of Employment and Social Development, Employment and Social Development Canada (ESDC)/Service Canada has announced a refusal to process applications in the food and

beverage service industry. Consequently, this letter is to inform you that we cannot process your application or the processing fee and we are returning your application.

For applications with payment by Credit Card:

- Redact the middle 8 digits of the credit card number
- MAIL (regular post, double envelope) the application, FYI letter and the redacted payment information to the employer.

For applications with payment by certified cheque or Money order: **Do not alter the document.**

- Mail, using **Registered Mail**, the application, FYI letter and the original certified cheque or Money order to the employer.

III. LMOs confirmed, where unused positions remain, suspended as a result of the moratorium

NHQ is managing the suspensions of all confirmed LMOs impacted by the moratorium. Regions **will not** be required to take any action.

Changes have been made in FWS. These changes include:

- Decision detail has been changed to "SUSPENDED";
- SF Notes and CIC Notes have been updated to indicate the LMO has been suspended;
- ER Notes have been updated to advise POs this ER has LMOs affected by the moratorium; however any pending LMOs that fall outside of the scope of the moratorium can be processed as normal.

Employers will be advised, via registered mail, of the suspension and the letters will be uploaded in FWS. Due to Canada Post capacity limits with respect to registered letters, it may take 8-10 weeks for suspension letters to be delivered. (More information may be provided at a later date on how employers will be advised of the status of suspended LMOs.)

If employers who receive the suspension letter have questions, they should be advised to submit their question/concerns/issues to the email account noted on their letter.

No refunds will be issued for suspended LMOs.

Annex A

List of Sales & Services Occupations (Skill type 6 based on NOC-2006)

NOC Code	NOC Title
0611	Sales, Marketing and Advertising Managers
0621	Retail Trade Managers
0631	Restaurant and Food Service Managers
0632	Accommodation Service Managers
0651	Other Services Managers
6211	Retail Trade Supervisors
6212	Food Service Supervisors
6213	Executive Housekeepers
6214	Dry Cleaning and Laundry Supervisors
6215	Cleaning Supervisors
6216	Other Service Supervisors
6221	Technical Sales Specialists - Wholesale Trade
6241	Chefs
6242	Cooks
6251	Butchers, Meat Cutters and Fishmongers - Retail and Wholesale
6252	Bakers
6411	Sales Representatives - Wholesale Trade (Non-Technical)
6421	Retail Salespersons and Sales Clerks
6451	Maîtres d'hôtel and Hosts/Hostesses
6452	Bartenders
6453	Food and Beverage Servers
6484	Other Personal Service Occupations
6611	Cashiers
6622	Grocery Clerks and Store Shelf Stockers
6623	Other Elemental Sales Occupations
6641	Food Counter Attendants, Kitchen Helpers and Related Occupations
6651	Security Guards and Related Occupations
6661	Light Duty Cleaners
6662	Specialized Cleaners
6663	Janitors, Caretakers and Building Superintendents
6681	Dry Cleaning and Laundry Occupations
6682	Ironing, Pressing and Finishing Occupations
6683	Other Elemental Service Occupations

Temporary Foreign Worker Program Bulletin

Date: 2011-02-01

To: All TFWP Staff (Managers, Consultants, Officers, etc.)

From: Andrew Kenyon, Director General, Temporary Foreign Workers and Labour Market Information Directorate, NHQ

Subject: Policy Guidelines for Verifying Participation in the Work-Sharing Program

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Purpose:

The purpose of this Bulletin is to assist Human Resources and Skills Development Canada (HRSDC)/Service Canada in the assessment of an application for an opinion under section 203 of the *Immigration and Refugee Protection Regulations* (*IRPR*), by considering employers' participation in the Work-Sharing Program.

For the purposes of the Temporary Foreign Worker Program (TFWP), employer's participation in the Work-Sharing Program may show no need for temporary foreign workers to work in a specific occupation for that employer.

Authority:

The *IRPR* prescribes the factors that HRSDC/Service Canada is to consider in forming an opinion on the labour market impact of hiring of a foreign national. Section 203(3) outlines the six factors related to the impact on the labour market as follows:

a) whether the employment of the foreign national is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;
b) whether the employment of the foreign national is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;
c) **whether the employment of the foreign national is likely to fill a labour shortage**;
d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation, and whether the working conditions meet generally accepted Canadian standards;
e) **whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents**; and
f) whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute in progress or the employment of any person involved in the dispute.

Background:

Work-Sharing is an adjustment program designed to help employers and employees avoid temporary layoffs when there is a reduction in the normal level of business activity that is beyond the control of the employer.

An information sharing agreement between the Director General of the Temporary Foreign Workers and Labour Market Information Directorate and the Director General of the Labour

Market Program Operations Directorate is attached as Appendix A. This agreement enables HRSDC/Service Canada officers to inquire about work sharing agreements in place to better assess the need for temporary foreign workers.

The confirmation and verification of the occupations associated with a Work-Sharing Agreement will help in the assessment of factors (c) and (e) of section 203(3):

- Factor (c): if the position(s) identified on the application is the same position identified within the Work-Sharing Agreement, this could be an indication that a labour shortage does not exist for the position(s) requested.
- Factor (e): if the position(s) identified on the application matches the position within the Work-Sharing Agreement, this could be an indication that full-time work is available for Canadian citizens or permanent residents.

Guidelines:

When evaluating factors (c) and (e) of section 203(3) of *IRPR*, HRSDC/Service Canada officers have the authority to request information from a variety of sources to verify the employers' participation in the Work-Sharing Program and may consider information from the following sources:

Documentary Evidence
For employers who have indicated that they are participating in the Work-Sharing Program, they can be asked to provide a copy of any current or recent (within the preceding two years) Work-Sharing Agreements. It is the responsibility of employers to provide a copy of the body of the Work-Sharing Agreement, with the application.

The body of the Agreement includes employer's information only. The personal information contained within the annex cannot be collected as it includes employees' names. It must be stated to the employer that the only information within the annex that can be submitted is the list of occupation(s) or position(s) covered, and that the employees' names must be blacked-out.

Verification with Work-Sharing Officer
On a case-by-case basis, HRSDC/Service Canada officers have the authority to make direct contact with the Work-Sharing Program to verify the validity of the Work-Sharing Agreement, including the occupation(s) for which the employer is part of the Work-Sharing Program.

In the event that an employer has not reported his/her Work-Sharing Agreement as part of the application process, HRSDC/Service Canada officers may request that the Work-Sharing Program search its records to confirm whether or not a Work-Sharing Agreement is in place. HRSDC/Service Canada officers may also request a copy of the Agreement, which includes the list of occupation(s) or position(s) covered.

Verification with Employer
HRSDC/Service Canada officers may contact the employer to request further clarification or information about any of the documentation he/she provided. The employer must explain possible discrepancies or inconsistencies related to the Work-Sharing Agreement, including the occupation(s) or position(s) listed.

If an employer is currently using a Work-Sharing Agreement and is applying to get an opinion for occupation(s) or position(s) noted in the Work-Sharing Agreement, the opinion should be negative according to the section 203(3).

NOTE: In assessing factors (c) and (e) of section 203(3) of *IRPR*, the onus rests with the employer to provide sufficient information to the HRSDC/Service Canada officers in order to provide an opinion.

Key Information:	Appendix: Information Sharing Agreement between the TFWP and Work-Sharing Program
Approved by:	Andrew Kenyon, DG
Division:	Policy and Program Design Althea Williams, Director Krista McCracken, A/Manager NC-TFWP_PTET-INBOX-GD

APPENDIX A

April 30, 2010

Nancy Gardiner
Director General
Human Resources and Skills Development Canada
Labour Market Program Operations Directorate
140 Promenade du Portage
Gatineau, Québec
K1A 0J9

Re: Letter respecting a collection of personal information by the Temporary Foreign Worker Program from the Work-Sharing Program, both of Human Resources and Skills Development Canada (HRSDC).

Dear Ms. Gardiner:

We would like to inform the Work-Sharing Program (WSP) that the Temporary Foreign Worker Program (TFWP) wishes to verify participation in the WSP. This information, which will include personal information, is required by the TFWP for the purposes of assessing a Labour Market Opinion (LMO).

There is a need for the TFWP to ensure that employers are making efforts to hire Canadians and permanent residents before hiring temporary foreign workers (TFWs). As some employers participate in the WSP to reduce the number of working hours payable to employees, the collection of information by the TFWP from the WSP will assist in the assessment of the LMO under section 203 of the current *Immigration Refugee and Protection Regulations (IRPR)*:
203(3):
(c) whether the employment of the foreign national is likely to fill a labour shortage;
(e) whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadians citizens or permanent residents.

The WSP can disclose employer information under the authority of 34(2) of the *Department of Human Resources and Skills Development Act* (*DHRSDA*) which states:
34(2):
"information may be made available to the Commission or a public officer of the Department for the administration or enforcement of a program".

The TFWP's intent is to use the work sharing information on a case by case basis:

- The TFWP will modify the LMO application form to include an indication by the employer whether or not they have a work-sharing agreement in place. The onus will be on the employer to provide a copy of the body of the work-sharing agreement to the TFWP.
- The Service Canada Officer may then verify the work-sharing agreement by contacting the WS officer who can validate whether or not an agreement is in place, and the contents of the agreement, including the occupation(s). There will be no electronic systems exchange, only verbal/written confirmation that the work-sharing agreement is valid.
- The LMO application will be assessed against section 203 of *IRPR* and if the position requested on the LMO falls within the position(s) that the employer has within their work-sharing agreement, further assessment will be required prior to issuing an opinion.
- In the event that the TFWP is in receipt of information that an employer may not have reported his/her work-sharing agreement as part of the LMO application process, the TFWP may request that the WSP search its records to validate whether or not an agreement is in place, and the TFWP may request a copy of the agreement, including the occupation(s).

The Parties agree as follows:

1. Pursuant to section 34(2) of the *DHRSDA*, the WSP will make available to the TFWP, information including personal information, contained in the work-sharing agreement.
2. Any personal information will be made available to the TFWP for the sole purpose of the administration of requests for LMOs.
3. Both Parties understand that the collection, use and disclosure of personal information are governed by Part 4 of the *DHRSDA*.

Sincerely,

On behalf of the Temporary Foreign Workers Program:
(Signed original)

Andrew Kenyon
Director General

I am in agreement with the terms and conditions of this Letter.
On behalf of the Work Share Program:

(Signed original)
Nancy Gardiner
Director General

Temporary Foreign Worker Program Bulletin

Date: 2010-12-06 (Revised on 2011-03-30)

To: All TFWP Staff (Managers, Consultants, Officers, etc.)

From: Andrew Kenyon, Director General, Temporary Foreign Workers and Labour Market Information Directorate, NHQ

Subject: Clarification Regarding Labour Market Opinion Applications Involving Foreign-Based Employers

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Purpose:

The purpose of this Bulletin is to provide guidance in addressing situations where a foreign-based business has entered into a contractual arrangement to provide goods and/or services in Canada.

These guidelines are not intended to address situations of business visitors or intra-company transfer of employees or self-employed foreign nationals as per section 10.3.1.2 of the "Directives for Assessing Labour Market Opinions".

Background:

Foreign-based employers can be awarded contracts for the provision of goods and/or services in Canada. These scenarios can arise from an open procurement process (e.g. request for proposals, outsourcing an activity, lack of specialized individuals, specific equipment needs, temporal concerns, etc.), or service/warranty agreements (post-purchase) and post-warranty arrangements.

Foreign-based companies awarded contracts for goods and/or services in Canada are required to be apprised of and meet the same measure of federal/provincial/territorial regulations as a Canadian company when operating in Canada. This includes the labour market opinion (LMO) requirements when an employer makes a job offer to temporary foreign workers for employment opportunities in Canada.

Within this context, it is necessary to provide direction regarding the employer-employee relationship, the determination of the employer on the LMO when an affiliated branch office in Canada does not exist, and what impact these types of arrangements have on the Canadian labour market.

To ensure an efficient labour market, specific recruitment variation considerations are given to short-term arrangements involving requests for highly specialized skills and/or knowledge.

Labour Market Opinion Assessment Guidelines:

Foreign-based employers

For the purposes of providing an LMO and conducting an analysis under section 203 of the *Immigration and Refugee Protection Regulations* (*IRPR*), the "employer" is considered to be the

business responsible for providing direction, supervision, remuneration, workplace safety coverage to the employee. In addition, the employer must submit the request for the LMO.

Foreign-based companies operating in Canada where they do not have an official office must apply for LMOs when making job offers to temporary foreign workers for employment opportunities in Canada. The Canadian company is considered as the "service consumer" and not the "employer" in those LMO applications. Service consumers could be a number of different legal entities, such as registered companies, associations, clubs, municipalities and/or governments. Sometimes, candidates who already work for the foreign-based company may not qualify for an LMO exemption. In this case, the company must obtain an LMO.

In general, Human Resources and Skills Development Canada (HRSDC)/Service Canada staff must consider the full measure of the "Directives for Assessing Labour Market Opinions", including wages offered to the temporary foreign worker, possible impact of labour disputes, working conditions and recruitment efforts made by the employer.

Employment applications for limited duration job offers

This Bulletin applies to short-term service contracts for highly specialized skills and/or knowledge. The foreign service provider must apply for the LMO when the Canadian entity is considered to be a service consumer in the contractual arrangement.

When assessing an application for an LMO, HRSDC/Service Canada staff must consider:

- the foreign-based business as the employer of record on the LMO, and ensure documentation supporting any contractual arrangement for the **WORK** performed by the temporary foreign worker is submitted as part of the application package. The **WORK** described must not simply be the provision of labour by a foreign-based company to a company in Canada, such as through a labour brokerage contract;

- the work location as the location specified in the contractual arrangement with the Canadian company;

- the information submitted by the foreign-based business to demonstrate that the work being undertaken is proprietary, unique or specialized in nature. This could be demonstrated for example, based on the specialized skill level of the position being requested, or through details outlined in the contract related to skills/equipment. While these situations may generally involve high-skilled occupations (NOC 0, A and B), they may also involve lower-skilled occupations (NOC C and D) with specific requirements at that skill level to the work being performed;

- the proposed timeframes for the work under the contractual agreement. In general, the work is of limited duration, such as less than one month. However, on the merits of the contractual arrangements, HRSDC/Service Canada staff can consider more than one month with established contractual end dates and when training Canadian citizens and/or permanent residents is not a reasonable alternative due to the scope of the work (i.e. no long-term opportunities);

- the variations to the minimum advertising requirements (section 14.1.4 of the Directives) for specialized services and warranty work; and

- all elements under section 203(1) of the *IRPR*, including genuineness, substantially the same (STS), and federal/provincial/territorial agreement consistency, effective April 1, 2011.

Guidelines:

HRSDC offers the following administrative guidelines for documentation with respect to LMO applications involving foreign-based employers:

- A foreign-based company that is deemed to be the end-user company must be identified as the employer in the Foreign Worker System (FWS) and sign the LMO application. If a foreign-based employer is required to obtain a business number from Canada Revenue Agency (CRA) this business number should be made available to the Temporary Foreign Worker Program as an identifier. If a foreign-based employer does not have a CRA number, it is not necessary to get one prior to submitting an LMO application. Under no circumstances should a foreign-based employer use a Canadian service consumer or a third party's CRA business number.

- The contact for the employer must also be from the foreign-based company.

- As per the Third party representatives (section 3.1 of the Directives), the foreign-based company can authorize the Canadian service consumer as a third party.

- HRSDC/Service Canada staff can upload the documentation supporting the arrangement between the foreign-based employer and the Canadian company and add a note in the "Notes to File" section of the FWS. If scanning is not available, HRSDC/Service Canada staff can include a summary of the documentation provided by the foreign-based employer in the note.

- In the "CIC Notes" section, HRSDC/Service Canada staff must include details of the arrangement, including the name of the service consumer and the specific work location details.

- The wage to be documented in the FWS must be the wage paid by the employer to the temporary foreign worker.

Key Information:

Approved by: Andrew Kenyon, DG
Division: Program Development and Implementation
Steven West, Director
Lara White, Manager
NC-TFWP_PTET-INBOX-GD

Temporary Foreign Worker Program Bulletin

Date: 2011-03-30

To: All TFWP Staff (Managers, Consultants, Officers, etc.)

From: Andrew Kenyon, Director General, Temporary Foreign Workers and Labour Market Information Directorate, NHQ

Subject: Clarification Regarding Communication With an Employer When There is an Authorized Third Party Representative

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Purpose:

The purpose of this Bulletin is to provide guidance and clarity around contacting an employer when a third party representative has been appointed to act on their behalf.

Background:

A third party can provide a variety of services, such as basic application assistance, recruitment services or legal representation. Not all third parties are authorized to act on an employer's behalf for the purposes of obtaining a labour market opinion (LMO), or an arranged employment opinion (AEO) from Human Resources and Skills Development Canada (HRSDC)/Service Canada.

Employers can appoint a third party to act on their behalf on an application-by-application basis for a definite or indefinite period of time.

This Bulletin aims to address third party concerns about services being provided by HRSDC/Service Canada staff. Services can and should be provided to duly appointed representatives, however, HRSDC/Service Canada does reserve the right to verify the information submitted or requested by the appointed third party.

Not all third parties must be appointed. Third party recruiters can play a role in the LMO application process and not be appointed by an employer. Employers nevertheless remain accountable for the actions of any person who recruited on their behalf.

Guidelines:

- An employer can formally appoint a third party, to act as a representative, by completing the "Appointment of Representative" form attached to the LMO application, or by writing and signing a letter on the company's letterhead authorizing a third party to act on behalf of the employer. Declarations from legal representatives are also accepted.
- The appointment of a third party means that HRSDC/Service Canada provides the same services as that provided to the employer including, all administrative services such as name changes, spelling corrections to decision letters, or obtaining copies of decision letters.

- HRSDC/Service Canada staff must verify the "Appointment of Representative" form, or the letter signed by the employer authorizing the third party for every LMO application by contacting the employer directly. At this time, HRSDC/Service Canada must verify by telephone that the employer has authorized the third party to act on their behalf and intends to offer the job(s) to the foreign national(s). Employers should be reminded that they are ultimately responsible for the truthfulness and accuracy of all information submitted on their behalf by an authorized third party.

- **Whenever possible, or when requested by the employer, HRSDC/Service Canada staff will direct outstanding questions to the authorized third party named in file**.

- The appointment of a third party remains in effect for the duration of the assessment, unless otherwise specified on the "Appointment of Representative" form.

- HRSDC/Service Canada staff should always verify whether or not a third party involved in the application process is on the due diligence list.

- If the third party is on the due diligence list, HRSDC/Service Canada staff must also confirm key details contained within the LMO application when contacting the employer. If the employer can verify that key details of the application are correct, it is processed as usual. If the employer is unable to verify key details of the application, they must be reminded that they are responsible for the truthfulness and accuracy of all information submitted by the third party. If the employer chooses to cancel the service of a third party, they should be advised that it must be done in writing and that the information will be noted on the file.

  Please note that under no circumstances, is HRSDC/Service Canada staff permitted to advise the employer that a third party is on the due diligence list.

- In cases where there is a doubt in the accuracy or truthfulness of information submitted by an authorized third party, HRSDC/Service Canada staff can verify the information with the employer.

Considerations:

- HRSDC/Service Canada does reserve the right to contact the employer for additional fact-finding when information cannot be obtained, or adequately obtained, from the authorized third party.

- When communicating with an authorized third party, HRSDC/Service Canada staff should inform the employer of their discussion either by written correspondence or telephone.

- HRSDC/Service Canada staff must direct outstanding questions to the authorized third party named in the file except when conducting Employer Compliance Reviews or when the information cannot be obtained, or adequately obtained, from the third party.

- **When conducting Employer Compliance Reviews as part of the monitoring initiative, the current practice is to contact the employer directly.**

- With the amendments to the *Immigration and Refugee Protection Regulations* (*IRPR)* subsections 203(1)*(e)*, effective April 1, 2011, employers may also be contacted in order to determine if they provided substantially the same (STS) wages, working conditions, and employment in an occupation as set out in previous job offers to temporary foreign workers.

- When conducting an STS compliance review, HRSDC/Service Canada staff should first communicate with the employer (not the authorized third party) to request any related documentation. HRSDC/Service Canada staff, however, may contact the authorized third party to acquire documentation when directed to do so by the employer.

- With the amendments to the *IRPR* subsections 203(1)*(a)* and 200(5), effective April 1, 2011, employers may be contacted by HRSDC/Service Canada staff in order to assess the genuineness of the job offer made to the temporary foreign worker. This assessment will be based on whether:

    - employer is actively engaged in the business in which the job offer is being made;
    - job offered to the TFW meets the reasonable employment needs of the employer, and is consistent with the type of business the employer is engaged in;
    - employer can reasonably fulfil the terms and conditions of the job offer; and
    - employer, or the third party representative acting on behalf of the employer, is compliant with the relevant federal-provincial/territorial employment and recruitment legislation.

Key Information:

Approved by: Andrew Kenyon, DG
Division: Program Development & Implementation Division
Steven West, Director
Lara White, A/Manager
NC-TFWP_PTET-INBOX-GD

Temporary Foreign Worker Program Bulletin

Date: 2011-05-11

To: All TFWP Staff (Managers, Consultants, Officers, etc.)

From: Andrew Kenyon, Director General, Temporary Foreign Workers and Labour Market Information Directorate, NHQ

Subject: Clarification Regarding the Removal of Foreign Nationals' Names from Labour Market Opinion Letters

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Purpose:

The purpose of this Bulletin is to provide clarification to Human Resources and Skills Development Canada (HRSDC)/Service Canada staff on the removal of foreign nationals' names from labour market opinion (LMO) confirmation letters.

Background:

HRSDC is authorized, under section R203(2) of the *Immigration and Refugee Protection Regulations (IRPR),* to issue an.LMO upon the request from officers of Citizenship and Immigration Canada (CIC), the Canada Border Services Agency (CBSA), or from an employer.

For administrative purposes, the employer must provide a copy of the LMO confirmation letter to the foreign national, as CIC and CBSA require a copy to process a work permit application (except where an LMO exemption applies). The Foreign Worker System (FWS) also provides CIC and CBSA with electronic details about the job offer and the foreign national associated with the LMO confirmation letter.

It is important for CIC and CBSA to be able to link a foreign national to a specific LMO confirmation letter in order to prevent foreign nationals from fraudulently identifying themselves as recipients of a genuine job offer from an employer.

Privacy concerns:

Until recently, Annex A of an LMO confirmation letter provided the name of a foreign national confirmed to be entering Canada under that LMO. Where an LMO confirmation letter was issued for multiple positions, it was commonplace to include multiple names as listed in Annex A. This presented a privacy risk because the LMO confirmation letter (including Annex A) was sent by the employer to all of the foreign nationals identified.

HRSDC/Service Canada is subject to strict limitations on the collection and disclosure of personal information under the *Access to Information Act* and the *Privacy Act*, including the names of foreign nationals entering Canada under the Temporary Foreign Worker Program (TFWP).

Current status:

The FWS release (version 8.0) on April 1, 2011, no longer provides the possibility to include the name of a foreign national in an LMO confirmation letter (with the exception of confirmation letters related to the Live-in Caregiver Program (LCP), and Arranged Employment Opinions (AEO)), in order to respond to the above-noted privacy concern. The names of foreign nationals are still shared electronically with CIC and CBSA through the FWS for the purposes of administering the TFWP.

Considerations:

The removal of the names of foreign nationals from LMO confirmation letters helps to ensure that private information, under the control of HRSDC/Service Canada, is protected in accordance with the *Privacy Act*.

The LMO confirmation letter will continue to provide details to employers about the position to be filled with a temporary foreign worker (TFW), such as the job title and the number of positions. However, employers and authorized third parties will have to rely on their own internal records when linking the names of foreign nationals with the corresponding LMO confirmation letter.

CIC and CBSA will continue to verify the foreign national's identity documents against the name provided through the FWS in processing a work permit application. This will ensure the integrity of the LMO when it is used to apply for a work permit at CIC by a foreign national who has been offered employment as a result of an LMO confirmation.

The CIC-CBSA exchange service will continue to manage cases in which inconsistent or incorrect names of foreign nationals have been provided.

Discussions have been held with CIC and CBSA, and both departments support this change. They have also agreed that this will lead to positive Program integrity outcomes by ensuring that officers at ports-of-entries rely on electronic systems to confirm the authenticity of the foreign national's job offer.

Next Steps:

In the upcoming FWS release scheduled for July 9, 2011, HRSDC/Service Canada staff will be able to generate and print a separate PDF document containing the names of the foreign nationals provided by the employer. This document will include instructions to the employer indicating that it is to be used for their own records only and should not be shared with all of the foreign nationals identified on the LMO confirmation letter. This does not apply to confirmation letters related to the LCP and AEO.

The June FWS release will also improve the LMO confirmation letter function by allowing CIC and CBSA officers to print the system file in bold and in a larger font to ensure legibility.

The privacy concerns extend to all LMO and AEO processes and consideration is being given to remove details about the foreign national from all confirmation letters issued by HRSDC/Service Canada to ensure the proper handling of private information in accordance with the *Privacy Act*.

Further changes are under development for the next system release, tentatively scheduled for December 2011. The plan is to have the FWS automatically generate a second annex, for all LMO and AEO confirmation letters, that will contain the name of a foreign national. This annex

will be for the employers' own records and will instruct them not to forward a copy to all of the foreign nationals associated with the confirmation letter.

HRSDC is developing an update to the Web site to inform employers of these changes.

HRSDC is going to engage key stakeholders in order to manage and ensure a smooth transition as a result of the changes made to the system and LMO confirmation letters.

Key Information:

Approved by:	Andrew Kenyon, DG
Division:	Program Development and Implementation Steven West, Director Lara White, Manager NC-TFWP_PTET-INBOX-GD

Temporary Foreign Worker Program Bulletin

Date: 2011-11-01

To: All TFWP Staff (Managers, Consultants, Officers, etc.)

From: Andrew Kenyon, Director General, Temporary Foreign Workers and Labour Market Information Directorate, NHQ

Subject: TFWP Use of the National Occupational Classification 2006 until 2014-2015

Purpose:

The purpose of this Bulletin is to inform Human Resources and Skills Development Canada (HRSDC)/Service Canada staff that the Temporary Foreign Worker Program (TFWP) will continue to operate under the National Occupational Classification (NOC) 2006 until the end of fiscal year 2014-2015.

Background:

The NOC provides a systematic classification structure that categorizes and describes the entire range of occupational activity in Canada. Its detailed occupations are identified and grouped primarily according to the work performed, as determined by the tasks, duties and responsibilities of the occupation.

The NOC structure is jointly revised by HRSDC and Statistics Canada every five years to incorporate new information on existing occupations and new occupational titles. Every ten years, structural changes that affect the coding framework, such as the addition of new occupations, are considered. The NOC 2011 represents the unification of HRSDC's NOC 2006 and Statistics Canada's NOC for Statistics (NOC-S) 2006. Although the vast majority of specific occupational groups may be comparable to earlier data sets, significant changes have been made to the major groups and to the NOC-S coding system. This makes the NOC 2011 structure significantly different from the NOC 2006 and NOC-S 2006 structures.

The TFWP uses a system based on the NOC 2006 to support the labour market opinion (LMO) application assessment process. The current system will not be able to assess prevailing wages according to the NOC 2011 until Labour Market Information (LMI) Service publish wage data according to the new structure. To allow a seamless implementation of the NOC 2011, the work required to remap the Foreign Worker System will take time.

In addition, the LMI Service will be unable to post wages according to the new NOC structure until Statistics Canada begins releasing wage data from the National Household Survey, which will likely occur in 2013. The LMI Service may not adopt the new NOC until 2015, once the Labour Force Survey data is released according to the NOC 2011.

In the interim, NHQ will work with Service Canada to develop, test and implement a system that will efficiently incorporate the NOC 2011 structure without any operational and processing interruptions.

Key Information:

Approved by:	Andrew Kenyon, DG
Division:	Policy and Program Design Althea Williams, Director Mike T. Perry, Manager NC-TFWP_PTET-INBOX-GD

Temporary Foreign Worker Program Bulletin

Date: 2012-02-27

To: All TFWP Staff (Managers, Consultants, Officers, etc.)

From: Andrew Kenyon, Director General, Temporary Foreign Workers and Labour Market Information Directorate, NHQ

Subject: **Facilitated Labour Market Opinion Assessment Process in Quebec**

Purpose:

The purpose of this bulletin is to provide guidance on the assessment of labour market opinion (LMO) applications under the new facilitated process in Quebec. This process is part of an agreement recently signed between Human Resources and Skills Development Canada (HRSDC), and the ministère de l'Immigration et des Communautés culturelles (MICC). The objective of this bulletin is also to define the department's role in reaching a decision, when assessing LMO applications that include selected professions in high demand and in sectors experiencing labour shortages in Quebec.

Authority:

The Temporary Foreign Worker Program (TFWP) operates under the authority of the *Immigration and Refugee Protection Act* (IRPA) and the *Immigration and Refugee Protection Regulations* (IRPR).

Under the Canada-Quebec Accord on Immigration, Canada and Quebec share joint responsibility for assessing the potential labour market impacts of the entry of temporary foreign workers in the province of Quebec.

Background:

HRSDC and the MICC both signed an agreement to create a facilitated LMO assessment process. This process applies to LMO applications submitted by employers for job offers, in the province of Quebec, within a list of selected occupations experiencing a labour shortage.

Under the facilitated process, only LMO applications for occupations under the National Occupational Classification (NOC) skill type 0 (Management), and skill levels A (Professional) and B (Technical) occupations identified on the list are eligible. The list of occupations identified by MICC and Emploi Québec is available on the Web sites of HRSDC and MICC.

Employers wishing to hire temporary foreign workers for occupations included on the list are not required to provide proof of their recruitment efforts. However, they are encouraged to make best efforts to recruit Canadian citizens or permanent residents prior to making a job offer to a foreign national.

Information about the Agreement:

The **Memorandum of Understanding (MOU)** (Protocole d'entente) is a federal-provincial agreement between HRSDC/Service Canada, MICC and CIC which establishes:

1. A new facilitated LMO assessment process to enable employers to fill selected positions in high demand and sectors experiencing labour shortages in the province of Quebec.
2. A new work permit facilitation process, between MICC and CIC, to streamline the granting of work permits to foreign nationals who graduate from a specific professional training program in an educational institution located in Quebec.

List of Selected Occupations Experiencing Labour Shortages in Quebec

The first section of the MOU describes the facilitated LMO process for occupations under the NOC skill type 0 (Management), and skill levels A (Professional) and B (Technical) identified by MICC as experiencing a labour shortage in Quebec. Based on the MOU and its provisions, HRSDC/Service Canada and MICC prioritize LMO applications for occupations on the list over regular LMO applications.

The list of occupations will be annually revised by MICC and published on the Web sites of HRSDC and MICC. The 2011-2012 list is comprised of 44 professions.

The **Letter of Understanding (LOU) (Lettre d'entente)** is a written agreement which defines the roles of HRSDC/Service Canada and MICC in order to:

1. Reduce administrative redundancy in the assessment of LMO applications by HRSDC/Service Canada and MICC.
2. Formally allocate responsibility for the assessment of the LMO evaluation criteria to MICC and HRSDC/Service Canada respectively.

The LOU, which is comprised of five tables for the assessment of LMOs, applies to all TFWP streams (e.g. Seasonal Agricultural Worker Program, Live-in Caregiver Program, Pilot Project for NOC C and D Occupations, etc.), including the new facilitated LMO process in Quebec. HRSDC/Service Canada staff should refer to these tables when assessing LMOs under this process.

Guidelines:

LMO applications submitted under the facilitated process will be fast-tracked and assessed separately according to the four-step LMO assessment process. To ensure an accelerated processing standard, employers must submit their LMO applications and all required documents directly to the MICC.

After the applications have been reviewed and assessed, the MICC is responsible for transferring the employers' applications and recommendations to HRSDC/Service Canada in a timely fashion.

HRSDC/Service Canada staff reviews the employer's LMO application and begins the assessment well before receiving MICC's evaluation of the criteria assessed and recommendations.

As a tool/aide-mémoire for the assessment of LMO applications under this process, **HRSDC/Service Canada staff must refer to the assessment tables and ensure to attach a copy of the assessment sheet to the physical LMO application on file**.

HRSDC/Service Canada staff must advise the MICC of any updates/changes related to the assessment of LMOs. This must be done in a timely fashion to assist with the facilitated LMO process. MICC will reciprocate for all the LMO criteria assessed by MICC. For example, where a confirmation of a new wage (factor assessed by MICC) is required from the employer, MICC will communicate with the employer and relay the updated wage rate to HRSDC/Service Canada. Employers are required to confirm wage changes with HRSDC/Service Canada in writing.

In the case of a negative LMO decision, the organization responsible for recommending the refusal should provide a detailed justification to the other organization.

Employers who receive a negative LMO decision may contact either one of the organizations assessing the LMO, for more explanation. If the decision to refuse the LMO does not fall under HRSDC/Service Canada's responsibility (as indicated in the assessment tables), HRSDC/Service Canada staff will provide the reason and advise the employer to contact MICC for more details.

LMO Assessment under the Facilitated Process

Step 1: Application Review

- HRSDC/Service Canada staff reviews the employer's LMO application after receiving it from the MICC.
- HRSDC/Service Canada staff must ensure the application and all required documents have been signed and completed by the employer before beginning the assessment.
- It is important to remember that under the facilitated LMO assessment process, employers are not required to submit proof of recruitment efforts.
- If required, refer to the directive on missing information.

Step 2: Determining Eligibility of the Occupation on the Application

- MICC assesses the position against the NOC and advises HRSDC/Service Canada. If uncertain about eligibility under the facilitated process, the MICC will advise HRSDC/Service Canada whether to assess an LMO application under the regular stream.
- In cases of divergence on determining eligibility of an employer's LMO application, HRSDC/Service Canada staff must communicate with MICC to come to an agreement on the appropriate NOC code and determine eligibility.
- HRSDC/Service Canada staff must always contact MICC in cases where NOC codes are problematic and/or where eligibility under the facilitated process is unclear.
- HRSDC/Service Canada must contact the MICC if an LMO application is recommended for regular processing.

Step 3: Assessment (four-step facilitated LMO assessment process)

- HRSDC/Service Canada must assess LMO applications under the facilitated process based on the four-step LMO process. Details about this process are available in the TFWP Manual.
- After consolidating the assessment of HRSDC/Service Canada and MICC's into a final decision, HRSDC/Service Canada forwards the joint decision to the employer.

Key Information:

Approved by: Andrew Kenyon, DG
Division: Operational Management and Development
Steven West, Director
Jaouad Haqhaqi, Senior Policy Analyst
NC-TFWP_PTET-INBOX-GD

Temporary Foreign Worker Program Bulletin

Date: 2012-07-30

To: All TFWP Staff (Managers, Consultants, Officers, etc.)

From: Andrew Kenyon, Director General, Temporary Foreign Workers and Labour Market Information Directorate, NHQ

Subject: Modifications to the Agricultural Stream

Purpose:

The purpose of this Bulletin is to provide guidance to Human Resources and Skills Development Canada (HRSDC)/Service Canada staff regarding modifications to the Agricultural Stream of the Pilot Project for Occupations Requiring Lower Level of Formal Training which have been implemented and are now available on the TFWP Web site.

Background:

NHQ has made some changes to the Agricultural Stream of the Pilot Project for Occupations Requiring Lower Level of Formal Training. These modifications include:

- shortening the name to **Agricultural Stream**; and
- expanding the Steam to officially accommodate higher-skilled occupations within the agricultural sector.

Employers who wish to hire temporary foreign workers (TFW) in higher-skilled agricultural occupations can choose between the Agricultural Stream, the Seasonal Agricultural Worker Program or the Stream for Higher-skilled Occupations. However, all requirements of the particular Stream selected must be met.

Under the Agricultural Stream, the only variance between the lower and higher-skilled positions is related to the housing option. Employers have more flexibility on where higher-skilled TFWs can be housed. As indicated on the Web site:

- For <u>lower-skilled TFWs</u> whether they are housed **on-farm** or **off-site,** employers can only deduct a maximum of $30 per week (pro-rated for partial weeks) from the TFW's wage, unless applicable provincial/territorial labour standards specify a lower amount).

- For <u>higher-skilled TFWs</u> being housed;
  - **on-farm**, employers can deduct a maximum of $30 per week (pro-rated for partial weeks) from the TFW's wage, unless applicable provincial/territorial labour standards specify a lower amount; or
  - **off-site,** employers acting as the leaseholder, the owner of the dwelling or other (to be described on the labour market opinion (LMO) form and the employment contract), has to base the rent on the market rent, which is then divided by the number of TFWs sharing the accommodation. The rent of each occupant has to be equal and cannot be more than 30% of the TFW's gross monthly earnings.

If only one foreign worker resides in the accommodation provided, the rent cannot be more than 30% of the TFW's gross monthly earnings.

As for the **housing inspection** the obligation to provide proof that the housing has been inspected is for the on-farm as well as for the off-site housing. The inspection must still, be conducted by the appropriate provincial/municipal body or by an authorized private inspector with appropriate certifications from the relevant level of government.

Guidelines:

Web site

The Agricultural Stream information has followed the new Web site re-design which has been implemented for the Live-in Caregiver Program (LCP). It is user friendly and information is easy to find by clicking on the appropriate tabs (Description, Requirements, Wages, Working Conditions and Occupations, Advertising, How to Apply and Next Steps).

Labour Market Opinion (LMO) Form

Changes to the Agricultural Stream LMO Form have been made to reflect the modifications to the stream requirements and to improve the language used for some questions. The changes include:

- Title of the form – (eliminated the reference to the Pilot Project for Occupations Requiring Lower Levels of Formal Training)
- Box 25 – (modified the language)
- Box 60 – Educational Requirements of the Job (modified the options to more closely align with National Occupational Classification skill levels)
- Box 63 – Wage in Canadian Dollars and Number of Work (modified the language)
- Box 72 – Seasonal Housing Approval (modified to "Housing Type" which is now based on the skill level of the occupation)
- Box 73 – "Housing Inspection" (modified the language and added additional boxes)
- DECLARATION OF EMPLOYER
  Under the heading "Check each box to declare that you comply (or will comply) with the statements below:" The text in the following bullets have been modified:
  - 2 (employment contract-removed the reference to the Pilot Project),
  - 5 (private health coverage),
  - 6 (wage),
  - 7 (housing) and
  - 9 (workplace safety).

Employment Contract

Changes to the Agricultural Stream Employment Contract have been made to:

- Title of the contract
- Instruction Sheet to Accompany the employment contract, under: Enforcing the Terms and Conditions of the Employment Contract
- Instruction Sheet to Accompany the employment contract, under: Sample Employment Contract
- Section 4 – Wages and Deductions, under clause 4.4
- Section 5 – Transportation Costs, under clause 5
- Section 6 – Accommodations, under clauses 6.1, 6.2, 6.3, 6.3.1, 6.3.2 and 6.3.3
- Section 7 – Health Care insurance, under clause 7.1
- Section 8 – Workplace Safety, under clause 8.1

Foreign Worker System and Employer On-line Registration

Due to changes to the housing requirements for the Agricultural Stream for higher-skilled positions, the on-line registration for employers has been postponed to a future release. Starting

August 30, 2012, HRSDC/Service Canada staff will be able to enter into the Foreign Worker System (FWS) the LMO data submitted by the employer.

Operational Considerations:

Housing: Until the next release of the Foreign Worker System (FWS), planned for the fall of 2012, HRSDC/Service Canada staff will need to input housing data from the LMO form in FWS free text box labeled "housing". Question related to the proof of housing inspection, contract attached or not and the rent amount can still be filled in the present boxes.

All the information entered will be reflected on the annex letter.

Housing inspection: the obligation to provide proof that the housing has been inspected is for the on-farm as well as for the off-site housing. The inspection must still be conducted by the appropriate provincial/municipal body or by an authorized private inspector with appropriate certifications from the relevant level of government. As proof, employers can submit a copy of the housing inspection report from the previous year, with an expected date for the current year.

Wages: Not all wages for higher-skilled positions listed on the National Commodity List are listed at this point in time. NHQ is doing its best to provide the information on the Web site as soon as possible.

Health coverage: Service Canada staff do not need to verify that the private health coverage that is to be provided to the TFW is equivalent to the provincial/ territorial standards. Employers must check the appropriate box under the Employer Declaration Section.

Workplace Safety Insurance (e.g. Worker's Compensation): Service Canada staff do not need to verify that the private insurance plan that is to be provided to the TFW is equivalent to the provincial/ territorial standards. Employers must check the appropriate box under the Employer Declaration Section.

Next Steps:

- Determine and make available on the TFWP Web site, wages for higher-skilled positions under the National Commodities List;
- Develop the Agricultural Stream section in the TFWP Manual.

Key Information:

Approved by: Andrew Kenyon, DG
Division: Operational Management and Development
Steven West, Director
France Asselin, Manager
NC-TFWP_PTET-INBOX-GD

Temporary Foreign Worker Program Bulletin

Date: 2014-05-30 (revised)

To: All TFWP Staff (Managers, Consultants, Officers, etc.)

From: Alexis Conrad, Director General, Temporary Foreign Workers and Labour Market Information Directorate, NHQ

Subject: Expanding the Alberta Pilot for Occupation-specific Work Permits

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Purpose:

The purpose of this bulletin is to provide clarification to Employment and Social Development Canada (ESDC)/Service Canada staff on the expansion of the Alberta Pilot for Occupation-specific Work Permits. This Pilot is jointly administered by Citizenship and Immigration Canada (CIC) and the Government of Alberta under the Temporary Foreign Workers (TFW) Annex to the *Agreement for Canada-Alberta Cooperation on Immigration*. The pilot, which provides labour market opinion (LMO) exemptions, initially covered the steamfitter and pipefitter occupation, but has expanded to include other occupations.

Authority:

The Temporary Foreign Worker Program (TFWP) operates under the authority of the *Immigration and Refugee Protection Act* (IRPA), and the *Immigration and Refugee Protection Regulations* (IRPR).

The IRPR prescribes the factors that ESDC/Service Canada is to consider in forming an opinion on the labour market impact of hiring a foreign national. Section 203 of the IRPR outlines the authorities of ESDC/Service Canada:

203. (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)*(c)(i)* to (ii.1), an officer shall determine, on the basis of an opinion provided by the Department of Employment and Social Development, if:

> (c) the issuance of a work permit would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals;

Background:

The TFW Annex to the *Agreement for Canada-Alberta Cooperation on Immigration* contains the following commitment:

7.2.1 The Canada-Alberta Working Group on temporary foreign workers (TFW), defined in section 9.2, will work toward developing occupation-specific (but non-employer specific) work permits for TFWs working in Alberta in the engineering, construction and procurement industries to permit limited mobility of certain higher-skilled TFWs within a particular industrial sector.

Under the authority of this TFW Annex, CIC and the Government of Alberta have implemented a pilot to allow LMO exemptions and semi-open work permits for job offers made for selected

occupations deemed as being in high demand and experiencing labour shortages. The first occupation covered by the pilot was steamfitters and pipefitters, classified under the National Occupational Classification (NOC) code 7252.

Current status:

Effective July 16, 2012, the pilot will cover six new occupations, in addition to the initial steamfitter and pipefitter trade (NOC code 7252). The occupations to be included in the pilot are:

1. Carpenter (NOC 7271)
2. Estimator (NOC 2234)
3. Heavy duty equipment mechanic (NOC 7312)
4. Ironworker (NOC 7264)
5. Millwright and industrial mechanic (NOC 7311)
6. Steamfitter and pipefitter (NOC 7252)
7. Welder (NOC 7265)

Pilot Parameters

To ensure the protection of the Canadian labour market, TFWs seeking to work in Alberta in any of these seven occupations will be required to have an initial job offer from an employer or an employer acting on behalf of a recognized Group of Employers (GoE) under the CIC-ESDC GoE Pilot.

The job offer must indicate that the wages offered are consistent with the prevailing wage rate paid to Canadian and permanent resident employees working in the same occupation and geographic area, and that the working conditions for the occupation meet the current provincial/territorial labour market standards.

If the TFW has a genuine job offer, and holds a trade certificate recognized in Alberta at the journeyperson level, the TFW will be eligible for an occupation-specific, semi-open work permit with a duration of two years. This allows the TFW to move between employers in the specific occupation within Alberta without seeking a new work permit.

If the TFW has a genuine job offer but does **not** hold a trade certificate recognized in Alberta, the TFW will be eligible for an occupation-specific, employer-specific work permit with a duration of one year or until the TFW receives the appropriate certification. Once certified, the TFW may apply for the occupation-specific, semi-open work permit with a duration of two years.

For more information on Alberta Apprenticeship and Industry Training (AAIT) certification and the requirements to work in a trade, visit the Government of Alberta (www.tradesecrets.alberta.ca).

Eligible Applicants	Application Period	Duration of Work Permit
Uncertified Applicants: • must have an approval letter from AAIT, for an application under the Alberta Qualification Certificate Program for one of the trades included under the pilot;	Applications will be accepted between July 16, 2012 and July 31, 2014 at a visa office or, if applicable, at a port of entry. Once the TFW is certified, an	Occupation-specific, employer-specific work permit with a duration of one year. This initial one-year work permit allows TFWs to meet the certification requirements

• must have an initial job offer for a position located in Alberta from an employer or an employer making a job offer on behalf of a recognized GoE under the CIC - ESDC GoE Pilot.	application can be sent to the Case Processing Centre (CPC) in Vegreville to continue participation in the pilot (refer to the Certified Applicants section).	of AAIT while remaining employed by their first employer. The Alberta Qualification Certificate must be submitted along with the application for work permit extension.
Certified Applicants: • must hold an Alberta Qualification Certificate or a trade certificate recognized in Alberta (www.tradesecrets.alberta.ca) in one of the occupations covered by the pilot; • must be currently working for, or have a job offer from an employer in Alberta.	Applications will be accepted between July 16, 2012 and July 31, 2014, at a visa office or, if applicable, at a port of entry. TFWs already working in Alberta may apply at CPC-Vegreville by mail or online, before their initial work permit expires.	Two-year, occupation-specific, semi-open work permit. This semi-open work permit allows TFWs to change employers but they are restricted to working within the specific occupation in Alberta.
Qualified Estimators: Employers hiring estimators under this pilot must ensure the applicants have the qualifications to perform the job duties of the occupation. This includes: • certification by the Canadian Institute of Quantity Surveyors (CIQS) (ciqs.org); • completion of a three-year college program in civil or construction engineering technology; or • several years of experience as a qualified tradesperson in a construction trade such as plumbing, carpentry or electrical. **NOTE**: Qualified estimators are not required to apply to the Alberta Qualification Certificate Program; therefore they will not have an approval letter from AAIT.	Applications will be accepted between July 16, 2012 and July 31, 2014, at a visa office or, if applicable, at a port of entry. TFWs already working in Alberta may apply at CPC-Vegreville by mail or online, before their initial work permit expires.	Two-year, occupation specific, semi-open work permit. This semi-open work permit allows TFWs to change employers but they are restricted to working with the specific occupation in Alberta.

For more information on the pilot, visit CIC's Operational Bulletin and the Government of Alberta Employment and Immigration – Pilot Fact Sheet.

Guidelines:

Until July 31, 2014, if LMO applications are received for any occupation covered by the Alberta Pilot for Occupation-Specific Work Permits, ESDC/Service Canada staff should encourage employers to withdraw those applications as they are LMO exempt.

If an employer insists on proceeding with the LMO application, ESDC/Service Canada staff must then issue a negative LMO under section 203(1)(*c*) of the IRPR, and if necessary, refer the employer to CIC's Operational Bulletin.

Key Information:

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