

# 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 Human Resources and Skills Development Canada (HRSDC) Labour Market Opinion (LMO). Role of HRSDC is to provide an opinion to CIC, which allows CIC to proceed to consideration of work permit application.

**1.1.1.** Purpose / Goal and Supporting Permanent Immigration (Arranged Employment Opinion (AEO))

## 1.2. Legislative and Regulatory Framework

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

**1.2.1.1.** Immigration and Refugee Protection Act

**1.2.1.2.** Immigration and Refugee Protection Act - Arranged Employment Opinion

**1.2.2.** *Immigration and Refugee Protection Regulations (IRPR)*

**1.2.2.1.** Immigration and Refugee Protection Regulations

**1.2.2.2** Immigration and Refugee Protection Regulations - Arranged Employment Opinion

**1.2.3.** *Department of Human Resources and Skills Development Act (DHRSDA)* 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

## **2. Program Policy and Design**

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*The previous section outlined the legislative authorities and the role of Human Resources and Skills Development Canada (HRSDC). This section moves to discussion of the fundamental function of Human Resources and Skills Development Canada 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)

**2.1.5.** Permanent immigration of foreign workers – arranged employment opinion (AEO)

**2.1.5.1.** History of arranged employment opinion

**2.1.5.2.** Human Resources and Skills Development Canada's role in assessment of arranged employment opinions

**2.1.5.2.1.** Temporary entry of foreign workers - labour market opinion

**2.1.5.3.** Proof of funds

### **2.2. Temporary Foreign Worker Program Structure**

**2.2.1.** Role of Human Resources and Skills 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**

### **2.5.6. Assessing arranged employment opinion - related factors**

## **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 employment 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**

**2.6.9.2. Citizenship and Immigration Canada – Immigration Practitioners (CICIP)**

**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, Human Resources and Skills 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



## 3. Program Operations

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

### 3.1 Temporary Foreign Worker Program (TFWP)

#### Infrastructure

### 3.2 Administrative Requirements Common to Labour

### Market Opinion and Arranged Employment Opinion

### 3.3 Labour Market Information

### 3.4 Arranged Employment Opinions

### 3.5 Labour Market Opinions

### 3.6 Academics

### 3.7 Film & Entertainment

### 3.8 NOC C & D

### 3.9 Live-in Caregiver Program

### 3.10 Seasonal Agricultural Worker Program

### 3.11 Directive – Accelerated Labour Market Opinion Initiative

## **3.1 Temporary Foreign Worker Program (TFWP) Infrastructure**

- Provides HRSDC 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 Canadian 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**

**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)**

##### **3.2.6.3.1.1.2. Due Diligence**

##### **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**

##### **3.2.6.3.2.1. Canada Revenue Agency - what is the business number**

##### **3.2.6.3.3. Employer Name (name of business)**

*This document contains sections 3.2.6.3.3 and 3.2.6.2.6.3.3.1:*



- **3.2.6.3.3.1.** Changes to Employer Name
- **3.2.6.3.4. Address (Number/Street/P.O. Box)**  
*This document contains sections 3.2.6.3.4 to 3.2.6.3.18:*
  - **3.2.6.3.5.** City
  - **3.2.6.3.6.** Province/State
  - This field is required. Refer to **3.2.6.3.5.** for additional information
  - **3.2.6.3.7.** Country
  - **3.2.6.3.8.** Postal/Zip Code
- When entering employer and 3rd party information, the FW system will prompt you if the Postal/Zip code is wrong.
- **3.2.6.3.9.** Business Telephone Number
- **3.2.6.3.10.** Website
- **3.2.6.3.11.** Date Business Started
- **3.2.6.3.12.** Describe the principal business activity
- **3.2.6.3.13.** Contact name
- **3.2.6.3.14.** Job Title
- **3.2.6.3.15.** Contact Telephone Number and Extension
- **3.2.6.3.16.** Fax Number
- Advisors must confirm that the contact fax number is not the same as the 3rd Party fax number.
- **3.2.6.3.17.** Email
- **3.2.6.3.18.** Preferred Official Language of Correspondence
- **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:*
  - **3.2.6.3.20.** Number of Foreign Workers
  - **3.2.6.3.20.1.** Number of Foreign Worker's: (10+ seek Business Expertise Consultant concurrence – region-specific directive)
  - **3.2.6.3.21.** Were any employees laid off in the past 12 months?
- **3.2.6.4. Third Party Information (if applicable)**  
*This document contains sections 3.2.6.4.1 to 3.2.6.4.6:*
  - **3.2.6.4.1.** Deadline for receipt of original documents
  - **3.2.6.4.2.** Canada Revenue Agency Business Number
  - **3.2.6.4.3.** Company Name
  - **3.2.6.4.4.** Address and contact info
  - **3.2.6.4.5.** Preferred Official Language of Correspondence
- Third party representatives (e.g. ACSESS) refer to Section 126 of IRPA
  - **3.2.6.4.6.** Third Party Representative authorized to act for employer
- Refer to section **3.2.6.3.18.**

- **3.2.6.5. Details of Job Offer**  
*This document contains sections 3.2.6.5 to 3.2.6.5.11:*
  - **3.2.6.5.1.** Determination of Occupation
  - **3.2.6.5.2.** Number of Foreign Workers requested under this job title
  - **3.2.6.5.3.** Expected duration of employment
- LMO Related
- AEO Related
- Duration of employment (region specific directives listed below)
- **3.2.6.5.4.** Expected start date of employment, if any
- **3.2.6.5.5.** Location of job
- **3.2.6.5.5.1.** Location of Work Regional Reference Bulletin  
For information on concurrence see **3.5.7**
- **3.2.6.5.6.** Province
- **3.2.6.5.7.** Main duties of the job
- **3.2.6.5.8.** Educational requirements of the job
- **3.2.6.5.9.** Experience/skills requirements of the job
- **3.2.6.5.10.** Language requirements
- **3.2.6.5.11.** Position is part of a union

### **3.2.7. Rendering a decision and post-decision process**

*This document contains sections 3.2.7.1 to 3.2.7.4:*

- **3.2.7.1.** Reconsiderations - LMO letter of refusal
- **3.2.7.2.** Cancellation of Application
- **3.2.7.3.** Flagging on TFWS
- **3.2.7.4.** Instructions for Transmitting the LMO Confirmation Letter and Annex to Employers

## **3.3 Labour Market Information**

### **3.3.1. Wages**

#### **3.3.1.1. Bulletin: Collective Agreements**

#### **3.3.1.2. Labour Organizations Directory**

### **3.3.2. Availability of resident and Canadian workers**

## **3.4 Arranged Employment Opinions**

- Restates goal of AEO and HRSDC's role reflecting labour market conditions. Distinguish between LMO and AEO: Target populations, employers, economic sectors in the labour market, main procedural or operational differences. Definition of Arranged Employment: an offer of indeterminate employment in Canada. (IRPA, section 82)

### **3.4.1. Arranged Employment Opinion - Factors**

#### **3.4.1.1. Genuineness**

##### **3.4.1.1.1. Job Related Factors**

**3.4.1.1.2. Employer Related Factors**

**3.4.1.1.3. Employment Criteria**

**3.4.1.1.4. Wages and Working Conditions**

**3.4.2. Mandatory Phone Call**

**3.4.3. Reconsideration / Cancellations / Replacements / Changes**

**3.4.3.1. Steps to Reconsideration**

**3.4.4. Issuance of Arranged Employment Opinion - Decision to Employer**

## **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)**

**3.5.4.1.1. Two levelled approach to assessing genuineness**

**3.5.4.1.2. Assessing actively engaged**

**3.5.4.1.3. Assessing reasonable employment needs**

**3.5.4.1.4. Assessing ability to fulfill**

**3.5.4.1.5. Assessing past compliance**

**3.5.4.1.6. Genuineness, the six labour market factors and substantially the same**

**3.5.4.1.7. Recording assessment outcomes**

**3.5.4.1.8. Relevant Federal and Provincial/Territorial laws**

**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

#### **3.5.5.1.4. Directive: Assessment of the Wage Factor on Labour Market Opinion Applications**

##### **3.5.5.1.4.1. Prevailing Wages for Pharmacists**

##### **3.5.5.1.4.2. Prevailing wages for Registered Nurses**

##### **3.5.5.1.4.3. Salary and Benefits**

##### **3.5.5.1.4.4. Working Conditions**

##### **3.5.5.1.4.5. Unpaid Work**

##### **3.5.5.1.5. Recruitment**

- 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 administrative 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**

**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

- List of Potential Businesses in the Sex Trade (2012-10-24)

**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.** Overall 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 recruitment 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 Advertisement**

##### **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**

#### **3.8.2.5. Wages, Benefits and Working Conditions**

##### **3.8.2.5.1. Unionized work environment**

##### **3.8.2.5.2. Wages and Deductions clauses in the employment contract**

**3.8.2.6. When applicable, review and adjustment of the worker's wages after 12 months of employment**

**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 Assessment 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. Concurrence 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.** Human Resources and Skill Development Canada (HRSDC)

**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 HRSDC'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**

#### **3.9.6.1. Confirmed and Refused**

- **Confirmed:** The application meets all program criteria and a positive LMO is issued.
- **Refused:** The application does not meet the program criteria. The employer is advised of the refusal by phone, and a refusal letter is sent. Notes are put to file to explain the reasons for the refusal.

#### **3.9.6.2. Closed**

- There is a second / duplicate application for the same employer and same LC, close the application and reference the file number in notes to file.

#### **3.9.6.3. Withdrawal of application**

#### **3.9.6.4. Cancellation and Revocation**

#### **3.9.6.5. Request for review of decision**

- A chart has been developed, that describes the file review process. Please see Annex 6.4.1.5., for the "File Review Process" Chart.

#### **3.9.6.6. Amendments/Change of names after approval**

### **3.9.7. Integrity**

#### **3.9.7.1. Due Diligence List**

#### **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

### **3.11 Directive – Accelerated Labour Market Opinion Initiative**

- Flow chart
- Accelerated Labour Market Opinion (A-LMO) Eligibility Checklist
- Letter to Employer – Ineligibility



## **4. Post-Labour Market Opinion Integrity**

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*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)**

#### **4.3.1. Monitoring Initiative (MI)/ECR Directive**

##### **4.3.1.1. ECR Process**

##### **4.3.1.1.1. Step 1: Preparing for the review**

##### **4.3.1.1.2. Step 2: Employer contact**

##### **4.3.1.1.3. Step 3: Documenting ECRs in the FWS**

##### **4.3.1.1.4. Step 4: ECR assessment (receipt/review of documentation)**

##### **4.3.1.1.5. Step 5: Justification and/or Compensation**

##### **4.3.1.1.6. Step 6: Recommendation and requests for concurrence**

##### **4.3.1.1.7. Step 7: File close out**

### **4.4. Arranged Employment Opinion Directive**

#### **4.4.1. Consideration of Employer Compliance Reviews Results in the Assessment of Arranged Employment Opinion Applications**

### **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**

**4.5.1.2. 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)**

**4.5.2.1. Letters and Enclosures**

**4.5.2.1.1. MI – Initial Contact**

**4.5.2.1.2. Annex B – Enclosure (NOC 0, A & B)**

**4.5.2.1.3. Annex B – Enclosure (NOC C & D)**

**4.5.2.1.4. MI – Additional Information Required**

**4.5.2.1.5. MI - ECR Justification**

**4.5.2.1.6. MI - Compliant**

**4.5.2.1.7. MI - Compliant with Corrective Action**

**4.5.2.1.8. MI - Non-Compliant**

**4.5.2.1.9. MI - Inconclusive**

**4.5.2.1.10. MI -Withdrawal Acknowledgement**

**4.5.2.2. Tools**

**4.5.2.2.1. MI Checklist (NOC 0, A & B)**

**4.5.2.2.2. MI Checklist (NOC C & D)**

**4.5.2.2.3. STS and MI Tracker**

**4.5.2.2.4. MI Tracking Instructions**

**4.5.2.2.5. ECR Overview MI**

**4.5.3. Revocation**

## **5. Quality Assurance**

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*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**



Human Resources and  
Skills Development CanadaRessources humaines et  
Développement des compétences Canada

Canada

Skills and Employment Branch

H

R

S

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INTRANET

## Temporary Foreign Worker Program Bulletins

A TFWP Bulletin is a standardized electronic means of communicating policy direction and information to the Regional Consultants and local officers of the Foreign Worker Program.

A TFWP Bulletin can be defined as having information that will respond to our legislative mandate which, is to provide CIC with a labour market opinion. It can be seen as containing information concerning the direction of the Foreign Worker Program.

### October 2012

- Prevailing Wage Rate for Ski and Snowboard Instructor Positions in the Provinces of British Columbia, Alberta, Saskatchewan and Manitoba - 2012/2013 Season

### August 2012

- Assessing Wages in Cold Lake Region, Alberta

### July 2012

- Modifications to the Agricultural Stream
- Expanding the Alberta Pilot for Occupation-specific Work Permits

### May 2012

- New Wage Methodology on the Working in Canada Web Site

### February 2012

- Facilitated Labour Market Opinion Assessment Process in Quebec

### November 2011

- TFWP Use of the National Occupational Classification 2006 until 2014-2015

### June 2011

- Implementation of the Alberta Pilot on Occupation Specific Work Permits for Steamfitters and Pipefitters

### May 2011

- Clarification Regarding Revocation of Arranged Employment Opinions
- Clarification Regarding the Removal of Foreign Nationals' Names from Labour Market Opinion Letters

**April 2011**

- Clarification on Labour Market Opinions for Owner/Operators of a Business
- Clarification Regarding Communication With an Employer When There is an Authorized Third Party Representative

**March 2011**

- Clarification Regarding Labour Market Opinion Applications Involving Foreign-Based Employers

**February 2011**

- Assessing Minimum Hours of Work for Ski and Snowboard Instructor Positions
- Policy Guidelines for Verifying Participation in the Work-Sharing Program

**December 2010**

- Reducing Wages of Temporary Foreign Workers from those Confirmed in the Original Labour Market Opinion

**October 2010**

- Policy Clarification Regarding Assessing Prevailing Wage Rates for Pharmacy Students

**August 2010**

- Active/Non-Active Function and Requesting Missing Information Directives
- Clarification Regarding Employer or Third-Party Requests to Change or Replace Names on Labour Market Opinion Confirmations

**February 2010**

- Policy Clarification Regarding Assessing Prevailing Wage Rates for Pharmacists (NOC 3131) Working Towards Full Licence

**August 2009**

- Third Party Bulletin

**April 2009**

- HRSDC/Service Canada Operational Response to the Implementation of Manitoba's Worker Recruitment and Protection Act (WRAPA)
- Elimination of the Application to Extend a Labour Market Opinion
- Monitoring Initiative

**July 2008**

- Neutral Impact Labour Market Opinions (LMO) and Prevailing Wage Assessment Bulletin

**May 2004**

- Exceptions to provisions of the Pilot Project for Low-skilled Occupations: Guidelines for the exercise of regional discretion in allowing exceptions to the conditions of the pilot project

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Comments:



## Temporary Foreign Worker Program Bulletin

**Date:** 2004-05-04

**To:** All TFWP Staff (Managers, Consultants, Officers, etc.)

**From:** Andrew Kenyon, Director General, Temporary Foreign Workers and Labour Market Information Directorate, NHQ

**Subject:** Exceptions to provisions of the Pilot Project for Low-skilled Occupations: Guidelines for the exercise of regional discretion in allowing exceptions to the conditions of the pilot project

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### Background:

On July 9, 2002, the Foreign Worker Program launched a pilot project for the carefully managed entry of foreign workers in occupations requiring lower levels of formal training, in situations where there is a demonstrable shortage of Canadians citizens and permanent residents available. The pilot provides for the consideration of applications for foreign workers in these occupations under the standard Foreign Worker Program criteria, with the addition of several conditions designed to protect both the foreign worker and the employment interests of Canadians with lower levels of skills and training. The pilot project is intended to apply to positions in NOC skill levels C and D which are not covered by the Live-in Caregiver Program (LCP) or the Seasonal Agricultural Workers Program (SAWP).

The provisions of the pilot project include:

- the requirement for a written employment contract;
- payment of return airfare by the employer;
- assurance from the employer of the availability of adequate, affordable accommodation;
- provision of medical and workers' safety insurance by the employer; and
- a twelve-month limit on confirmations and work permits, with obligatory four-month stay in country of residence before returning to Canada in a subsequent low-skilled position.

These requirements are designed to ensure that employers make active, ongoing efforts to recruit Canadians, by having employers pay for additional costs associated with recruiting foreign workers and bringing them to Canada. These measures are also designed to protect the interests of potentially vulnerable workers, who may be prepared to accept sub-standard working or living conditions, or to pay their own travel expenses, in order to have an opportunity to work in Canada, possibly with the expectation of being able to eventually become permanent residents.

Since the inception of the pilot, regions have identified situations in which the nature of the jobs and the employment circumstances of the worker are such that the provisions of the pilot project may be deemed unnecessary.

The requirement for unique skills alone would not be enough to exempt an employer from the pilot guidelines. Although a unique combination of skills may address the issue of protection of job opportunities for Canadians, the issue of protection of the foreign worker still needs to be addressed, and can best be done through the application of the pilot criteria. The rationale for the extra conditions under the pilot is two pronged: the protection of job opportunities for Canadians



with lower levels of skills and training, and the protection of foreign workers during their stay in Canada.

### **Guidelines:**

Exceptions to the provisions of the pilot project may be made where the worker's employment situation is such that the areas of concern which the additional pilot requirements are intended to address are not at issue.

Generally speaking, this would include situations in which:

- the worker is well paid;
- the work is short-term (generally under a year);
- the employee is already under contract with the employer;
- the worker is entering Canada to work pursuant to their normal duties; and,
- the worker is compensated in some manner for travel and accommodation costs while traveling

Foreign Worker Officers should work in consultation with the region in cases where they believe that an exception from the pilot project provisions can be made in relation to a position without undermining the intentions of the pilot and the protection the provisions are intended to provide.

This discretion should be exercised in consultation with the Foreign Worker Officer's Regional Consultant. A feature will be included in the new Foreign Worker System to allow for NOC C and D confirmations to occur without the application of pilot provisions, where warranted, and on consultation with regional officers. Officers will be asked to provide a rationale for the exception.

Where a decision is made to allow an exception to the pilot provisions, Foreign Worker Officers should develop labour market opinions for these positions using the standard Foreign Worker Program criteria, including the employer's efforts to hire Canadian citizens and permanent residents. The additional requirements of the pilot project would not be applied.

Some examples of circumstances in which the pilot requirements could be waived:

**Example A:** Drill operators on a specially designed vessel for work in the offshore oil and gas sector. These positions fall into NOC C. However, the workers are under regular contract to the employer, are highly paid, will be compensated for travel, and are living aboard the vessel during their term of employment in Canada. They are uniquely trained in the operation of machinery aboard the vessel. The Foreign Worker Officer should develop a labour market opinion based on application of standard criteria under section 203(3) of the Immigration and Refugee Protection Act Regulations. The pilot project provisions for an employer-employee contract, assurance of the availability of affordable housing, or ensuring that medical and worker's safety insurance coverage would not serve any purpose, and so the application should be evaluated, and confirmation issued, if the labour market warrants, without application of the pilot project provisions.

**Example B:** An employer seeks confirmation of a worker to perform maintenance work on machinery for which the worker has specialized training, but the work does not meet the requirements for a work permit exemption as an after-sales service business visitor. The worker is under contract as a regular employee of the manufacturer of the machinery, and travel is a standard component of his or her job. The worker will be in Canada for about five days to complete the work. The Foreign Worker Officer should perform the standard labour market evaluation of this case. It would not be necessary to apply the pilot project provisions.

In some instances, although HRSD traditionally granted confirmations before the introduction of the low-skilled pilot project, there is not sufficient justification to exempt them from the pilot provisions. Regions have informed us that the long-standing tradition of confirmation of workers in some industries will result in undue hardship for the employers if the pilot guidelines are implemented without notice. At this time, if an employment situation is not one in which an exception to the provisions of the pilot project is justified, the regions should continue to work with NHQ to develop implementation strategies.

It remains the intention of NHQ that the pilot guidelines be applied to all requests for workers in NOC levels C and D with very few exceptions, largely for well-established programs such as the SAWP and LCP.

**Key Information:**

**Approved by:**  
**Division:**

Andrew Kenyon, DG  
Program Development and Implementation  
Steven West, Director  
France Asselin, Manager  
NC-TFWP\_PTET-INBOX-GD



## Temporary Foreign Worker Program Bulletin

**Date:** 2008-07-10

**To:** All TFWP Staff (Managers, Consultants, Officers, etc.)

**From:** Andrew Kenyon, Director General, Temporary Foreign Workers and Labour Market Information Directorate, NHQ

**Subject:** Neutral Impact Labour Market Opinions (LMO) and Prevailing Wage Assessment Bulletin

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### Purpose:

The purpose of this Bulletin is to clarify the labour market opinion (LMO) assessment process in cases where the entry of the temporary foreign worker (TFW) will likely have a neutral impact on the Canadian labour market. Specifically, the intent is to inform Human Resources and Skills Development Canada (HRSDC)/Service Canada staff that a prevailing wage rate must be established in all cases, including situations where it is expected that there is/will be a neutral impact on the Canadian labour market.

### Background:

The *Immigration and Refugee Protection Regulations (IRPR)* provide guidance to HRSDC/Service Canada to determine whether the entry of a foreign national would likely have a positive or neutral impact on the Canadian labour market. This wording was intended to emphasize the benefits to employers of having access to foreign nationals, in contrast to the former approach which emphasized the negative impact (e.g. the focus was on potential loss of job opportunities for Canadians). Whether a decision is based on an assessment that the impact is positive or neutral, the outcome is the same in practical terms: a confirmation is issued.

When assessing an LMO application, HRSDC/Service Canada is mandated under section 203(3) of the *IRPR* to base the LMO 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 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



## **Guidelines:**

In cases where HRSDC/Service Canada determines that the entry of the TFW will have a neutral impact on the Canadian labour market, the job offer should be assessed on its own merit, based on an examination of all six factors as outlined above by section 203(3) of the *IRPR*.

**Specifically, a Canadian wage must always be identified when issuing LMO decisions. Further, the prevailing wage rate is identified as the average hourly wage (or higher, at the discretion of the employer) for the occupation in the specific geographical area where the TFW will be employed and should not include allowances for room and board or other benefits.**

## **Operational Considerations:**

Granting a neutral or positive LMO without assessing all six factors, including the prevailing wage rate, will set an unwanted precedent for future employer applications.

Employers seeking to transfer workers from a foreign office to Canada for the purpose of obtaining Canadian work experience may apply for an LMO exemption from Citizenship and Immigration Canada (CIC). While an exemption is often granted, there remain instances where it is not, leading to confusion vis-à-vis how to apply the LMO factors, including the prevailing wage rate under such circumstances.

Instances where CIC denies an employer's request for an exemption under the *IRPR* to transfer workers from a foreign office to Canada should not necessarily be interpreted as a neutral impact. As previously stated, a job offer should be assessed on its own merit, based on an examination of all six factors as required by section 203(3) of the *IRPR*.

Note: A foreign wage rate is not acceptable to replace a Canadian prevailing wage.

## **Key Information:**

<b>Approved by:</b>	Andrew Kenyon, DG
<b>Division:</b>	Policy and Program Design Althea Williams, Director NC-TFWP_PTET-INBOX-GD

## **TFWP – INFO BULLETIN - INTERNAL DISTRIBUTION ONLY**

**Date: April 15, 2009**

**To: Coordinators and officers responsible for the Temporary Foreign Worker Program (TFWP)**

**From: Irwin Bess, Director, Integrity and Horizontal Coordination, TFWP, Human Resources and Skills Development Canada (HRSDC)**

**Title: Monitoring Initiative**

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### **Purpose**

The purpose of this information bulletin is:

- 1) to inform you about the launch of the TFWP Monitoring Initiative;
- 2) to advise you that two new consent clauses have been added to the Labour Market Opinion (LMO) application form and describe how to capture this information on the Foreign Worker System (FWS); and
- 3) to provide you with possible answers to anticipated employer questions.

### **Scope**

This bulletin applies to all Service Canada officials across Canada (except Quebec region).

At this time, the Initiative only applies to the regular LMO stream (high and low-skilled workers). It excludes the Expedited Labour Market Opinion Pilot Project, Live-In Caregivers Program, Seasonal Agricultural Workers Program, Arranged Employment Opinions, certain short-term incidental employment (e.g. original equipment manufacturers doing warranty/maintenance work, equipment operators, entertainment requests - TV and film, vessels), foreign based employers, and job offers located in Quebec.

### **Guiding Principles**

Participation is voluntary and employers may withdraw at any time.

Applications should continue to be assessed against the six factors enumerated in S.203(3) of the *Immigration and Refugee Protection Regulations* and other operational directives:



- (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.

## Background

The Monitoring Initiative will be launched on April 27, 2009. The Initiative is designed to strengthen the integrity and the effectiveness of the Temporary Foreign Worker Program. The objectives of the Initiative are to:

- Collect up-to-date information on employers' labour force needs, specifically recent and anticipated arrivals, lay-offs and departures of Canadians, permanent residents and temporary foreign workers (TFWs);
- Provide HRSDC/Service Canada with information on employers compliance with the terms of previous offers of employment to support future decision-making and enhanced employer monitoring and compliance measures; and
- Raise employers' understanding of their responsibilities with respect to TFWs, particularly as it concerns the terms of the offer of employment (e.g. wages and working conditions).

Both the EMP5239B and on-line LMO applications have been updated to include two new clauses under the "Declaration of Employer." Employers should choose from one of the following two options:

- *I have read and understand the Monitoring Initiative Fact Sheet and agree to participate in the Initiative.*

- *I have read and understand the Monitoring Initiative Fact Sheet and do not agree to participate in the Initiative.*

The Fact Sheet is attached as Annex A. Additional Qs & As to answer employer questions are attached as Annex B.

## Procedures

### Part A: How to capture consent in the Foreign Worker System

#### For on-line applications:

- Employers will have to answer the questions directly on the online questionnaire. (An error message will appear if an employer does not select either box.) Once the application is submitted by the employer, and imported by a Foreign Worker Officer (FWO) into the Foreign Worker System, all related fields will pre-fill, as completed by the employer at the time of application. However, if an employer wishes to withdraw after the application is submitted, see “**consent withdrawn**” instructions below.

#### For EMP 5239B, if a box is checked:

- FWOs should select the appropriate choice from a drop-down menu on the “Incorporation Status/RFO Consent” page in the FWS:
  - Select the “**consent given**” option if an employer checks the first clause, “agree to participate”;
  - Select the “**no consent given**” option, if an employer checks the second clause, “do not agree to participate”;
  - Select the “**consent withdrawn**” option, if an employer who initially agreed to participate later indicates that he/she wishes to withdraw.
    - Where an employer wishes to withdraw, please ask him/her to provide a rationale and written notification of his/her decision (e.g. fax, letter, e-mail).
    - Create a “Note to File” and record the reason (if provided), date, time, and name of the FWO who received the employer’s request to withdraw.
    - Upon receipt, add the written notification to the employer’s paper file. (This information does not need to be uploaded into the FWS.)



- Written notification of withdrawal is not necessary but is appreciated for integrity purposes. If written notification is not received, the employer will still be considered to have withdrawn.

**For EMP5239B if neither box is checked:**

- Where an employer does not check either box (i.e. no response), the FWO should follow up with the employer to verify whether or not he/she wishes to participate as part of routine employer calls. The FWO should ask the employer to go on-line or offer to fax/email them a copy of the Fact Sheet and Consent Clauses for their review and response.
- Where the FWO has followed-up with the employer without response after 2 business days, the application should be treated as “no consent given”. Applications should not be considered to be incomplete.

**Part B: LMO applications filed using the old form**

- Effective April 27, 2009, new LMO application forms (for both paper-based and on-line applications) will be available on the TFWP website. Employers seeking foreign workers through the regular LMO stream (high and low-skilled workers) should use these new LMO application forms. However, there may be instances where employers and/or third party representatives have access to old paper-based applications.
- Until May 11, 2009, if you receive an application on the old paper-based form, the FWO should follow up with the employer to inform them of the release of the new form. FWO should also make the employer aware of the consent clauses and ask them to go on-line or offer to fax/email them a copy of the Fact Sheet and Consent Clauses for their review and response.
- If no response has been received after 2 business days, the application should be treated as “no consent given” and assessed against the 6 IRPR factors and other operational directives. Applications should not be considered to be incomplete.
- However, if you receive an application after May 11, 2009 based on the old paper-based LMO application form, you must return the application and ask the employer to fill out the application using the new LMO application form.

**Part C: Compliance Reviews**

- A more detailed compliance review methodology will be developed in spring 2009; the design will depend on the level of employer uptake of the Initiative as well as regional and/or sectoral concerns.

- It is anticipated the first round of employer engagement and/or compliance reviews will take place in fall 2009. Additional information and directives will be provided at that time to support further implementation.

**Attached annexes:**

Annex A: Monitoring Initiative Fact Sheet

Annex B: Additional Employer Qs & As - For Internal Distribution Only

**Key NHQ contacts:**

Emily Shaw (819) 965-6988

My-Tu Kaan (819) 934-1435

**Temporary Foreign Worker Program  
Monitoring Initiative Fact Sheet**

**1. What is the purpose of the Initiative and why should I participate voluntarily?**

- The Initiative is designed to strengthen the integrity of the Temporary Foreign Worker Program (TFWP). Your participation will help us to continue to assess the need for temporary foreign workers (TFWs) to fill labour shortages and their experiences in the Canadian labour market. It will also allow you to gain a better understanding of your responsibilities as an employer of TFWs.
- Information gathered as a result of your participation in the Initiative, including your ability to demonstrate good-standing, may be considered in future Labour Market Opinion (LMO) application(s).

**2. What will I be asked to do as a participant?**

- You may be asked to:
  - Submit documentation demonstrating that you have respected the terms of the offer(s) of employment (e.g. wages, working conditions, etc.) for the TFW(s) you hired;
  - Report to Human Resources and Skills Development Canada/Service Canada (HRSDC/SC) any recent and anticipated arrivals, lay-offs and/or departures of Canadians, permanent residents, and TFWs. (This information will help us monitor the continued need for TFWs and ensure that Canadians and permanent residents are considered first for job opportunities.); and
  - Allow HRSDC/SC officers to enter the workplace for on-site consultations.

**3. If I agree to participate, will my labour market opinion application be processed faster and will it influence the outcome of my application?**

- All applications are assessed against the six factors enumerated in S.203(3) of the Immigration and Refugee Protection Regulations.
- However, we encourage your participation in this Initiative to strengthen the integrity of the Program and to demonstrate your good-standing for consideration in future LMO applications.



**4. Is my agreement to participate limited to this LMO application and to this/these worker(s) only?**

- Participation in this Initiative applies to this LMO application and to this/these worker(s) only.
- However, HRSDC/SC may contact employers of temporary foreign workers for a number of reasons that are not related to participation in the Initiative.

**5. What happens if I am found not to be upholding the terms of the offer of employment to a temporary foreign worker?**

- HRSDC/SC will work with you to undertake appropriate corrective measures.
- Where there is reason to believe that you may not have fully adhered to relevant employment legislation (e.g. employment standards, occupational health and safety), HRSDC/SC will share any concerns with the relevant federal and/or provincial/territorial authorities.

**6. What happens if I agree to participate but change my mind later?**

- Participation is voluntary. To withdraw, please notify Service Canada in writing and provide a rationale for your decision.



**Temporary Foreign Worker Program Monitoring Initiative:  
Additional Employer Qs & As**

**1. I operate a business in Quebec and Ontario, why is the application form different with respect to the Monitoring Initiative?**

- Currently, this Initiative does not apply to job offers located in Quebec.
- Under the Canada-Quebec Accord, both HRSDC/SC and the Government of Quebec are involved in the assessment of LMO applications for job offers located in Quebec. As such, the Quebec Government has the authority to verify employers' compliance as it concerns the terms of the offer of employment as stated in the LMO application.

**2. How much of my time will be required to participate? Can I limit my degree of participation?**

- The details of how we will follow-up with employers are in the process of being developed. Every effort will be made to develop a process that is not overly burdensome on participating employers.
- Employers have the option of limiting their degree of participation.
- More information will be available at a later date.

**3. If there were problems in the past, does that automatically mean that I'll get a negative LMO in the future?**

- In assessing LMO applications, HRSDC/SC considers a range of information.
- Our intention is to work with you and to help you find corrective measures. However, it is your responsibility to take action to correct any identified issues.

**4. Will information on past compliance be kept on record and how will it be used?**

- Information collected through follow-ups with employers will be recorded on the Foreign Worker System and remain in the system. HRSDC/SC officers may refer to information kept in the Foreign Worker System to assess LMO applications.

**5. I know of an employer who is mistreating his/her TFWs. Can I report it to you?**

- Alleged cases of abuse or mistreatment of temporary foreign workers are taken very seriously by HRSDC/SC and will be reviewed and dealt with to the extent possible.
- In some cases, we may ask that you refer your concerns to the appropriate federal and/or provincial/territorial authorities for labour and/or safety related complaints/issues.
- In cases of fraud or misrepresentation as it relates to an LMO, your complaint should be directed to Citizenship and Immigration Canada and/or Canada Border Services Agency (CBSA) for investigation and enforcement. The CBSA Border Watch Toll-free Line is 1-888-502-9060.

**TFWP DIRECTIVE – INTERNAL DISTRIBUTION ONLY**

**Date: April 27, 2009**

**To: Coordinators and officers responsible for the Temporary Foreign Worker Program (TFWP)**

**From: James Sutherland, Director, Program Development and Implementation, TFWP, Human Resources and Skills Development Canada (HRSDC)**

**Title: Elimination of the Application to Extend a Labour Market Opinion**

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**Purpose:**

The purpose of this bulletin is 1) to inform you that HRSDC will remove the application to extend a Labour Market Opinion (LMO) from circulation; 2) to advise of the introduction of a new question on a revised foreign worker application for an LMO; and 3) to provide guidance on important changes to the LMO process.

These actions will have the effect of both simplifying the LMO application process for employers and for HRSDC/SC officers, and make it clear to employers that their treatment of foreign nationals that they employ or have previously employed is a relevant factor that may be considered by HRSDC/SC officers when assessing a subsequent job offer.

**Background/Context:**

Upon receipt from an employer of a request for an LMO, pursuant to section 203 of the *Immigration and Refugee Protection Regulations* (IRPR), HRSDC/SC officers assess the impact that the hiring of the temporary foreign worker (TFW) is likely to have on the Canadian labour market.

In making this assessment, HRSDC/SC officers consider such factors as whether the wages being offered are consistent with the prevailing wage rate for the occupation, whether the working conditions meet generally accepted Canadian standards, whether the employment of the foreign national is likely to fill a labour shortage, and the efforts that the employer has made to recruit and train Canadian citizens and permanent residents.

The assessment, which can result in a neutral, positive, or negative LMO being provided to the employer, is also provided to Citizenship and Immigration Canada (CIC). In fact, it is CIC that actually determines, based on the LMO



provided by HRSDC/SC, whether the offer of employment is genuine and the impact that hiring the foreign national will likely have on the labour market. This is one of the factors that CIC assesses as part of its determination as to whether or not to issue a work permit to a foreign national.

Starting in February 2007, to extend the stay of workers already in the country, employers could complete an abbreviated form, an Application to Extend an LMO. This abbreviated form required employers to provide the system file number from the original LMO, and advised employers that they may be asked to provide evidence that the wages and working conditions of the foreign national whose stay in Canada may be extended are consistent with the offer of employment upon which the original neutral or positive LMO was based.

LMOs are required to support a foreign national's initial application for a work permit as well as an application to extend the authorized period of their stay set out in a work permit. The IRPR does not make a distinction between the two situations in terms of the relevant factors to be considered by HRSDC/SC officers in rendering its opinion. The creation of the Application to Extend an LMO was an administrative decision to streamline the processing of LMOs in situations where the worker was already in Canada pursuant to a valid work permit.

#### **Policy Clarification and Response:**

To implement the elimination of the Application to Extend an LMO, coordinators and officers responsible for delivering the TFWP are asked to consider the following information, guidance and impacts:

1. Effective April 27, 2009, the Application to Extend an LMO will be discontinued and all employers will be required to submit an Application for a LMO. All references to LMO extensions will also be removed from communications and outreach materials.
2. In cases where employers anticipate that their human resource needs will continue beyond the period covered by the TFW's work permit, employers are requested to apply for a new LMO four months prior to the expiry to ensure that ample time exists for the processing of the new LMO and, if authorized, the subsequent work permit request.
3. Upon the submission of a new LMO application, a return employer may be asked to demonstrate proof of compliance with the terms of previous offers of employment (e.g. wages and working conditions) to TFWs. The discretion to verify an employer's compliance rests with the HRSDC/SC officer responsible for the application review. Unless requested by HRSDC/SC, employers are not required to submit proof of past compliance with the terms of previous offers of employment to TFWs. Please note that HRSDC/SC officer discretion extends to any LMO issued to the employer in the previous five years and not just for the



occupation requested on the current application. In order to avoid duplication, HRSDC/SC officers are always asked to check the Notes to File section on the Foreign Worker System to check whether compliance checks requested have not already been successfully completed in the past.

4. Proof of past compliance will generally focus on the wages and working conditions agreed-upon in a previous LMO issued. When considering past compliance, a HRSDC/SC officer can consider the following examples to below to guide their assessment. All findings must be documented in the Foreign Worker System.

- **Wages:** Employers could be asked to demonstrate that the wages agreed-upon in any previous LMO submitted were, in fact, paid. An HRSDC/SC officer may request payroll records, pay stubs, cancelled checks or, T4s, in order to make this assessment.
- **Working Conditions:** HRSDC is currently working with the provinces and territories to obtain labour and employment standards info to better assess this factor. At the present time, HRSDC/SC officers may still request documentation (payroll records) to ensure that an employer's commitment to offer full-time employment was respected (min. 30 hours/week), overtime pay requirements were met, and benefits (sick and vacation leave) were appropriately extended. In addition, for any Program stream with free to- and from- airfare provisions, an HRSDC/SC officer may also request proof that the employer paid the airfare (e.g. receipt that coincides with TFW arrival, credit card statement, etc.) as it is linked to TFW mobility and, ultimately, working conditions.
- **Transfer of Skills and/or Knowledge:** 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.
- **Job Creation and/or Retention:** 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 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.
- **Recruitment:** If applicable, did the employer follow through on the commitments made on a previous LMO application LMO (or, in some cases, submitted an HR Plan) to hire or train Canadian citizens or permanent residents?

In circumstances where an officer has exhausted the examples above and feels that further past compliance checks may be warranted (e.g. copy of a lease to prove that agreed-upon accommodations were provided, checking if benefits publicly articulated were extended to TFWs, etc.), the HRSDC/SC officer is



requested to consult with his/her Regional Consultant/Manager first. Should the Regional Consultant/Manager agree with the officer's requests for additional verification/assessment and wish to escalate the LMO application further, the Regional Consultant/Manager is asked to send an email to the NHQ Inbox at NC-TFWP\_PTET-INBOX-GD for further attention. These situations will require NHQ approval before a more robust assessment of the LMO is initiated.

In addition, all requests, whether a new or return employer, will be subject to the standard assessment criteria imposed under Section 203(3) of the *Immigration and Refugee Protection Regulations* and the existing conditions and requirements imposed under the applicable Program stream.

5. Unlike employers submitting their first LMO application, return employers have established a history with HRSDC/SC that can be used on subsequent LMO requests to more accurately establish whether the new offer of employment will be respected. In cases where it appears that a return employer has not fully respected the terms of a previous offer of employment to a TFW, HRSDC/SC will work with the employer to help them understand and uphold their responsibilities by suggesting appropriate corrective measures. Examples of appropriate corrective measures include an officer requesting that the employer provide a TFW with back payment consistent with a previous LMO's agreed-upon wage and/or, if applicable, reimbursement of airfare that should have originally been paid by the employer. A negative LMO could be issued should a return employer not be willing to undertake the necessary corrective measures requested and demonstrate proof (e.g. copy of certified check). Please note that all corrective measures recommended by an officer must be shown to have been completed before a subsequent LMO can be issued. Officers are asked to document all previous compliance requests and/or actions under the Notes section of the Foreign Worker System to ensure that a comprehensive employer history is outlined in future LMO requests.

6. A negative LMO could be also issued if, upon the request of an officer, a return employer refused to demonstrate proof of past compliance with the terms of previous offers of employment to TFWs.

7. Although return employers submitting an Application to Extend an LMO may have been asked to justify their past LMO performance, officers often did not assess their recruitment efforts with the same scrutiny as an employer submitting a regular Application for an LMO. Therefore, applying more vigour to the application of return employers' recruitment efforts, consistent with the regular LMO process and also the complete factors outlined in S. 203 of IRPR, is also envisioned as part of this directive. Exceptions to the General Rule of the Directives for Assessing LMOs can be found at:

[http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/lmodir/lmodir-14.shtml#1416](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lmodir/lmodir-14.shtml#1416).



8. Effective April 27, 2009, the printable application for a LMO for employers wishing to hire TFWs under the *Pilot Project for Occupations Requiring Lower-Levels of Formal Training (NOC C and D)*, Exotic Dancer, and high-skilled occupations (National Occupational Classification O, A and B) will have the following question added to box 20: *Have you employed a foreign worker in the past five years?*

9. HRSDC/SC recognizes that many employers will return for with future LMO requests, and would like to ensure that there is a way to identify them quickly and efficiently. As a result, the question added to box 20 of the printable application for a Labour Market Opinion is intended to serve as an operational trigger for officers looking to establish whether the application is from a new or return employer. A 'yes' answer in box 20 could trigger an initial review of the employer's history in the Foreign Worker System, and a request from an officer to the employer to demonstrate proof of previous compliance with conditions described above. Conversely, a 'no' answer in box 20 could be accepted in good faith by an officer or the employer's history could still be reviewed in the Foreign Worker System to ensure accuracy and honesty. It is recommended that an officer always request that an employer demonstrate proof of past compliance if they are found to be dishonest in their reply to the question in box 20 of the LMO application. Officers are asked to document all previous compliance requests and/or actions under the Notes section of the Foreign Worker System to ensure that a comprehensive employer history is outlined in future LMO requests.

10. The same previous compliance measures will also apply to the Live-In Caregiver Program (LCP) stream. No application form changes are required as the Foreign Live-In Caregiver Application (Annex E) already has the following question under Box 20 to assist HRSDC officers in their assessment: *Have you previously employed a foreign live-in caregiver?*

11. In May 2009, the same question will also be added to the LMO applications for the Seasonal Agricultural Worker Program, Group of Employers, and Group of Employers Membership. Online applications for all affected streams of the Temporary Foreign Worker Program will also be updated at the same time to ensure consistency.

12. TFWs can continue working while Labour Market Opinions and work permit applications are being processed, provided they apply to have work permits renewed before the expiration date of their initial work permit. If work permits are expired (and the requests for work permit renewals have been made after the expiration date), TFWs are not allowed to work. They must seek "Restoration in Status" and work permit renewals from CIC, before being eligible to return to work. Please note that it is the choice of the employer if they put forward the name of a new or current TFW on an LMO application. The employer may receive a positive, or neutral, LMO if the name put forward is that of a current TFW. However, as is always the case, CIC will assess on a case by case basis,

based on the requirements of IRPA and IRPR, whether or not a work permit will be issued to the worker.

**For further information or inquiries, please contact the NHQ Inbox at NC-TFWP\_PTET-INBOX-GD and/or Brian Hickey at (819) 934-6162.**



Human Resources and  
Skills Development CanadaRessources humaines et  
Développement des compétences Canada

Canada

Skills and Employment Branch



## Temporary Foreign Worker Program

### TFWP Directive – Internal Distribution Only

**Date:** April 1, 2009

**To:** Coordinators and officers responsible for the TFWP

**From:** Andrew Kenyon, Director General, TFWP

**Subject:** 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.

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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**

### **Licensing:**

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 licensing 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 Division, 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.Despres-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-ple.mb@servicecanada.gc.ca](mailto:fwp-ple.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 bestowed 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](http://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

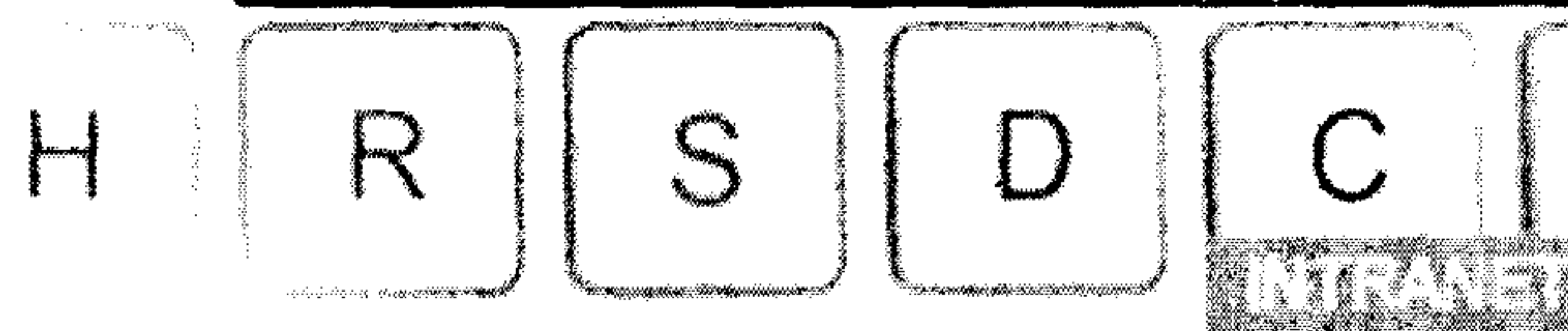
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Comments

Human Resources and  
Skills Development CanadaRessources humaines et  
Développement des compétences Canada

Canada

Skills and Employment Branch



## Third Party Bulletin

Employers are permitted to authorize third-party representatives to act on their behalf for the purposes of requesting Labour Market Opinions (LMO). While the majority of third parties are helpful to employers there remain unscrupulous third parties that misrepresent employers as it relates to the content of LMO applications.

While there are several ways that third parties can misrepresent employers, this bulletin addresses the following scenarios: forging information such as the employer's signature; falsifying an employer's information, such as the address and phone number; inflating the number of workers requested by the employer; and creating phantom companies to apply for and obtain LMOs. The scope of this bulletin does not include any other types of misrepresentation that do not relate directly to the LMO application, such as third parties charging fees to foreign workers.

### Procedure

#### Receipt of Complaints

*Step 1* - Without exception, this process will be initiated once the Temporary Foreign Worker Program receives an official letter of complaint from an employer identifying that a third party misrepresented her/his intentions.

There are three ways that complaint letters may be sent to Human Resources and Skills Development Canada:

1. **Proactive Contact with Employers** - Service Canada officers are directed that, at their discretion, they should conduct random phone calls to employers that have identified that they wish to use a third party. These calls will serve to verify the information on the LMO application and ensure that the employer is aware of its submission.  
  
If Service Canada determines that the third party has misrepresented the employer as a result of the random phone call, the officer should prompt the employer to submit a letter describing the specific misrepresentation and the necessary corrections to the LMO.
2. **Letters Received Directly from Employers** - Unsolicited complaints about third party misrepresentation may be received directly from employers. These complaints must address misrepresentation by a third party within the context of an LMO application.
3. **Other Sources** - If complaints are received from other sources, such as workers, non-governmental organizations, or anonymous sources, Service Canada officers should contact the employer to verify the information provided in the initial complaint and the information in the LMO application in question.

If the employer indicates that there was no misrepresentation on the part of the third party, no action will be taken; however, if the employer confirms that they were misrepresented by a third party, the officer should encourage the employer to submit a letter describing the specific misrepresentation and the necessary corrections to the LMO.

*Step 2* - The Service Canada officer must then call the employer to verify receipt of the letter and to verify the contents therein.

*Step 3* - The discrepancy identified by the employer is corrected in the system as per the letter (if possible) and a note in the system should be logged in the "Notes to Citizenship and Immigration Canada section" detailing what information was incorrect.

*Step 4* - The employer's letter is forwarded to National Headquarter (NHQ) for consideration for the 'due diligence list'.

*Step 5* - The third party information is compiled at NHQ and, when appropriate, placed on a list that will be accessible to TFWP Officers on the intranet.

If a new application is received naming a third party on the list, the officer is advised to proceed with the following steps.

*Step 6* - If another application is received naming the same third party on the "due diligence list" (the officer would know this by checking the intranet list) the Service Canada Officer makes a mandatory phone call to the employer to verify information on the application to ensure that it is correct using a list of pre-determined questions developed by NHQ.

*Step 7* - If the information is correct, no action is required.

If the information is incorrect the officer should ask the employer to submit written confirmation that it is incorrect and include the information necessary to make corrections in the system. The application should be placed on hold until the request is received (missing information flag placed).

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Comments



## Temporary Foreign Worker Program Bulletin

**Date:** 2010-02-02

**To:** All TFWP Staff (Managers, Consultants, Officers, etc.)

**From:** Andrew Kenyon, Director General, Temporary Foreign Workers and Labour Market Information Directorate, NHQ

**Subject:** Policy Clarification Regarding Assessing Prevailing Wage Rates for Pharmacists (NOC 3131) Working Towards Full License

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### Purpose:

This Policy Bulletin is issued for the purpose of providing guidance to HRSDC/Service Canada officers on how Section 203(3)(d) (wages and working conditions) of the *Immigration and Refugee Protection Regulations* (IRPR) should be applied when processing a request by an employer for a labour market opinion (LMO) in respect of an offer of employment made to a foreign national who:

- i. Will fill an intern pharmacist position.
- ii. 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 positions, classified under National Occupation code (NOC) 3414 - *Other Assisting Occupations in Support of Health Services*.

### Background:

The occupation of pharmacists (NOC 3131) is a regulated high skilled occupation. The worker dispenses prescribed pharmaceuticals and provides consultative services to both clients and health care providers.

Pharmacists are regulated in all provinces and territories in Canada, and in order for a Canadian and/or foreign national to become licensed in the occupation, he/she must complete an internship in the occupation. The internship requirement is required in all provinces and territories. However, the length of the internship varies between 1 month to 2 years, depending on the region and in some instances, the previous work experience of the foreign national in the occupation. The main duties of the interns are quite distinct from those of pharmacy assistants or technicians.

Currently, there is regional variation on how wages for intern pharmacist positions are assessed as part of a LMO application. In some Regions, wages are only confirmed at the average hourly wage for licensed pharmacists, while in other Regions there is a two-tiered wage structure for assessing NOC 3131 – licensed wages and wages for individuals working towards full licensing.

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 working towards full certification earn on average two-thirds the hourly wage of licensed pharmacists.

### **Guideline:**

To ensure national consistency across regions and to ensure that the wages offered to temporary foreign workers 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 Labour Market Information 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 foreign worker 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 (e.g. expanded scope of practice and wage adjustment).

### **Key Information:**

<b>Approved by:</b>	Andrew Kenyon, DG
<b>Division:</b>	Policy and Program Design
	Althea Williams, Director
	Mike Perry, Manager
	NC-TFWP_PTET-INBOX-GD



## Temporary Foreign Worker Program Bulletin

**Date:** 2010-08-02

**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 Employer or Third-Party Requests to Change or Replace Names on Labour Market Opinion Confirmations

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### Purpose:

The purpose of this Bulletin is to establish a national policy for accepting requests related to name changes or replacements on Labour Market Opinions (LMO) from employers/third party.

### Background:

As part of the LMO application process, Human Resources and Skills Development Canada (HRSDC)/Service Canada collects the names of prospective temporary foreign workers (TFWs). This information enables Citizenship and Immigration Canada (CIC) to match a "named" LMO to a work permit application.

In some cases, employers (or their representatives) have been known to request:

1. a name change on the LMO, due to:
  - spelling mistakes, or
  - inverted first and last names
2. a name replacement on the LMO with the name of a different person, due to:
  - CIC's refusal to issue a work permit to a TFW, requiring the employer to find a substitute TFW;
  - an employer's decision to hire a more qualified TFW after the initial LMO was requested, or
  - the original TFW no longer being able to come to Canada to work, for personal reasons.

In the absence of national direction on this matter, regional offices have developed a range of policies related to employers' requests to change foreign workers' names once an LMO has been issued. This national policy on name changes and replacement names on LMOs will improve program integrity by ensuring a consistent approach to meeting employers' needs.

### Guideline:

- Employers may change or replace the name(s) of the foreign worker(s) identified on the LMO application on **ONE** occasion.
- The LMO **must still be valid** for a change or a replacement in name to be processed. The LMO expiry date does not change, thus the new worker must submit his/her work permit application within six months of the issuance of the original LMO.

- The employer must send the request for a change or a replacement in writing and, where technology is available (e.g. a scanner) this should be uploaded to the Foreign Worker System (FWS).
- In the case of a third party representative requesting a name change or replacement, officers should contact the employer for verification.
- Only one request for a name change or replacement may be accepted within the six-month validity period. The modifications being requested should not represent more than 50 percent of the workers identified on the LMO. If employers are not sure of the workers they wish to hire, they should be encouraged to apply for an unnamed LMO.

### **Considerations:**

The TFW's name has no bearing on HRSDC/Service Canada's assessment of an employer LMO application.

- Some employers request multiple name changes or replacement names at different intervals resulting in several updates to one system file number, which could slow the processing times for LMOs.
- Changing or replacing names too frequently, or for a large number of workers would result in a situation where a large number of decision letters are produced.
- The six-month validity policy will limit the ability of the employer to make multiple changes to the names on the LMO because a name replacement will not lead to an extension. However, this shortened timeframe makes it unlikely that sufficient time will have passed for a work permit application to be assessed, so employers wishing to change the worker's name because the work permit was refused will likely need to reapply for another LMO.

### **Key Information:**

<b>Approved by:</b>	Andrew Kenyon, DG
<b>Division:</b>	Program Development & Implementation
	Steven West, Director
	David McCluskey, Manager
	NC-TFWP_PTET-INBOX-GD



## Temporary Foreign Worker Program Bulletin

**Date:** 2010-08-02

**To:** All TFWP Staff (Managers, Consultants, Officers, etc.)

**From:** Andrew Kenyon, Director General, Temporary Foreign Workers and Labour Market Information Directorate, NHQ

**Subject:** Active/Non-Active Function and Requesting Missing Information Directives

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### Purpose:

The purpose of this Bulletin is to define and outline how Human Resources and Skills Development Canada (HRSDC)/Service Canada will use the "Sent to Province" and the "**Active/Non-active**" functions of the Foreign Workers System (FWS).

This Bulletin is also to outline the guidelines for officers to request missing information from employers and third parties.

### Guideline:

#### Indicators

The "**Active/Non-active**" function allows officers to flag incomplete files and is intended to be used to reflect the period of time during which officers are waiting to receive requested information (e.g. proof of advertisement, payroll records, etc.) that is required for issuing a Labour Market Opinion (LMO) or an Arranged Employment Opinion (AEO).

It is important that the "**Active/Non-active**" dates indicate clearly the date when the information was first requested by HRSDC/Service Canada and the date when the employer or third party submitted the requested information. The "**Active/Non-active**" file status is located on the "**Officer Rationale and File Status**" page.

As we work towards improving the FWS file tracking and reporting on processing timeframes, it is important to note that as of the next System release, all reporting and search options will be based on "**Active/Non-active**" file status function. This will replace the "**Information Missing**" indicator (RFO – Request for Opinion) page and officers will no longer need to flag files for missing information. For additional information on the "**Active/Non-active**" file status function, please view the FWS version 7.0 highlights at: <http://intracom.hq-ac.prv/hrib-dirh/fw/common/fws/resources/highlights7.shtml>

#### "Sent to Province" indicator

The "Sent to Province" indicator will only be used when a file has been finalized by HRSDC/Service Canada and sent to the Province of Quebec (MCC) or Ontario (LCP) for assessment.

### Requesting missing information

The following guideline aims to provide guidance on how to request missing information that is required to issue a decision on LMO or AEO requests.

At the time an officer determines that more information is required to make a decision on an application, an initial telephone call to the employer or authorized third party contact (at the employer's request) should be made and the "**Non-active**" function should be activated in the FWS. Depending on the nature and complexity of the missing information, HRSDC/Service Canada may consider following-up the request by sending the employer a fax including a timeframe for submitting the requested information (suggested five business days).

It is also recommended that a follow-up telephone call be made three business days later to remind the employer or authorized third party contact of the missing information that has been requested.

If HRSDC/Service Canada has had no contact from the employer or authorized third party after the suggested five business days, a formal request can be made in writing and sent by fax or registered mail to the employer or authorized third party providing an additional five business days to submit the requested information. Officers should retain a copy of the fax confirmation for the records. The employer and authorized third party contact should be advised that if the missing information is not received in a reasonable timeframe, HRSDC/Service Canada officers will issue a decision based on the information they have.

Please note officers have discretion in defining a reasonable amount of time related to the request for missing information and should factor in the type, amount and complexity of the information that is required to issue a decision as well as past and current interactions with the employer or authorized third party contact. Five business days is recommended for most situations or where past and present contacts have not been successful.

When HRSDC/Service Canada receives the requested information, the "**Active**" function in the FWS should be amended as per the guidelines above. If an officer is unable to contact the employer or obtain the necessary information to issue a decision on an LMO or an AEO application by the established timeframes, the request should be refused. The refusal rationale will be under the genuineness of the application. Employers can re-submit an application if the job continues to be offered to the foreign national.

### **Key Information:**

<b>Approved by:</b>	Andrew Kenyon, DG
<b>Division:</b>	Program Development & Implementation
	Steven West, Director
	David McCluskey, Manager
	NC-TFWP_PTET-INBOX-GD



## Temporary Foreign Worker Program Bulletin

**Date:** 2010-10-14

**To:** All TFWP Staff (Managers, Consultants, Officers, etc.)

**From:** Andrew Kenyon, Director General, Temporary Foreign Workers and Labour Market Information Directorate, NHQ

**Subject:** Policy Clarification Regarding Assessing Prevailing Wage Rates for Pharmacy Students

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### Purpose:

The purpose of this Policy Directive is to provide guidance to officials who assess Labour Market Opinion (LMO) requests for pharmacy students.

This policy will be monitored and will run as a Pilot for one year.

Please note that a pharmacy student is considered to be an individual currently enrolled in a pharmacy program at a Canadian University, but has not yet graduated from the program. An intern pharmacist, in contrast, is an individual who has graduated from a pharmacy program at a Canadian University and is currently obtaining work experience as part of the licensing process for the applicable Provincial/Territorial Pharmacy regulatory authority.

### 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 officer is to determine, on the basis of an opinion 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.

TFWP officers at HRSDC/Service Canada are mandated to base an opinion on the following six factors as stated under section 203(3) of 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:**

In order for an individual to become a fully certified pharmacist National Occupation Classification (NOC) 3131, all pharmacy students in Canada must complete a studentship while completing their degree program.

With respect to Canadian pharmacy students, they usually complete the studentship throughout their degree program (i.e. often completing short-term studentships in-between their classroom studies during the summer months). 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) and only after they have completed their classroom studies.

After the foreign pharmacy student has completed the studentship, the individual must then complete an internship, which varies between one month and two years, depending upon the region, and in some instances, the previous work experience of the foreign national in the occupation.

While pharmacy students and interns perform some similar types of duties (i.e. they 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 these different duties, which consist of significantly less responsibility from intern pharmacists, they are often paid a lower wage. According to the pharmaceutical industry, Canadian citizen/permanent resident pharmacy students earn approximately one-third the average wage for a certified Pharmacist - NOC 3131.

## **Guideline:**

### **NOC Code**

When assessing LMO applications for foreign pharmacy students who are completing their studentships, foreign worker officers should classify the position under the NOC 3131. These positions should be assigned a job title of "Pharmacy Student". It should be noted in the CIC Notes section of the TFWP System that (1) the position is for a pharmacy student, and, therefore, the foreign national does not yet have the credentials to work as a fully certified pharmacist; and (2) the foreign pharmacy student must be working under the direct supervision of the fully certified pharmacist at all times.



### Prevailing Wage Rates

To ensure foreign pharmacy students are paid the same wages as Canadian citizen/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 Labour Market Information (LMI) average wage for NOC 3131- Pharmacists for the region/sub-region where the work will take place ; or
- the wage paid by the employer to their currently employed Canadian pharmacy students who are completing their studentship at the same location 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 pharmacy students.

Please note that HRSDC/Service Canada officers may confirm LMOs for student pharmacy positions with wages that go below the low-end of wage range under NOC 3131. That said, LMOs for these positions must not be confirmed at wages that go below the Province's Provincial minimum wage rate.

If, at the time the LMO application is being processed, the employer does not employ a Canadian citizen/permanent resident pharmacy student nor a Canadian citizen/permanent resident pharmacy student who has the same level of experience as the foreign national, the prevailing wage rate for the position is to be considered one-third of LMI Service's average wage under NOC 3131 for the region/sub-region where the work will take place.

### Documentation

It is up to the discretion of the foreign worker officer to determine what type of documentation to request from the employer to verify the wage being paid and the level of experience their Canadian citizen/permanent resident pharmacy students possess.

If the officer has concerns that the position being requested is not for a student but rather for an intern position, the officer should request additional documentation from the employer to demonstrate the genuineness of the position (i.e. proof that the foreign national is currently enrolled in a pharmacy program at a Canadian University).

### From Pharmacy Student to Pharmacy Intern

If the employer wishes to hire foreign nationals as pharmacy interns after they have completed their studentships, he/she will need to apply for another LMO that reflects the change in the foreign national's status. HRSDC/Service Canada must assess the new LMO application according to the criteria prescribed for pharmacy intern positions. Please refer to the Temporary Foreign Workers Program Bulletin entitled "*Policy Clarification Regarding Assessing Prevailing Wage Rates for Pharmacists (NOC 3131) Working Towards Full License*" for additional details on how to assess LMOs for pharmacy intern positions.

**Key Information:**

**Approved by:** Andrew Kenyon, DG  
**Division:** Policy and Program Design  
Althea Williams, Director  
Mike Perry, Manager  
NC-TFWP\_PTET-INBOX-GD



## 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

---

### 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 Canadian 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:**

<b>Approved by:</b>	Andrew Kenyon, DG
<b>Division:</b>	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.

Name of the employer requesting a wage reduction		
Telephone Number (     )     -	Facsimile Number (     )     -	
Mailing Address	E-mail Address	
<input type="checkbox"/> 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		
<input type="checkbox"/> 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.		
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:** 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

---

### 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:** 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

---

### 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.

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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:

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"information may be made available to the Commission or a public officer of the Department for the administration or enforcement of a program".

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- 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:** 2011-02-23

**To:** All TFWP Staff (Managers, Consultants, Officers, etc.)

**From:** Andrew Kenyon, Director General, Temporary Foreign Workers and Labour Market Information Directorate, NHQ

**Subject:** Assessing Minimum Hours of Work for Ski and Snowboard Instructor Positions

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### Purpose:

The purpose of this Bulletin is to provide guidance to Human Resources and Skills Development Canada (HRSDC)/Service Canada staff when assessing the "hours of work" element under the working conditions factor for ski and snowboard instructor positions {National Occupational Classification (NOC) 5254 - Program Leaders and Instructors in Recreation Sport and Fitness}, as part of Labour Market Opinion (LMO) applications.

### 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 HRSDC/Service Canada, whether the job offer is genuine and the employment of the temporary foreign worker (TFW) is likely to have a neutral or positive impact on the Canadian labour market.

HRSDC/Service Canada is 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:**

The ski and snowboard instructor occupation is unique because of the pay structure and the seasonal nature of the industry. Canadian citizen and permanent resident ski and snowboard instructors are compensated based on their level of experience and certification. They also receive different rates of hourly compensation, including a base salary and additional pay for hours of instruction. As well, depending on weather conditions, the hours of work offered to Canadian citizen and permanent resident ski and snowboard instructors can vary significantly from one pay period to another.

Due to the non-standard hours of work, wage structure and seasonal nature of the industry, employers who hire temporary foreign workers (TFWs) to fill ski and snowboard instructor positions can guarantee to offer the same wages and working conditions as Canadians citizens and permanent residents working in the same occupation and location (minimum 20 hours). Employers find it difficult, however, to meet TFWP standard requirement of a minimum offer of 30 hours per week.

In some cases, the TFWP's standard minimum requirement of 30 hours of work per week has had a negative impact on the Canadian labour market because employers have provided additional work hours to temporary foreign workers over Canadian citizen and permanent resident ski and snowboard instructors in order to provide TFWs with 30 hours of work per week.

As stipulated in the TFWP Directives for Assessing Labour Market Opinions (Part II, Section 12 entitled "Working Conditions"), *"Part-time job offers do not generally receive a positive labour market opinion because temporary foreign workers must support themselves financially while working in Canada. However, a collective agreement, industry or association that oversees an occupation may define full-time as being less than 30 hours per week. In these cases, the occupational standards prevail."*

Based on consultations with industry representatives, the occupational standards for full-time Canadian citizen and permanent resident ski and snowboard instructor positions are generally a minimum of 20 hours of work per week. However, these instructors are able to support themselves financially because they usually receive subsidised housing.

## **Guideline:**

HRSDC/Service Canada staff must assess the prevailing wage rate and working conditions component of the LMO for ski and snowboard instructor positions, as per section 203(3)(d) of the IRPR according to the following criteria:

### Minimum Hours of Work:

To ensure TFWP requirements are consistent with industry standards, the minimum hours of work requirement for ski and snowboard instructor positions should be considered 20 hours of work per week. If an employer is unable to provide at least 20 hours of work due to extenuating circumstances (e.g. if weather conditions do not permit TFWs to instruct), the employer must:

- a. pay the TFW for at least 20 hours of work at the prevailing wage rate stated in the LMO;  
or
- b. offer the TFW additional hours at a later date to ensure that they have been provided a minimum of 20 hours of work per week over the duration of employment.

Although the LMO confirmation letter indicates that the TFW is approved to work 20 hours per week, they are allowed to work supplementary hours, if additional work is available. In these circumstances, the employer must provide the TFW overtime compensation when required under provincial/territorial employment standards.

#### Prevailing Wage Rate:

The prevailing wage rate for the occupation continues to be the rate as identified in the past by Service Canada for ski and snowboard instructors. The prevailing wage rate for ski and snowboard instructors is the minimum wage paid to the TFW for each hour employed, regardless if they are 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.).

### **Operational Procedures:**

#### Notes to File:

In cases where an LMO for a ski or snowboard instructor position is confirmed, HRSDC/Service Canada must make a note in the *Notes to File* section of the Foreign Worker System indicating the TFW is guaranteed a salary, which is based on the worker receiving 20 hours of work per week. Any additional hours worked must be paid at the hourly wage as noted on the confirmed LMO letter and according to provincial overtime policies, when applicable.

#### Other Occupations under NOC 5254:

In instances when an employer is requesting to hire a TFW under NOC code 5254 - Program Leaders and Instructors in Recreation, Sport and fitness, but the TFW will not be working as a ski and snowboard instructor, HRSDC/Service Canada staff should assess the LMO applications according to the minimum 30 hours of work per week requirement.

#### Substantially the Same Assessment:

The hours of work policy for ski and snowboard instructor positions is retroactive. When assessing the Substantially the Same (STS) factors (e.g. wages, working conditions and occupations) effective April 1, 2011, HRSDC/Service Canada staff must review any previously approved LMO(s), for ski and snowboard instructor positions according to the minimum 20 hours of work per week requirement, even if the LMO has been originally approved with a higher number of hours per week.

For the purpose of the STS assessment, the hours of work element of the working conditions factor should be considered as substantially the same when a TFW has been provided a minimum of 20 hours of work per week.

In order to determine if the employer has successfully fulfilled the minimum hours of work requirement, HRSDC/Service Canada staff should collect and review payroll records for the TFW's **entire** duration of employment when conducting employer compliance reviews and STS assessments.



**Key Information:**

**Approved by:** Andrew Kenyon, DG  
**Division:** Policy and Program Design  
Althea Williams, Director  
Mike Perry, Manager  
NC-TFWP\_PTET-INBOX-GD

## 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:** 2011-04-15

**To:** All TFWP Staff (Managers, Consultants, Officers, etc.)

**From:** Andrew Kenyon, Director General, Temporary Foreign Workers and Labour Market Information Directorate, NHQ

**Subject:** Clarification on Labour Market Opinions for Owner/Operators of a Business

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### Purpose:

The purpose of this Bulletin is to provide guidance in addressing situations where a temporary foreign worker (TFW) is an owner/operator of a business and is applying at Human Resources and Skills Development Canada (HRSDC)/Service Canada for a 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)*.

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 NOC 0, A or B occupation. Please note that a business owner/operator is not the same as a self-employed individual, since 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% 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% 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 Temporary Foreign Worker 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.

#### *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.

**Other Related Directives:**

Employers interested in hiring self-employed foreign nationals.

**Key Information:**

<b>Approved by:</b>	Andrew Kenyon, DG
<b>Division:</b>	Policy and Program Design
	Althea Williams, Director
	Jena Cameron, 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:**

<b>Approved by:</b>	Andrew Kenyon, DG
<b>Division:</b>	Program Development and Implementation
	Steven West, Director
	Lara White, Manager
	NC-TFWP_PTET-INBOX-GD



## Temporary Foreign Worker Program Bulletin

**Date:** 2011-05-24

**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 Revocation of Arranged Employment Opinions

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### Purpose:

The purpose of this Bulletin is to provide guidance regarding the revocation of an Arranged Employment Opinion (AEO), prior to the issuance of a permanent resident visa by Citizenship and Immigration Canada (CIC).

### Authority:

As per section 82 of the *Immigration and Refugee Protection Regulations (IRPR)*, Human Resources and Skills Development Canada (HRSDC)/Service Canada is mandated to provide an AEO to support a foreign national's application for permanent residency under the Federal Skilled Worker class. An AEO can be requested by an employer who is offering a permanent job to a foreign national or by a CIC officer.

Under subsection 82(2) of the *IRPR*, the determination to award points for arranged employment to a skilled worker applying for permanent residency is assessed, in part, on the basis of an AEO provided to CIC by HRSDC/Service Canada. According to the section 82(2)(c)(ii) and (d)(ii), HRSDC/Service Canada issues an AEO based on the following three factors:

- (A) the offer of employment is genuine;
- (B) the employment is not part-time or seasonal employment, and
- (C) the wages offered to the skilled worker are consistent with the prevailing wage rate for the occupation and the working conditions meet generally accepted Canadian standards.

### Guidelines:

The revocation of an AEO is a process initiated by HRSDC/Service Canada and CIC. Prior to the issuance of a permanent resident visa, any AEO can be revoked under the following circumstances:

1. The employer has provided materially false or misleading information; or
2. New facts have come to light subsequent to the date of the issuance of the opinion that change the assessment of any of the factors set out in subsections 82(2)(c) or 82(2)(d) and that, in turn, change the opinion; or
3. The AEO was based on an unintentional error as to some material fact.

Under the *IRPR*, HRSDC/Service Canada shall be responsible for making a decision regarding the AEO in a reasonable and consistent way. In this regard, the AEO decision shall be based on relevant facts and the factors set out in subsections 82(2)(c) or 82(2)(d) of the *IRPR*.

***NHQ and Regional Offices' Roles and Responsibilities:***

Where revocation seems warranted based on any or all of the above three circumstances, Temporary Foreign Worker Program (TFWP) consultants from regional offices or HRSDC staff should submit their recommendation through the HRSDC/Service Canada inbox. The AEO Revocation Request Form is to be filled out and sent, along with supporting documentation, to the inbox at NC-TFWP\_PTET-INBOX-GD, for assessment. Once received, the TFWP staff at NHQ will review the request and determine whether or not to approve it.

In the event that information becomes available to CIC or Canada Border Services Agency (CBSA), they can inform HRSDC through the CIC/CBSA inbox exchange. In this case HRSDC will prepare the AEO Revocation Request Form, in consultation with the appropriate regional office.

Once the decision to revoke an AEO is made, HRSDC will issue a letter to inform the employer of the revocation and will notify CIC and CBSA of the decision. HRSDC will also make a note concerning the AEO revocation in the "Notes to CIC" field.

***Employer Recourse:***

No appeal process will be established for employers whose AEOs are revoked. Employers are, however, free to apply for a new AEO, although the information that led to the initial revocation may be used in assessing any new application.

***Considerations:***

Revoking an AEO is a serious step, and should only be taken when circumstances warrant it. Where a decision to revoke an AEO could have damaging consequences on the employer, it is important to note those consequences and any options that might mitigate them.

***Key Information:***

<b>Approved by:</b>	Andrew Kenyon, DG
<b>Division:</b>	Policy and Program Design Althea Williams, Director NC-TFWP_PTET-INBOX-GD



## Temporary Foreign Worker Program Bulletin

**Date:** 2011-06-23

**To:** All TFWP Staff (Managers, Consultants, Officers, etc.)

**From:** Andrew Kenyon, Director General, Temporary Foreign Workers and Labour Market Information Directorate, NHQ

**Subject:** Implementation of the Alberta Pilot on Occupation Specific Work Permits for Steamfitters and Pipefitters

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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 implementation of the Alberta Pilot on Occupation Specific Work Permits for steamfitters and pipefitters under the Agreement for Canada-Alberta Cooperation on Immigration.

### 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:

(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 TFWs, 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 high-skilled TFWs within a particular industrial sector.

**Current status:**

The Government of Alberta and the Department of Citizenship and Immigration Canada (CIC) have agreed to undertake a pilot to allow labour market opinion (LMO) exemptions for job offers to steamfitters and pipefitters, as classified under code 7252 of the National Occupation Classification (NOC) coding system.

Under this Pilot, the LMO exemption applies only to positions in Alberta related to NOC 7252, and is effective from June 1, 2011 to May 31, 2015. However, applicants can only apply to the Pilot within its first year of operation (**June 1, 2011 until May 31, 2012**).

Uncertified foreign steamfitters and pipefitters can apply under the Pilot and may be issued an LMO exempt one-year employer-specific work permit by CIC. This initial one-year period is intended to allow the TFW to meet the certification requirements of Alberta Apprenticeship and Industry Training (AAIT) while remaining employed by the initial employer or a Group of Employers (GoE) recognized by CIC and HRSDC. After receiving AAIT certification, the TFW will be eligible to apply for an LMO exempt two-year non-employer-specific (open) work permit.

Certified foreign steamfitters and pipefitters already working in that trade in Alberta can apply through this Pilot to a two-year open work permit before the original work permit expires. **However, such work permit applications must be received between June 1, 2011 and May 31, 2012.**

All foreign steamfitters and pipefitters who receive job offers in NOC 7252 after May 31, 2012 will not be eligible for the Pilot and will once again require an LMO as per the regular process.

**Pilot Parameters**

This Pilot Project will operate as follows:

<b>Types of applicants</b>	<b>Initial one-year employer-specific work permit</b>	<b>Two-year non-employer-specific (open) work permit with mobility in Alberta</b>
Uncertified TFW applicants who have an initial job offer in the steamfitter/pipefitter occupation from an Alberta employer, OR An Alberta employer acting on behalf of a GoE recognized by CIC and HRSDC	Apply between June 1, 2011 and May 31, 2012* at a visa office or, if applicable, at a Port Of Entry.	Once certified, apply at the Case Processing Centre in Vegreville, before May 31, 2013 to continue to be part of the Pilot.
Certified TFW applicants (steamfitter/pipefitter) working for (or possessing a job offer from) an employer in Alberta, OR An Alberta employer acting on behalf of a GoE recognized by CIC and HRSDC.		Apply between June 1, 2011 and May 31, 2012*, and before original work permit expires.

\*Applications will not be accepted for this Pilot after May 31, 2012.



A review and evaluation of the Pilot will start mid-2014.

Specific information on the Pilot can be found on the Government of Alberta Employment and Immigration Web site and in CIC Operational Bulletin 279-B.

**Guidelines:**

For LMO applications submitted between June 1, 2011 and May 31, 2012, Service Canada staff should encourage employers to formally withdraw any LMO applications for NOC 7252 eligible for the LMO exemption under the Pilot. Should an employer insist on proceeding with the LMO application for NOC 7252 in Alberta, HRSDC/Service Canada staff must then issue a negative opinion under section 203(1)(c) of the *IRPR*.

The negative LMO decision letter will refer the employer to the LMO exemption applicable under the Alberta Pilot on Occupation Specific Work Permits.

**Key Information:**

<b>Approved by:</b>	Andrew Kenyon, DG
<b>Division:</b>	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

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### 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:**

<b>Approved by:</b>	Andrew Kenyon, DG
<b>Division:</b>	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**

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### **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:**

<b>Approved by:</b>	Andrew Kenyon, DG
<b>Division:</b>	Operational Management and Development
	Steven West, Director
	Jaouad Haqhaqi, Senior Policy Analyst
	NC-TFWP_PTET-INBOX-GD

## Temporary Foreign Worker Program Bulletin

**Date:** 2012-05-25

**To:** All TFWP Staff (Managers, Consultants, Officers, etc.)

**From:** Andrew Kenyon, Director General, Temporary Foreign Workers and Labour Market Information Directorate, NHQ

**Subject:** New Wage Methodology on the Working in Canada Web Site

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### Purpose:

The purpose of this Bulletin is to inform Human Resources and Skills Development Canada (HRSDC)/Service Canada staff about the new Labour Market Information (LMI) wage methodology which has been implemented and is now available on the Working in Canada (WiC) Web site.

### Background:

The LMI Division at NHQ and the Service Canada Regional LMI Network, in partnership with Statistics Canada, have developed a new methodology for calculating prevailing wages, including the wages employers are required to pay for temporary foreign workers (TFWs). This new methodology is based primarily on Statistics Canada's Labour Force Survey (LFS), which provides consistency and defensibility.

The new methodology is intended to address:

- irregular wage updates;
- varying sample sizes;
- blending of data sources of unequal quality; and
- unnecessary rounding of estimates.

However, in the process of validating the new wages, LMI staff has identified instances where there will be significant increases or decreases compared to the currently posted wages. These differences could have an impact on employers' wage structures, and affect their financial ability to hire TFWs.

In order to mitigate the impact of large wage increases resulting from the new methodology, employers will continue to be required to pay TFWs the same wage that they pay to Canadian citizen or permanent resident workers doing the same job in the same location. However, in cases where wages increase by **more than 15%**, those wages will not be immediately published. Instead the LMI Service will thoroughly verify and validate the proposed wages to ensure that the information is accurate and reliable before it is posted on the WiC Web site.

The new wage methodology does not apply to the Seasonal Agricultural Worker Program, the Agricultural stream and the Live-in Caregiver Program. A separate wage structure is used for these sectors which are primarily occupied by TFWs.



As per the operational agreement signed between HRSDC/Service Canada and the province of Quebec in 2012, the Ministère de l'Immigration et des Communautés culturelles (MICC) is responsible for setting prevailing wage rates based on a methodology developed by Emploi-Québec. In all other provinces and territories, the TFWP staff will assess wages according to the new LMI wage methodology.

### **Considerations:**

The TFWP staff will still monitor and respond to employers' concerns about prevailing wages. However, the new wage methodology is expected to allow for more consistency in wages paid to Canadian workers and TFWs.

### **Next Steps:**

A new page has been posted on the TFWP Web site regarding the prevailing wages and provides a detailed explanation of the wage structure and scenarios.

### **Key Information:**

<b>Approved by:</b>	Andrew Kenyon, DG
<b>Division:</b>	Policy and Program Design
	Althea Williams, Director
	Mike T. Perry, Manager
	NC-TFWP_PTET-INBOX-GD

## Temporary Foreign Worker Program Bulletin

**Date:** 2012-07-16

**To:** All TFWP Staff (Managers, Consultants, Officers, etc.)

**From:** Andrew Kenyon, 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 Human Resources and Skills Development Canada (HRSDC)/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 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 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:

- (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-HRSDC 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 journeyman 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](http://www.tradesecrets.alberta.ca)).

Eligible Applicants	Application Period	Duration of Work Permit
<b>Uncertified Applicants:</b> <ul style="list-style-type: none"> <li>must have an approval letter from AAIT, for an application under the Alberta Qualification Certificate Program for</li> </ul>	Applications will be accepted between July 16, 2012 and July 31, 2013 at a visa office or, if applicable, at a port of entry.	Occupation-specific, employer-specific work permit with a duration of one year.  This initial one-year work

<p>one of the trades included under the pilot;</p> <ul style="list-style-type: none"> <li>• 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 - HRSDC GoE Pilot.</li> </ul>	<p>Once the TFW is certified, an application can be sent to the Case Processing Centre (CPC) in Vegreville to continue participation in the pilot (refer to the Certified Applicants section).</p>	<p>permit allows TFWs to meet the certification requirements of AAIT while remaining employed by their first employer. The Alberta Qualification Certificate must be submitted along with the application for work permit extension.</p>
<p><b>Certified Applicants:</b></p> <ul style="list-style-type: none"> <li>• must hold an Alberta Qualification Certificate or a trade certificate recognized in Alberta (<a href="http://www.tradesecrets.alberta.ca">www.tradesecrets.alberta.ca</a>) in one of the occupations covered by the pilot;</li> <li>• must be currently working for, or have a job offer from an employer in Alberta.</li> </ul>	<p>Applications will be accepted between July 16, 2012 and July 31, 2013, at a visa office or, if applicable, at a port of entry.</p> <p>TFWs already working in Alberta may apply at CPC-Vegreville by mail or online, before their initial work permit expires.</p>	<p>Two-year, occupation-specific, semi-open work permit.</p> <p>This semi-open work permit allows TFWs to change employers but they are restricted to working within the specific occupation in Alberta.</p>
<p><b>Qualified Estimators:</b> Employers hiring estimators under this pilot must ensure the applicants have the qualifications to perform the job duties of the occupation. This includes:</p> <ul style="list-style-type: none"> <li>• certification by the Canadian Institute of Quantity Surveyors (CIQS) (<a href="http://ciqs.org">ciqs.org</a>);</li> <li>• completion of a three-year college program in civil or construction engineering technology; or</li> <li>• several years of experience as a qualified tradesperson in a construction trade such as plumbing, carpentry or electrical.</li> </ul> <p><b>NOTE:</b> Qualified estimators are not required to apply to the Alberta Qualification Certificate Program; therefore they will not have an approval letter from AAIT.</p>	<p>Applications will be accepted between July 16, 2012 and July 31, 2013, at a visa office or, if applicable, at a port of entry.</p> <p>TFWs already working in Alberta may apply at CPC-Vegreville by mail or online, before their initial work permit expires.</p>	<p>Two-year, occupation specific, semi-open work permit.</p> <p>This semi-open work permit allows TFWs to change employers but they are restricted to working with the specific occupation in Alberta.</p>



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, 2013, if LMO applications are received for any occupation covered by the Alberta Pilot for Occupation-Specific Work Permits, HRSDC/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, HRSDC/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:**

<b>Approved by:</b>	Andrew Kenyon, DG
<b>Division:</b>	Program Development and Implementation
	Steven West, Director
	Mario Rondeau, Manager
	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

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### 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 Stream 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 lower-skilled TFWs 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 higher-skilled TFWs 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:** 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

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### 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:**

<b>Approved by:</b>	Andrew Kenyon, DG
<b>Division:</b>	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**

<b>Postal Code</b>	<b>CSD Name</b>
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

<b>Postal Code</b>	<b>CSD Name</b>
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
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T9M1T8	Cold Lake
T9M1T9	Cold Lake
T9M1V1	Cold Lake
T9M1V2	Cold Lake
T9M1V3	Cold Lake
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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
T9M1X1	Cold Lake
T9M1X2	Cold Lake
T9M1X3	Cold Lake
T9M1X5	Cold Lake
T9M1X6	Cold Lake
T9M1X7	Cold Lake
T9M1X8	Cold Lake
T9M1X9	Cold Lake
T9M1Y1	Cold Lake
T9M1Y2	Cold Lake
T9M1Y3	Cold Lake
T9M1Y4	Cold Lake
T9M1Y5	Cold Lake
T9M1Y6	Cold Lake
T9M1Y7	Cold Lake
T9M1Y8	Cold Lake
T9M1Y9	Cold Lake
T9M1Z1	Cold Lake
T9M1Z2	Cold Lake
T9M1Z3	Cold Lake
T9M1Z4	Cold Lake
T9M1Z5	Cold Lake

Postal Code	CSD Name
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T9M1Z7	Cold Lake
T9M1Z8	Cold Lake
T9M1Z9	Cold Lake
T9M2A1	Cold Lake
T9M2A2	Cold Lake
T9M2A3	Cold Lake
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T9M2A5	Cold Lake
T9M2A6	Cold Lake
T9M2A7	Cold Lake
T9M2A8	Cold Lake
T9M2A9	Cold Lake
T9M2B1	Cold Lake
T9M2B2	Cold Lake
T9M2B3	Cold Lake
T9M2B4	Cold Lake
T9M2B5	Cold Lake
T9M2B6	Cold Lake
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T9M2B8	Cold Lake
T9M2B9	Cold Lake
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T9M2C2	Cold Lake
T9M2C3	Cold Lake
T9M2C4	Cold Lake
T9M2C5	Cold Lake
T9M2C6	Cold Lake
T9M2C7	Cold Lake
T9M2C8	Cold Lake
T9M2C9	Cold Lake
T9M2E1	Cold Lake
T9M2E2	Cold Lake
T9M2E3	Cold Lake
T9M2E4	Cold Lake
T9M2E5	Cold Lake
T9M2E6	Cold Lake
T9N0A1	Bonnyville
T9N0A2	Bonnyville
T9N0A3	Bonnyville
T9N0A4	Bonnyville
T9N0A6	Bonnyville

Postal Code	CSD Name
T9N0A7	Bonnyville
T9N0A8	Bonnyville
T9N0A9	Bonnyville
T9N0B2	Bonnyville
T9N0B3	Bonnyville
T9N0B4	Bonnyville
T9N0B5	Bonnyville
T9N0H1	Bonnyville
T9N0H2	Bonnyville
T9N0H3	Bonnyville
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T9N1A2	Bonnyville
T9N1A3	Bonnyville
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T9N1A8	Bonnyville
T9N1A9	Bonnyville
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T9N1B5	Bonnyville
T9N1B6	Bonnyville
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T9N1B8	Bonnyville
T9N1B9	Bonnyville
T9N1C1	Bonnyville
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T9N1C6	Bonnyville
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T9N1E2	Bonnyville
T9N1E3	Bonnyville
T9N1E4	Bonnyville
T9N1E5	Bonnyville



Postal Code	CSD Name
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T9N1E7	Bonnyville
T9N1E8	Bonnyville
T9N1E9	Bonnyville
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T9N1G2	Bonnyville
T9N1G3	Bonnyville
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T9N1G6	Bonnyville
T9N1G7	Bonnyville
T9N1G8	Bonnyville
T9N1G9	Bonnyville
T9N1H1	Bonnyville
T9N1H2	Bonnyville
T9N1H3	Bonnyville
T9N1H4	Bonnyville
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T9N1H6	Bonnyville
T9N1H7	Bonnyville
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T9N1K9	Bonnyville
T9N1L1	Bonnyville
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Postal Code	CSD Name
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T9N1L4	Bonnyville
T9N1L5	Bonnyville
T9N1L6	Bonnyville
T9N1L7	Bonnyville
T9N1L8	Bonnyville
T9N1L9	Bonnyville
T9N1M1	Bonnyville
T9N1M2	Bonnyville
T9N1M3	Bonnyville
T9N1M4	Bonnyville
T9N1M5	Bonnyville
T9N1M6	Bonnyville
T9N1M7	Bonnyville
T9N1M8	Bonnyville
T9N1M9	Bonnyville
T9N1N1	Bonnyville
T9N1N2	Bonnyville
T9N1N3	Bonnyville
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T9N1N5	Bonnyville
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T9N1N9	Bonnyville
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T9N1P3	Bonnyville
T9N1P4	Bonnyville
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T9N1P7	Bonnyville
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T9N1R5	Bonnyville
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T9N1R7	Bonnyville
T9N1R8	Bonnyville

Postal Code	CSD Name
T9N1R9	Bonnyville
T9N1S1	Bonnyville
T9N1S2	Bonnyville
T9N1S3	Bonnyville
T9N1S4	Bonnyville
T9N1S5	Bonnyville
T9N1S6	Bonnyville
T9N1S7	Bonnyville
T9N1S8	Bonnyville
T9N1S9	Bonnyville
T9N1T1	Bonnyville
T9N1T2	Bonnyville
T9N1T3	Bonnyville
T9N1T4	Bonnyville
T9N1T5	Bonnyville
T9N1T6	Bonnyville
T9N1T7	Bonnyville
T9N1T8	Bonnyville
T9N1T9	Bonnyville
T9N1V1	Bonnyville
T9N1V2	Bonnyville
T9N1V3	Bonnyville
T9N1V4	Bonnyville
T9N1V5	Bonnyville
T9N1V6	Bonnyville
T9N1V7	Bonnyville
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T9N1V9	Bonnyville
T9N1W1	Bonnyville
T9N1W2	Bonnyville
T9N1W3	Bonnyville
T9N1W4	Bonnyville
T9N1W5	Bonnyville
T9N1W6	Bonnyville
T9N1W7	Bonnyville
T9N1W8	Bonnyville
T9N1W9	Bonnyville
T9N1X1	Bonnyville
T9N1X2	Bonnyville
T9N1X3	Bonnyville
T9N1X4	Bonnyville
T9N1X5	Bonnyville

Postal Code	CSD Name
T9N1X6	Bonnyville
T9N1X7	Bonnyville
T9N1X8	Bonnyville
T9N1X9	Bonnyville
T9N1Y1	Bonnyville
T9N1Y2	Bonnyville
T9N1Y3	Bonnyville
T9N1Y4	Bonnyville
T9N1Y5	Bonnyville
T9N1Y6	Bonnyville
T9N1Y7	Bonnyville
T9N1Y8	Bonnyville
T9N1Y9	Bonnyville
T9N1Z1	Bonnyville
T9N1Z2	Bonnyville
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T9N1Z4	Bonnyville
T9N1Z5	Bonnyville
T9N1Z6	Bonnyville
T9N1Z7	Bonnyville
T9N1Z8	Bonnyville
T9N1Z9	Bonnyville
T9N2A1	Bonnyville
T9N2A2	Bonnyville
T9N2A3	Bonnyville
T9N2A4	Bonnyville
T9N2A5	Bonnyville
T9N2A6	Bonnyville
T9N2A7	Bonnyville
T9N2A8	Bonnyville
T9N2A9	Bonnyville
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T9N2B8	Bonnyville
T9N2B9	Bonnyville
T9N2C1	Bonnyville
T9N2C2	Bonnyville



Postal Code	CSD Name
T9N2C3	Bonnyville
T9N2C4	Bonnyville
T9N2C5	Bonnyville
T9N2C6	Bonnyville
T9N2C7	Bonnyville
T9N2C8	Bonnyville
T9N2C9	Bonnyville
T9N2E1	Bonnyville
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T9N2E3	Bonnyville
T9N2E4	Bonnyville
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T9N2G1	Bonnyville
T9N2G2	Bonnyville
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T9N2G4	Bonnyville
T9N2G5	Bonnyville
T9N2G6	Bonnyville
T9N2G7	Bonnyville
T9N2G8	Bonnyville
T9N2G9	Bonnyville
T9N2H1	Bonnyville
T9N2H2	Bonnyville
T9N2H3	Bonnyville
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T9N2H5	Bonnyville
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T9N2H7	Bonnyville
T9N2H8	Bonnyville
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T9N2J2	Bonnyville
T9N2J3	Bonnyville
T9N2J4	Bonnyville
T9N2J5	Bonnyville
T9N2J6	Bonnyville
T9N2J7	Bonnyville
T9N2J8	Bonnyville

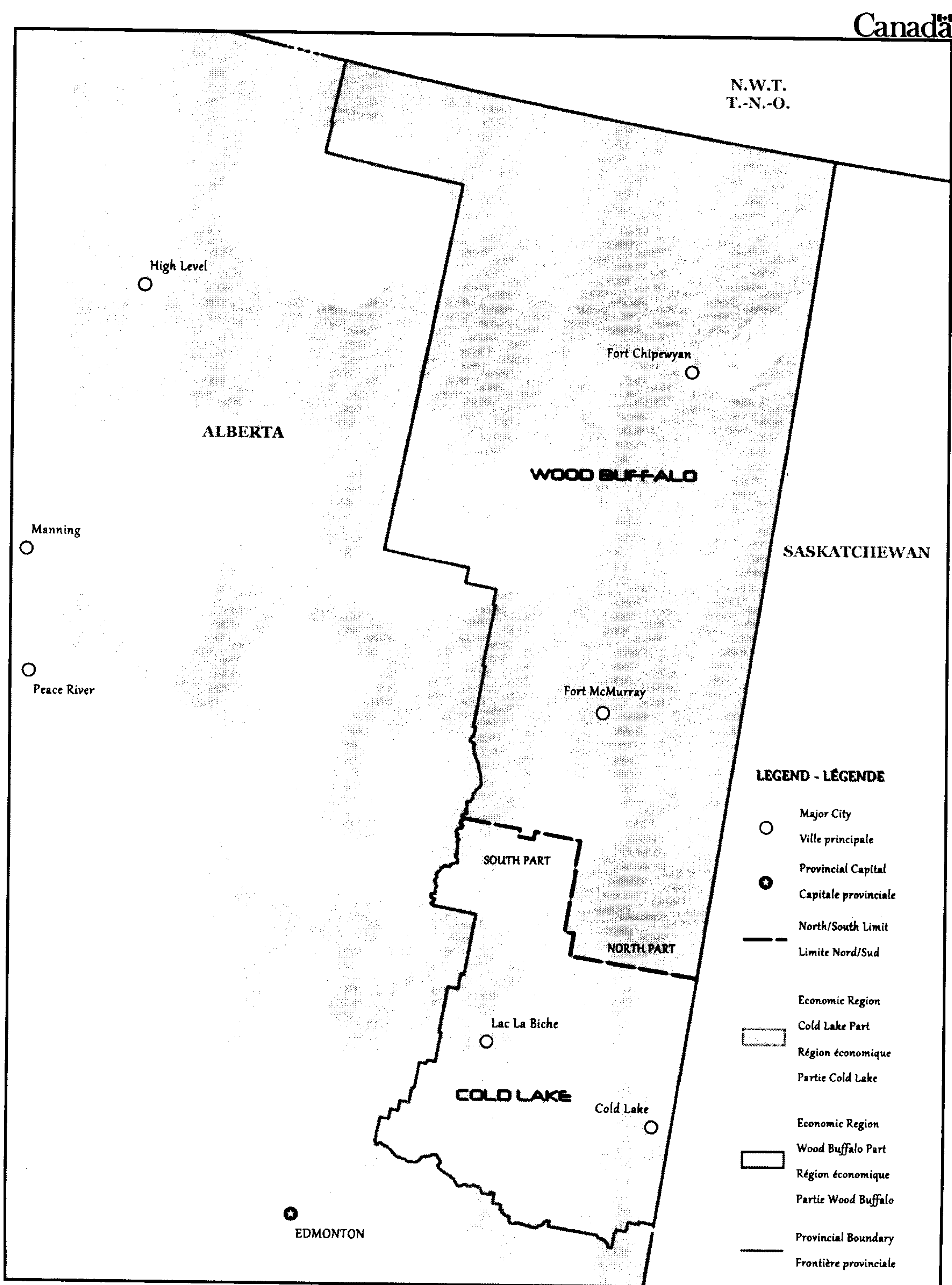
Postal Code	CSD Name
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T9N2K1	Bonnyville
T9N2K2	Bonnyville
T9N2K3	Bonnyville
T9N2K4	Bonnyville
T9N2K5	Bonnyville
T9N2K6	Bonnyville
T9N2K7	Bonnyville
T9N2K8	Bonnyville
T9N2K9	Bonnyville
T9N2L1	Bonnyville
T9N2L2	Bonnyville
T9N2L3	Bonnyville
T9N2L4	Bonnyville
T9N2L5	Bonnyville
T9N2L6	Bonnyville
T9N2L7	Bonnyville
T9N2L8	Bonnyville
T9N2L9	Bonnyville
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T9N2N6	Bonnyville
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T9N2N9	Bonnyville
T9N2P1	Bonnyville
T9N2P2	Bonnyville
T9N2P3	Bonnyville
T9N2P4	Bonnyville
T9N2P5	Bonnyville

Postal Code	CSD Name
T9N2P6	Bonnyville
T9N2P7	Bonnyville
T9N2P8	Bonnyville
T9N2P9	Bonnyville
T9N2R1	Bonnyville
T9N2R2	Bonnyville
T9N2R3	Bonnyville
T9N2R4	Bonnyville
T9N2R5	Bonnyville



## ANNEX B

### Reference Map for Wood Buffalo and Cold Lake Region



## Temporary Foreign Worker Program Bulletin

**Date:** 2012-10-19

**To:** All TFWP Staff (Managers, Consultants, Officers, etc.)

**From:** Andrew Kenyon, Director General, Temporary Foreign Workers and Labour Market Information Directorate, NHQ

**Subject:** Prevailing Wage Rate for Ski and Snowboard Instructor Positions in the Provinces of British Columbia, Alberta, Saskatchewan and Manitoba - 2012/2013 Season

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### Purpose:

The purpose of this Bulletin is to provide guidance to Human Resources and Skills Development Canada (HRSDC)/Service Canada staff when assessing prevailing wage rates for Ski and Snowboard Instructors (National Occupational Classification (NOC) code 5254) as part of labour market opinion (LMO) applications.

### 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 HRSDC/Service Canada, whether the job offer is genuine and the employment of the temporary foreign worker (TFW) is likely to have a neutral or positive impact on the Canadian labour market.

HRSDC/Service Canada is 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:

For the 2012/2013 season, the prevailing wage rate for ski and snowboard instructor positions is based on the Canada West Ski Areas Association (CWSA) wage survey and Statistics Canada's Labour Force Survey.

This prevailing wage rate is the minimum wage paid to the 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.).

### Guideline:

For the purposes of the TFWP, on April 25, 2012, the prevailing wage rate was changed from the average to the median rate between the lowest and the highest existing wage for the occupations. This new method of calculating median wages, by occupation and region, has proven to be more consistent and reliable than previous approaches. Employers are now allowed to pay TFWs up to 5% below of the prevailing wage provided they can demonstrate that the wage they are proposing to pay the TFWs is in line with the wage they are paying their Canadian and permanent resident employees doing the same job in the same region. These wages cannot fall below provincial minimums rates.

Ski and Snowboard Instructor Occupation	Hourly Base Rates				
	Vancouver Island	BC Coast	BC Interior	Alberta	SK / MB
Level 1 CSIA/CASI	\$11.00	\$12.63	\$11.25	\$13.50	\$11.38
Level 2 CSIA/CASI	\$12.75	\$15.05	\$13.06	\$14.94	\$11.88
Level 3 CSIA/CASI	\$14.25	\$17.50	\$16.66	\$17.06	\$14.38
Level 4 CSIA/CASI	\$18.00	\$18.40	\$20.50	\$19.00	\$15.63

CSIA – Canadian Ski Instructor's Association  
CASI – Canadian Association of Snowboard Instructors

### Operational Procedures:

#### Other Occupations Under NOC 5254:

In instances when an employer is requesting to hire a TFW under NOC code 5254 - Program Leaders and Instructors in Recreation, Sport and fitness, in positions other than as a ski or snowboard instructor, HRSDC/Service Canada staff should assess the LMO applications using labour market information data.

### Key Information:

**Approved by:** Andrew Kenyon, DG  
**Division:** Policy and Program Design  
Colin Spencer James, Director  
Mike Perry, Manager  
NC-TFWP\_PTET-INBOX-GD

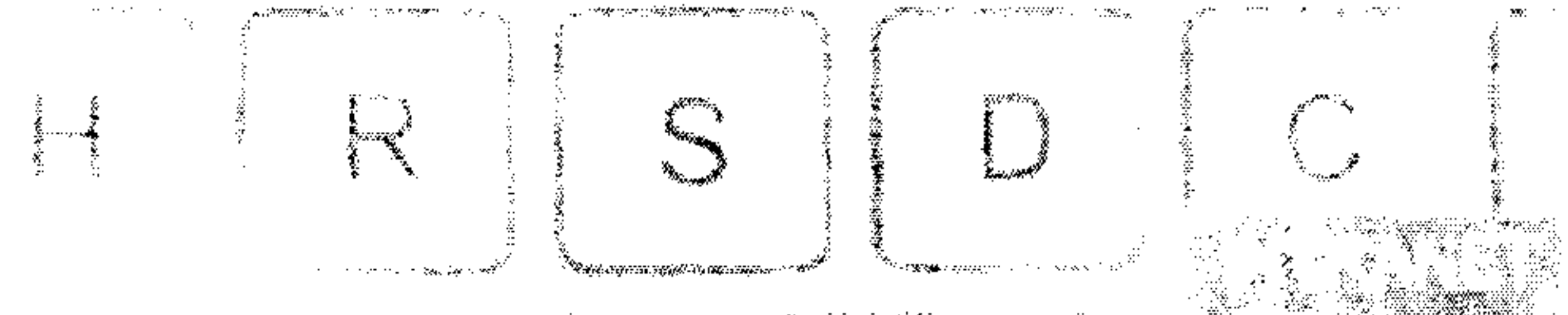


Human Resources and  
Skills Development Canada

Ressources humaines et  
Développement des compétences Canada

Canada

Skills and Employment Branch



## 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 Human Resources and Skills Development Canada (HRSDC) Labour Market Opinion (LMO). Role of HRSDC is to provide an opinion to CIC, which allows CIC to proceed to consideration of work permit application.

#### 1.1.1.

Purpose / Goal and Supporting Permanent Immigration (Arranged Employment Opinion (AEO))

### 1.2. Legislative and Regulatory Framework

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

##### 1.2.1.1. Immigration and Refugee Protection Act

##### 1.2.1.2. Immigration and Refugee Protection Act - Arranged Employment Opinion

#### 1.2.2. Immigration and Refugee Protection Regulations (IRPR)

##### 1.2.2.1. Immigration and Refugee Protection Regulations

##### 1.2.2.2 Immigration and Refugee Protection Regulations - Arranged Employment Opinion

1.2.3. Department of Human Resources and Skills Development Act (DHRSDA) 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

Comments

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## Temporary Foreign Worker Program Manual

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### Section 1.1.1– Vision of the TFWP and Supporting permanent immigration (Arranged Employment Opinion)

#### Vision of the Temporary Foreign Worker Program

The TFWP helps address temporary skills or labour shortages by allowing employers to hire foreign workers when sufficient numbers of Canadian or permanent resident workers are not readily available. The program is designed to address short-term labour market shortages and is not a solution to long-term labour needs.

<http://www.cic.gc.ca/english/departement/media/releases/2009/2009-10-09a.asp>

#### Supporting permanent immigration (AEO)

As it relates to permanent immigration, the Government of Canada has stated on multiple occasions that it is very important to position Canada as a destination of choice for skilled immigrants. While the need for skilled workers might vary from one year to the next, there are fundamental trends such as globalization, an aging population in many other Western countries, and international competition for skilled workers, that are all placing pressure on Canada's capacity to position itself as a destination of choice for highly skilled workers. Over the coming years, Canada's net labour force growth will increasingly rely on immigration. For example, within the next 10 to 15 years, immigration will account for all net labour force growth and, within 30 years, all net population growth. In addition, with the gradual removal of barriers to international trade, many Canadian employers will come to rely not only on skilled workers from abroad to support their operations domestically, but also to expand their activities in new and emerging international markets. Therefore, immigration has become an important element of the Government's policy agenda over the recent years.

#### Government Policy Priorities: Aligning the Federal Skilled Worker Program to Labour Market Needs

Employers in certain sectors and industries are increasingly turning to the FSWP to address their labour needs and providing them a competitive edge in attracting, hiring and retaining skilled workers. The source of much of their frustration is due, to a large extent, to the wait times for processing applications. In this context and considering the international competition between countries to attract the "best and the brightest", the immigration toolbox of each country is constantly benchmarked against one another.

In 2006, *Advantage Canada* committed to better align immigration with labour market needs. Subsequently, in *Budget 2007*, steps were taken to improve labour market responsiveness of economic immigration such as improvements to the TFWP. In *Budget 2008*, a commitment was made to improve the responsiveness of permanent immigration to meet labour market needs, particularly as it relates to the FSWP. This resulted in the *Action Plan for Faster Immigration – Ministerial Instructions*. Introduced on November 28, 2010, the *Ministerial Instructions* were developed in order to better link FSWP to labour market pressures as well as reduce backlog. The *Ministerial Instructions* would achieve these two objectives through a) limiting the intake of new FSWP applications to applicants with the ability to quickly integrate into the Canadian labour market and, b) freeing up resources to process FSWP applications from past years.

## Temporary Foreign Worker Program Manual

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### Section 1.2 – Legislative and regulatory framework / Authorities

The TFWP is jointly managed by CIC and HRSDC and is delivered as a horizontal initiative between CIC and HRSDC/Service Canada. In keeping with joint-management of the TFWP by CIC and HRSDC, both departments are responsible for providing policy and program directions. IRPA provides a broad legislative framework for CIC's and HRSDC's mandates and authorities including the purpose of an Opinion in consideration of a work permit as further defined in the IRPR. The CBSA issues work permits at ports of entry and conducts investigation into possible violations of IRPA.

Section 3(1) (g) of IRPA governs the entry of visitors, students and temporary workers for purposes such as trade, commerce, tourism, international understanding and cultural, educational and scientific activities. CIC derives its authority to issue work permits from Section 200 of IRPR and HRSDC, to issue Opinions, from Section 203(2). Under the Regulations, HRSDC/Service Canada, when required, provides five Opinions to CIC and any prospective employer (or group of employers) 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. These Opinions are used as part of CIC's consideration for issuing a work permit or a work permit extension.

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.



## Temporary Foreign Worker Program Manual

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

## Temporary Foreign Worker Program Manual

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### Section 1.2.1.2 – Immigration and Refugee Protection Act: Arranged Employment Opinion

As a result of the emerging need for employers to increasingly rely on workers from overseas on both a temporary and permanent basis, the federal government undertook a series of initiatives in support of this important policy agenda. A key initiative was the enactment of the IRPA in June 2002 that covers both permanent residents and temporary foreign workers streams.

#### Permanent residents

As it relates to permanent immigration, the IRPA (subsection 12(2) of the Act) provides for the selection of immigrants as members of an economic class **based on their ability to become successfully established in Canada**. Becoming successfully established in Canada assists in the integration of the foreign national to Canadian society and ensures that the foreign national does not have to rely on social assistance programs. The method of selection was designed to choose immigrants who will be able to provide an economic benefit to Canada. The primary goal of their selection is their positive economic impact. This does not imply that federal skilled workers do not also provide important social benefits but it is not the primary basis for their selection.

The introduction of IRPA resulted in the birth of the points-based immigration system coined the FSWP. In order for a foreign national to immigrate to Canada through the FSWP s/he must obtain a minimum number of points towards their application as determined by the minister of CIC. Currently the minimum number of points required is 67.<sup>1</sup> Foreign nationals applying for permanent immigration through the FSWP are selected on the basis of age, education, work experience, languages skills, adaptability, and **arranged employment**.

In the context of the FSWP, and the broader objective of the IRPA (i.e. the selection of immigrants based on the ability to become successfully established in Canada), research has demonstrated that arranged employment is not only a good predictor of successful economic integration, it also enables employer to respond to their human capital needs.

There are a number of economic streams available to foreigners (i.e. Canadian Experience Class, Provincial Nominee Program, etc.) to permanently immigrate to Canada; however the FSWP is the principal vehicle.<sup>2</sup> The points system, upon which the FSWP is based, was a significant departure from the previous method of selection which assessed an application for permanent residence on the "intended occupation" of the applicant whereas the FSWP focuses on more flexible skill sets found in each individual recognizing that workers must be adaptable to the long term structural labour market changes (i.e. transition to the knowledge economy).

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<sup>1</sup> <http://www.cic.gc.ca/english/information/applications/guides/EG72.asp#minimum%20idminimum>

<sup>2</sup> The Federal Skilled Worker Program represents roughly 40% of new immigrant intake through the economic class (2010).



## Temporary Foreign Worker Program Manual

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### 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;

## Temporary Foreign Worker Program Manual

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- 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).

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

**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



## Temporary Foreign Worker Program Manual

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- 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.

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### Section 1.2.2.2 – Immigration and Refugee Protection Regulations: Arranged Employment Opinion

#### Permanent residents

Definition of “Arranged Employment”: Arranged employment is defined in the IRPR as “an offer of indeterminate employment in Canada” (IRPR 82(1)).

Section 82(2) of the IRPR outlines the factors considered by CIC in the granting of points for arranged employment, and Sections 82(2)(c) and 82(2)(d) describe the role played by HRSDC. It states that ten points shall be awarded to a skilled worker for arranged employment in Canada in an occupation that is listed in Skill Type 0 Management Occupations or Skill Level A or B of the NOC matrix if they are able to perform and are likely to accept and carry out the employment and if:

1. the skilled worker is in Canada and holds a work permit and
  - i. there has been a determination by an officer under section 203 that the performance of the employment by the skilled worker would be likely to result in a neutral or positive economic effect on the labour market in Canada;
  - ii. the skilled worker is currently working in that employment;
  - iii. the work permit is valid at the time an application is made by the skilled worker as well as at the time the permanent resident visa, if any, is issued to the skilled worker; and
  - iv. the employer has made an offer to employ the skilled worker on an indeterminate basis once the permanent resident visa is issued to the skilled worker.
2. the skilled worker is in Canada and holds a work permit referred to in paragraph 204(a) or 205(a) or subparagraph 205 (c)(ii) and the circumstances referred to in subparagraph (a)(ii) to (iv) apply; or
3. the skilled worker does not intend to work in Canada before being issued a permanent resident visa and does not hold a work permit and
  - i. the employer has made an offer to employ the skilled worker on an indeterminate basis once the permanent resident visa is issued to the skilled worker, and
  - ii. an officer has approved the offer of employment based on an opinion provided to the officer by HRSDC at the request of the employer or an officer that:
    - a. the offer of employment is genuine;
    - b. the employment is not part-time or seasonal employment, and
    - c. the wages offered to the skilled worker are consistent with the prevailing wage rate for the occupation and the working conditions meet generally accepted Canadian standards; or
4. the skilled worker holds a work permit and;
  - i. the circumstances referred to in subparagraphs (a)(i) to (iv) and paragraph (b) do not apply; and
  - ii. the circumstances referred to in subparagraphs (c)(i) and (ii) apply.



## Temporary Foreign Worker Program Manual

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### 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](http://hrsdc.prv/eng/corporate/department/alt/pdf/dept_structure_100726.pdf)

Skills & Employment organizational chart can be found at :

## **Temporary Foreign Worker Program Manual**

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

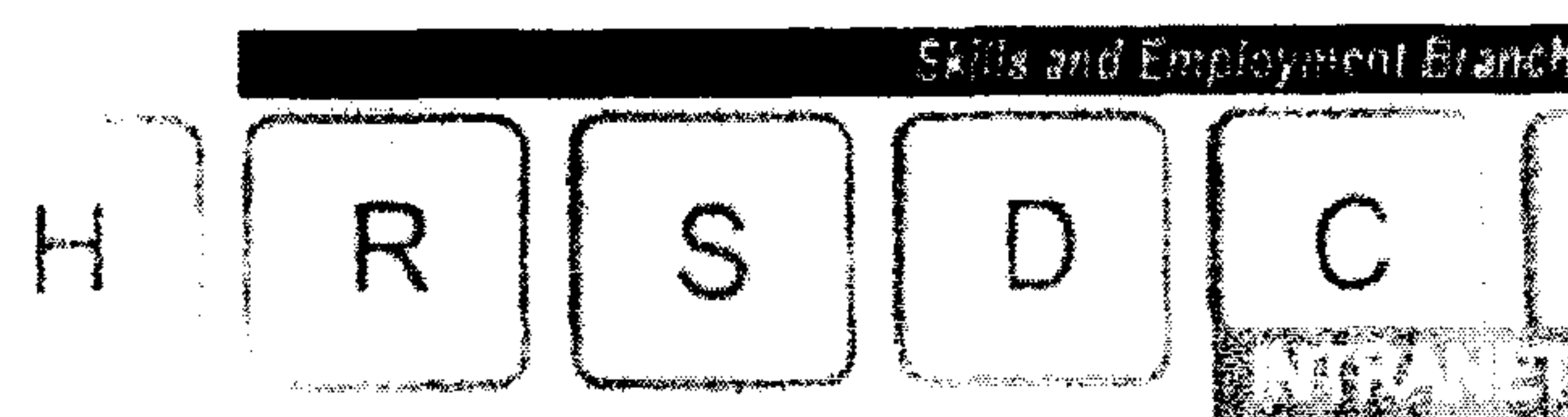




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## 2. Program Policy and Design

*The previous section outlined the legislative authorities and the role of Human Resources and Skills Development Canada (HRSDC). This section moves to discussion of the fundamental function of Human Resources and Skills Development Canada 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)
- 2.1.5. Permanent immigration of foreign workers – arranged employment opinion (AEO)
  - 2.1.5.1. History of arranged employment opinion
  - 2.1.5.2. Human Resources and Skills Development Canada's role in assessment of arranged employment opinions
    - 2.1.5.2.1. Temporary entry of foreign workers - labour market opinion
  - 2.1.5.3. Proof of funds

### 2.2. Temporary Foreign Worker Program Structure

- 2.2.1. Role of Human Resources and Skills 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 filling 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**

### **2.5.6. Assessing arranged employment opinion - related factors**



## **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 employment 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**

#### **2.6.9.2. Citizenship and Immigration Canada – Immigration Practitioners (CICIP)**

#### **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, Human Resources and Skills 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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Continued



## Temporary Foreign Worker Program Manual

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### 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.

## Temporary Foreign Worker Program Manual

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### 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](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 indeterminate 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.



## Temporary Foreign Worker Program Manual

### 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](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.

## Temporary Foreign Worker Program Manual

### 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](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/caregiver/description.shtml)



## Temporary Foreign Worker Program Manual

### 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](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/sawp.shtml)

## **Temporary Foreign Worker Program Manual**

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### **Section 2.1.5 – Permanent immigration of foreign workers – Arranged Employment Opinion**

With respect to foreign nationals interested in becoming permanent residents of Canada, under the FSWP, IRPR section 82(2)(c) & (d) mandates HRSDC to provide an opinion to CIC based on the genuineness or content of an offer of permanent employment (commonly known as an AEO) made by an employer located in Canada to a foreign worker (staying outside of Canada until the permanent resident visa is issued) in support of the worker's application for permanent residence. As per IRPR section 82, permanent employment is referred to as "indeterminate" employment.

Unlike the parameters considered in the case of the temporary entry of workers, HRSDC is asked to assess whether the offer of indeterminate employment has enough "substantiality" in that it will, in all likelihood, lead the applicant to become economically established immediately after his or her landing in Canada (hence the waiving of the requirement for settlement funds). IRPR requires HRSDC to assess whether the employer's offer is genuine, that the wages offered to the Foreign National are consistent with the prevailing rate for the occupation and whether the working conditions meet generally accepted Canadian standards, and that the employment is not part-time or seasonal.

An offer of employment made by a Canadian employer is considered to be an important contribution to the settlement ability of an applicant and his/her successful establishment in Canada. Applicants for permanent residency will receive 10 points under the Arranged Employment factor of the selection grid. In addition, applicants that have Arranged Employment points, approved by an Immigration Officer, will also be receiving an additional 5 points under the Adaptability factor in recognition of the settlement ability linked to having already found an indeterminate offer of employment upon their landing in Canada. Altogether, Arranged Employment approved by an Immigration Officer, provides the applicant with 15 points out of the 67 pass mark (as of October 2003).



## Temporary Foreign Worker Program Manual

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### Section 2.1.5.1 – History of Arranged Employment Opinion

Arranged employment as a selection criterion for permanent immigration predates IRPA 2002. In the *Immigration Act (1978)*, offers of Arranged Employment were assessed by the NES, a former program of the department that is now known as HRSDC which also administered employer applications for “labour market validations” – now known as LMO’s. Arranged Employment offers were assessed by the NES based on the wages and working conditions offered and that the employment of the foreign national would not adversely affect the employment opportunities of Canadians and permanent residents.

With the introduction of IRPA in 2002, the assessment of whether the employment of a foreign national would have an adverse impact on the employment opportunities of Canadians and permanent residents was removed. However, the “genuineness” of the arranged employment offer was clearly identified as an assessment factor.

## Temporary Foreign Worker Program Manual

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### Section 2.1.5.2 – Human Resources and Skills Development Canada's Role in Assessment of Arranged Employment Opinions

As previously mentioned, arranged employment is a criteria under the FSWP that is used to assess a foreign national's application for permanent residence. CIC awards 10 points to FSWP applicants having Arranged Employment in a skilled occupation plus an additional 5 points for adaptability towards the 67 point pass mark. In order for CIC to award the TFWP applicant these 15 points towards their application, arranged employment in Canada must be in an occupation that is listed in Skill Type 0 Management Occupations or Skill Level A or B of the NOC matrix and the applicant is able to perform and is likely to accept and carry out the employment.

The role of HRSDC as it relates to Arranged Employment is primarily labour market based. To this end, under the IRPR, HRSDC is mandated to assess certain labour market-related characteristics of an employer's offer of arranged employment. Assessment of AEO applications is based on the following factors:

- the offer of employment is genuine;
- the employment is not part-time or seasonal employment,
- the wages offered to the skilled worker are consistent with the prevailing wage rate for the occupation and the working conditions meet generally accepted Canadian standards; and
- the job offer is in an occupation that its listed in NOC 0, A, or B.

Unlike HRSDC's role in the assessment of LMOs relating to employers wanting to hire foreign workers on a temporary basis, HRSDC does not assess the likely impact on the Canadian labour market of the employer offering Arranged Employment (i.e. labour shortages, transfer of skills, creation of employment, etc.). As Arranged Employment supports the FSWP application for permanent immigration, the likely impact of the hiring a foreign national is not considered because the foreign national is considered to be part of and not a supplement to the Canadian labour market.



## **Temporary Foreign Worker Program Manual**

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### **Section 2.1.5.2.1 – Temporary entry of foreign workers – Labour Market Opinion**

HRSDC's role in the immigration process is principally known through its activities relating to the temporary entry of foreign workers for a specified period of time. In this context, HRSDC is responsible for applying a "labour market test," specifically to provide CIC with an opinion (commonly known as a LMO) on the likely impact on the Canadian labour market if a foreign national were to fill a position. Providing this opinion allows HRSDC to influence the movement of a large number of foreign workers into Canada.

The IRPA, which came into force on June 28, 2002, affirmed HRSDC's role and implemented a shift in the approach to the entry of foreign workers (whether temporary or seeking permanent residence). The shift reflects the Government of Canada's broad policy agenda discussed in the previous section, relating to the growth of a knowledge-based economy; the globalization of economies; the liberalized movement of goods and services through various trade agreements; and the fact that Canada will become more and more dependent on immigration for its labour force growth.

In respect to temporary workers, the IRPR sets out parameters for HRSDC's labour market test. The IRPR require HRSDC to take into account the broad labour market benefits of hiring foreign nationals, as well as potential negative effects.

## Temporary Foreign Worker Program Manual

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### Section 2.1.5.3 – Proof of Funds

Applicants under the FSWP must provide evidence to CIC that they have sufficient funds to support themselves during the period of their initial establishment. This stipulation is in recognition of the fact that during the initial period of adjustment to a new country, new immigrants may have difficulties in finding a job in Canada. In the case of a skilled worker with two dependents applying for immigration, this applicant would have to provide proof that they have \$ 16,580 at their disposal.<sup>1</sup>

However, the requirement to demonstrate proof of funds is waived for applicants who have received points under the Arranged Employment provision. This exemption is provided in recognition of the fact that applicants, who have received a genuine offer of employment for an indeterminate period of time, will be more able to establish themselves upon landing since they will be immediately employed.

The Government of Canada does not provide financial support to new skilled worker immigrants. This places emphasis on the importance of ensuring that employers, who receive a positive AEO opinion, are able to meet the terms of the arranged employment offer/AEO application. As such, the accurate assessment of AEO applications ensures that skilled workers do not find themselves in a vulnerable situation.

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<sup>1</sup> Skilled workers and professionals: Who can apply—Proof of funds.  
<http://www.cic.gc.ca/english/immigrate/skilled/funds.asp>



## Temporary Foreign Worker Program Manual

### 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](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](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>

## Temporary Foreign Worker Program Manual

### 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 3.1 Roles & Responsibilities) found in Section 6 of the TFWP Manual



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### 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](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.

## Temporary Foreign Worker Program Manual

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### 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>



## Temporary Foreign Worker Program Manual

### 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***



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*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).

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### 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

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### 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*



## Temporary Foreign Worker Program Manual

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*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).*



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### 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

## Temporary Foreign Worker Program Manual

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### 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*



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*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).*

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### 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



## Temporary Foreign Worker Program Manual

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### 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*



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***(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).*



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### 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.

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### **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



**Temporary Foreign Worker Program Manual****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](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lmodir/lmodir-7.shtml)

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### 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](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lmodir/lmodir-7.shtml)



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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.*

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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](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](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](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](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](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](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](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](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](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](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/SAWPSheets/PEI.shtml)

#### Newfoundland and Labrador

SAWP does not operate in Newfoundland and Labrador.



## Temporary Foreign Worker Program Manual

### 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);



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- 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](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:



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- 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

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### 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);



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- 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](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:

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- 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



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

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### 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*



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*(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).



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### 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



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### 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
<b>Alberta</b> <a href="http://www.cic.gc.ca/english/department/laws-policy/agreements/alberta/can-alberta-annex_B-2008.asp">http://www.cic.gc.ca/english/department/laws-policy/agreements/alberta/can-alberta-annex_B-2008.asp</a>	April 1, 2009		<b>To be Implemented:</b> 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.
<b>British Columbia</b> <a href="http://www.cic.gc.ca/ENGLISH/department/laws-policy/agreements/bc/bc-2010-annex-f.asp">http://www.cic.gc.ca/ENGLISH/department/laws-policy/agreements/bc/bc-2010-annex-f.asp</a>	April 9, 2010		
<b>Ontario</b> <a href="http://www.cic.gc.ca/english/department/laws-policy/agreements/ontario/can-ont-amend_agree.asp">http://www.cic.gc.ca/english/department/laws-policy/agreements/ontario/can-ont-amend_agree.asp</a>	August 1, 2008		

**Temporary Foreign Worker Program Manual****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.



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### 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.]*



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(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.



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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

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### 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.]*



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(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.

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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.]*

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(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).



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### 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](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)<sup>1</sup> 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.

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<sup>1</sup> 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.

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### **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



**Temporary Foreign Worker Program Manual****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:

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### 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;*



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- (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**



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**(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 -Wages

The definition of substantially the same wages will be defined as 2% or greater under the wages originally offered. Generally, wages provided that are found to be under 2% will be considered to be substantially the same, while wages provided that are found to be 2% or greater will be considered to not be substantially the same.

If it is found that an employer provided wages that were lower than originally offered - yet the paid wage was still considered to be substantially the same as the offer since the difference was under the 2% mark - the officer can still ask the employer to compensate the affected worker(s) for the disadvantage; however, the employer will not be issued a negative opinion for substantially the same assessment and will not be sanctioned.



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### 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.

### Compensation

Compensation (e.g. corrective measures) are actions the employer could take to address any discrepancy in the wages committed to in the original Opinion and/or work permit. Such measures do not necessarily need to be financial in nature, but should be required according to the nature of the discrepancy. For example, if the employer paid a lower wage than he committed to paying, he must repay the worker the difference and ensure any current TFW is also paid the correct wages.

No compensation is required by the employer in the case of a higher wage. An unauthorized increase in wages, such as a bonus or salary increase will not be recovered from the temporary foreign worker. However, it will flag Service Canada to review the worker's employment in an occupation to ensure the position has not changed.

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 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.

In all applications, all three "substantially the same" 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.

The assessment of "substantially the same" is one of the five opinions to be issued by HRSDC/Service Canada. HRSDC/Service Canada will also issue an Opinion on 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 "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.

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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



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### 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;*



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- (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**



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**(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.



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### Disadvantage

A disadvantage related to working conditions is one where there has been an unauthorized deviation in working conditions from the original Opinion and/or work permit, resulting in the working conditions no longer meeting generally acceptable Canadian standards in the province or territory where the TFW is employed, or where conditions of the TFWP have been violated or not met.

### Compensation

Compensation (e.g. corrective measures) are actions the employer could take to address any discrepancy in the working conditions 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 difference in working conditions is related to provincial/territorial Labour Standards and Occupational Health and Safety legislative requirements, the Service Canada officer should assess the severity and frequency of the violations and whether or not a violation is still outstanding when determining whether a positive Opinion could be issued for the current application.

Providing a justification and compensation, where possible, would need to be completed before HRSDC/Service Canada could issue a positive Opinion for the current application.

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.



## Temporary Foreign Worker Program Manual

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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.

In all applications, all three “substantially the same” 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.

The assessment of “substantially the same” 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 “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



## Temporary Foreign Worker Program Manual

### 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*



## Temporary Foreign Worker Program Manual

*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



## Temporary Foreign Worker Program Manual

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- (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



## Temporary Foreign Worker Program Manual

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. Although the intent is to ensure that the worker worked in the occupation described in the Opinion and work permit, evidence of a different occupation may also indicate that the TFW was paid a different wage than what was indicated on the Opinion and/or work permit.

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.

## Temporary Foreign Worker Program Manual

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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



## Temporary Foreign Worker Program Manual

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### Section 2.5.6 – Arranged Employment Opinion Related Factors

Section 82(2) of the IRPR outlines the factors to be considered by HRSDC in assessing applications for arranged employment.

#### Assessing whether the position is for a skilled worker

Under the Federal Skilled Worker Class, the occupation for which the employer has made the job offer must fall under the NOC Skill type 0 or Skill Levels A or B (see section 3.2.7 on "Determination of Occupations")

#### Assessing whether the offer of employment is genuine

As described under Section 3.4.1

#### Assessing whether the offer is for an indeterminate period

The job offer does not specify any termination date or specific employment period duration.

#### Assessing whether the offer is for full-time work

As described under Section 3.4.1.2

#### Assessing whether the offer is for non-seasonal work

As described under Section 3.4.1.2

#### Assessing whether the wages offered are consistent with the prevailing wage rate for the occupation and the working conditions meet generally accepted Canadian standards

As described under Section 3.3

**Temporary Foreign Worker Program Manual****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](#)



**Temporary Foreign Worker Program Manual****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-hrsrc.gc.ca/eng/workplaceskills/foreign\\_workers/academic.shtml](http://www.rhdcc-hrsrc.gc.ca/eng/workplaceskills/foreign_workers/academic.shtml)

2.6.3.1

## Alliance of Sector Councils

[Home](#) > [Sector Councils](#) > [List of Canada's Sector Councils](#)

### List of Canada's Sector Councils

#### Members

##### Aboriginal Human Resource Council

<http://www.aboriginalhr.ca>

Tel: (306) 956-5360



**Aboriginal Human  
Resource Council**

connections - partnerships - solutions

##### Apparel Human Resources Council

<http://www.apparelconnexion.ca>

Tel: (514) 388-7779



**Apparel Human Resources Council**  
Conseil des ressources humaines  
de l'industrie du vêtement

##### BioTalent Canada

<http://www.biotalent.ca>

Tel: (613) 235-1402



##### Canadian Agricultural Human Resource Council

<http://www.cahrc-ccrha.ca>

Tel: (613) 745-7457



CANADIAN AGRICULTURAL HUMAN RESOURCE COUNCIL  
CONSEIL CANADIEN DES RESSOURCES HUMAINES  
DE L'INDUSTRIE AGRIQUE

##### Canadian Apprenticeship Forum

<http://www.caf-fca.org>

Tel: (613) 235-4004



**Canadian Apprenticeship Forum**  
Forum canadien sur l'apprentissage

##### Canadian Automotive Repair and Service Council

<http://www.cars-council.ca>

Tel: (613) 798-0500



**Canadian Automotive  
Repair and Service**

Service d'innovation et de  
réparation automobiles du Canada

##### Canadian Council for Aviation & Aerospace

<http://www.avaerocouncil.ca>

Tel: (613) 727-8272





**Canadian Council of Professional Fish Harvesters**<http://www.fishharvesterspecheurs.ca>

Tel: (613) 235-3474

**Canadian Plastics Sector Council**<http://www.cpssc-ccsp.ca>

Tel: (613) 231-4470

**Canadian Printing Industries Sector Council**<http://www.cpisc-csic.ca>

Tel: (613) 688-0293

**Canadian Steel Trade and Employment Congress**<http://www.cstec.ca/>

Tel: (416) 480-1797

**Canadian Supply Chain Sector Council**<http://www.supplychaincanada.org>

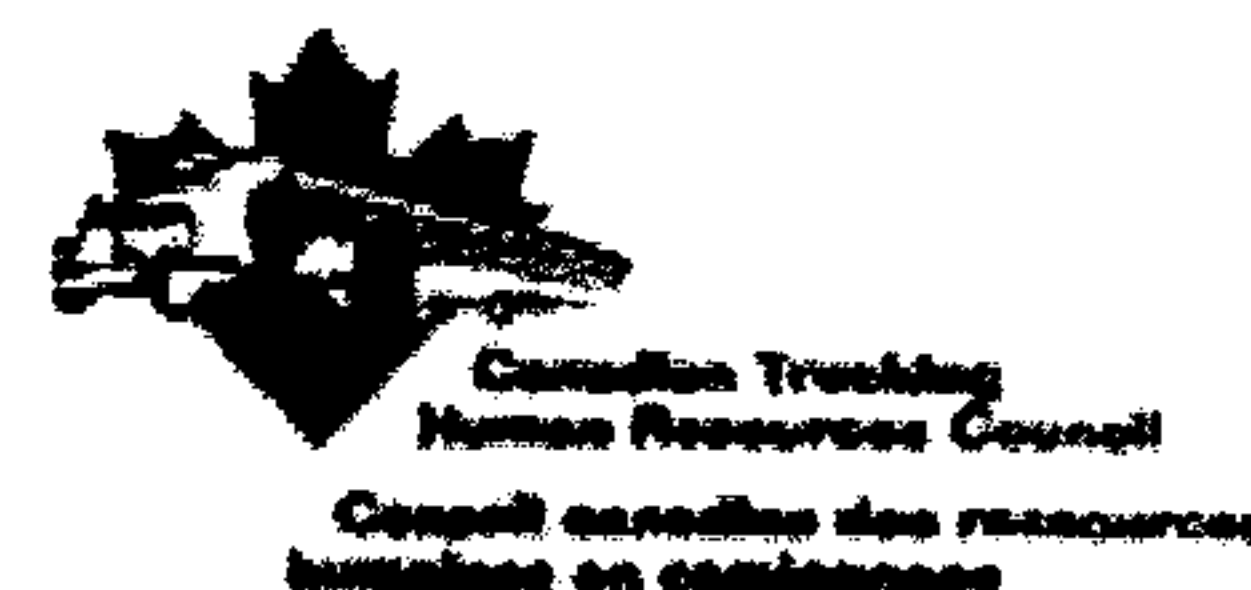
Tel: (905) 897-6700

**Canadian Tourism Human Resource Council**<http://www.cthrc.ca>

Tel: (613) 231-6949

**Canadian Trucking Human Resources Council**<http://www.cthrc.com>

Tel: (613) 244-4800

**Child Care Human Resources Sector Council**<http://www.ccsc-cssge.ca>

Tel: (613) 239-3100

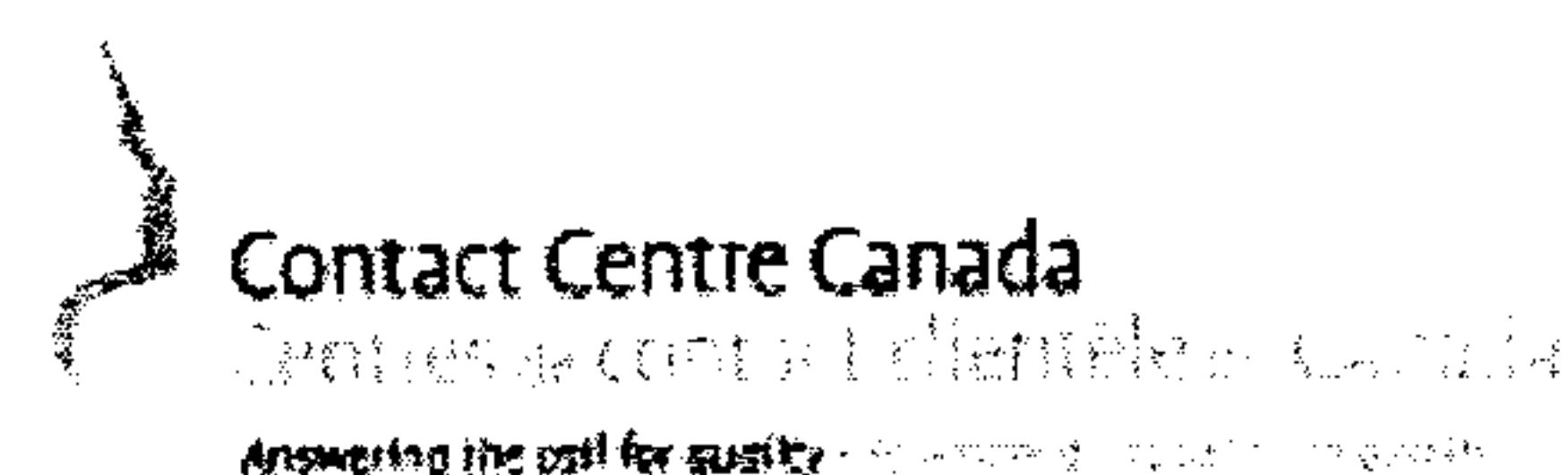
**Construction Sector Council**<http://www.csc-ca.org>

Tel: (613) 569-5552



**Contact Centre Canada**<http://www.contactcentrecanada.ca>

Tel: (613) 232-2063

**Cultural Human Resources Council**<http://www.culturalhrc.ca>

Tel: (613) 562-1535

**Environmental Careers Organization of Canada**<http://www.eco.ca>

Tel: (403) 233-0748

**Electricity Sector Council**<http://www.brightfutures.ca>

Tel: (613) 235-5540

**Food Processing HR Council**<http://www.fphrc.ca>

Tel: (613) 237-7988

**Forest Products Sector Council**<http://fpsec-cspf.ca>

Tel: (613)-234-0901

**Forum for International Trade Training**<http://www.fitt.ca>

Tel: (613) 230-3553

**HR Council for the Nonprofit Sector**<http://www.hrcouncil.ca>

Tel: (613) 244-8332

**Information and Communications Technology Council**<http://www.ictc-ctic.ca>

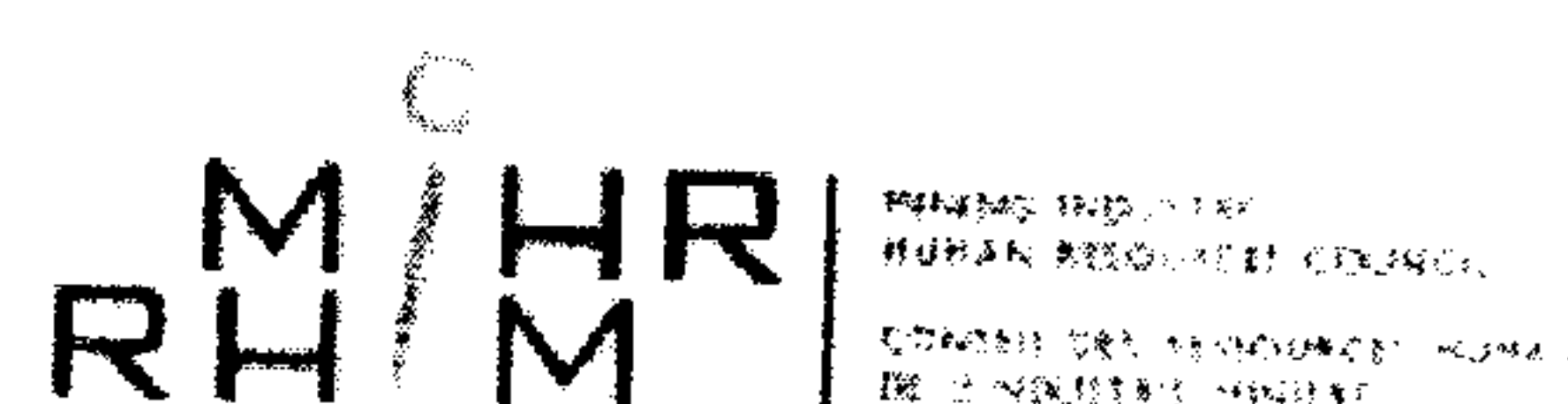
Tel: (613) 237-8551



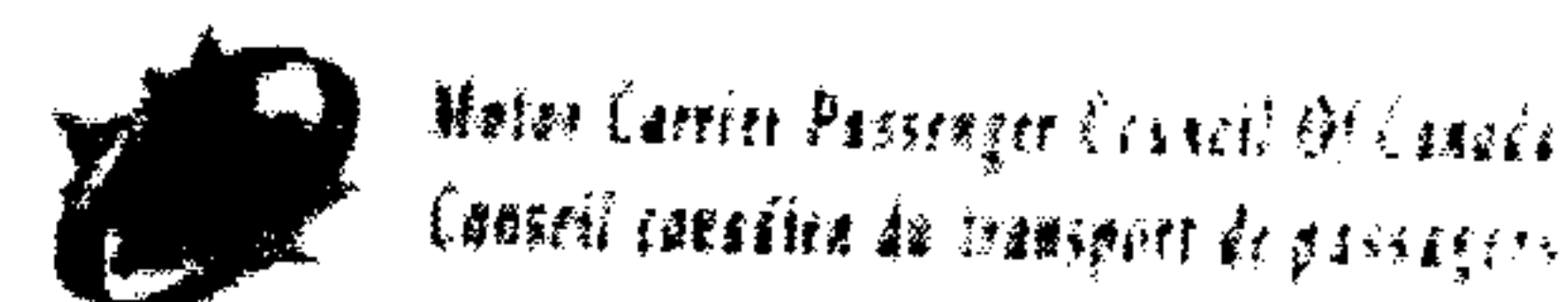


**Mining Industry Human Resources Council**<http://www.mihhr.ca>

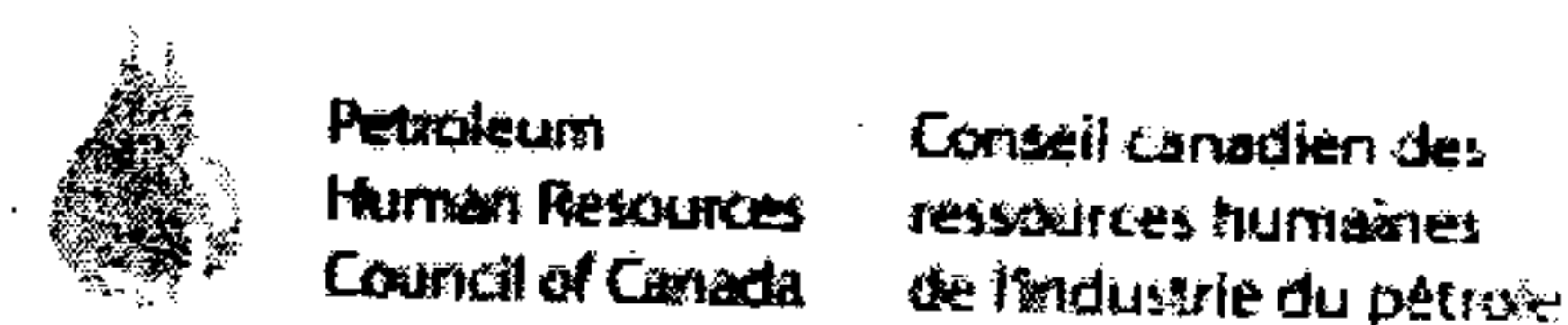
Tel: (613) 270-9696

**Motor Carrier Passenger Council of Canada (BUS)**<http://www.buscouncil.ca>

Tel: (905) 884-7782

**Petroleum Human Resources Council of Canada**<http://www.petrohrsc.ca>

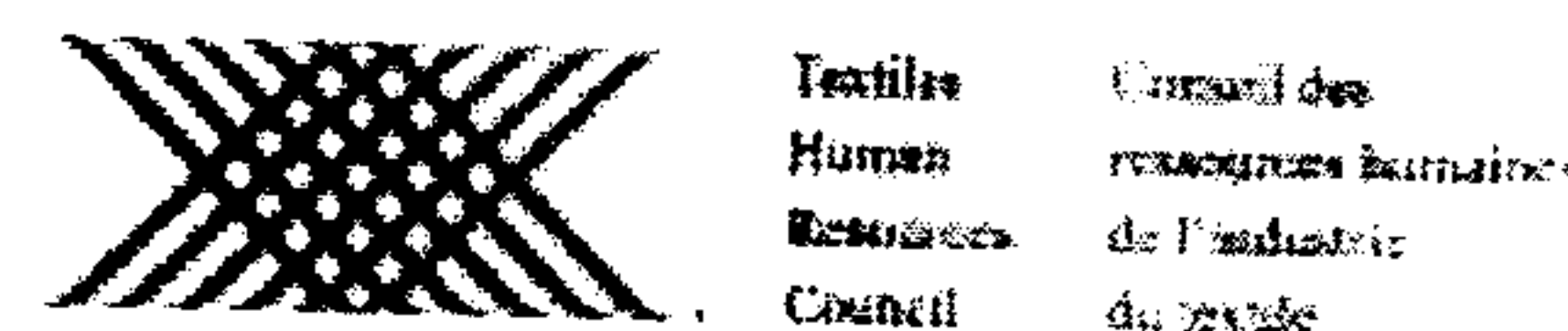
Tel: (403)-516-8100

**Police Sector Council**<http://www.policecouncil.ca>

Tel: (613) 729-5959

**Textiles Human Resources Council**<http://www.thrc-crhit.org>

Tel: (613) 230-7217

**Wood Manufacturing Council**<http://www.wmc-cfb.ca>

Tel: (613) 567-5511

**Partners****Asia-Pacific Gateway Skills Table**<http://www.apgst.ca>**Association of Canadian Community Colleges**<http://www.accc.ca>**Canadian Council of Technicians and Technologists**<http://www.cctt.ca>**Engineers Canada**<http://www.engineerscanada.ca>

**Installation, Maintenance and Repair Sector Council**

<http://www.imrsectorcouncil.ca>



**National Association of Career Colleges**

<http://www.nacc.ca>



**Polytechnics Canada**

<http://www.polytechnicscanada.ca/>



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**Canada**

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## Temporary Foreign Worker Program Manual

### 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](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 make 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](http://www.rhdcc.gc.ca/fra/competence/travailleurs_etrangers/amtdir/amtdir-3.shtml)

## Temporary Foreign Worker Program Manual

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



## Temporary Foreign Worker Program Manual

### 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.

**Temporary Foreign Worker Program Manual****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](http://www.hrsdc.gc.ca/eng/workplaceskills/sector_councils/information.shtml)



**Temporary Foreign Worker Program Manual****Section 2.6.9.2 – Citizenship and Immigration Canada – Immigration Practitioners**

CICIP is a forum in which CIC shares information with practitioner groups, such as Canadian Migration Institute (CMI), that have an active role in advocating with government around immigration policy and operational procedures.

<https://www.cmi-icm.ca/en/content/CICIP>

## Temporary Foreign Worker Program Manual

### 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>



## Temporary Foreign Worker Program Manual

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### 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.

## Temporary Foreign Worker Program Manual

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### 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
<b>Alberta</b> <a href="http://www.cic.gc.ca/english/department/laws-policy/agreements/alberta/can-alberta-annex_B-2008.asp">http://www.cic.gc.ca/english/department/laws-policy/agreements/alberta/can-alberta-annex_B-2008.asp</a>	April 1, 2009		<b>To be Implemented:</b> 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.
<b>British Columbia</b> <a href="http://www.cic.gc.ca/ENGLISH/department/laws-policy/agreements/bc/bc-2010-annex-f.asp">http://www.cic.gc.ca/ENGLISH/department/laws-policy/agreements/bc/bc-2010-annex-f.asp</a>	April 9, 2010		
<b>Ontario</b> <a href="http://www.cic.gc.ca/english/department/laws-policy/agreements/ontario/can-ont-amend_agree.asp">http://www.cic.gc.ca/english/department/laws-policy/agreements/ontario/can-ont-amend_agree.asp</a>	August 1, 2008		



## Temporary Foreign Worker Program Manual

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### 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.

## Temporary Foreign Worker Program Manual

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### 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.



## Temporary Foreign Worker Program Manual

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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.

## **Temporary Foreign Worker Program Manual**

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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.





Human Resources and  
Skills Development Canada

Ressources humaines et  
Développement des compétences Canada

Canada

Skills and Employment Branch

H

R

S

D

C

INTRANET

## 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.*

### 3.1 Temporary Foreign Worker Program (TFWP)

#### Infrastructure

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

#### 3.3 Labour Market Information

#### 3.4 Arranged Employment Opinions

#### 3.5 Labour Market Opinions

#### 3.6 Academics

#### 3.7 Film & Entertainment

#### 3.8 NOC C & D

#### 3.9 Live-in Caregiver Program

#### 3.10 Seasonal Agricultural Worker Program

#### 3.11 Directive – Accelerated Labour Market Opinion Initiative

### 3.1 Temporary Foreign Worker Program (TFWP) Infrastructure

- Provides HRSDC 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 Canadian 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**

#### **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)**

##### **3.2.6.3.1.1.2. Due Diligence**

##### **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**

##### **3.2.6.3.2.1. Canada Revenue Agency - what is the business number**

##### **3.2.6.3.3. Employer Name (name of business)**

*This document contains sections 3.2.6.3.3 and 3.2.6.2.6.3.3.1:*

##### **3.2.6.3.3.1. Changes to Employer Name**

##### **3.2.6.3.4. Address (Number/Street/P.O. Box)**

*This document contains sections 3.2.6.3.4 to 3.2.6.3.18:*

##### **3.2.6.3.5. City**

##### **3.2.6.3.6. Province/State**

- This field is required. Refer to **3.2.6.3.5.** for additional information

##### **3.2.6.3.7. Country**

**3.2.6.3.8. Postal/Zip Code**

- When entering employer and 3rd party information, the FW system will prompt you if the Postal/Zip code is wrong.

**3.2.6.3.9. Business Telephone Number**

**3.2.6.3.10. Website**

**3.2.6.3.11. Date Business Started**

**3.2.6.3.12. Describe the principal business activity**

**3.2.6.3.13. Contact name**

**3.2.6.3.14. Job Title**

**3.2.6.3.15. Contact Telephone Number and Extension**

**3.2.6.3.16. Fax Number**

- Advisors must confirm that the contact fax number is not the same as the 3rd Party fax number.

**3.2.6.3.17. Email**

**3.2.6.3.18. Preferred Official Language of Correspondence**

**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:*

**3.2.6.3.20. Number of Foreign Workers**

**3.2.6.3.20.1. Number of Foreign Worker's: (10+ seek Business Expertise Consultant concurrence – region-specific directive)**

**3.2.6.3.21. Were any employees laid off in the past 12 months?**

**3.2.6.4. Third Party Information (if applicable)**

*This document contains sections 3.2.6.4.1 to 3.2.6.4.6:*

- Third party representatives (e.g. ACSESS) refer to Section 126 of IRPA

**3.2.6.4.1. Deadline for receipt of original documents**

**3.2.6.4.2. Canada Revenue Agency Business Number**

**3.2.6.4.3. Company Name**

**3.2.6.4.4. Address and contact info**

**3.2.6.4.5. Preferred Official Language of Correspondence**

- Refer to section **3.2.6.3.18.**

**3.2.6.4.6. Third Party Representative authorized to act for employer**

**3.2.6.5. Details of Job Offer**

*This document contains sections 3.2.6.5 to 3.2.6.5.11:*

**3.2.6.5.1. Determination of Occupation**

**3.2.6.5.2. Number of Foreign Workers requested under this job title**

**3.2.6.5.3. Expected duration of employment**

- LMO Related
- AEO Related
- Duration of employment (region specific directives listed below)



**3.2.6.5.4.** Expected start date of employment, if any

**3.2.6.5.5.** Location of job

**3.2.6.5.5.1.** Location of Work Regional Reference Bulletin  
For information on concurrence see **3.5.7**

**3.2.6.5.6.** Province

**3.2.6.5.7.** Main duties of the job

**3.2.6.5.8.** Educational requirements of the job

**3.2.6.5.9.** Experience/skills requirements of the job

**3.2.6.5.10.** Language requirements

**3.2.6.5.11.** Position is part of a union

**3.2.7.** Rendering a decision and post-decision process  
*This document contains sections 3.2.7.1 to 3.2.7.4:*

**3.2.7.1.** Reconsiderations - LMO letter of refusal

**3.2.7.2.** Cancellation of Application

**3.2.7.3.** Flagging on TFWS

**3.2.7.4.** Instructions for Transmitting the LMO Confirmation Letter and Annex to Employers

### **3.3 Labour Market Information**

**3.3.1.** Wages

**3.3.1.1.** Bulletin: Collective Agreements

**3.3.1.2.** Labour Organizations Directory

**3.3.2.** Availability of resident and Canadian workers

### **3.4 Arranged Employment Opinions**

- Restates goal of AEO and HRSDC's role reflecting labour market conditions. Distinguish between LMO and AEO: Target populations, employers, economic sectors in the labour market, main procedural or operational differences. Definition of Arranged Employment: an offer of indeterminate employment in Canada. (IRPA, section 82)

**3.4.1.** Arranged Employment Opinion - Factors

**3.4.1.1.** Genuineness

**3.4.1.1.1.** Job Related Factors

**3.4.1.1.2.** Employer Related Factors

**3.4.1.1.3.** Employment Criteria

**3.4.1.1.4.** Wages and Working Conditions

**3.4.2.** Mandatory Phone Call

**3.4.3.** Reconsideration / Cancellations / Replacements / Changes

**3.4.3.1.** Steps to Reconsideration

**3.4.4. Issuance of Arranged Employment Opinion - Decision to Employer**

## **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)**

**3.5.4.1.1. Two levelled approach to assessing genuineness**

**3.5.4.1.2. Assessing actively engaged**

**3.5.4.1.3. Assessing reasonable employment needs**

**3.5.4.1.4. Assessing ability to fulfill**

**3.5.4.1.5. Assessing past compliance**

**3.5.4.1.6.**

Genuineness, the six labour market factors and substantially the same

**3.5.4.1.7. Recording assessment outcomes**

**3.5.4.1.8. Relevant Federal and Provincial/Territorial laws**

**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

**3.5.5.1.4.**

Directive: Assessment of the Wage Factor on Labour Market  
Opinion Applications

**3.5.5.1.4.1. Prevailing Wages for Pharmacists**

**3.5.5.1.4.2. Prevailing wages for Registered Nurses**

**3.5.5.1.4.3. Salary and Benefits**

**3.5.5.1.4.4. Working Conditions**

**3.5.5.1.4.5. Unpaid Work**

**3.5.5.1.5. Recruitment**

- 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 administrative 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**

**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

- List of Potential Businesses in the Sex Trade (2012-10-24)

### 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. Overall 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 recruitment 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

**3.8.2.5.** Wages, Benefits and Working Conditions

**3.8.2.5.1.** Unionized work environment

**3.8.2.5.2.** Wages and Deductions clauses in the employment contract

**3.8.2.6.**

When applicable, review and adjustment of the worker's wages after 12 months of employment

**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 Assessment 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. Concurrence 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.** Human Resources and Skill Development Canada (HRSDC)

#### **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**

**3.9.4.4.2. 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 HRSDC'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

#### 3.9.6.1. Confirmed and Refused

- **Confirmed:** The application meets all program criteria and a positive LMO is issued.
- **Refused:** The application does not meet the program criteria. The employer is advised of the refusal by phone, and a refusal letter is sent. Notes are put to file to explain the reasons for the refusal.

#### 3.9.6.2. Closed

- There is a second / duplicate application for the same employer and same LC, close the application and reference the file number in notes to file.

#### 3.9.6.3. Withdrawal of application

#### 3.9.6.4. Cancellation and Revocation

#### 3.9.6.5. Request for review of decision

- A chart has been developed, that describes the file review process. Please see Annex **6.4.1.5.**, for the "File Review Process" Chart.

**3.9.6.6. Amendments/Change of names after approval**

**3.9.7. Integrity**

**3.9.7.1. Due Diligence List**

**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

### **3.11 Directive – Accelerated Labour Market Opinion Initiative**

- Flow chart
- Accelerated Labour Market Opinion (A-LMO) Eligibility Checklist
- Letter to Employer – Ineligibility

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Comments

## Temporary Foreign Worker Program Manual

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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 MP's 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.

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### 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:	
<b>BF date/date d'échéance:</b>	
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".



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Service  
Canada**Response Summary Sheet**

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

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### 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 3.2.2.2.1 – 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.**”

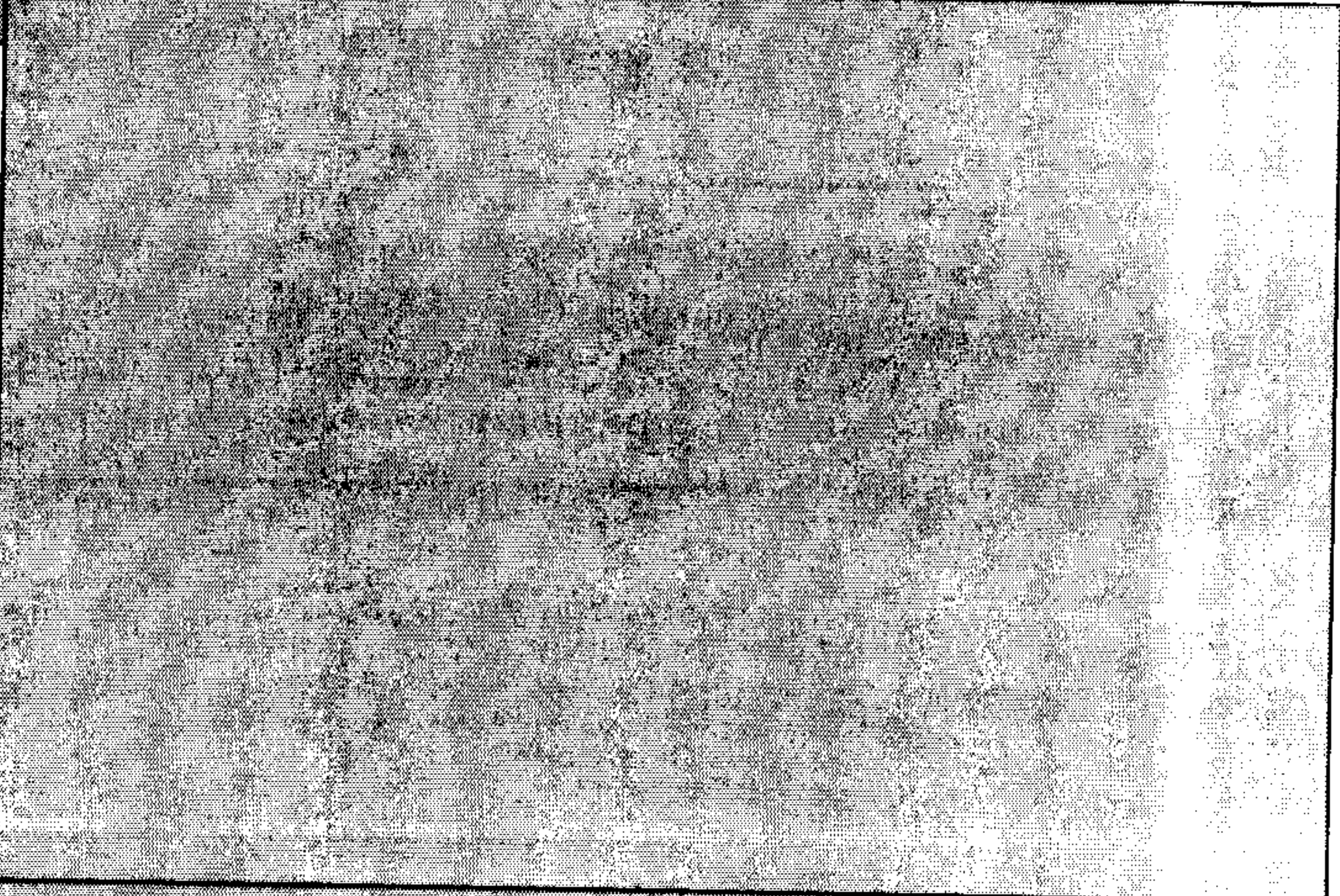


### Section 3.2.3.1 – Labour Market Opinion Application Assessment Checklist

**Agree to Participate in MI [ YES ] NO**

REVIEW and VERIFICATION	DISCUSSION
<b>Prior to call:</b>	
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	
<b>During call:</b>	
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	

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<b>MANDATORY CALL</b>		
<b>Call #1: Date</b> _____ <b>Time</b> _____ If employer not contacted: <input type="checkbox"/> Message left – deadline of _____ <input type="checkbox"/> Unable to Contact - RFI sent <b>Notes to file completed</b>		
<b>Call #2: Date</b> _____ <b>Time</b> _____ If employer not contacted: <input type="checkbox"/> Message left – deadline of _____ <b>Notes to file completed</b>		
<b>DECISION</b>		
<input type="checkbox"/> Confirmed	<input type="checkbox"/> Refused	<input type="checkbox"/> Withdrawn at Employer's Request
<b>Officer</b> _____		<b>Date</b> _____



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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.

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### 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.



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### 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

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3. Refusal Letters: Mainstream/Unnamed LMO
  - 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 3.2.6.1.1 – Arranged Employment Opinion – Related

#### When an Arranged Employment Opinion is required

In order to support the foreign national's application for permanent immigration to Canada, the department of Citizenship and Immigration Canada (CIC) must validate the offer of arranged employment in order to award the 15 points for arranged employment. As part of the validation process at CIC, an Arranged Employment Opinion (AEO) from Service Canada is required in certain instances. More specifically, an AEO is required when the foreign national applying for permanent residency 1) does not intend to work in Canada before being issued a permanent resident visa and does not hold a work permit and 2) in the case that the foreign national holds a work permit, the foreign national does not currently work for the same employer making the offer of arranged employment or does not currently work in the same position i.e. the offer of arranged employment does not match the conditions of the work permit.

#### When an AEO is not required

An AEO is not required in order for the employer to support the application for permanent immigration of a foreign national if the foreign national is currently in Canada, holds a valid work permit, and is currently employed by the employer offering arranged employment in the same occupation the employer is currently employing the foreign national to do as per the work permit. In such cases, the foreign national applying for permanent immigration need only submit the arranged employment offer with their application to CIC. More specifically, an AEO is not required under the following circumstances:

##### Case # 1 (a labour market opinion exists)

The skilled worker is in Canada and holds a work permit and

- a. the person is currently working in that employment;
- b. the work permit is valid at the time an application is made by the skilled worker as well as at the time the permanent resident visa, if any, is issued to the skilled worker;
- c. the employer has made an offer to employ the person on an indeterminate basis (same position, same location) once the permanent resident visa is issued.

##### Case # 2 (a labour market opinion does not exist e.g. HRSDC exempt)

The skilled worker is in Canada and holds a work permit pursuant to section 204(a) [international agreement] or section 205(a) or subparagraph 205(c)(ii); and

- a. the person is currently working in that employment;
- b. the work permit is valid at the time an application is made by the skilled worker as well as at the time the permanent resident visa, if any, is issued to the skilled worker;
- c. the employer has made an offer to employ the person on an indeterminate basis once the permanent resident visa is issued.

For more information regarding how to support the permanent immigration of a foreign national in cases where an AEO is not required, contact CIC.

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### **Treatment of requests for Arranged Employment for jobs located in Quebec**

Under the Canada-Quebec Accord, both federal and provincial governments share the jurisdiction over immigration in the Province of Quebec. The responsibility for the selection of skilled workers for permanent immigration in the province of Quebec is undertaken by the Government of Quebec; HRSDC does not issue AEOs in the province of Quebec. Requests from employers interested in offering a permanent job located in the Province of Quebec to support a foreign national's application for permanent residency should be referred to the Ministère de l'Immigration et des Communautés culturelles (MICC).

For more information on the way the program operates in Quebec, officers should visit the Internet web site of the MICC at

<http://www.immigration-quebec.gouv.qc.ca/fr/immigrer-installer/travailleurs-permanents/index.html>



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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.

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### 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.



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### 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.

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### Section 3.2.6.3.1.1.3 – Third Party Representatives Due Diligence

Employers are permitted to authorize third-party representatives to act on their behalf for the purposes of requesting Labour Market Opinions (LMOs). While the majority of third parties are helpful to employers there remain unscrupulous third parties that misrepresent employers as it relates to the content of LMO applications.

While there are several ways that third parties can misrepresent employers, this bulletin addresses the following scenarios: forging information such as the employer's signature; falsifying an employer's information, such as the address and phone number; inflating the number of workers requested by the employer; and creating phantom companies to apply for and obtain LMOs. The scope of this bulletin does not include any other types of misrepresentation that do not relate directly to the LMO application, such as third parties charging fees to foreign workers.

#### Procedure

##### Receipt of Complaints

*Step 1* -Without exception, this process will be initiated once the Temporary Foreign Worker Program (TFWP) receives an official letter of complaint from an employer identifying that a third party misrepresented her/his intentions.

There are three ways that complaint letters may be sent to Human Resources and Skills Development Canada:

1. **Proactive Contact with Employers** - TFWP officers are directed that, at their discretion, they should conduct random phone calls to employers that have identified that they wish to use a third party. These calls will serve to verify the information on the LMO application and ensure that the employer is aware of its submission. If the TFWP officer determines that the third party has misrepresented the employer as a result of the random phone call, the officer should prompt the employer to submit a letter describing the specific misrepresentation and the necessary corrections to the LMO.
2. **Letters Received Directly from Employers** - Unsolicited complaints about third party misrepresentation may be received directly from employers. These complaints must address misrepresentation by a third party within the context of an LMO application.
3. **Other Sources** - If complaints are received from other sources, such as workers, non-governmental organizations, or anonymous sources, TFWP officers should contact the employer to verify the information provided in the initial complaint and the information in the LMO application in question.

If the employer indicates that there was no misrepresentation on the part of the third party, no action will be taken; however, if the employer confirms that they were misrepresented by a third party, the officer should encourage the employer to submit a letter describing the specific misrepresentation and the necessary corrections to the LMO.

*Step 2* - The TFWP officer must then call the employer to verify receipt of the letter and to verify the contents therein.



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*Step 3* - The discrepancy identified by the employer is corrected in the system as per the letter (if possible) and a note in the system should be logged in the "Notes to CIC" section detailing what information was incorrect.

*Step 4* - The employer's letter is forwarded to National Headquarter (NHQ) for consideration for the "due diligence list".

*Step 5* - The third party information is compiled at NHQ and, when appropriate, placed on a list that will be accessible to TFWP officers on the intranet.

If a new application is received naming a third party on the list, the officer is advised to proceed with the following steps.

*Step 6* - If another application is received naming the same third party on the "due diligence list" (the officer would know this by checking the intranet list) the TFWP officer makes a mandatory phone call to the employer to verify information on the application to ensure that it is correct using a list of pre-determined questions developed by NHQ.

*Step 7* - If the information is correct, no action is required.

If the information is incorrect the officer should ask the employer to submit written confirmation that it is incorrect and include the information necessary to make corrections in the system. The application should be placed on hold until the request is received (missing information flag placed).

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### 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.



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### Section 3.2.6.3.1.2.1 – Self-Employed Temporary Foreign Worker

#### What is a self-employed individual?<sup>1</sup>

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<sup>2</sup>:

- 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.

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<sup>1</sup> 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.

<sup>2</sup> These definitions can also be found in CIC's Section 5.31 of the Foreign Worker Manual



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### 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<sup>3</sup>. 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

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<sup>3</sup> 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.



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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%<sup>4</sup> 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.

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<sup>4</sup> As indicated in Statistics Canada's Workplace Employment Survey

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### 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

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.



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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.

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### Section 3.2.6.3.3 – Employer Name

#### The employer's name must be verified

TFWP officers verify unfamiliar business names by searching in the FWS (using the name and asterisk). 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](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.



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### 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 "YYMMDD 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.

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### 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](https://ssl.req.gouv.qc.ca/slc0110_eng.html)), <http://www.canada411.ca/> or [www.google.ca](http://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.



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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](http://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](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.

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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.



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### 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.

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### 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 (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.



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**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 (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.

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### **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.



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### 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](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.

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### 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.



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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](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](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/unnamed_lmo.shtml).

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### 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.



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### 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.

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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.



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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.emploiuebec.net/mtg/inter/noncache/contenu/asp/mtg121\\_rechrprofs\\_01.asp?lang=ANGL&Porte=1](http://imt.emploiuebec.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.

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### 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.



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### Rendering a decision and post-decision process

#### Section 3.2.7.1 – Reconsiderations - NOC O, A, B, C or D

##### Background:

When a letter of refusal has been issued on an application for a LMO, the client may request a review of that decision.

##### Guidelines:

Employers who wish to challenge the decision to refuse the LMO application should be advised they may submit a written *Request for Reconsideration* to the Service Canada office. The letter requesting the reconsideration must:

- address all of the points of refusal itemized in the refusal letter; and
- describe the changes/amendments to previous application(s) to demonstrate that program criteria are being met.

##### Instruction:

###### Foreign worker Representatives

When a **letter of reconsideration** is received, whether or not there is an attached application, the original application/docket is pulled and prepared for the officer. The job is duplicated in FWS, creating a new system file number. If there is a new application, the information on the application will be verified against the information in FWS by the Officer at the time of review. The new SF is written in red ink on the outside of the docket, beside the original SF. The new SF is then assigned (in FWS) to the TFWP Officer who initially issued the decision on the application and the docket is placed in the Officer's slot in the Distribution Bay. On the RFO screen of the original SF, the file location is updated to read, "Reconsideration – see SF#" (insert new SF). In the event that the TFWP Officer is unavailable, the Team Leader will handle/delegate the request to ensure the service standard is met. If a refusal letter accompanies an application and there is no letter from the employer requesting a review of the decision, the application is treated as a new application. The previous SF is not pulled from the file bay nor is the SF duplicated in the FWS.

If additional information arrives after an application is refused, an FYI letter is sent advising that a new application is required. When a request for reconsideration is received, and the application was originally refused for non-response to a FYI letter, after setting up the docket, the application will be placed in the work bay, based on the date the reconsideration was received.

###### TFWP Officers

As the reconsideration request may be submitted by the employer or the third party, it is the responsibility of the TFWP Officer to contact the employer directly to verify the request. The Officer will also confirm that the employer received the "Request for Information" (RFI) letter and/or the refusal letter; if not, a copy of the letter is forwarded to the employer so that he/she is aware of the points of refusal. The 48/48 process would be applied to the re-assessment of the

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application where the refusal was based on our inability to contact the employer. After reviewing the request for reconsideration and any additional information provided, the Officer, if warranted, will issue a confirmation. If there is no change to the original decision, the applicant will be advised, in writing, why the decision remains unchanged. At this time, it should also be made clear that a new application will be required if the applicant wishes to pursue the hiring of a foreign worker.

The reconsideration decision should be communicated to the employer within 15 business days of receipt of the request. If an employer was required to re-advertise the position based on the updated national recruitment requirements, the employer is to be advised that a new application will be required with the proof of the new recruitment efforts.

### Section 3.2.7.2 – 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



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- 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, "YYYYMMDD 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.

### Section 3.2.7.3 – Flagging on TFWS

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### Section 3.2.7.4 - 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 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).

As part of providing an opinion referred to in section 203(2), a Service Canada officer must perform an ECR to determine 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, 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).

To perform the STS ECR as stated above, the Service Canada officer compares the wages, working conditions, and occupation actually provided to the TFW with those set out on the LMO Confirmation Letter and Annexes. Therefore, employers must be sent the LMO Confirmation Letter and Annexes so that they are aware of the terms and conditions they have agreed to abide by and for which they are accountable.

#### 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.



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**Section 3.3.1.1 – Establishing Prevailing Wage Rates for Positions Covered Under Collective Bargaining Agreements**

**Purpose:**

To inform TFWP Officers about a change in policy for determining wage rates for positions covered under a collective bargaining agreement.

**Guidelines:**

On January 1, 2009, an announcement was posted on the TFWP website indicating that employers seeking LMOs for positions covered under a collective bargaining agreement must agree to pay either the rate as established by the collective agreement or the prevailing rate as established by HRSDC/Service Canada, whichever is higher.

Please note that as of March 23, 2009, employers will be required to offer a TFW working in a unionized environment the same wage rate, as established under the collective bargaining agreement, offered to Canadians doing the same job in the same location.

In addition, in cases where benefits are offered to Canadians or permanent residents, those same benefits must also be extended to the TFW.

In order to determine the wage rate for the unionized positions, TFWP Officers should now request a copy of the relevant collective bargaining agreement prior to the assessment of the LMO applications.

**Exception:**

There may, of course, be instances where exceptions to this policy are warranted. The TFW Directorate will be consulting with regional offices to discuss when exceptions could be considered.

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### Section 3.4.1 – Arranged Employment Opinion – Factors

According to section 82(2)(c)(ii) of the IRPR, in order to award points to a skilled worker for Arranged Employment in Canada, a CIC Officer "has approved that offer of employment based on an opinion provided to the officer by the HRSDC at the request of the employer or an officer." The role of HRSDC is to provide an AEO as to whether:

- the offer of employment is genuine;
- the employment is not part-time or seasonal employment, and
- the wages offered to the skilled worker are consistent with the prevailing wage rate for the occupation and the working conditions meet generally accepted Canadian standards.

HRSDC provides an AEO at the request of an employer or his/her authorized representative or, in rarer instances, at the request of CIC.



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### Section 3.4.1.1.1 – Genuineness of the Job Offer: Job-related Factors

#### Foreign national must be hired under an employer-employee relationship

In the assessment of the job-related factors of the job offer, it is important to ensure that the foreign national being offered a job will become an "employee". The following indicators are listed in order to assist the Service Canada FWP Officers to determine whether an employer has offered a foreign national a job as an employee:

- the relationship is one of subordination. The employer will often direct, scrutinize, and effectively control many elements of how the work is performed;
- the employer controls the worker with respect to both the results of the work and the method used to do the work;
- the employer determines and controls the method and amount of pay. Salary negotiations may still take place in an employer-employee relationship;
- where the schedule is irregular, priority on the worker's time is an indication of control over the worker;
- the employer determines what jobs the worker will do;
- the worker receives training or direction from the employer on how to do the work;
- the overall work environment between the worker and the employer is one of subordination; and
- the employer chooses to listen to the worker's suggestions but has the final word.

Employers intending to hire foreign nationals in a capacity other than an "employee" (e.g. self-employed, entrepreneur, or investor) should be referred to CIC to understand the requirements under the appropriate immigration class.

#### Job offer is contingent on certification/licensing in a regulated occupation

It is important to determine whether the occupation and the performance of the associated duties are regulated by law and require licensing or certification of the worker. On the application form the employer is asked if the occupation associated with the job offer has any mandatory licensing/certification requirements, and if so, to identify the corresponding body of authority. If the job offer from the employer requires the employee to be licensed/certified, this must be notated in a note to CIC and documented in the FWS under job requirements and additional job details. CIC Officers will consider the qualifications of the applicant in that context. It is important to document which provincial or territorial regulatory body will need to be contacted by the CIC Officer since the foreign national will have to demonstrate to the licensing/certification body that they are able to satisfy the mandatory requirements. The Service Canada FWP Officer's note should consist of providing information to CIC on the relevant regulatory body.

Service Canada FWP Officers should practice due diligence by ensuring that the employer has included all mandatory licensing/certification requirements in the AEO application. Information in this regard is available under section "Employment Requirements" of the NOC code. The Service Canada FWP Officer should include all compulsory licensing/certification requirements in the system file under the "Requirements" section and advise the employer of these requirements. A first source of information in that regard is the Working in Canada website (<http://workingincanada.gc.ca/content/pieces-eng.do?cid=1>).

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### **Consistency between the position offered and the business operations**

Officers should consider whether the offer of employment is consistent with the companies' normal business activities/practices. For example, Service Canada FWP Officers should consider to what extent the offer of employment is for a position that is consistent with the type of activities conducted by the employer as part of usual business operations (e.g. a health-related occupation would not be part of the usual operations of a law firm). There might be instances where a new position is created to support the development of a new business line and such a position would be consistent with the activities of the employer.



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### Section 3.4.1.1.2 – Genuineness of job offer: Employer-related factors

The following sections will describe the factors to consider in assessing the genuineness of the offer of employment when looking at it from the employer-side of the equation. These directives are provided to help clarify the context and circumstances surrounding the offer of employment, which in turn, provide the tools to permit TFWP Officers to better assess the genuineness factor.

#### Business location

It does not include the mere presence of an agent or office in Canada. A company with no employees, which exists in name only, and is established merely for facilitating the entry of a skilled worker, would not qualify. Additionally, companies that do not have an office set up on Canadian soil would not qualify for an AEO.

#### Ability to honour terms of job offer

When determining if the employer can successfully sustain the foreign worker's salary, Officers are to look at the number of AEO requests for the past 24 months and the total of the salaries that were offered for each of these requests. Should the amount of all these salaries be more than the amount listed on the T4 Summary block 14, the Officer must request from the employer the business's income tax return (T1, T2 etc.). The provided financial documentation must be able to prove that the company has the ability to indeterminately sustain the offered salary of the foreign worker.

#### Type of business entities

##### Employer-employee relationship

In most cases, the employer making a request must already have a minimum one full-time employee in the business for at least one year – hence an employer/employee relationship is required for the applicant wishing to apply for an AEO. This is necessary to verify that the employer can demonstrate the ability to offer a stable employment situation that has some reasonable chance of allowing an immigrant to become economically established in Canada. If an employer is a self-employed person (in a partnership or on his own) then his ability to offer stable employment requires the employer to demonstrate another form of proof that he can provide stable employment.

The existence of an employer/employee relationship is not determined by HRSDC/Service Canada but by the CRA. As long as CRA collects EI/CPP premiums through remittances made by the employer, there is an employer/employee relationship. Specifically, note that employers that have a minimum of one employee on payroll (not including themselves), should receive the PD7A forms on remittances. However, CRA has indicated that some self-employed individuals, although they should not, could at times receive this form. Since self-employed individuals do not pay EI premiums, the EI premiums box (on the PD7A) will be blank. If this is the case, Service Canada FWP Officers could conclude that the business might not have a minimum of one employee on their payroll.

Additionally, TFWP Officers can review the T4 Summary of Remuneration Paid to determine if the business has been employing a minimum of one employee over the last period of 12 months. Note, however, that this step is only to be taken when the Officer has doubt concerning the likelihood that the offer of employment will materialize into the employment of the foreign national.



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HRSDC does not recommend that this procedure be administered to businesses that are already well-known or established. All things considered, if the employer is unable to satisfy the Officer that it can offer stable employment, a negative AEO should be issued.

To summarize:

- a. Should the EI premiums box (PD7A) be blank and should boxes 18 and 19 on the T4 Summary of Remuneration Paid also be blank, there is reason to doubt the genuineness of the offer of employment. In all likelihood, this employer is self-employed and is not meeting our standard of employing a minimum of one employee for a twelve month period.
- b. Should the EI premiums box (PD7A) be blank, the T4 Summary of Remuneration Paid boxes (either 18 or 19) contain numbers and the employer submitted copies of her/his PD7As covering the previous 12 months, the Officer must clarify, with this employer, the apparent inconsistencies in the information provided.
- c. Should the EI premiums box, on the PD7A, contain numbers, and the employer submitted copies of her/his PD7As covering the previous 12 months, the Officer can conclude that this employer is genuine and meeting the requirements.

### Non-profit organizations

An employer can be either an organisation which operates for profit as well as a non profit organisation such as a charitable/religious organisation, a non governmental organisation or a public/academic institution. As it is the case for employers which operate for profit, non profit organisations must already employ full-time permanent employees in order to be eligible employers for an AEO. The CRA maintains a directory of registered charities that could be accessed on the Internet. As earlier discussed, a positive AEO is based on the assumption that the Foreign National will become successfully established in Canada, therefore they will not have to rely on public assistance programs to support their settlement. Charitable organizations eligible to make a request for an AEO are those who are involved in providing services such as assistance of public worship and the administration of programs providing food, clothing and/or shelter. Not eligible are non-profit organizations whose members are engaged solely in activities aimed at their own spiritual growth.

Please note that in the case of non profit organizations, it might not be possible for some employers such as charitable organizations to provide copies of PD7As and T4 Summary of deductions. In such cases, the TFWP Officers will have to determine to what extent the non-profit organization is well-established by considering how long the organisation has been in existence; if it is well-known in the community; if it is registered with CRA; and if it has employed workers in the past.

Example:

*The following represents two situations where HRSDC can and cannot provide a positive AEO:*

#### An AEO can be approved:

1. A religious organization requests an AEO for a religious worker, whose main duties include the assistance at services of public worship and the administration of programs providing food, clothing and/or shelter.

#### An AEO cannot be approved:

2. A religious organization requests an AEO for a religious worker, whose main tasks are limited to fulfilling



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their own spiritual well-being.

### Employer of record as opposed to placement agencies and similar firms

It is essential that the assessment of genuineness be linked directly to the employer of record, that is to say, the employer who will enter into an employer-employee relationship with the workers and will pay the worker's salary. While a placement agency may act as an intermediary, referring workers to employers, it cannot be considered the employer of record.

There is only one instance where a placement agency and other similar firms can be considered an employer of record: when the firm needs to meet its own human resource requirements in support of its business operations (e.g. a placement agency interested in hiring qualified human resource recruiters or general managers).

While placement agencies or similar firms (head-hunter agencies, temporary help agencies, and employment brokers) cannot be considered the employer of record in most instances, nonetheless they can play an acceptable "third party" role when representing an employer and ensuring on its behalf that all the administrative requirements for the AEO request are met.

### **Minimum number of years in operation and number of employees**

As mentioned earlier, among the first steps involved in assessing the genuineness of the job offer is the verification that the employer has been in business for at least one year and has had a minimum of one employee. This can be verified by ensuring that the employer:

- a. has a valid business address and phone number (TFWP Officers should use <http://www.canada411.ca> to validate the employer's name and phone number that appears on the application;
- b. has a valid business number issued by the CRA, and a website or email address (if applicable);
- c. has provided copies of CRA remittance forms (PD7A) and copy of CRA T4 "Summary of remuneration paid" showing that the business paid source deductions for at least one full-time employee over the past 12 months (the T4 Summary must show EI premiums paid for both the employee (block #18) and the employer (block #19) – this information is required to demonstrate that CRA has deemed them to be not just a business but also an employer of record, for at least one person, for the last 12 months);
- d. evidence to support that the business has been in operation in Canada for at least one year (e.g. business licenses spanning more than 12 months or current commercial lease agreement); or
- e. if the business is not well-known or established, and/or the business has not employed anyone over the previous year and/or has not been in operation for at least one year, nonetheless an Officer has reason to believe that the employer is an established organization. It is expected to be a rare occasion that a confirmation would be issued in these circumstances. Because of the rarity of this occasion, Officers should discuss with his/her regional supervisor in the region and reach an agreement before confirming.

Examples relating to (e)



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1. A new company was created to take advantage of a significant investment project. Though the company has not been in operation for a full year, because the company has been awarded a contract to ensure a successful start, HRSDC can, in all likelihood, be confident that this employer will provide indeterminate employment to a foreign national.
2. A company has been known to operate for many years in a community, however, for a particular reason (i.e., natural disasters, avian flu, mad cow disease or else), was not in operation for a certain period of time, and accordingly had no employees on the payroll for that specific period. Nevertheless, because of the company's positive reputation and the fact that it will resume operations and conduct business as usual, HRSDC can, in all likelihood, be confident that this employer will provide indeterminate employment to a foreign national.
3. A charitable or religious organisation that would never be in a position to provide PD7As but that is well-known in the community and the Officer is confident that it would be in a position to provide for the settlement of the foreign national. Such a situation would not result in an additional burden to social assistance programs.

The TFWP Officer has the responsibility to contact the employer to ensure that the information, provided at the time the application is assessed by HRSDC/Service Canada, is still accurate. As part of the direct call to the employer (see 7.2.2.) it is particularly important to confirm the address, considering that HRSDC/Service Canada will send a letter to this employer providing the result of the assessment, and possibly the document the employer needs to forward to the applicant (and the third party where applicable). If the information provided on the application does not allow the TFWP Officer to contact the employer by phone, HRSDC/Service Canada can write to the employer and insist he/she provide an employer contact phone number (NOT a third party contact number).

In the context of this call to the employer, it might be appropriate to remind the employer that the letter offering employment to the foreign national represents a commitment to hire the person for an indeterminate period. The request for an AEO is not simply a means of interviewing the foreign national without any commitment to hire the person.

### Validating the supporting documents

When looking at PD7As and T4 Summaries submitted by the employer, the business number on each must be verified with the business number that was given by the employer on the application to ensure that they are actually for the company that is offering the foreign worker the position and not for another company owner by the employer.

All documents submitted by the employer should be examined to determine if they are actually providing the information they are intended to provide, whether they were tampered with, or whether they are acceptable substitutes to the normal documents that are requested.

Should a TFWP Officer doubt the validity of any supporting document, s/he should ask the employer to send in others.

### Employer Reasonable Able To Fulfill Terms of Employment

#### Relationship between the number of previous requests for AEOs and the employer's workforce size

The offer of employment cannot be assessed without considering the context of the business operation. As a basic principle, HRSDC/Service Canada must be in a position to determine



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whether the job will offer a reasonable employment opportunity allowing the immigrant to become successfully established in Canada immediately upon arrival. It is therefore not unreasonable to establish a link between the number of AEO requests received from a given employer over the previous 24 months and that employer's current size (number of employees).

TFWP Officers should be thorough and practice due diligence when the same employer has requested a number of AEO applications in the previous two years. In such situations, TFWP Officers must assess the appropriateness and genuineness of these additional applications. Considering the fact that such cases require a more in-depth assessment, they should be discussed with a regional consultant or supervisor for advice and final review.

Cases that would require particular attention involve repeated AEO users for example, when the cumulative number of requests for AEOs over the last 24 months, from a given employer, corresponds to more employees or a significant differentiation in comparison to the employer's current payroll (as per the T4 Summary). In cases where the Officer deems it necessary, the employer can be required to demonstrate that the business has the ability to meet the additional payroll costs (e.g. if new hires are only replacing employees leaving as per the RoE issued, if a business plan exists that is related to an expansion of the business). If the employer cannot provide an argument to satisfy the TFWP Officer that all new salary costs will not adversely affect the business' operations, the request cannot be considered genuine.

### Example

#### *Situation where a TFWP officer can provide a negative AEO:*

A handwritten T4 Summary is included with the application and indicates ten employees, yet the total employment income is shown as \$49,000 and total remittances to CRA as \$9,500 (total of CPP, EI and income tax for both the employee and employer contributions). The offer of employment included with the application is for a production supervisor with a salary of \$50,000. Since this amount is more than the employment income of all employees in 2002, HRSDC/Service Canada can consider this offer of employment as not genuine if not substantiated further by the employer.

## Reasonable Employment Needs

### Reasons associated with the hiring of a new employee

The decision to hire an employee is not a simple question in itself and usually depends on several variables. Before reaching that decision, the employer will have estimated that the additional labour costs involved in paying a new worker is more than compensated by the increase in expected revenues associated with a higher level of production. From a simple human resource requirement model, one can assume that an employer will require a new employee to either:

- fill a position created by attrition (e.g. to replace a person leaving as a result of a retirement, a resignation or a transfer), or
- to fill a new employment opportunity created by growth in the business operations.

The absence of any of these two conditions raises doubts to the genuineness of the proposed job offer. An employer should easily be able to explain which of these two basic reasons underlies their current request for an additional worker. Conversely, a TFWP Officer may have reasonable doubts as to the existence of a real job opening if an employer is unable to make a link between the request for a worker and the state of their business operations. Questioning the employer on this factor will allow the Officer to consider to what extent the employer-stated reasons underlying

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the need to hire a new employee is consistent with standard human resource management practices. *COULD REQUEST NEW CONTRACT DETAILS*

### Recruitment practices

It is usually good management practice to ensure that before hiring a full-time employee in a permanent job, an employer would first review applications of potential candidates or consider other recruitment practices (e.g. review of curriculum vitae only, oral interview over the phone or face to face). While recruitment practices may vary by employer according to size and/or industrial sector, from basic phone interviews to sophisticated cognitive skill assessments, it is usually unlikely that an employer would be prepared to offer a permanent job to someone they would have never contacted. This situation might not be impossible but the TFWP Officer should confirm with the employer that it is common practice in the context of his company. It may be that the recruitment function is contracted outside of the firm and that the employer totally relies on the expertise of the recruitment firm to conduct the selection of new employees. If the employer, however, has never met or discussed the offer of employment with the foreign national and it is not considered a usual practice for similar companies in this sector, the TFWP Officer should carefully consider this fact in addition to the other factors before confirming the genuineness of the offer. Please note that we are not assessing whether the employer has attempted to hire Canadian citizens (as per LMO policy). Rather, we are assessing that the employer has made an attempt to communicate with his/her potential employee.



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### Section 3.4.1.1.3 – Employment Criteria

#### Standard full-time employment

For the purpose of the AEO, a position will be considered 'full-time employment' when the person will be working 30 hours or more during a normal work week.

#### Variable full-time employment

In the case of variable hours of work (shift work, compressed work hours) the hours of work should average 30 hours per week or more over a full shift rotation.

The occupation is subject to a collective agreement, which defines full time employment as being less than 30 hours per week. Such a definition of full-time work would be acceptable for an AEO.

The hours of work for the occupation are flexible, but based on project milestones rather than set work hours. A typical example can be found in the software industry where the employees may be expected to put in long hours to complete projects, and given time off during slow periods. In general, Officers should ensure that the hours of work commensurate with standard industry practices.

There are health or regulatory restrictions in the workplace that require the employees to work fewer hours as part of their contract (e.g. underwater welders, deep sea divers, and airline pilots are all required to take lengthy breaks from work for health or safety reasons). In these cases, there will likely be a standard work week defined either by the industry or by an association.

#### Part-time Employment

Situations where the hours of work are less than 30 hours per week, which do not fall into any of the situations described above, would be considered part-time. In these situations, confirmations should be refused.

#### Seasonal Employment

There is no definition of seasonal employment in the IRPA legislation. The Oxford Canadian English Dictionary defines seasonal as, "of, depending on, or varying with seasons." From a labour market perspective, seasonality in employment is principally linked to situations where the climate (weather) or a given period of the year (holiday period) or a given industrial sector affects the level of employment. A seasonal job is usually expected to provide temporary work that lasts until the end of the "season." For HRSDC's purposes, seasonal employment can be considered any activity that is seasonally dependent. Some examples of seasonal employment are:

- ski instructors (winter),
- hunting guides (fall), and
- most agricultural occupations involved in planting (spring-summer) or harvesting (summer-fall).

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It is worth noting that while many occupations have a seasonal element associated to them, they are not considered seasonal employment situations. For example, while the school year ends in June and begins again in September, teaching is not considered seasonal employment because teaching is not dependant on a season. As well, the building and construction industry normally peaks in the summer and slows down in the fall. The industry does not shut down as a ski hill does in the spring - construction is merely slower.



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### **Section 3.4.1.1.4 – Wages and Working Conditions**

The directives provided in the case of developing a LMO as it relates to wages and working conditions are the same ones that must be apply in assessing applications for AEOs. Please refer to the common Section 3.3 (LMI) for descriptions on how to assess these factors.

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### Section 3.4.2 – Mandatory Phone Call

All employers applying for an AEO must be contacted by phone by the TFWP Officer as part of the normal processing of the request. There are no exceptions to this requirement. A phone conversation with a third party agent will not satisfy this requirement. The purpose of the call will be to ensure that the offer of permanent employment is still open to a foreign national, to confirm the wages and salary of the offer of employment and to remind the employer that the letter of offer of employment represents a commitment to hire the named applicant immediately upon arrival in Canada following the issuance by CIC of the permanent resident visa.

There might be instances, however, where there is a need to conduct a more in-depth assessment of the employer's request before making a determination on the genuineness of the job offer. The TFWP Officer should ensure that s/he possesses the information that s/he requires to make a clear determination as to the likelihood that the job offer will result in the employment of the foreign national. The decision to render an AEO confirmation requires due diligence on the part of the TFWP Officer and should only be taken once satisfied the job offer is *plausible* and *consistent* with the employer's intentions.

Before calling the employer, ensure that the application has been input and that all the points that need to be discussed with the employer have been identified. It is a good practice to note what needs to be discussed with the employer on a piece of paper or a checklist within the physical file. During this conversation the following information must be verified:

- that the employer did submit the application;
- verification of the fax, email and third party information;
- that the position is still open and available to the foreign worker;
- that it is an indeterminate full time position;
- determine if the employer wishes the officer to discuss the file with the third party or with themselves;
- inform them of any required supporting documentation or missing information;
- verify the offered wage. If it does not meet prevailing wage then inform the employer and ask if they are willing to increase it to meet prevailing. If so, a new letter of offer must be faxed in;
- the amount of vacation pay or days that are being offered to the foreign worker. These must meet the provincial employment standards. If they do not meet, then the employer must increase them to meet the provincial standards and this must be submitted in writing on a new job offer letter addressed to the foreign worker; and
- clarification of any parts of the application that is required. If it is extensive then ask for it in writing.

Should the results of the phone call to the employer raise doubts as to the genuineness of the offer of employment or there exists a contradiction between the application and the information provided by the employer via the phone call, the burden of proof is still with the employer and the TFWP Officer should request, in writing, all new information that deviates from the original application. Employers can provide HRSDC/Service Canada with such information either by email, fax or regular mail.

It is important to keep in mind that under IRPR (82), HRSDC is mandated, under the genuineness of the job offer, which is essential to maintaining the integrity of the Program.



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In comparison to the other two criteria ((a) not part-time and seasonal and (b) wages and working conditions offered are consistent to those accepted by Canadians), determining the genuineness of the offer of employment will most likely require the greatest amount of analysis. The genuineness of the job offer is examined by considering two complementary elements: 1) the job and 2) the employer.

### **Documenting the phone call**

All conversations with the employer or verified third party should be documented on a system file note with the date listed as well as the contents of the conversation.

### **Unable to reach the employer**

If a message is left for the employer it should be noted electronically with the date and time the message was left, with whom the message was left or if a voicemail was left. It should also be noted that the 2-day timeframe was given for the employer to return the Officer's call. The system file note should also contain a list of the information the Officer was seeking. This is to ensure that any Officer can answer the employer's questions regarding the file.

If the employer contact is out of the office for an extended period of time, a refusal will be issued with instructions on how to request a reconsideration of the decision.

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### Section 3.4.3 – Reconsiderations/Cancellations/Replacements/Changes

In general, the option to have a reconsideration of the opinion done is not given if all the information to render a decision is present.

For instance, reconsiderations are offered in the following instances:

- the employer contact did not respond to the message left within the given timeframe; and
- the employer contact did not submit the required information within the given timeframe.

Reconsiderations are not normally offered in the following instances:

- the occupation is classified as a N.O.C C and D;
- the employer would not be able to submit any information that would change the Officer's decision; and
- the employer contact refused to increase the wage or working conditions.

The option to have the decision reconsidered is added to the bottom of the refusal letter. The employer contact has 30 days from the date of decision to submit, in writing, their request for reconsideration.

An example of the wording is:

- "As you did not respond to the message to verify the information on file by the given deadline, the offer of employment cannot be deemed genuine".
- "Should you wish to continue with this application you must submit in writing, to my attention, a request to reconsider the decision within 30 days from the date of this decision. Please ensure that you provide an explanation as to why you were unable to respond to the message. You may fax the request for reconsideration to 1-866-585-7524".

In the event that an employer applies for a reconsideration, a phone call must be made to the employer to ensure that they did in fact submit the request for a reconsideration.



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### Section 3.4.3.1 – Steps to Reconsideration

#### Inputting a Reconsideration

When a request for reconsideration is received, the Officer will pull the original file from the file management room and create a duplicate of the original system file. The original file will be placed inside the reconsideration file. The RFO number on the original file will be folded back so that the new RFO number will be visible.

The Officer will create a duplicate of the original system file number. A note on the new file's RFO screen must be added indicating that this is a reconsideration of the previous system file number. The new RFO number will be written vertically in black marker on the new physical file.

#### Deciding on a Reconsideration

The Officer must telephone the employer in order to verify that they actually did submit the request for a reconsideration. The Officer will analyze the new information and any new information provided must be verified with the employer contact through a telephone call.

The decision making process of a reconsideration is the same as deciding on an initial application.

#### Number of Reconsideration Requests

The Officer must telephone the employer in order to verify that they actually did submit the request for a reconsideration. The Officer will analyze the new information and any new information provided must be verified with the employer contact through a telephone call.

The decision making process of a reconsideration is the same as deciding on an initial application.

#### Cancellation Requests

Occasionally employers will request that a previously issued AEO be cancelled. When this happens, the foreign worker Officer must determine whether or not the opinion has been used. If the opinion has not been used the employer must submit a cancellation request and must outline the reason he requires the opinion to be cancelled.

If the opinion has been used by the foreign worker to attempt to gain entry to Canada the opinion will not be cancelled, however the offered salary may be subtracted from the total salary of all the AEOs when assessing the ability to pay. The Officer is to ask the employer for proof regarding the reason why the foreign worker was denied entry. Employers are sent a letter from CIC when a foreign national is denied entry; therefore the employer should be able to provide the Officer with this letter to substantiate their cancellation request. Should the employer be unable to provide sufficient proof to support their cancellation request, the opinion will still count towards their total offered positions and the salary of the position will be added to the total offered salary.

Should the Officer obtain the proof that the opinion has been used and that the claim that the foreign national was unable to gain entry, the salary offered on that opinion will be subtracted from the total offered salaries of all the approved opinions. Should there be no proof to substantiate the employer's claim, then the salary will remain in the total of all offered salaries.

## **Temporary Foreign Worker Program Manual**

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Under no circumstances should an opinion that has been used be cancelled. Opinions can be cancelled at the request of the employer only if they have not been used by a foreign national to gain entry to Canada, whether successful entry was obtained or not. Each cancellation must be well documented and the request for a cancellation must be received in writing.

### **Replacements**

Employers will sometimes request that they be able to replace one foreign worker's name for another foreign worker's name on an opinion. We do not allow names to be replaced. Should the employer wish to hire a different foreign national than the one listed on the opinion, he must submit in writing a request to withdraw the opinion of the foreign worker he no longer wishes to hire and submit a new application for the foreign worker he now wishes to hire. The withdrawal request must be verified via telephone call to the employer contact and the normal processing time for the new application applies.

### **Requests for changes to the opinion**

Once an opinion has been issued, the employer contact may notice something he wishes to change. Should the change that the employer is requesting be to the substantial information, then the employer contact is advised to submit a cancellation request and a new application.

Currently we deal with two types of information change requests. The first one would be to the language requirements of the position. Should the employer request that the language requirements be changed, we are able to make the change simply by putting the new language requirements on the annex of the opinion and a note to CIC. There is no need to cancel the application and issue a new application.

Should the employer contact wish to change the educational requirements of the position, the employer contact needs to submit this request in writing. The opinion must be cancelled and a new opinion be issued, however a new application does not need to be submitted.



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### Section 3.4.4 – Issuance of arranged employment opinion decision to employers

Whether the Officer is issuing a positive or negative decision, a letter must be completed in order to inform the employer and third party, if any, of the decision.

#### Issuing confirmation letters

The maximum expiry date of a positive AEO is two years minus a day from the date the decision is rendered. However, sometimes the employer will state in the job offer letter a date that beyond which the job offer will no longer be valid. Should this date be less than the maximum date of two years minus a day, then it is to be used as the expiry date.

Generally, there is no need to add special wording to the confirmation letters as, through their assessment of the application, the Officer has determined that all requirements for an AEO have been met.

#### Refusal letters

Refusal letters are issued when the officer has determined that one or more of the requirements for an AEO have not been met. When a negative opinion is issued, each of the issues that caused the Officer to issue a negative opinion should be addressed in the refusal letter along with an explanation of the option to re-apply should they have additional information to provide that they consider would lead to a position opinion.

Sample wording for various situations that have led to a negative opinion being issued is listed in the MS COS electronic reference folder.

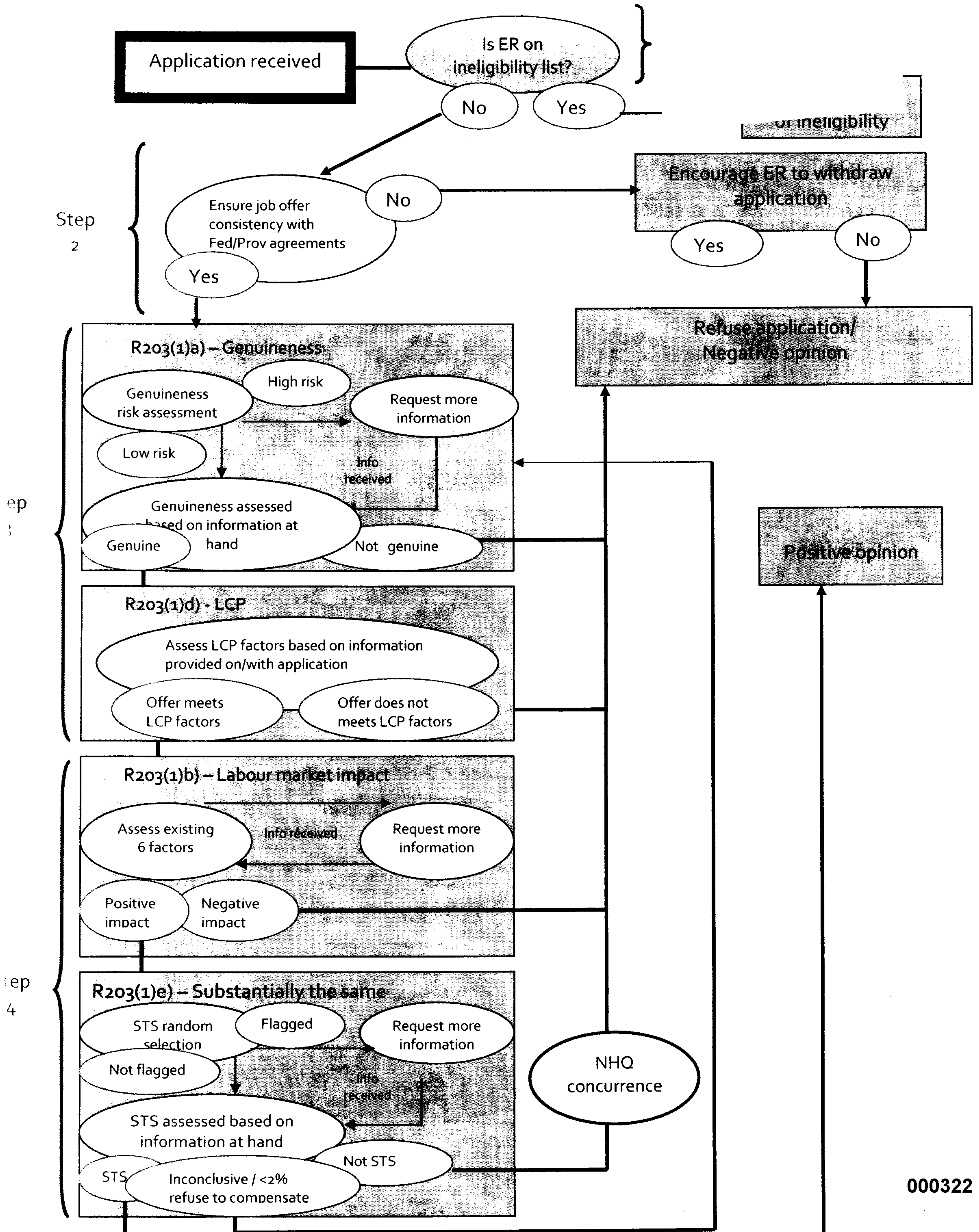
If the refusal is being issued because of inability to contact the employer contact, a copy of the refusal letter is to be sent to the third party as well.

There is no expiry date on a negative opinion.

If the fax number of the employer has not been verified, then the opinion is to be mailed to the employer, a copy placed in the file and the file documented both electronically on the Officer rationale screen, as well as physically on the inside cover of the folder.



# Map of Application Assessment





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### Section 3.5.2 – Step 1: CIC Ineligibility List and Employer Representative Eligibility

The first step in the LMO assessment process is to verify that the employer applying for the LMO is in fact eligible to use the program and, where applicable, their third party representative is authorized in accordance with section 91 of IRPA.

In accordance with paragraphs 203(1)(e)(i) and (ii) of IRPR, all employers that hired TFWs in the two years preceding their current application must demonstrate that they provided them with STS wages, working conditions and occupation, as indicated in their LMO confirmation letter and annex. Should an employer be found to not have lived up to the terms of previous LMOs and failed to provide justification and/or compensation, they will be referred to CIC who may deem them to be ineligible to participate in the program for two years. This list, housed on CIC's public Website, must be consulted prior to processing an LMO.

Should the employer applying for an LMO be ineligible to use the program, Officers are to issue a letter reminding the employer of their ineligibility and the application will not be assessed.

Additionally, when employers wish to have themselves represented by a third party during the LMO process, Officers must determine if their third party representative is authorized to perform these services under s.91 of IRPA. If the paid third party representative does not meet the criteria listed under s.91, Officers will be required to inform the employer that HRSDC/Service Canada cannot conduct business with the third party and that all questions or dealings will be directed to the employer.

Once the eligibility of the employer and a third party representative has been determined, Officers are to proceed to step 2 of the LMO assessment process: checking the job offer's consistency with the terms of federal/provincial/territorial agreements.

#### 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# for which there were issues.

Following the assessment of step 1, the following notes should be put in the 'notes to file' field:

- employer ineligible or;
- employer eligible and (if applicable);
- 3<sup>rd</sup> party authorized; and
- 3<sup>rd</sup> party not authorized.

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 interaction: Initial third party was not authorized. Following discussion with employer, third party was replaced.

A finding that the employer is on the ineligibility list would impact the assessment of future applications received by this employer. Therefore, the following notes should be put in the 'employer notes' field: employer ineligible to use the program until (inset date).



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### 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.



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### 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.

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### 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.



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Service Provided for Compensation	Does not require authorization	Requires authorization
	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)	

### Procedures for when a representative is not authorized

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.

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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:SecretariatConsultants@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 <a href="mailto:SecretariatConsultants@cic.gc.ca">SecretariatConsultants@cic.gc.ca</a>
Non-ICCRC immigration consultants/consulting firm.	Direct employer to: <ul style="list-style-type: none"> <li>• inform the ICCRC (for future reference in case the individual eventually applies for membership);</li> <li>• file a complaint with the Canadian Council of Better Business Bureaus (<a href="http://www.ccbbb.ca/">http://www.ccbbb.ca/</a>);</li> <li>• forward complaint to OMC at <a href="mailto:SecretariatConsultants@cic.gc.ca">SecretariatConsultants@cic.gc.ca</a>; and</li> <li>• contact local law enforcement, if necessary.</li> </ul>
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): <a href="http://www.cic.gc.ca/english/information/representative/verify-rep.asp">http://www.cic.gc.ca/english/information/representative/verify-rep.asp</a>



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**ANNEX A****Letter to the Employer:  
Use of unauthorized representative**

*To be used when notifying employers that their representative is not authorized under section 91 of 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]

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ANNEX B

Unauthorized Third Party Representative Tracking

Region:

From-To Date:

TP Name (last, first)	Business Name (if applicable)	Province	Address	System File Number
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## Temporary Foreign Worker Program Manual

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### 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.

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### Section 3.5.4.1 – Step 3: Genuineness

The new regulations provide a degree of clarity with respect to the assessment of the genuineness of an employer's job offer, and how this will be considered when assessing a LMO application. The following four factors will be assessed to determine the genuineness of the employer's job offer:

- 1) an employer's active engagement in the business in respect of which the offer is being made;
- 2) an employer's reasonable employment need;
- 3) an employer's ability to fulfil the terms of the job offer; and
- 4) an employer's or third party's compliance with federal and provincial employment and recruitment legislation in the province in which the TFW will work.

Program officers must assess all four genuineness factors. An employer's failure to satisfy any of these four factors would result in a negative LMO based on genuineness and the remaining factors under section 203 (i.e. the six labour market factors and STS assessment) will not be assessed.

If all four genuineness factors receive a positive assessment, the program officer is to proceed to assess the remaining factors under section 203 (i.e. the six labour market factors and STS).



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### Section 3.5.4.1.1 - Two-levelled approach to assessing Genuineness

To ensure that genuineness assessments strike a balance between improved program integrity and efficiency in processing applications, two levels of assessments are used.

Each genuineness factor is evaluated separately based on information provided in the LMO application (including attestations) and a follow-up conversation with the employer (level 1 assessment). As part of the level 1 assessment, every LMO application is reviewed against the following five criteria to determine if any of the genuineness factors require the employer to submit additional documentation in support of a level 2 assessment:

- the employer's most recent previous LMO or AEO was negative as a result of either genuineness or **STS** assessment;
- **ECR** findings revealed that the employer failed to comply with program requirements;
- the employer was subject to an LMO/AEO **revocation** since their last application (for reasons other than an unintentional error);
- the employer is, or has been, the subject of a serious **complaint, infraction or investigation** (including credible media reports); and
- the third-party is on the due diligence list.

These criteria should only trigger a level-2 assessment of the genuineness factor that relates specifically to the issue. All other factors should be assessed based on information provided in the application. For instance, if a credible media report suggests that an employer has been charged with a workplace safety infraction, the officer would ask the employer to provide proof of their compliance with federal and provincial employment legislation (genuineness factor d). The remaining factors would be assessed based on attestations and information provided in the application unless other risk indicators were present that would cause the officer to question the other elements of genuineness.

An employer's refusal to submit documentation when required or requested will result in a negative opinion on genuineness, which would lead to a negative LMO.



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### Section 3.5.4.1.2 – Actively engaged

The assessment of this criterion is important to ensure that the offer of employment is coming from an employer that legally exists and operates a business relating to the job offer made to the TFW. The employer should have an operating/functioning business, providing either a good or service related to the job offer made to the TFW, would normally have at least one employee, and must have a work location in Canada where the TFW could work. Foreign employers are acceptable so long as all or some of the work occurs in Canada. For example, a cross-border executive may have a job that is based in the United States, but also has re-occurring job duties in Canada.

**Assessing actively engaged:** *R200(5)(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*

Employers will be required to describe their main business activities on their LMO application form (box 18) and indicate the number of Canadians and permanent residents employed at the location of employment specified on the LMO (box 25). This information will be used to assess whether the employer is actively engaged in a business that relates to the offer made to the TFW.

Additionally, all employers that are new to the program (i.e. have never applied for an LMO or AEO before) will be subject to a level-2 assessment of this factor and will be required to submit a copy of their business license/permit at the time of application to substantiate that they are actively engaged in their business. Since not all municipalities require a business license/permit to operate, new employers may also submit specified 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, type of business and number of employees should be checked for consistency with information provided on/with the application, including the employer's description of their business activities.

Private households, due to the nature of their business activities as employers, must be evaluated differently. If they have never employed workers in the past, this information might not be available, nor do these employers satisfy the requirement of "providing a good or service" or the one-employee criterion that is imposed on other types of employers.

These employers (private households that have no history of employing staff, have no employer history in the FWS and cannot submit a T4 Summary) may still be able to fulfil this criterion under genuineness, but will have to explain in detail how their circumstances have changed so that they are now in need of full-time personnel to fill a labour shortage. Moreover, these employers, like all others, are required to obtain a CRA business number. A CRA business number for another business operating out of the same household (e.g. plumbing or electrician business) cannot be used for the purposes of hiring a TFW for the household.

For returning employers (including private households), officers should check the employer profile to ensure that the business activities described by the employer on their current application do not deviate substantially from the ones listed in past applications. If there is a significant difference, the officer should ask for an explanation on how the principal business activities have changed through a follow-up conversation. This would normally be sufficient to make an assessment of this genuineness factor. Only in the rarest of cases (e.g. there is a reason to doubt the employer is lawfully in business, the type of business activities has changed significantly



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without a reasonable explanation or the employer is using a third-party on the due diligence list) would the officer conduct a level 2 assessment of this factor for returning employers. If one of these indicators exists, the officer would request a business license/permit. If a business license is not required in the municipality in which the business operates, they can submit a business contract(s) for work in Canada or an attestation by a lawyer, notary public or chartered accountant.

However, should the officer also have a legitimate reason to conduct a level 2 assessment of the employer's ability to fulfil (e.g. the employer is known to have recently declared bankruptcy), CRA documentation should be requested instead, including: a T4 Summary of Remuneration paid, and schedules 100 and 125 of their CRA T2 Corporation Income Tax Return (if the business is incorporated) or if they are not incorporated, CRA's T2125 Statement of Business or Professional Activities. In either case, information such as the business name, number, address and type should be checked for consistency with the information on file and information provided with the application.

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### Section 3.5.4.1.3 – Reasonable employment need

Employers will need to prove that the job offer is consistent with their reasonable employment needs. This means that the job offered matches the general type of work that is reasonably and usually part of employment in that business/sector and whether the business is experiencing growth or attrition, conditions that would normally require the hiring of a new employee.

**Assessing reasonable employment need:** *R200(5)(b) whether the offer is consistent with the reasonable employment needs of the employer*

Because there is no documentation that could reasonably substantiate an employer's employment needs, this genuineness factor always receives a Level 1 assessment.

On the LMO application, employers will be required to provide a rationale for the job offer they are making to the TFW and explain how this meets their employment needs. Program officers must consider the type of business the employer is engaged in (as described in box 18), the rationale provided and the type of occupation requested when assessing this factor.

When questions arise concerning the legitimacy of the employment needs, officers are encouraged to clarify the employer's rationale by phone or by requesting a more detailed explanation in writing.



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### Section 3.5.4.1.4 – Ability to fulfill

Employers must demonstrate that they are reasonably able to fulfil all of the terms of employment. This means being capable of providing, for the duration of the work permit, full-time work in line with the job description and acceptable employment standards. It includes not only the employer's ability to pay required salaries and benefits, but also their ability to meet other programmatic requirements such as providing return airfare and interim medical coverage under the NOC C&D pilot project.

**Assessing ability to fulfil:** *R200(5)(c) whether the terms of the offer are terms that the employer is reasonably able to fulfil*

For a Level 1 assessment, officers will rely on signed attestations by employers which confirm the employer's commitment to fulfilling the terms of the job offer. These attestations vary by program stream, but may include the following:

- I will provide any TFW 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.
- I will pay full transportation costs for the worker to travel from his/her country of residence (or from his/her residence in Canada) to the location of work in Canada and for the return to the country of residence (as stipulated in employment contract) and will not recoup, directly or indirectly, any of these costs from the worker.
- I will provide medical coverage until the TFW is eligible for provincial/territorial health care insurance coverage (where applicable).
- I am in good standing with the applicable workers compensation program and I will register the TFW under the appropriate provincial/territorial workers compensation/workplace safety insurance plans where available or purchase a personal for free, on-the-job-injury or illness insurance that provides the TFW with an equivalent protection to the one offered by the applicable provincial law.

A level-2 assessment of this factor would not be triggered unless there was a clear reason for doubting the employer's ability to meet this requirement and the required documentation could assist an officer's assessment of this criterion. For example, if, due to financial constraints, an employer had failed to provide return airfare to a NOC D worker as promised on a previous LMO, a level-2 assessment would be warranted in order to better determine the employer's capacity to meet this requirement for the current LMO application. Alternatively, if the employer neglected to meet this requirement because they failed to understand their obligations, but subsequently remunerated the employee and attested to meeting this requirement in the future, a level-2 assessment of this factor would not be appropriate because the submission of financial documentation would not address the reason for the employer's previous non-compliance with programmatic conditions.

If it is determined that a level-2 assessment of this factor is warranted, the employer will be asked to submit one or more of the following documents, which provide information on the operating income and profits of a business:

- T4 Summary of Remuneration paid – 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 employer, which gives an indication of whether that employer can easily absorb the salary to be



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paid a TFW. For instance, an employer that paid out millions of salary dollars the previous year would normally be able to absorb 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, officers will also look at T2, T1/T2125, where applicable.

- T2 schedule 100/125 (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 including: the salary listed on the current application and any other salary in relation to previous confirmations, either LMO or AEO, for TFWs that have not yet commenced employment. Operating income is listed on line 9970 of schedule 125. Should that line not be listed, officer must obtain this information by adding lines 9369 and 9899. Retained earnings (profits) are listed on line 3829 of the schedule 100.
- T2125/equivalent financial statement (if sole proprietorship or partnership) - provides information on the operating income of the business. Operating income is listed in Part 5, line 9369 of the T2125. Again, if the net income is at least as great as the additional salary cost in the LMO application (and any other foreign workers in relation to previous confirmations, either LMO or AEO based, not yet commencing employment), an opinion can be rendered.
- 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 their workers in the provincial workers' compensation scheme in provinces where it is not mandatory. If this registration is mandatory under provincial legislation, then the employer would be failing to comply with IRPR 200(5)(d) detailed in section 3.5.2.5.
- Business contracts – business contracts could substantiate the capacity for future earnings, particularly for employers whose CRA documents do not support their ability to fulfil financial obligations. For example, an employer may have had financial difficulties in the previous taxation year, yet they can demonstrate the capacity for future earnings due to an increase in business. Program officers should ensure that the business contract is at least as long as the job offer to the TFW and that the financial terms are sufficient to pay the TFW (at least as much as the salary and benefits offered to the TFW, and that of any others who have been previously approved but have not commenced work) and to meet other programmatic requirements (e.g. interim health insurance).

An attestation by a lawyer, notary public or chartered accountant – would attest to the fact that the employer 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).



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### Section 3.5.4.1.5 – Past compliance

Under this genuineness factor, employers must meet two separate conditions:

1. employers must be compliant with all federal/provincial/territorial employment legislation in the province(s)/territory(ies) where the TFW will work; and
2. employers must ensure that they and their recruiters have been and continue to be compliant with all federal/provincial/territorial legislation governing the recruitment of workers in the province(s) where the TFW will work.

These laws include, for instance, Manitoba's WRAPA and Alberta's *Fair Trade Act* (for a complete list, refer to Annex A).

**Assessing compliance:** *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*

Under a level-1 assessment, officers will rely on signed attestations by employers confirming the past and continued compliance, of themselves or any person who recruited TFWs on their behalf, with the federal or provincial laws that regulate employment or recruitment:

- I am in good standing with the applicable workers compensation program and I will register the TFW under the appropriate provincial/territorial workers compensation/workplace safety insurance plans where available or purchase a personal for free, on-the-job-injury or illness insurance that provides the TFW with an equivalent protection to the one offered by the applicable provincial law.
- I am compliant with, and agree to continue to abide by, the relevant federal/provincial/territorial laws that regulate employment in the occupation specified and, if applicable, the terms of any collective agreement in place. I recognize that any terms of the attached contract of employment less favourable to the WORKER than the standards stipulated in the relevant labour standards act are null and void.
- I am compliant with, and agree to continue to abide by provincial and federal legislation related to recruitment applicable in the jurisdiction where the position is located. All recruitment 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 recruitment. I am aware that I will be held responsible for the actions of any person who recruited TFWs on my behalf.

Officers would not conduct a level-2 assessment of this factor unless the employer's profile on FWS (or other information such as a credible media source, a report from a provincial authority, or the presence of the employer's recruiter on the due diligence list) indicates the employer's or recruiter's failure to comply with applicable legislation. If it is determined that a level-2 assessment of this factor is warranted, the employer will be asked to submit one or more of the following documents:

- Workers' compensation clearance letter – declares that the employer is registered with the workers' compensation board and has an account in good standing.
- Other appropriate provincial documentation – for example, if the employer/third party has been reviewed for employment/recruitment violations and cleared by the provincial labour board or ministry of labour, this could be used to substantiate the employer's compliance with employment/recruitment legislation.

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Employers using a third party recruiter that has been fined or flagged by the province for non-compliance with applicable recruitment legislation will receive a negative opinion on this genuineness factor.



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### **Section 3.5.4.1.6 - Genuineness, the six labour market factors and substantially the same**

If information comes to the attention of the officer during the assessment of the six labour market factors or STS that may have impacted the initial assessment of genuineness, this information should be considered and genuineness may be re-evaluated in light of the new information.

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### Section 3.5.4.1.7 - 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 1, the following example notes should be put in the "**Notes to File**" field:

#### **Step 3: Genuineness**

a) Actively Engaged - level 1 - information provided, **OR**

a) Actively Engaged - level 2

**trigger:** new employer.

**documents consulted:** business licence

**outcome:** deemed actively engaged

b) Reasonable Employment Need - level 1 - explanation provided (reasonable or not reasonable)

c) Ability to Fulfill - level 1 - attestation signed, **OR**

c) Ability to Fulfill - level 2

**trigger:** news report employer bankrupt

**documents consulted:** T4 Summary and business contracts

**outcome:** deemed able to fulfill - contracts worth 1M\$ awarded to the employer.

d) Past compliance w/ Employment and Recruitment Legislation - level 1 - attestation signed, **OR**

d) Past compliance w/ Employment and Recruitment Legislation - level 2

**trigger:** news report accident at job site

**documents consulted:** workplace safety clearance letter

**outcome:** deemed to be in compliance

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:



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**Employer interactions:** spoke with the employer for clarification re: reasonable employment need (include details of the conversation / information received).

A negative genuineness assessment would impact the assessment of future applications received by this employer. Therefore, the following notes should be put in the “**Employer Notes**” field:

- (SF#) job offer not genuine (factor c).

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### Section 3.5.4.1.8 – Relevant Federal and Provincial/Territorial laws

- 1) Relevant federal legislation includes, but not limited to, the following:
  - Immigration and Refugee Protection Act (IRPA) - <http://laws.justice.gc.ca/en/I-2.5/index.html>
  - CIC: Cracking Down on Crooked Consultants Act - <http://www.cic.gc.ca/english/departement/media/backgrounders/2010/2010-06-08.asp>
- 2) Relevant provincial legislation includes, but not limited to, the following:
  - Alberta: Fair Trading Act - <http://www.servicealberta.ca/1049.cfm>
  - Manitoba: Worker Recruitment and Protection Act (WRAPA) - <http://web2.gov.mb.ca/laws/statutes/2008/c02308e.php>
  - Ontario: Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others) - [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_09e32\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_09e32_e.htm)
  - Quebec: the Quebec government 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 - [http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/I\\_0\\_2/I0\\_2.html](http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/I_0_2/I0_2.html)
  - Nova Scotia: the Government of Nova Scotia is developing new legislation to regulate the employment of temporary foreign workers - <http://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.



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### Section 3.5.4.2. – Operational 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 effective April 1, 2011 and are complemented by existing LCP directives.*

#### 1. Preamble

These directives apply to Live-in Caregiver Program (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”;***

<b>LCP Specific Factors</b>
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**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.***

<b>Substantially the Same (STS)</b>
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**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.

Through the mandatory phone call with the employer, the officer must determine whether there is consistency between the need for a live-in caregiver (i.e. rationale for the job offer described in the LMO application), the type of care (above-mentioned categories) being requested and the tasks/duties to be performed (NOC 6474) by the live-in caregiver.

When assessing the work permit, CIC officers may take any familial relationship between the worker and the employer into account. However, Service Canada officers are not required to consider whether or not the live-in caregiver the employer(s) wishes to hire is a family member for the purpose of the LMO assessment. As a courtesy to CIC, if the employer(s) happens to provide such information during the phone call or in the LMO application, or in the contract, officers are advised to communicate this information to CIC through the FWS (CIC Notes).

When the duties indicated in the contract and the application identify tasks other than care to the above-identified categories, or where the rationale for the job offer described in the LMO application is not consistent with the duties of the job offer or duties implicit to work as a caregiver, officers should get further clarification from the employer. However, officers should keep in mind that the need is reasonable as long as the duties are consistent with care for children, seniors or disabled persons, and the caregiver will reside in the private household where care will take place.

When assessing the reasonableness of employers' need for a live-in caregiver, officers should be aware that *reasonableness* can be subjective and must avoid an inclination to impose personal value judgment on the assessment of an application. It is important to note that the need would be considered reasonable if it is in line with the requirements of the LCP factor 203(d)(i) to provide child care, senior home support care or care of a disabled person, and if the duties of the job offer correspond to those to be normally assumed by a live-in caregiver.



### **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 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 <sup>(1)</sup>. Some provinces, such as Manitoba, require registration under WRAPA in order to hire foreign workers; this registration should accompany the LMO application

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<sup>1</sup> Province of Alberta Employment Standards  
Province of British Columbia Employment Standards  
Province of Manitoba Employment Standards  
Province of New Brunswick Employment Standards



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:

*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.*

For **level 1 assessments**, program officers will rely on signed attestations from the employer that they (or anyone that recruited on their behalf) are/were compliant with federal and/or provincial laws regulating employment and recruitment. If this signed attestation is not included, the officer must call the employer to advise them that their LMO will be refused unless it is submitted. When an officer has a reasonable doubt that the employer(s) are compliant with the provincial/territorial employment and recruitment legislation, he/she must proceed with a **level 2 assessment**. This doubt may result from information shared by a provincial/territorial authority, a formal allegation of wrongdoing, a news article in the media, or the fact that the third party is on the due diligence list. Officers are advised to document the specific reason(s) they opted for a level 2 assessment.

## **Level 2 Assessment**

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.

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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



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, (i.e. 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 (e.g. third party on Due Diligence List, complaint) 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 3rd 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 child 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 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 defensible 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.

**N.B.** *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 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)<sup>2</sup>

Modified on December 9, 2011

Size of family unit	Community size				
	Rural areas	Urban areas			
		Less than 30,000 <sup>1</sup>	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

<sup>2</sup> Source: Statistics Canada <http://www.statcan.gc.ca/pub/75f0002m/2011002/tbl/tbl02-eng.htm>

## Temporary Foreign Worker Program Manual

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### 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.



## Temporary Foreign Worker Program Manual

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### **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.

## **Temporary Foreign Worker Program Manual**

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### **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 3.5.5.1.4 –

#### **Directive: Assessment of the Wage Factor on Labour Market Opinion Applications**

##### **Purpose:**

The purpose of this directive is to provide guidance on assessing the wage 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)
- Lower-skilled occupations  
(NOC skill levels C and D, excluding positions under the Live-in Caregiver Program, the Seasonal Agricultural Worker Program and the Agricultural Stream)

##### **NOTE:**

This directive does not apply to the Quebec region.

##### **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.

##### **Background:**

The following information is intended to provide Human Resources and Skills Development Canada (HRSDC)/Service Canada staff with a standard process to follow when assessing prevailing wages in accordance with the available labour market information. This process will help ensure that a consistent and transparent approach is applied when establishing the wage rate for temporary foreign workers (TFW). It will also ensure that the wage offered to TFWs reflects the standards by which Canadian and permanent resident employees working in the same occupation and geographic area are paid. The following three situations must be considered when determining the prevailing wage:

1. Collective bargaining agreements
2. Wage offers – equal to or above the posted median wage
3. Wage offers – below the posted median wage

##### **NOTE:**

Not every situation will be captured within these scenarios. However, regional staff can address any new scenario that may arise on an ad hoc basis in consultation with NHQ.

## **Guidelines:**

Employers are required to pay TFWs the same wage as Canadian and permanent resident employees doing the same job in the same geographic area. The wage rate should be assessed according to:

### **1 – 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 median wage, HRSDC/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 location, the wage offered should be accepted. (Refer to Section 3.3.1.1 of the TFWP Manual)

### **2 – Wage offers - equal to or above the posted median wage**

#### **Higher-skilled and lower-skilled occupations:**

- Wages offered to TFWs that are equal to or above the posted median wage will be accepted.
- Employers must offer TFWs a wage rate that is above the posted median wage if their Canadian and permanent resident employees working in the same occupation and geographic area are paid this wage

### **3 – Wage offers - below the posted median wage**

#### **Higher-skilled occupations:**

Employers who offer TFWs a wage that is:

- not more than 15% below the posted median wage will be accepted. However, these employers must demonstrate that they pay the same wage to their Canadian and permanent resident employees working in the same occupation and geographic area. (Refer to Annex A)
- more than 15% below the posted median wage will have the wage rejected, which will result in a negative LMO.

#### **Lower-skilled occupations:**

Employers who offer TFWs a wage that is:

- not more than 5% below the posted median wage will be accepted. However, these employers must demonstrate that they pay the same wage to their Canadian and permanent resident employees working in the same occupation and geographic area. (Refer to Annex B)
- more than 5% below the posted median wage will have the wage rejected, which will result in a negative LMO.

When an employer's wage offer is within a range of 15% below the posted median wage for a higher-skilled occupation, and within a range of 5% for a lower-skilled occupation, the employer must demonstrate that their Canadian and permanent resident employees working in the same occupation and geographic area are being paid the same wage. Employers will be required to provide this information at the time of application using the payroll template. (Refer to Annex C)



## Payroll

Employers must refer to their payroll records to complete the payroll template. This document must then be forwarded, along with the LMO application, to HRSDC/Service Canada for assessment. By requesting employers to complete the payroll template, the TFWP minimizes the risk of collecting personal information related to the employers' current workforce (e.g. social insurance numbers).

Only employers who currently employ a full-time Canadian or permanent resident employee working in the same occupation and geographic area as described in the LMO application can use the payroll template to support a variation from the posted median wage. **Employers, who do not currently employ a Canadian or permanent resident employee, will be required to pay their TFWs the posted wage or HRSDC/Service Canada will issue a negative LMO.**

## Payroll Process

Employers must complete the payroll template and include the wage information for at least one Canadian or permanent resident employee currently working in the same occupation and geographic area as requested on the LMO application. The payroll information must be provided for a minimum of three pay periods. If there are any irregularities within the information provided, HRSDC/Service Canada staff may request additional payroll information.

If HRSDC/Service Canada staff is not satisfied with the information provided in the payroll template, the employer may be asked to submit proof of payment to the worker to substantiate the information. When requesting this information, HRSDC/Service Canada staff should inform the employer not to submit any personal information pertaining to the worker (e.g. request only the first three digits of the social insurance number or the employee's first name).

## **Wage Assessment Considerations:**

Determining the median wage:

- HRSDC/Service Canada staff must refer to the median wage as determined by the LMI Service for the occupation and sub-geographic region where the work is scheduled to take place in order to determine the prevailing wage rate. For additional information on LMI wages, visit the Working in Canada (WiC) Web site at: <http://www.workingincanada.gc.ca>

When wages are not available:

- In some instances, wage information may not be available on the WiC Web site. In these cases, HRSDC/Service Canada staff should request that the LMI Service generates a median wage rate for the specified position and location.

Provincial/territorial wages other than minimum wage:

- In instances where provincial/territorial governments have established wage schedules (e.g. *Construction Industry Wages Act* in Manitoba), the LMO applications will be assessed using the greater of:
  - Up to 15% below the median posted wage for the occupation; or
  - The wages set by the province/territorial legislation.

Provincial/territorial minimum wage:

- When taking into account the 15% range for higher-skilled occupations and the 5% range for lower-skilled occupations, the wage cannot go below the provincial/territorial minimum wage. This applies to all wage assessments.

# Temporary Foreign Worker Program Manual

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## General:

- Employer must offer at least a minimum of 30 hours of work per week.
- More information can be found in the TFWP Manual, specifically under sections:
  - 3.9.4.4.2 for wage guidelines for LCP;
  - 3.10.6 for wage guidelines for SAWP; and
  - 3.8.9.8 for wage guidelines for the Agricultural stream.

## NOTE:

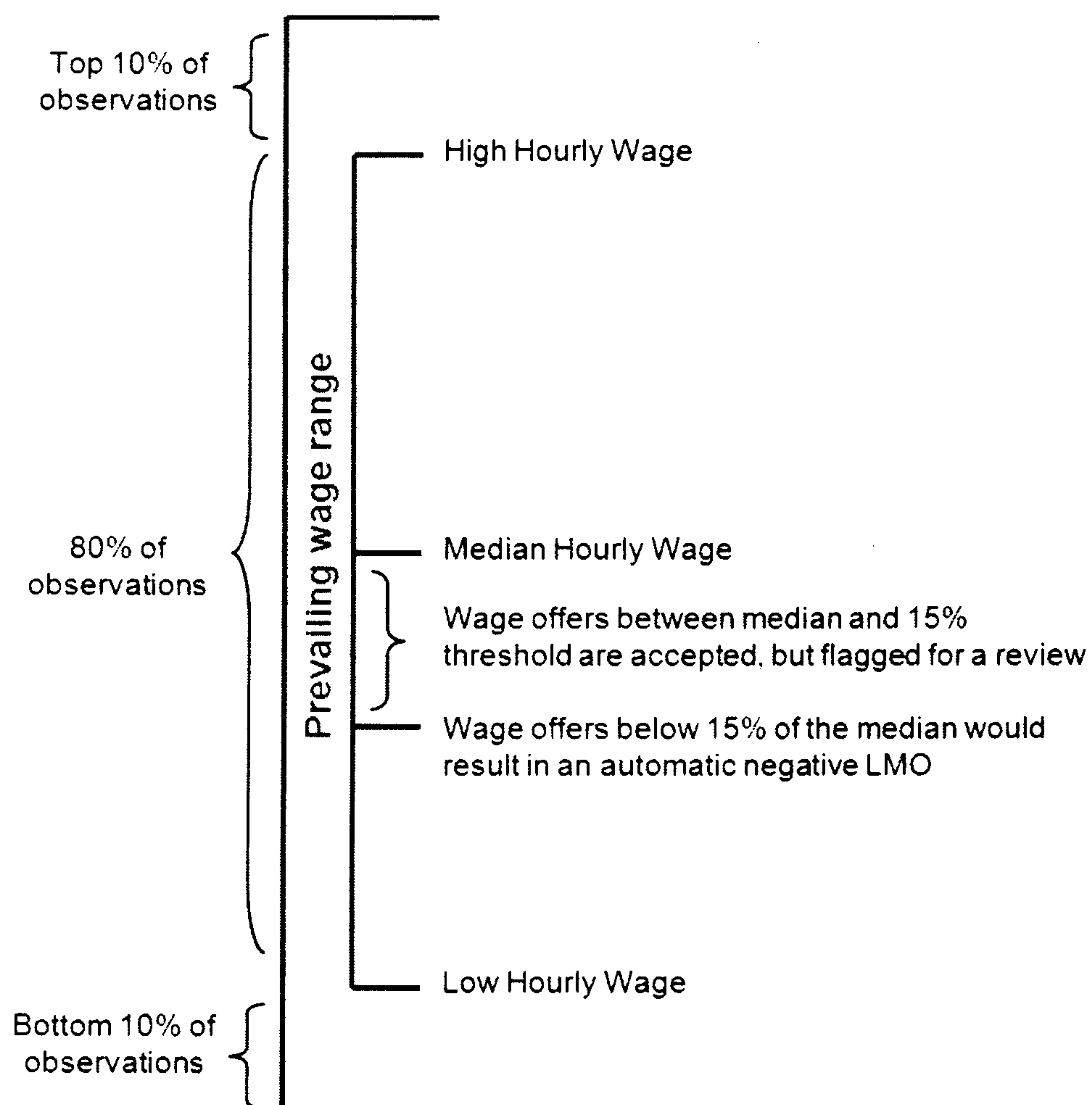
Refer to Annex D for scenarios that illustrate this policy.

## Key Information:

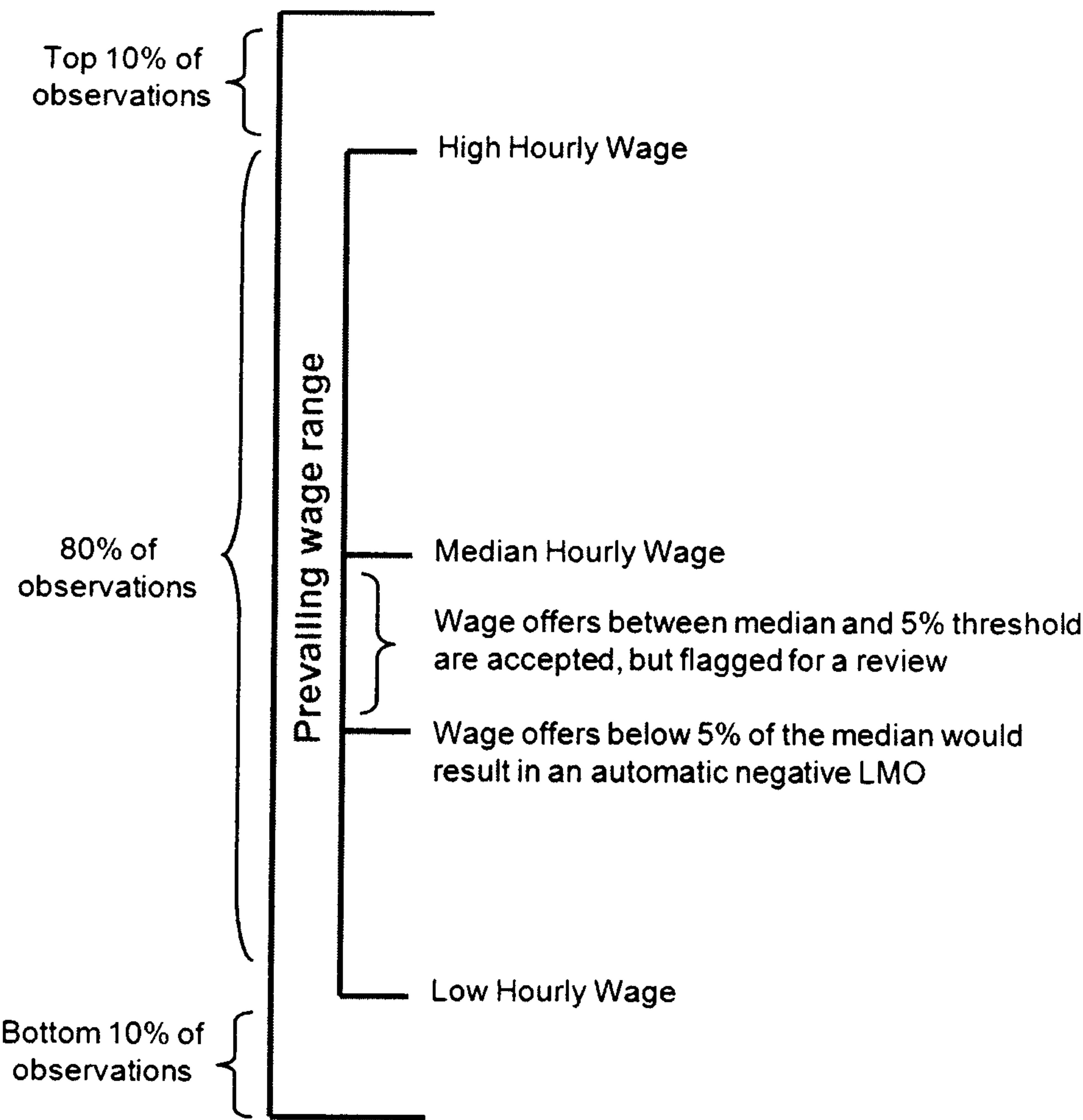
**Approved by:** Andrew Kenyon, DG  
**Division:** Policy and Program Design  
Althea Williams, Director  
Mike Perry, Manager  
NC-TFWP\_PTET-INBOX-GD



**Prevailing Hourly Wage Range Diagram  
for Higher-skilled Occupations**



Prevailing Hourly Wage Range Diagram  
for Lower-skilled Occupations





### Payroll Template

Employers must complete and submit this payroll template along with their labour market opinion application if they are:

- not offering their temporary foreign workers (TFW) the posted median wage; or
- offering TFWs the wage currently paid to their Canadian and permanent resident employees working in the same occupation and geographic area

Employer Name: \_\_\_\_\_

Date Completed: \_\_\_\_\_

Payroll Information				
Canadian citizen or permanent resident employee name (first name only)		Social insurance number (first 3 digits only)		Pay period 1 of 3 consecutive pay periods (for 1 employee)
Earnings and hours	Number of hours	Rate per hour	Current amount for specific pay period	YTD amount
Hourly, regular rate				
Stat holidays				
Overtime				
TOTALS:				
Deductions				
CPP, EI, tax, etc.				
Other deductions				
Union dues, accommodation, etc.				
TOTALS:				
Comments:				

Pay period 2 of 3 consecutive pay periods (for same TFW)				
Earnings and hours	Number of hours	Rate per hour	Current amount for specific pay period	YTD amount
Hourly, regular rate				
Stat holidays				
Overtime				
TOTALS:				
Deductions				
CPP, EI, tax, etc.				
Other deductions				
Union dues, accommodation, etc.				
TOTALS:				
Comments:				

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Pay period 3 of 3 consecutive pay periods (for same TFW)				
Earnings and hours	Number of hours	Rate per hour	Current amount for specific pay period	YTD amount
Hourly, regular rate				
Stat holidays				
Overtime				
TOTALS:				
Deductions				
CPP, EI, tax, etc.				
Other deductions				
Union dues, accommodation, etc.				
TOTALS:				
Comments:				



### 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 \$35/hour. Can I pay my foreign welders 15% less (\$29.75/hour)? If no, why not?
  - No, you are required to pay your temporary foreign worker welders a minimum of \$35/hour because this is what you pay your Canadian and permanent resident welders.
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 temporary foreign worker welders \$40/hour because you must pay temporary foreign workers the same wage that you pay your Canadian and permanent resident workers.
3. I do not employ Canadian welders. Can I pay my foreign welders 15% less than the median wage (\$35/hour)? If so, how?
  - No, you are required to pay the temporary foreign worker welders at least the median wage of \$35/hour because you do not employ any Canadian or permanent resident welders and, therefore, cannot demonstrate that you pay Canadian and permanent resident welders \$29.75/hour.
4. I employ Canadian welders at \$25/hour. Can I pay my foreign welders the same wage? If no, why not?
  - No, you cannot pay higher-skilled temporary foreign workers more than 15% below the median wage (\$35/hour).
5. 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 temporary foreign worker 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 \$11.71/hour. Can I pay my foreign food counter attendants 15% less (\$9.95/hour)? If no, why not?
  - No, you are required to pay your temporary foreign worker food counter attendants a minimum of \$11.71/hour because that is what you pay your Canadian and permanent resident food counter attendants.
2. I employ Canadian food counter attendants at \$10.50/hour. Can I pay my temporary foreign worker food counter attendants the same? If no, why not?
  - No, you cannot pay lower-skilled temporary foreign workers more than 5% below the median wage.



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### Section 3.5.5.1.4.1 – Assessing Prevailing Wage Rates for Pharmacists (NOC 3131) Working Towards Full License

#### Purpose:

To provide guidance to HRSDC/Service Canada officers on how Section 203(3)(d) (wages and working conditions) of the IRPR should be applied when processing a request by an employer for a LMO in respect of an offer of employment made to a foreign national who:

- will fill an Intern Pharmacist position; and/or
- 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 positions, classified under NOC 3414 - Other Assisting Occupations in Support of Health Services.

#### Background:

The occupation of Pharmacists (NOC 3131) is a regulated high skilled occupation. The worker dispenses prescribed pharmaceuticals and provides consultative services to both clients and health care providers.

Pharmacists are regulated in all provinces and territories in Canada, and in order for a Canadian and/or foreign national to become licensed in the occupation, he/she must complete an internship in the occupation. The internship requirement is required in all provinces and territories. However, the length of the internship varies between one month to two years, depending on the region and in some instances, the previous work experience of the foreign national in the occupation. The main duties of the interns are quite distinct from those of Pharmacy Assistants or Technicians. Currently, there is regional variation on how wages for Intern Pharmacist positions are assessed as part of a LMO application. In some Regions, wages are only confirmed at the average hourly wage for licensed pharmacists, while in other Regions there is a two-tiered wage structure for assessing NOC 3131 – licensed wages and wages for individuals working towards full licensing. While, LMI Services does not collect compensation data for unlicensed Pharmacists, wage information collected by representatives from the Canadian pharmaceutical industry indicates that Canadians working towards full certification earn on average two-thirds the hourly wage of licensed Pharmacists.

#### Guideline:

To ensure national consistency across regions and to ensure that the wages offered to TFWs 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 TFW 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.

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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 foreign worker 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).



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### Section 3.5.5.1.4.3 – Salary and Benefits

This field is required. TFWP Officers should not approve LMOs with wages under the prevailing minimum wage.

HRSDC/Service Canada expects employers to offer wages that are consistent with the prevailing rate paid to Canadians in the same occupation within the region. This is to ensure the following:

- that it is not more attractive for an employer to hire a foreign worker than a Canadian worker;
- that the entry of foreign workers does not put downward pressure on Canadian wages; and
- that the foreign workers are compensated, at the same prevailing wages as Canadians, for their work in Canada.

Employers could be asked to demonstrate that the wages agreed-upon in any previous LMO submitted were, in fact, paid. An HRSDC/Service Canada Officer may request payroll records, pay stubs, cancelled checks or, T4s, in order to make this assessment.

The most current labour market information comes from the following Labour Market Website:

[http://www.labourmarketinformation.ca/standard.aspx?pcode=lmiv\\_main&lcode=eng](http://www.labourmarketinformation.ca/standard.aspx?pcode=lmiv_main&lcode=eng)

Other possible sources of LMI may include provincial employment websites, union websites, labour standards websites, etc.

**Note:**

TFWP Officers must use the "Average Wage" column as the prevailing wage rate on the LMI website (labour market information.com).

The directive states:

*"Employers must indicate the salary or wages they will be paying to the foreign national. This salary must be a fixed, or agreed to amount for an agreed to number of hours of work per month, rather a payment based on commission or tips." "Foreign worker officers should not confirm employer requests unless there is a guaranteed salary or wages at the prevailing wage rate not taking commissions into account."*

- HRSDC states that the minimum number of hours that constitutes a full-time job is 30 hours/week and that is always what we have determined to be full-time employment, unless otherwise stated in a Union Contract. Nurses' full-time hours (because they vary so much) are calculated over one month and then averaged to one week's hours. Other hours can be averaged over a two week period.
- In unique situations where a foreign worker is employed by two different companies, his/her total combined hours worked must equal to more than 30 hours per week to be considered for a positive LMO.

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Program Officers should remember that in the cases of Unionized Positions:

- "in the case of jobs that are part of a bargaining unit, the collective agreement will govern the wage structure;"
- in some limited circumstances, HRSDC/Service Canada will consider a job offer when the position is unpaid; and
- unpaid labour may take a number of forms, and can include arrangements such as:
  - unpaid internships for students as part of their professional training;
  - work completed by individuals on a volunteer basis; and
  - job shadowing/on-the-job opportunities taken by established professionals for the purpose of learning new skills or methods.

Some may be exempt from LMO. More information on Unpaid Wages will be found at the following link:

[http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/lmodir/lmodir-11.shtml#112](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lmodir/lmodir-11.shtml#112)

In general, the prevailing wage rate is identified as the average hourly wage within an established range for a given occupation in a specific geographical area. Exceptions include:

- entry level position (new graduates); and
- occupations requiring above average experience or some additional skill element.

Program Officers should remember that in the cases of Positions Covered Under a Collective Agreement, in general, the prevailing wage rate for positions covered under a CBA is defined as the wage as established within the CBA for the position located in the same location where the TFW) is scheduled to work.

**Note:** The TFWP maintains the discretion to set the Prevailing Wage Rate for the position in cases where significant variation exists between the rate established under the CBA and the average wage. If the employer is offering benefits to her/his Canadian workers, these same benefits must also be extended to the TFWs.

### Part-Time Work

HRSDC states that the minimum number of hours that constitutes a full-time job is 30 hours/week and that is always what we have determined to be full-time employment, unless otherwise stated in a Union Contract. Of course, there are exceptions such as Teachers. Advisors should take the following into consideration when assessing a part-time request:

- the job being offered is high skilled or falls under NOC skills C or D;
- the TFW is being offered a minimum of 30 hours per week or the work is considered full-time based on the standards for the occupation; and
- the worker will be able to support himself/herself while carrying out part-time work in Canada (especially workers in NOC skill levels C and D).

More information for Part-Time work can be found at:

[http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/lmodir/lmodir-12.shtml#123](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lmodir/lmodir-12.shtml#123)

For low-skilled agricultural positions, the employer is allowed to pay SAWP wages as long as they provide the foreign worker with accommodations.



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### Benefits

In regard to the benefits offered to a foreign worker, the employer must respect the standards established in the province where the foreign worker will work.

Labour and employment standards cover the maximum hours of work, overtime pay requirements, sick and vacation leave, and health and safety. Ninety per cent of workers in Canada, including foreign workers, are regulated by the standards established by the province or territory where they work. The other ten percent of workers are federally regulated under the Canada Labour Code. Provincial labour and employment standards vary from province to province.

For more information on the Canada Labour Code: <http://laws.justice.gc.ca/en/L-2>

If the wage is low, but within the minimum and the average salary identified on the LMI website ([labourmarketinformation.com](http://labourmarketinformation.com)) and TFWP Officers see a wage scale and benefits provided, plus an analysis of wages from the past years (from a HR plan provided within the application or requested of the employer by officers) then benefits count in the total assessment of the request. When evaluating working conditions for the purpose of developing a labour market opinion, TFWP Officers' primary consideration is wages (see section 11). However, information with regard to working conditions can be helpful if there is doubt about whether to approve an application or not. In some cases (mainly in high-skilled positions), employee benefits (i.e. private pension or health plans) may compensate for wages that are slightly below the average range. Officers do not require proof of benefits except for SAWP.

### Other benefits

This is also part of the benefits package that TFWP Officers may/should consider. For example, meals may be provided, employee discounts may be offered, company vehicles & company cell phones may be supplied.

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### Section 3.5.5.1.4.4 – Working Conditions

According to the TFWP, acceptable working conditions are:

- generally full-time offers of employment; and
- offers of employment that comply with applicable labour and employment standards.

Full-time employment is defined as:

- 30 or more hours of work per week, or the equivalent position, taking into consideration the standards for the occupation established by the provincial or territorial government.

#### Employment and Labour Standards

Labour and employment standards cover the maximum hours of work, overtime pay requirements, sick and vacation leave, and health and safety. Ninety per cent (90%) of workers in Canada, including foreign workers, are regulated by the standards established by the province or territory where they work. The other 10 percent of workers are federally regulated under the Canada Labour Code. Provincial labour and employment standards vary from province to province. For information on which sectors of employment are covered by provincial, territorial or federal labour legislation, or labour and employment standards:

- visit the HRSDC Labour Standards Website; or
- consult with the provincial or territorial ministry responsible for labour and employment standards listed in Appendix A.

The minimum standards set by the provincial, territorial or federal governments prevail even if the employer and worker have reached other agreements on less advantageous working conditions.

#### Evaluating Working Conditions

When evaluating working conditions for the purpose of developing a LMO, TFWP Officers' primary consideration is wages (see section 11). However, information with regard to working conditions can be helpful if there is doubt about whether to approve an application or not. In some cases (mainly in high-skilled positions), employee benefits (i.e. private pension or health plans) may compensate for wages that are slightly below the average range.

If the information provided by an employer clearly indicates that the working conditions will not meet accepted standards (e.g., excessive hours of work, no overtime pay when warranted, a clear indication that no paid vacation or vacation pay will be provided when it is required, etc.), the employer should be contacted and informed that the labour market opinion application cannot be approved. They should be given the opportunity to modify their application accordingly.

In the case of NOC C and D positions, employers must fill out all of the working conditions information on the employment contract so that both the employee and the employer are fully apprised of their rights and obligations. For more information, visit the [www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/lowskill.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lowskill.shtml).



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### Part-Time Work

Part-time job offers do not generally receive a positive LMO because TFWs must support themselves financially while working in Canada. However, a collective agreement, industry or association that oversees an occupation may define full-time as being less than 30 hours per week. In these cases, the occupational standards prevail.

Some occupations are traditionally known to have working hours that vary from one week to the next. For example, a nurse may have a variable work week based on a 10-day shift rotation with six days on (for 12-hour shifts), followed by four days off. In these situations, offer of employment should be considered full-time as long as the average number of work hours per week is at least 30 (over a calculated and limited number of weeks).

There are limited exceptions to the full-time requirement:

1. the worker would reside outside Canada but work in Canada part-time (in this case, the ability of the foreign worker to self-support is not an issue); and/or
2. a request from two (or possibly more) employers for the same worker to fill part-time positions. The request must be coordinated by the employers and total hours must be full-time.

When assessing a LMO application for part-time work, TFWP Officers consider whether:

- the job being offered is high skilled or falls under NOC skills C or D;
- the TFW is being offered a minimum of 30 hours per week or the work is considered full-time based on the standards for the occupation; and
- the worker will be able to support himself/herself while carrying out part-time work in Canada (especially workers in NOC skill levels C and D).

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### Section 3.5.5.1.5 – Recruitment

#### Determining if Advertising Efforts are Required

The evaluation of advertising efforts involves a determination of whether the position is high-skilled (NOC 0, A and B) or low-skilled (NOC C and D) and whether the employer meets the advertisement requirements.

Most occupations are subject to the same minimum advertisement requirements (variations) based on the NOC system, skills levels 0, A, B, C and D. A LMO application should be denied if an employer does not comply with the requirements outlined below.

Advertisement criteria for live-in caregivers and occupations in the province of Quebec vary slightly from those mentioned below.

#### NOC 0 and A Occupations

Employers will have conducted the **minimum advertising efforts required** if they:

- conduct similar 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**
- advertise on the national Job Bank (or the equivalent in Newfoundland and Labrador, Saskatchewan or the Northwest Territories) for a minimum of 14 days during the 3 months prior to applying for a LMO.

Employers are encouraged to conduct ongoing recruitment efforts, including communities that face barriers to employment (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.

#### NOC B Occupations

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 or the Northwest Territories) for a minimum of 14 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, newsletters or national newspapers or by consulting unions or professional associations).

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 any benefits packages being offered. The wage range must always include the prevailing wage for the position.

Employers are encouraged to conduct ongoing recruitment efforts, including communities that face barriers to employment (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.



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### Variations to the Minimum Advertising Requirements

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

### Additional Advertisement Efforts

TFWP Officers may require alternative or additional recruitment efforts (i.e., increased duration [length of time] or broader advertisement [whether local, regional, or national]) if, they believe that additional efforts would yield qualified Canadian citizens or permanent residents who are available to work in the occupation and region.

### Proof of Recruitment Efforts

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 (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 (6) years, as stipulated in certain provincial and federal legislations, such as the Income Tax Act.

### Recruitment wages:

- must be included in all NOC C&D and B advertising;
- discretion to be used with NOC 0&A – documentation is to be on file for exceptions. Employer's are currently not required to post the wages on their advertisements, however if the Program Officer finds that posting the wages may yield qualified Canadians/Permanent Residents applying, they have the option to request a variation to the advertisement requirements. See Team Leader prior to doing so; and
- discretion to be used when considering the amount of time on advertising and the amounts spent. When considering this, it should be documented on the file. Minimum to be enforced as stated by NHQ's minimum advertising requirements as per the appropriate NOC skill level.

Most importantly, the advertisements must clearly describe the same job duties, position requirements, wages/salary and working conditions as described on the foreign worker application.

### Special Conditions:

Under IRPA, in some instances, employers do not need an HRSDC confirmation to hire foreign workers, and/or the foreign worker does not need a CIC work permit.

Learn about occupations that are exempt from the HRSDC LMO and CIC work permit.

Please note that special hiring criteria apply for some industry sectors and occupations including:

- Academics;
- Film and Entertainment;
- Information Technology;
- Live-in Caregivers;
- Pilot Project for Occupations Requiring Lower Levels of Formal Training (NOC C and D); and
- Seasonal Agriculture.

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### Examples of Recruitment Sites: (NOT exhaustive)

- [www.craigslist.com](http://www.craigslist.com)
- [www.workopolis.com](http://www.workopolis.com)
- [www.jobboom.com](http://www.jobboom.com)

### Exceptions:

1. If the work entails installation, inspection, or repair of equipment, and the terms of the warranty require that the repair be done by workers designated by the manufacturer.
2. The employer has established to HRSDC's (SERVICE CANADA'S) satisfaction that the nature of the work is such that it requires a specialist who does the work on a regular basis and who are familiar with the overall operation/production. The duration of the work is limited, and there is no opportunity for Canadian workers to be trained.
3. The position is with an international organization or the mission of a foreign government, but is not exempt under Section 186 of the Regulations (work permit not required) or Section 204 of the Regulations (business visitor under GATS or NAFTA). In such cases, the international organization or foreign government will have selected the foreign national according to its own process and in light of its own requirements. Although the position is in Canada the determining consideration is not possible employment opportunities for Canadians; the organization or foreign government must hire a candidate in accordance with its requirements."



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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;

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- 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.





## Advertising Variation Request Form

**SERVICE CANADA REGION:**

**DATE REQUESTED:**

**CONTACT NAME:**

**PHONE:**

**NOC CODE(S) AND JOB TITLE(S) INVOLVED:**

**ISSUE:**

- *Describe the variation you are requesting and explain why the variation is being requested.*

**BACKGROUND:**

- *Explain any past history of exception to recruitment in the requested area and/or occupation.*
- *Explain the potential impact of not granting the variation.*
- *Explain how the recruitment requirements would be assessed, if the variation were granted.*
- *Provide considerations (regional, political, program integrity, etc) with respect to putting the variation in place, and similar considerations (regional, political, program integrity, etc) in the event the variation is not implemented.*
- *Any other relevant information to be considered?*

**RECOMMENDATION:**

- *Provide a few key points that strongly justify granting the variation.*

**NHQ RESPONSE:** CONCUR: ☐ or DO NOT CONCUR: ☐

**DECISION DATE:**

**RATIONALE FOR NHQ DECISION:**

TFWP Director of Policy & Program Design

Signature:

TFWP Director of Program Development &  
Implementation

Signature:

Director General, TFW Directorate

Signature:

**Canada**

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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

Program Officers will take the employers' yes or no checkmark as literal, and record any comments they make in this field. The following Foreign Worker guidelines should be remembered.

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.

## Temporary Foreign Worker Program Manual

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### 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.



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### 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.

## Temporary Foreign Worker Program Manual

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### Section 3.5.5.2.2 – Substantially the Same Selection Methodology

To manage the operational impact on regions of the regulatory STS requirement, STS ECRs will be performed in two ways:

- Level I (attestation-based); and
- Level II (document-based).

The determination by Service Canada officers of when to perform Level II STS ECRs will be based on:

- Risk-based Selection (non-random) – to target higher risk employers; and
- Random Sampling - Employer Selection Model (ESM) – to identify employer compliance trends, vulnerable sectors/occupations, and policy directions.

To adequately represent the compliance of an employer, especially those that hire large numbers of TFWs, 

s.16(2)

When triggers are documented in the FWS, Service Canada officers are to contact NHQ via the ECR Inbox (NC-ECR-VCE-GD) prior to commencing the STS ECR to obtain a list of seven percent of the TFWs who have received work permits listing that employer name for the last two years.

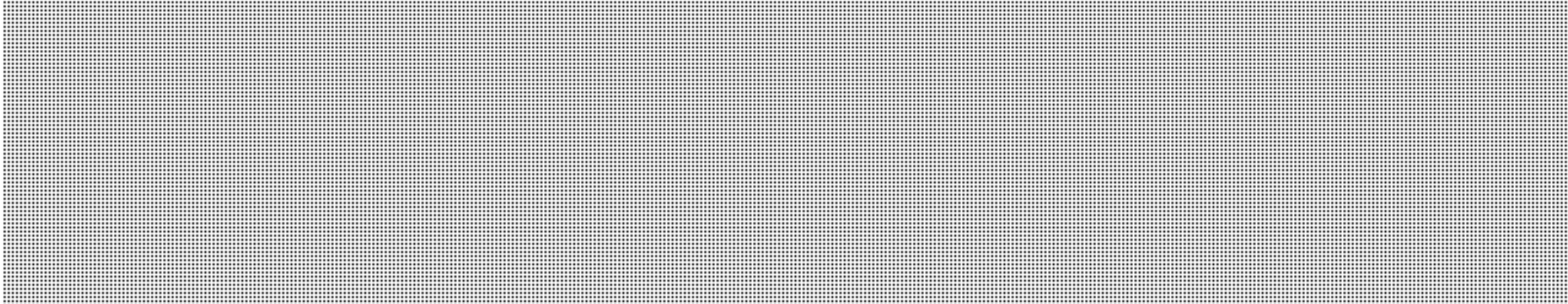
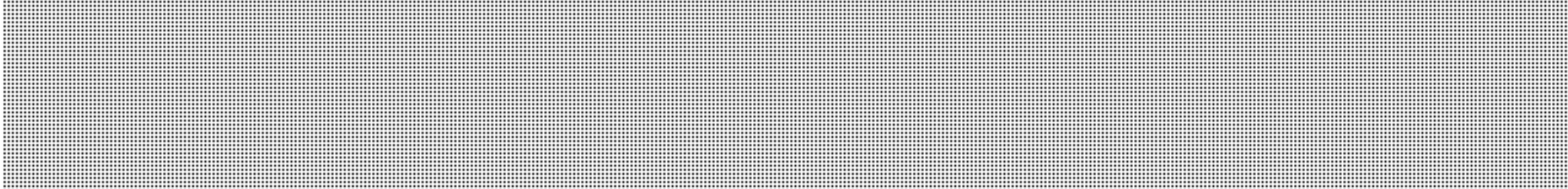


## Temporary Foreign Worker Program Manual

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### Section 3.5.5.2.3 – Substantially the Same Employer Compliance Review Level Determiner Tool

The STS ECR Determiner Tool will be used by NHQ to generate lists to inform regions which employers have been randomly selected for a Level I or a Level II STS ECR. These daily reports will use tombstone data input from local offices when a SF is created in the FWS the previous day. The list will include the following information:

- RCs;
-  s.16(2)
- 
- Names of TFWs (for Level II STS ECRs only).

Information regarding STS ECRs will be forwarded to the designated regional contact on a daily basis.

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Section 3.5.5.2.4.1 – Random-based Selection

To determine employer compliance trends, vulnerable sectors/occupations, and policy directions, Level II STS ECRs will also be performed based on a random sample determined by the ESM described below.

The ESM selects a representative sample of employers from among those estimated to be eligible for an ECR over a one year period.

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The ESM will produce representative statistical reports quarterly, track results of ECRs over time, and maintain a real-time running total of the number of reviews either underway or completed. Uncompleted or inconclusive reviews will also be tracked within the system.



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### ECR Level Determiner tool – Using the Lists

A MS Excel tool, the “ECR Level Determiner”, has been developed to assist Service Canada officers in deciding whether an employer is to undergo a Level I or a Level II STS ECR.

The tool will be used at NHQ with data from the FWS. The data will consist of information input into the FWS on a daily basis when registering LMO applications. Data will be compiled into two lists and will be sent to the appropriate regions via email on a daily basis. The lists will indicate which employers will be subject to a Level I STS ECR (**S1**) and which employers will undergo a more in-depth Level II STS ECR (**S2**).

Two daily lists will be generated and sent to each region and both centres of specialization:

**STS\_AT\_S1\_20111028** – This example is a list of employers in the Atlantic region who have been randomly selected by the ECR Level Determiner tool to undergo a Level I (S1) STS ECR. The list was generated on October 28, 2011.

**STS\_WT\_S2\_20111012** – This example is a list of employers in the Western Territories region who have been randomly selected by the ECR Level Determiner tool to undergo a Level II (S2) STS ECR. Also included are the names of the TFWs for whom documentation will be requested. The list was generated on October 12, 2011.

#### How to use the Lists

The lists are made up of two sets of information, CIC Work Permit info on the left, and HRSDC confirmed LMO information on the right. Service Canada officers should first ensure that the information such as Employer Name (both S1 and S2 lists) and TFW first and last name (S2 only) match in both sets of info (CIC and HRSDC) to the extent that they are certain that they are the same employer and the same TFW. For example, the first and last name could be reversed, etc. Where there is enough of a difference as to be uncertain that they are the same person, contact NHQ via the ECR Inbox and a new employer or TFW name will be provided.

#### Level I (**S1**):

- Verify the FWS to ensure there are no triggers in the Employer Notes that would prompt a Level II STS ECR.
- If no triggers are present, conduct Level I STS ECR as per the STS ECR Directive.
- If triggers are present, conduct Level II STS ECR as per section 3.5.5.2.6. Complete the ECR Tracker, recording this review on the “STS-Risk” tab of the Tracker, to indicate a non-random Level II STS ECR for this employer. Populate the ECR Tracker at each stage of review.

#### Level II (**S2**):

NOTE: Service Canada officers must conduct the indicated number of reviews.

- The S2 list provides TFW names for which documentation will be requested from the employer. Note the two colors of rows for each employer selected for Level II review. The number of TFWs highlighted in **WHITE** represents the required seven percent. In other words, this number of reviews must be completed for this employer.
- In the event that the Service Canada officer discovers that one or more of the selected TFW(s) highlighted in **WHITE** did not work for the employer, replace the name of that TFW with the name of the first TFW highlighted in **GREY** for that same employer.

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a)

b)

c) Populate the ECR Tracker (STS Random tab) at each stage of review.

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Please submit updated ECR Trackers to the ECR Inbox every Monday of pay week.



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Section 3.5.5.2.4.2 - Risk-Based (non-random) Selection

To ensure that higher risk employers undergo an in-depth compliance review, [redacted]  
[redacted]  
[redacted] When regions receive their daily lists, Employer Notes must be reviewed for employers on the Level I list, in order to ensure there are no triggers present that would elevate the review from a Level I to a Level II. Where no triggers exist, the officer would precede with the Level I attestation-based review.

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[redacted]  
Using the information available in the FWS, the following risk criteria will be used by Service Canada officers to determine whether a Level II STS ECR should be conducted:

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[redacted]

## Temporary Foreign Worker Program Manual

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### Section 3.5.5.2.5 - Initiating the Substantially the Same Employer Compliance Review

Conversations and details concerning STS ECRs must be recorded in the Employer Notes field and the Notes to File field of the FWS.

When an employer is undergoing a Level I STS ECR (attestation) or Level II STS ECR (random or risk-based), an entry should always be made in the Employer Notes field indicating that the employer is undergoing an STS ECR and in which SF the notes for that ECR can be found.

When an employer has been selected to undergo a Level I STS ECR, the employer has offered an affirmative attestation on the LMO application and no risk-based triggers have been noted in the employer profile, the Service Canada officer must make the following notation in the Notes to File section for the current LMO application:

“Employer selected for STS ECR based on attestation. Positive STS ECR based on attestation”.

In cases where an employer has been selected to undergo a Level II STS ECR but has not responded to the attestation question and/or has risk-based triggers noted in the employer profile, a Level II ECR (risk-based) should be considered. Details on the Level II ECR (random or risk-based) are found in section 3.5.5.2.4.



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### Section 3.5.5.2.6.1 - Contacting the Employer

Initial contact with employers should generally be made by telephone in order to determine the dates that the TFW was employed with the employer. Should the employer have any questions at the time of the initial call, the following notes may be of assistance:

1. Purpose of call
  - To inform the employer that they have been selected to confirm that they provided STS same wages, working conditions and occupation to a TFW employed by them in the last two years.
2. What kind of documentation will the employer be asked to provide?
  - A detailed list of documents is found in Annex A. NOTE: Service Canada officers may only request documents from the employer that fall within the employment of the TFW where transactions occurred within two years prior to receipt of the new LMO application. Where documentation to assess criteria falls outside the two-year time frame, the employer is not required to submit it.
3. What is the process and how long will it take?
  - Upon receipt of the requested documents, the officer will verify the documents and will notify employer by telephone of any clarification that may be required. Once all of the requested documents are received from the employer, a LMO decision will be forthcoming.

4.

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"Employer selected for STS ECR pertaining to SF # XXXXXXXX. Employer notified on (Year/Month/Day) and indicated that no TFW was employed in relation to that SF within the last two years."

If the employer indicates that they have employed a TFW in relation to the selected SF in the last two years then the following entry is made in the Notes to File field:

"Employer selected for STS ECR pertaining to SF # XXXXXXXX. Employer notified on (Year/Month/Day) and confirmed TFW employment within the last two years. Employer asked to submit (list any documents requested of the employer)."

Once the phone call has been placed, the Service Canada officers will use the Active/Inactive indicator in the FWS to set the file status as inactive. An initial contact letter will be mailed to the employer indicating the documents they are required to submit. In addition, Service Canada officers must inform employers to black out any personal information, such as Social Insurance

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Numbers, birth dates of Canadians/permanent residents, and personal bank account information, which may be found on documents they plan to submit.

If Service Canada officers have been unsuccessful to reach the employer by telephone, the initial contact letter should be sent.



s.16(2)

If the employer continues with the process and submits documentation, Service Canada officers will set the file as Active in the FWS and make a notation in the Notes to File field containing the following:

“Documents received from employer pertaining to SF # XXXXXXXX on (Year/Month/Day).”

Any documents received must be retained in the file of the current LMO application being assessed.

Service Canada officers will then assess the documentation according to section XXX and Annex A.

If the employer is asked to provide justification and/or compensation Service Canada officers will make a notation in the Notes to File field containing the following:

“Employer notified by telephone on (Year/Month/Day) to provide justification and/or proof of compensation on (Year/Month/Day).”

A justification letter will also be mailed to the employer indicating that the employer has been requested to provide justification and/or compensation.

Once a phone call requesting justification has been placed, Service Canada officers will use the Active/Inactive indicator in the FWS to set the file status as inactive. If the Service Canada officer is unable to reach the employer by telephone, the justification letter should be sent.

The employer will have 30 calendar days in which to submit the requested justification after which time, if no justification has been received, the Service Canada officer may proceed to issue a refusal of the LMO application, resulting in the employer being ineligible for the TFWP for two years.

When documents detailing the employer's justification and/or proof of compensation are received the Service Canada officer will set the file status as Active in the FWS and make a notation in the Notes to File field containing the following:

“Justification and/or proof of compensation received from employer pertaining to SF # XXXXXXXX on (Year/Month/Day).”

The officer will assess the justification(s) and/or proof of compensation according to Section 3.5.5.2.8. If the justification does not meet the requirements under the IRPR section (1.1), the officer will send the proof of compensation letter to the employer.



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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.

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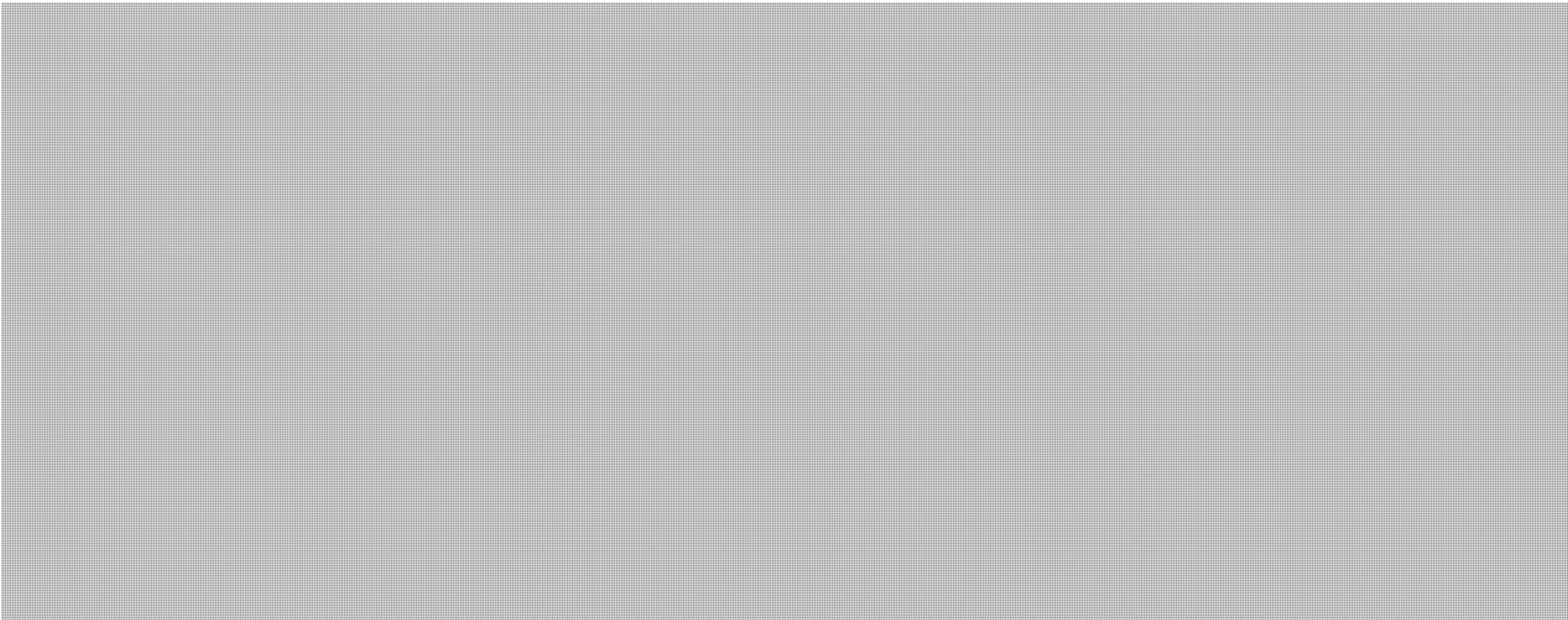
HRSDC and Service Canada reserve the right to contact an employer for additional fact-finding when the answer to a question cannot be obtained, or adequately obtained, by means of contacting the third party.

For more information, please see the operational directive pertaining to section 91 of the IRPA dealing with employer representation by a third party individual.

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**Section 3.5.5.2.6.3 - Employer Withdrawals**



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### **Section 3.5.5.2.7 - Demonstration of Substantially the Same**

The principal documents to be used in a Level II STS ECR are the LMO Confirmation Letter and associated Annex. In certain cases, the employer/employee contract may be requested, and where an Annex is not available, the LMO application will be used. A Service Canada officer may only request documents from the employer that fall within the employment of the TFW where transactions occurred within two years prior to receipt of the new LMO application (as per Section 203(1)(e) of IRPR). Where documentation to assess criteria falls outside the two-year time frame, the employer is not required to submit it.

An assessment of whether the employer has provided STS wages, working conditions and occupation will always be based on an assessment of all three factors.

The onus to prove that STS wages, working conditions and occupation were provided rests with the employer. In circumstances where an officer has reasonable doubts, based on the documentation provided by the employer, as to whether an employer has provided STS wages, working conditions or occupation the officer may present their preliminary findings to the employer and ask for an explanation of any irregularities or problems. To ensure fairness and transparency of the assessment process, employers will be provided with an opportunity to present any additional documentation or relevant explanations or justification. If additional documentation or explanations do not allay any remaining doubts as to the employers compliance, only then can a negative LMO be issued based on a negative STS finding(s).

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### Section 3.5.5.2.7.1 - Wages

A Service Canada officer may request payroll records, timesheets, or bank-processed cheques in order to make this assessment. A more comprehensive list of documentation to be assessed is identified in section 3.5.5.2.13.1.

When wage documentation submitted by the employer demonstrates that the wage paid is different from the wage stipulated on the LMO Confirmation Letter and associated Annex, a Service Canada officer should check the SF Notes field to see if Service Canada has previously approved a wage reduction. If there is no evidence of an authorized change in the prevailing wage, the Service Canada officer may require the employer provide an explanation and/or undertake compensation, depending on the variance noted below:

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s.16(2)

For the purpose of assessing that the wage indicated on a previous LMO Confirmation Letter and associated Annex was paid, it is the policy of HRSDC not to regard gratuities (i.e. tips) as part of the wage. An employer must demonstrate that the TFW was paid the identified prevailing wage not including gratuities.

The onus to provide the documentation to demonstrate that wages were STS rests with the employer. However, should an officer have reason to believe that wages have not been paid properly and the documentation is too extensive or complicated to assess, an officer may recommend that the employer seek assistance with the appropriate provincial authorities in order to gain assistance in performing the necessary calculations to assess and/or demonstrate compliance with any legislation or regulations pertaining to the payment of wages.



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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.

In this case, the employer would be asked to submit documentation to substantiate their claims regarding the change in hours, for example, a copy of the work sharing agreement or possibly a letter explaining the continuing need for the TFW. The employer must be asked to provide justification/compensation even if the reduced hours are above the 30 hours/week guideline set by the TFWP as the general standard for full time employment.

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. Comparison of the LMO Confirmation Letter and associated Annex to documentation submitted by the employer, as well as to the employer/employee contract, can provide valuable insight as to whether there were any substitutions of the terms of employment. Any such instances of substitution will be considered as non-compliance despite the value of the substitution or employer and employee consent.

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### Section 3.5.5.2.7.3 – Occupation

Employers will be asked to demonstrate that the occupation identified on the LMO Confirmation Letter and associated Annex and the actual position the TFW occupied over the course of the employment period that falls within the two-year look back were STS. More information on how employers will be asked to demonstrate this is found in section 3.5.5.2.13.1. If the duties fall within the LMO, nothing further is required. If the duties are not what was agreed upon, the employer must provide justification and (where necessary) compensation.

s.16(2)

The employer must be given the opportunity to provide justification and compensation if applicable. If not, the promotion of a TFW to an occupation with a different NOC code would constitute a failure to provide STS occupation regardless of the merits of the promotion.



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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.



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### **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 3.5.5.2.8.1.4 - An error in interpretation

An employer may not have provided STS wages, working conditions, or occupation as the result of a good faith error in interpretation. Where an employer raises this justification the employer will also be expected to provide compensation to correct the error(s).

The Service Canada officer should review the FWS Employer Notes field when an employer claims that their interpretation was made in good faith. [REDACTED]

s.16(2)

[REDACTED] Additional clarification from the employer may be required to substantiate whether the explanation would meet the regulatory requirement. If the error was demonstrably made in good faith (i.e. the employer has never been communicated with regarding this type of error) then the employer will also be expected to provide compensation. The ability to provide compensation in order to avoid a negative STS finding only arises when the error is in good faith.

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### Section 3.5.5.2.8.1.5 - An unintentional accounting or administration error made in good faith

An employer may not have provided STS wages, working conditions, or occupation as the result of an unintentional accounting or administrative error. Where an employer raises this justification the employer will also be expected to provide compensation to correct the error(s).

The Service Canada officer should review the FWS Employer Notes field when an employer claims that their interpretation was due to an accounting/administrative error and was unintentional. [REDACTED]

s.16(2)

[REDACTED] Additional clarification from the employer may be required to substantiate whether the explanation would meet the regulatory requirement. If the error was demonstrably was clearly unintentional (i.e. the employer has never been communicated with regarding this type of error) then the employer will also be expected to provide compensation. The ability to provide compensation in order to avoid a negative STS finding only arises when the error is unintentional.

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### Section 3.5.5.2.8.1.6 – Other Circumstances

An employer may present justifications that do not align with the prescribed exemptions above. Whether the justification is reasonable is left to the discretion of the Service Canada officer communicating with the employer.

For guidance, such justifications may include:

- a change in wage based on industry practice, merit based wage review etc.;
- a change in hours based on a request by the TFW to reduce hours (accompanied by documentation indicating mutual consent to the request);
- a change in hours based on seasonality of the occupation; and/or
- delays in TFW certification beyond the employer's control (e.g. lack of available certification test dates for regulated occupations).

## Temporary Foreign Worker Program Manual

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### Section 3.5.5.2.8.2 - Principles of Compensation

Compensation is action the employer could take to address a discrepancy in the wages, working conditions or occupation committed to in the original LMO Confirmation Letter and associated Annex.

#### **If compensation is possible**

If the TFW is still with the employer, the employer should apply direct compensation. A wage discrepancy should be remedied by direct payment to the TFW. If the position is not STS, the officer should contact the employer and ensure that a new opinion and work permit are sought, and the worker must return to the original job duties until a new LMO is approved.

In addition to direct compensation, a Service Canada officer may also request a letter of commitment from the employer guaranteeing compliance on future offers of employment. This letter may be used to establish a pattern of non-compliance upon which subsequent opinions may be refused if similar instances of non-compliance are identified. A commitment letter may also act as compensation in instances where correction of the non-compliance is not possible (i.e. the TFW is no longer with the employer).

#### **If compensation is not possible**

Where compensation is not possible, the employer can be deemed to have provided compensation if they can demonstrate that they made sufficient effort to compensate the TFW. If the TFW is no longer with the employer, proof of sufficient effort to compensate the TFW will include:

- a ROE to verify that the TFW does not work for the employer;
- a registered letter sent to the TFW's last known address detailing the compensation owed;
- an e-mail to the TFW; or
- a phone-call or email to the TFW's emergency contact.

A Service Canada officer may confirm the pending opinion for a shorter period than requested by the employer. Decreasing the duration of the LMO can be a way of providing the employer with a period of time to demonstrate compliance after which, upon future application, a second past compliance assessment can be conducted.

A negative LMO would be issued if an employer is not willing to provide compensation (with proof) within the allotted time.

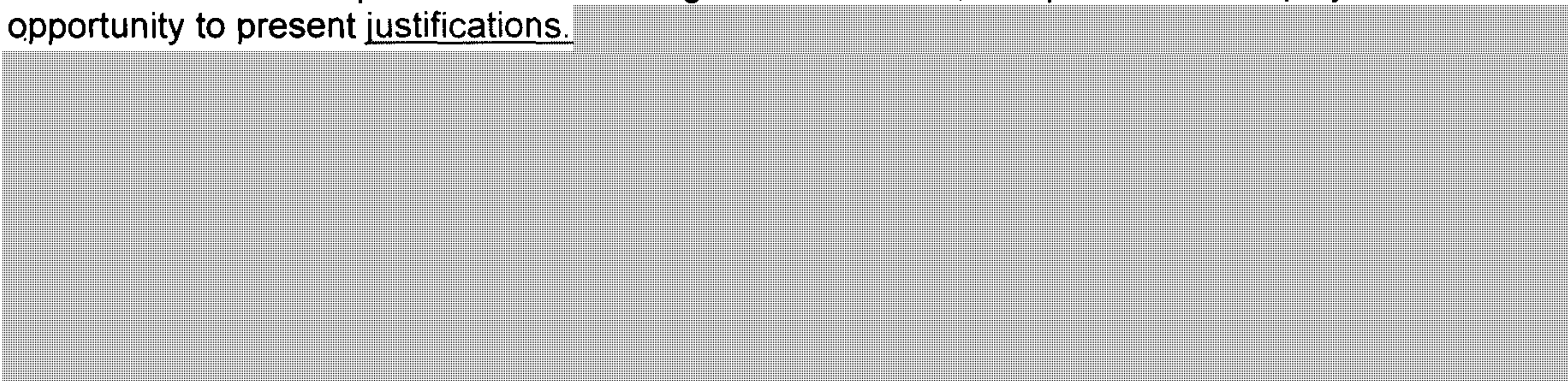


## Temporary Foreign Worker Program Manual

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### Section 3.5.5.2.8.2.1 - Repetition of Justifications/Compensation

As all returning employers must meet the STS criteria, a returning employer could potentially be found as not providing STS wages, working condition and/or occupation in a subsequent STS ECR, when undergoing an assessment of their new LMO application. Service Canada officers must follow the same process for assessing all three criteria, and provide the employer an opportunity to present justifications.



s.16(2)

## Temporary Foreign Worker Program Manual

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### Section 3.5.5.2.10 - Revocation of an opinion

In addition to requesting compensation and issuing a negative opinion, a Service Canada officer also has the ability to revoke the unused portions of previously confirmed opinions when the STS ECR has revealed that the employer did not provide the wages, working conditions or occupation stipulated in the LMO confirmation letter and annex.

An LMO may only be revoked in according with the Revocation Directive.



## Temporary Foreign Worker Program Manual

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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.

## Temporary Foreign Worker Program Manual

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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.



## Temporary Foreign Worker Program Manual

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### Section 3.5.5.2.13.1 - STS ECR Elements and Compensation

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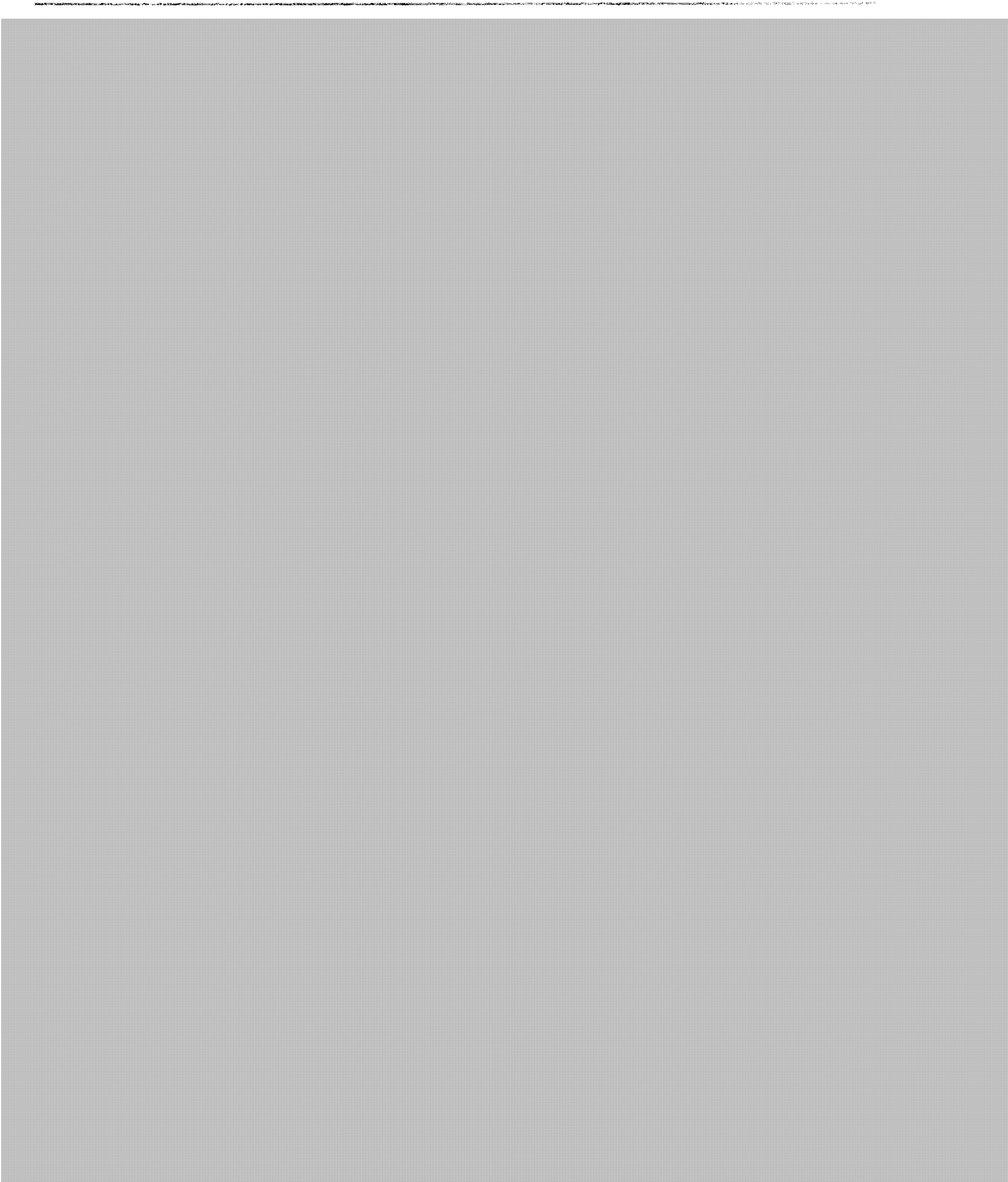
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Approved by: Andrew Kenyon, DG, TFW-LMI Directorate

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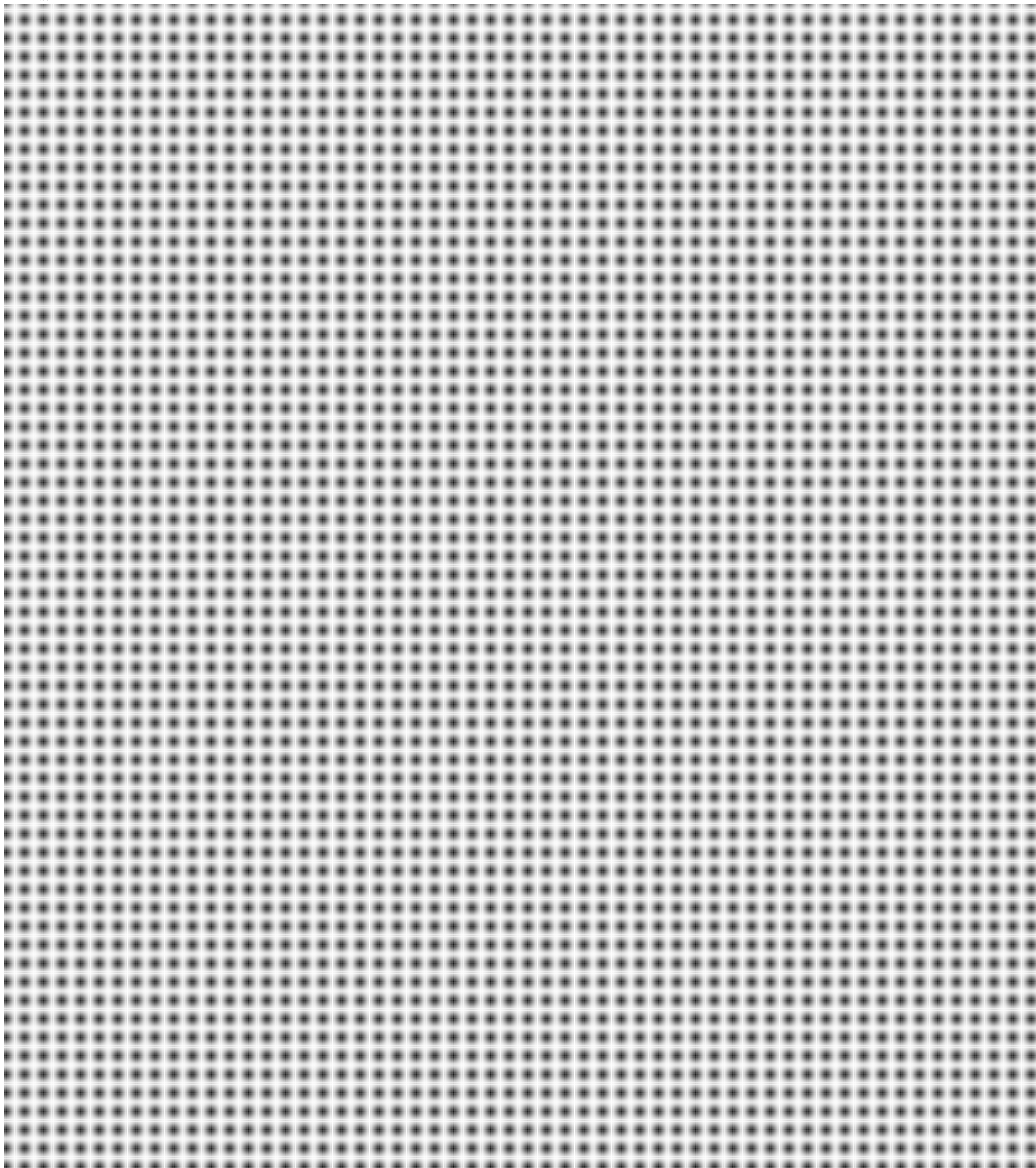
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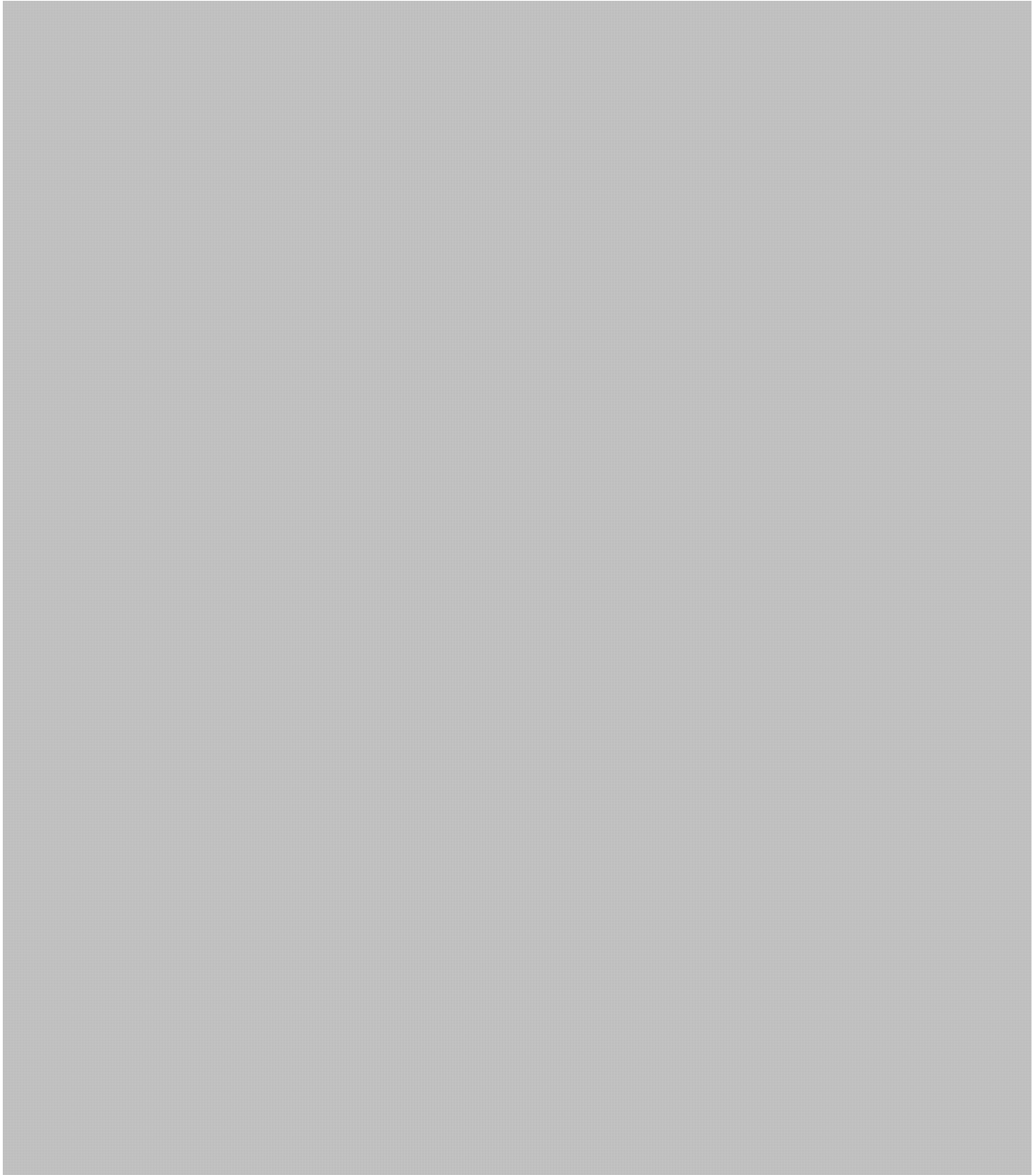
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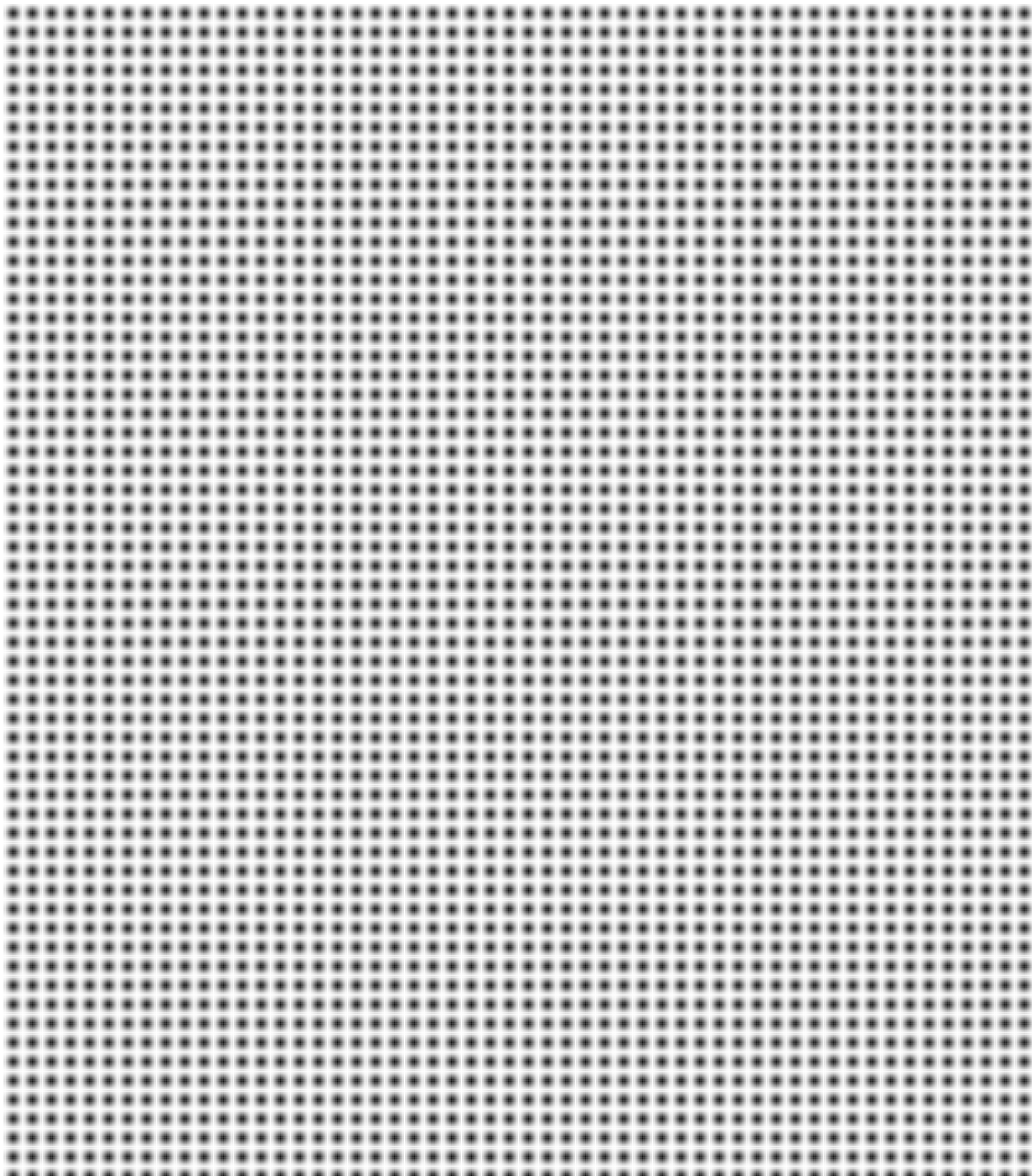
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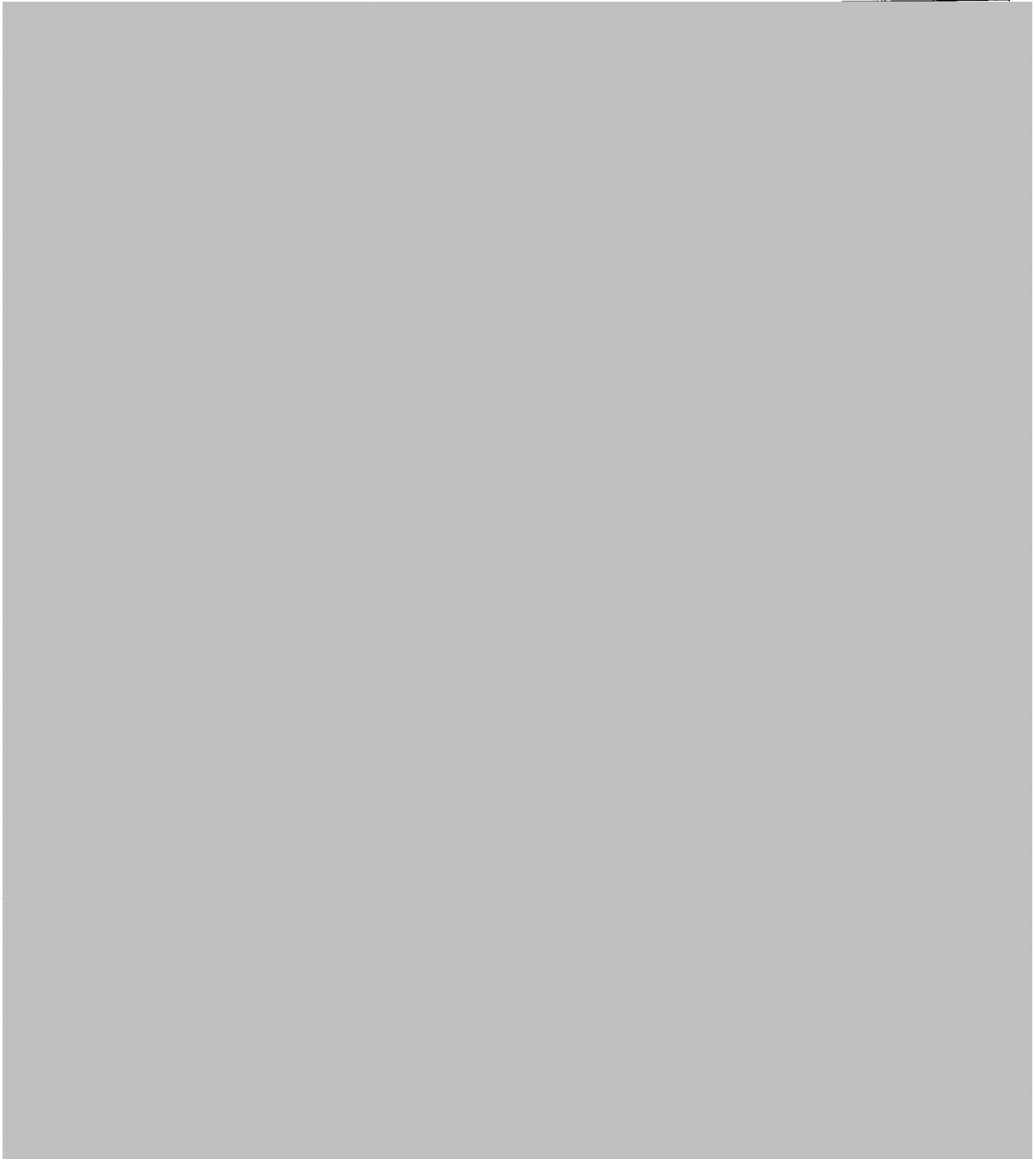
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## Temporary Foreign Worker Program Manual

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## Temporary Foreign Worker Program Manual

### Section 3.5.5.2.13.2 – Information Sharing Agreements

Agreement	Status	Permissible	Non-permissible
<b>CIC – Memorandum of Understanding</b>	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.
<b>CRA – Memorandum of Understanding</b>	Signed November 12, 2008	Verifies valid business number and employer/location details.	HRSDC does not share information around contributions owed to CRA.
<b>Province of Alberta – Letter of Understanding</b>	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
<b>Federal</b>	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	
<b>Alberta</b>	\$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)
<b>British Columbia</b>	\$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



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					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

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						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
<b>New Brunswick</b>	\$ 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.   Holiday pay is regular wages plus 1½ times regular rate for hours worked.  Must meet eligibility requirements.  (s.19 (1)(2))	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.
<b>Newfoundland and Labrador</b>	\$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 of 4 years from the date of the last entry.



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			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

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		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  <i>Personal emergency leave:</i> 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	



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	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.

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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***



## Temporary Foreign Worker Program Manual

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### 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;

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- 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

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### 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:*

## Temporary Foreign Worker Program Manual

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- (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;



## Temporary Foreign Worker Program Manual

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(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.

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### 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.



## Temporary Foreign Worker Program Manual

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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).



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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.

## Temporary Foreign Worker Program Manual

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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.



## Temporary Foreign Worker Program Manual

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### 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.

## Temporary Foreign Worker Program Manual

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### Section 3.6.2 – Recruitment of Foreign Academics

#### Hiring Steps

Educational institutions hiring foreign academics for Canadian positions must :

1. Submit their application form (768 PDF KB) – HTML Version 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/advertrecruitment.s.html](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/communications/advertrecruitment.s.html)) 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



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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.



## FOREIGN WORKER APPLICATION

### Application for a Labour Market Opinion

#### PRIVACY NOTICE

I understand the information contained on this form and on any sheet attached thereto, including information that qualifies as personal information as defined in the *Privacy Act*, as well as any other information and personal information collected by Human Resources and Skills Development Canada (HRSDC) for the purpose of providing a Labour Market Opinion pursuant to the *Immigration and Refugee Protection Regulations* shall be used by HRSDC and shared with Citizenship and Immigration Canada (CIC) solely for that purpose. I understand that this information may also be shared with federal departments and agencies for the administration and enforcement of the *Immigration and Refugee Protection Act and Regulations* as permitted by the *Department of Human Resources and Skills Development Act*. This information may also be shared with Provincial/Territorial governments for the purpose of administration and enforcement of Provincial/Territorial legislation, including employment standards and occupational health and safety legislation, as permitted by the *Department of Human Resources and Skills Development Act*. Finally, I understand that this information may also be used by HRSDC and CIC for policy analysis, research and/or evaluation in relation to the entry and hiring of foreign workers to Canada or the *Immigration and Refugee Protection Act*.

I understand that I have no obligation to complete and sign this application, but failure to do so may prevent HRSDC from providing a Labour Market Opinion as required by the *Immigration and Refugee Protection Regulations*.

Authority to collect the information contained on this form and on any sheet attached thereto, including personal information as defined in the *Privacy Act*, including any other information collected by HRSDC for the purposes described above is provided under the *Department of Human Resources and Skills Development Act* and the *Immigration and Refugee Protection Act*. Once under the control of HRSDC, the personal information contained in this form and on any sheet attached thereto as defined in the *Privacy Act*, as well as any other personal information collected by HRSDC for these purposes is administered in accordance with the *Privacy Act*. The *Privacy Act* gives individuals the right to access their personal information under the control of a federal government institution. Instructions for making formal requests are outlined in the publication *Info Source*, copies of which are located at all Service Canada Centres or at the following Internet address: <http://infosource.gc.ca>. The personal information collected by HRSDC for the purposes described above will be retained in Personal Information Bank "HRDC PPU 440".

#### EMPLOYER INFORMATION

Employer ID # (if applicable)	2 Canada Revenue Agency (CRA) Business Number (15 digit code is <u>mandatory</u> for Canadian employers) -RP	3 Employer Name (name of business)	
Business Telephone Number ( ) -	5 Address: Number / Street / PO Box #	6 City	7 Province/State
Country	9 Postal/Zip Code	10 Date business started (yyyy-mm-dd)	11 Website Address
Describe the principal business activity:			
Contact Name: First Middle Last		14 Job Title	
Preferred Official Language of Correspondence <input type="checkbox"/> English <input type="checkbox"/> French	16 Contact Phone Number ( ) -	Ext.	17 Fax Number ( ) -
E-mail		19 Number of Canadians/permanent residents employed in Canada.	
2 Have you employed a foreign worker in the past 5 years? <input type="checkbox"/> No <input type="checkbox"/> Yes If applicable, number of foreign workers currently employed in Canada (neither Canadian citizens nor permanent residents).			
1 Were any employees laid off in the past 12 months? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, how many? Reason(s) for layoff(s) and occupations affected:			

#### \* THIRD PARTY INFORMATION (if applicable)

Canada Revenue Agency Business Number (15 digit code is <u>mandatory</u> for third party company) -RP	23 Company Name		
Third Party Representative authorized to act for employer First Name Middle Name Last Name			
Preferred Official Language of Correspondence <input type="checkbox"/> English <input type="checkbox"/> French	26 Address: Number / Street / PO Box #		
City	28 Province/State	29 Country	30 Postal/Zip Code



Telephone Number	Extension	32 Fax Number	33 E-mail address
( ) -		( ) -	

If you are a third party representative acting on behalf of an employer, written authorization from the employer to act on his/her behalf is required. Employers who wish to have third party representation should fill out the "Appointment of Representative" sheet attached to this form. HRSDC reserves the right to contact the employer directly if necessary.

### DETAILS OF JOB OFFER

Use a separate sheet for each additional job offer.

If you are requesting a Labour Market Opinion for identical job offers, provide the information only once.

4 Job title	35 Is the job temporary with intent to permanent? <input type="checkbox"/> No <input type="checkbox"/> Yes	36 Number of foreign workers you are requesting under this job title (same wage, job description, location, etc)?
5 Expected duration of employment days weeks months years	38 Expected start date of employment, if any (yyyy-mm-dd)	
6 Location of job : Number and Street	City	Postal Code
		40 Province

### DETAILS ON JOB OFFER (continued)

7 Main duties of the job

8 Educational requirements of the job:
<input type="checkbox"/> Doctorate/PhD <input type="checkbox"/> Master's degree <input type="checkbox"/> Bachelor's degree
<input type="checkbox"/> College level diploma/certificate <input type="checkbox"/> Apprenticeship diploma/certificate <input type="checkbox"/> Trade diploma/certificate
<input type="checkbox"/> Secondary school <input type="checkbox"/> Vocational school diploma/certificate <input type="checkbox"/> No formal education requirement

Additional information:

9 Experience/skills requirements of the job:

10 Language requirements: Indicate the language requirement that is needed for this position. If you indicate a language that the foreign worker does not speak, a CIC officer will refuse the application, even if the worker is suitable for the position.

Oral : ☐ English ☐ French ☐ Other ☐ None      Written: ☐ English ☐ French ☐ Other ☐ None

If "Other", please explain.

11 Salary (in Canadian dollars)	Number of hours per day	Number of hours per week	Total number of hours per month
per hour      per day      per month      per year      other			
\$      \$      \$      \$      \$			

12 Benefits:	Number of paid vacation days
<input type="checkbox"/> disability insurance <input type="checkbox"/> medical insurance <input type="checkbox"/> dental insurance <input type="checkbox"/> pension	

13 Other benefits:

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Are there provincial/territorial/federal certification, licensing or registration requirements of the job?

☐ No ☐ Yes → If yes, what is the name of the certifying/licensing/registering body?

Please note: Citizenship and Immigration Canada will check to ensure the foreign worker holds the required certification, licensing or registration requirements when processing the work permit application.

### DETAILS ON JOB OFFER (continued)

Is the position part of a union?

☐ No ☐ Yes → If yes, what is the name of the union?

Has the union been consulted about the hiring of a foreign worker?

☐ No ☐ Yes → If yes, what is the position of the union? Provide details. Attach documentation, if available.

Is there a labour dispute in progress?

☐ No ☐ Yes → If yes, please provide details.

Have you attempted to recruit Canadians / permanent residents for this job?

☐ Yes → If yes, provide details of your recruitment efforts and the results.

If you posted your job offer on Job Bank, please provide the Job Bank Order Number(s):

Attach supporting documentation such as advertisements in local and national newspapers, recognized Internet job sites, job-specific and professional publications, recruitment drives, job faires, etc.)

☐ No → If no, please explain.

What are the potential benefits to the labour market in Canada that will occur as a result of employing the foreign worker?

☐ filling a labour shortage ☐ transfer of new skills or knowledge to Canadians/permanent residents ☐ direct job creation or retention of Canadians/permanent residents ☐ other

Provide details:

Do you plan to train Canadians / permanent residents for the position to be filled by the foreign worker?

☐ No ☐ Yes → If yes, provide a brief description of the training plan.

### FOREIGN WORKER INFORMATION

Please provide information on a separate sheet for each foreign worker coming into Canada.

Name of Foreign Worker - Family Name

55 Given Name(s)

☐ Male ☐ Female

57 Date of Birth (yyyy-mm-dd)

58 Country of Residence (where worker currently lives)

59 Citizenship

If the foreign worker is currently in Canada, please indicate the immigration status:

☐ visitor ☐ foreign worker ☐ refugee claimant ☐ student

Title of job offered to the foreign worker

### ENTERTAINMENT REQUEST (if applicable)

Name of the Production

63 Total number of people involved in the Production

Type of Production

A copy of the contract between the employer and the foreign entertainer must be attached with this application form, except for film and TV requests.

Contract included with application?

☐ Yes

☐ No

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### DECLARATION OF EMPLOYER

I am an unincorporated employer, sole proprietor or partnership. ☐ Yes ☐ No

If you answered "YES" to the above:

I understand that some provinces and territories operate, pursuant to agreements with the federal Department of Citizenship and Immigration, provincial nominee programs. I hereby consent to HRSDC providing the personal information contained in this request for a Labour Market Opinion to the provincial/territorial government(s) of the province(s) or territory(ies) where I carry on business to be used by the province(s) or territory(ies) for the administration of their Provincial Nominee Programs.

☐ Yes  
☐ No

#### Agreement to Participate in the Monitoring Initiative

(The Initiative does not apply to employers seeking foreign workers to fill job offers located in Quebec.)

- ☐ *I have read and understand the Monitoring Initiative Fact Sheet and agree to participate in the Initiative.*
- ☐ *I have read and understand the Monitoring Initiative Fact Sheet and do NOT agree to participate in the Initiative.*

### SIGNATURE OF EMPLOYER

I have read and understand the Privacy Notice. I certify that the information provided in this application is true and accurate.

\_\_\_\_\_  
Signature of Employer

\_\_\_\_\_  
Printed Name of Employer

\_\_\_\_\_  
Title of Employer

\_\_\_\_\_  
Date

### SIGNATURE OF THIRD PARTY (if applicable)

I certify that the information provided in this application is true and accurate to the best of my knowledge.

\_\_\_\_\_  
Signature of Third Party Representative

\_\_\_\_\_  
Printed Name of Third Party Representative

\_\_\_\_\_  
Date

### INFORMATION FOR EMPLOYERS

Please forward this application to the Service Canada Centre responsible for processing foreign worker applications.

For the list of appropriate centres, please consult our website at:

[http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/listhrcc.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/listhrcc.shtml)

Once an officer assesses this application, the employer will be notified of the decision.

## APPOINTMENT OF REPRESENTATIVE

To Human Resources and Skills Development Canada:

FOR THE PURPOSES OF AN APPLICATION FOR A FOREIGN LIVE-IN CAREGIVER.

I, \_\_\_\_\_, residing at  
(name of employer)

\_\_\_\_\_  
(full address)

Telephone Number: ( ) - \_\_\_\_\_

Fax Number: ( ) - \_\_\_\_\_

hereby appoint \_\_\_\_\_  
(name of representative)

of \_\_\_\_\_  
\_\_\_\_\_  
(full address)

Telephone Number: ( ) - \_\_\_\_\_

Fax Number: ( ) - \_\_\_\_\_

as my representative to act on my behalf in relation to obtaining from Human Resources and Skills Development Canada a temporary employment confirmation of an offer of employment for

\_\_\_\_\_  
(name of individual to whom employment has been offered)

I hereby agree to ratify and confirm all that my representative shall do or cause to be done by virtue of this appointment.

This appointment shall remain in full force and effect until \_\_\_\_\_ unless due notice in writing of its revocation has been given to HRSDC.

\_\_\_\_\_  
(signature of employer)

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(print name of employer)

Personal Information is administered in accordance with the Privacy Act. It will be retained in Personal Information Bank HRDC PPU 440. Individuals have the right to access their personal information. For instructions, please consult the government publication Info Source found in Human Resources Centres and available at the web site: <http://infosource.gc.ca>

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## Section 3.7.1

### Directive: Sex Trade-related Businesses

#### Purpose:

The purpose of this directive is to provide policy and operational guidance to Human Resources and Skills Development Canada (HRSDC)/Service Canada regarding labour market opinion (LMO) applications received from sex trade-related businesses. This new directive is to ensure that temporary foreign workers (TFW) are not hired by businesses linked to the sex trade, where there are reasonable grounds to suspect a risk of sexual exploitation for some of their workers.

#### Authorities:

Sub-section 203(3)(d) of the *Immigration and Refugee Protection Regulations* (IRPR) provides HRSDC/Service Canada with the authority to assess *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* before the issuance of an LMO.

#### Background:

There is significant concern that some TFWs could be subject to abuse, exploitation, including sexual exploitation, or degrading work. To diminish the vulnerability of TFWs and to reduce the potential subsequent negative impacts on the labour market, linked to the “working conditions” factor set out in Section 203(3) of IRPR, negative LMOs will be issued for all LMO applications received from businesses in the sex trade, regardless of the occupation.

Businesses in the sex trade are to be issued negative LMOs when applying to hire any TFW regardless of the occupation (e.g. exotic dancers, headliners, accountants, engineers, waitresses, artists, etc.).

#### Definition of Sex Trade-related Businesses

For the purposes of this directive, strip clubs, escort services, and massage parlours are considered business sectors related to the sex trade where there are reasonable grounds to suspect a risk of exploitation, including sexual exploitation. In addition, businesses outside of the categories of strip clubs, escort services and massage parlours may also be considered as a sex trade-related business if there are reasonable grounds to suspect that there is a risk of exploitation or degrading work for any of their workers.

#### NOTE:

Professional massage therapy clinics that employ accredited therapists are not included in this directive.

#### Citizenship and Immigration Ministerial Instructions

Citizenship and Immigration Canada (CIC) will issue Ministerial Instructions directing immigration officers not to process Work Permit applications from foreign nationals seeking employment in businesses that are in these sectors, where there are reasonable grounds to suspect a risk of sexual exploitation.

## Policy Guidelines:

Effective July 4, 2012, HRSDC/Service Canada is to issue a negative LMO to sex trade-related businesses, including but not limited to businesses operating strip clubs, massage parlours and escort services, based on the working conditions assessment factor. These guidelines are to be applied to all businesses in these categories.

HRSDC/Service Canada should take care not to issue negative LMOs involving businesses that typically require their employees to have qualifications and credentials that are regulated and certified by provincial authorities, such as massage therapy clinics. The employer must submit proof that their establishment and/or employees have attained the necessary certification to provide massage therapy services in their province.

### **When the business is not a strip club, escort service or massage parlor**

In addition, if an LMO application involves a business outside of the categories of strip clubs, escort services and massage parlours, but HRSDC/Service Canada has reason to believe that the business to which the potential TFW would be destined presents a risk of abuse, exploitation or degrading work, a negative LMO is to be issued to the employer.

## Operational Guidelines:

Businesses in the sex trade are to be issued negative LMOs when applying to hire any TFW regardless of the occupation (e.g. exotic dancers, headliners, accountants, engineers, waitresses, artists, etc.)

When an LMO application is received, prior to assessing any other factors, HRSDC/Service Canada must determine whether the business is in the sex trade by following these steps:

- a. Review the LMO application to determine the nature of the business (such as, adult entertainment venue, nude dancing, exotic dancing, activities involving partial or whole nudity, escort services) and the job description (such as, topless dancing, erotic/exotic massage).
- b. Consult the attached **Annex - List of Potential Businesses in the Sex Trade** of previous employers who requested an LMO for exotic dancers, including headliners.
- c. Where legally authorized, consult the best available evidence from law enforcement officials or from CIC, Canada Border Services Agency (CBSA), Canadian Security Intelligence Service (CSIS), RCMP/police, Public Safety, provinces/territories and other governmental organizations.
- d. If the employer's name does not appear on the list, conduct an internet search to obtain additional information about the employer and the business.
- e. If the business is suspected to be related to the sex trade, HRSDC/Service Canada should contact the employer to clarify the nature of the business.
- f. Other indicators include:
  - i. Complaints to HRSDC/Service Canada that the employer is involved in sexual exploitation, abuse, human trafficking or other illicit activities, or if the employer is currently under investigation for such activities, or reports to local police.
  - ii. Advertising
  - iii. Media reports



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- If it is **clearly evident** that the business is in the sex trade, issue a negative LMO based on "unacceptable working conditions":

- a. For the refusal reason in the Foreign Worker System (FWS), select "Other" and copy/paste the following text into the explanation box:

***The working conditions are such that there are reasonable grounds to suspect that there is a risk to any worker of abuse, exploitation, including sexual exploitation, or degrading work.***

***For more information:***

[http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/communications/trade.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/communications/trade.shtml)

- b. In the FWS's Notes to File section and the CIC Notes to File Section, indicate the rationale and source of information for determining that the business is in the sex trade.
  - c. Issue the notification letter to the employer as per the usual process.
- If it is **not clear** that the business is in the sex trade and/or there is reasonable concern of exploitation or abuse:
    - a. Contact NHQ for guidance via the TFWP Inbox with the subject heading as "Businesses in the Sex Trade".
    - b. After analysing the situation, NHQ will provide guidance to Service Canada on how to proceed.

**NOTE:**

LMOs for exotic dancers and headline exotic dancers from strip clubs no longer require concurrence from NHQ since a negative LMO is to be issued. These applications are to be processed and entered into the FWS as usual.

**LMOs issued prior to July 4, 2012:**

Positive LMOs which were issued to sex trade-related businesses prior to July 4, 2012, and for which work permits were not yet issued, will be reviewed and revoked by NHQ.

**LMO Applications received prior to July 4, 2012:**

LMO applications that were received prior to July 4, 2012, but a LMO was not yet issued, will be assessed according to this policy.

Annex – List of Potential Businesses in the Sex Trade

## Potential Businesses in the Sex Trade

Business Name

Booking agents or talent agents who may or may not deal with exotic dancers

Employer submitted letter committing to cease s/trade related activities

Employer Name	City	Province
0696527 BC LTD.	Courtenay	British Columbia
1043877 Alberta Ltd o/a Dublin's Pub	Medicine Hat	Alberta
1045525 Ontario Ltd. o/a Mirage Nite Club	Cambridge	Ontario
1078193 Alberta Ltd o/a Blue Oasis	Drayton Valley	Alberta
1223984 Ontario Ltd. o/a Charley T's	Toronto	Ontario
1307761 Ontario Limited (o/a Leopard's Lounge)	Windsor	Ontario
1446673 Ontario Limited o/a Whiskey A Go Go	Concord	Ontario
1484167 Ontario Limited o/a Maxim's	Hamilton	Ontario
1600855 Ontario Inc. Triple Play	Sarnia	Ontario
1639329 Ontario Ltd. o/a Royal Lancasters	London	Ontario
1682298 Ontario Inc. (o/a Spearmint Rhino Gentlemen's Club)	Etobicoke	Ontario
1694078 Ontario Inc (O/A The Nuden Cabaret)	Ottawa	Ontario
2027625 Ontario Ltd o/a The Doll House	Kitchener	Ontario
2076018 Ontario Corporation o/a Divas Lounge	Brampton	Ontario
330223 Alberta Ltd o/a French Maid Sports Lounge	Calgary	Alberta
355 Mansion After Dark Ltd	Calgary	Alberta
515331 nb inc	Moncton	New Brunswick
5641163 Ontario Limited aka Studio 4	Windsor	Ontario
578105 Alberta Ltd o/a The French Maid Speakeasy	Calgary	Alberta
617981 Ontario Ltd. o/a The New Danny's of Windsor	Windsor	Ontario
644812 Ontario Ltd. o/a JR's Tavern	Chatham	Ontario
651552 Ontario Inc. o/a "The Manor"	Guelph	Ontario
702932 Alberta Ltd o/a Showgirls	Edmonton	Alberta
710561 Ontario Ltd. o/a The New Fairbanks Hotel	Toronto	Ontario
747416 Alberta Ltd o/a the Gents Club	Red Deer	Alberta
848347 Ontario Limited Solid Gold Inn	Burlington	Ontario
850655 Alberta Ltd o/a Showgirls	Fort McMurray	Alberta
867240 Alberta Ltd o/a Risqué Rouge	Calgary	Alberta
941370 Alberta Ltd o/a Showgirls	Grande Prairie	Alberta
Arzac Tavern o/s Jasons	Windsor	Ontario
Barefax	Ottawa	Ontario
BI Restaurants Ltd o/a Saint Pete's Men's Club	Edmonton	Alberta
Black Wolfrun Holdings Ltd o/a Airways Country Inn	Nisku	Alberta



Blondie's	London	Ontario
Boudoir Rouge	Calgary	Alberta
Cabaret Lady Mary-Ann	Quebec	Quebec
Caddy's	Toronto	Ontario
Cathouse	Calgary	Alberta
CAS Capital Inc o/a The Aurora Night Club	Banff	Alberta
Casino Gentlemen's Club	Toronto	Ontario
Celebrities	Vancouver	British Columbia
Centerfolds Showbar	Thunder Bay	Ontario
Cheetahs of Windsor	Windsor	Ontario
Club Paradise	Toronto	Ontario
Club Pro Adult Entertainment Inc.	Concord	Ontario
Cotton Club	St. Johns	NFLD
Crossovers Entertainment (Barrie) Ltd.	Barrie	Ontario
D. Atlantic Inc. o/a Treasures	Mississauga	Ontario
D.E. LIMITED O/A FOR YOUR EYES ONLY	Toronto	Ontario
Dannys of Windsor	Windsor	Ontario
Diamonds Cabaret	Mississauga	Ontario
Duchess on Tranquille Village Hotel	Kamloops	British Columbia
Edna Global Management Inc.	New Westminster	British Columbia
House of Lancaster	Toronto	Ontario
INTERNATIONAL SPECIALISTS ENTERTAINMENT / TED LOWE	Broken Arrow	
Kennedy Club Inc.	Mississauga	Ontario
Keystone Motor Inn	Brandon	Manitoba
Lipstixx	Winnipeg	Manitoba
Lloyd White & Ryan Ross o/a Diamonds Gentleman's Club	Edmonton	Alberta
Mints Nightclub	Niagara Falls	Ontario
Oxford Hotel o/a solid Gold Nightclub	Winnipeg	Manitoba
Penthouse Club	Niagara Falls	Ontario
Pink Paradise	Laval	Quebec
Pure Platinum Gentlemen's Club	Fort Erie	Ontario
Scanty's Restaurant	Weston	Ontario
Seductions International (1049560 Ontario Limited)	Niagara Falls	Ontario
Silvers Lounge	Windsor	Ontario
Solid Gold	London	Ontario

Spanky's Chatham Hotel Inc.	Chatham	Ontario
SPI Entertainment	Las Vegas	
Studio Four Tavern Inc	Windsor	Ontario
Sundowner		
Sundowner Private Social Club Inc.	Niagara Falls	Ontario
Superb Entertainment	Winnipeg	Manitoba
The Beef Baron Tavern Inc.	London	Ontario
The Landing Strip	Toronto	Ontario
The Palace East	Pickering	Ontario
The Plaza Gentlemen's Club	Kingston	Ontario
The Ranch Electric Roadhouse Ltd o/a The Ranch Roadhouse	Edmonton	Alberta
Union Hall Nightclub	Edmonton	Alberta



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### **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.

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### Section 3.7.5 – Camera Operators for World Wrestling Entertainment

#### Directive:

Until further notice, the World Wrestling 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.

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### 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.



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### 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.

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### 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).



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### 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.

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### 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*.



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### 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.

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### 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.



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### **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.

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### 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.



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### **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.

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### **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.



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### **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.

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### **Section 3.8.2.4.4 – Provincial labour and safety legislation**

The employment contract 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.



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### 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.

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### Section 3.8.2.5 – Wages, Benefits and Working Conditions

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 StatsCa, 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' requests to hire a 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. The prevailing wage is the average hourly wage paid to Canadians working in an occupation in a specific geographical area.

Employers must make sure that the working conditions that they are providing are consistent with federal and/or provincial standards; for the occupation and workplace.

If the information provided by an employer clearly indicates that the working conditions will not meet accepted standards (e.g., excessive hours of work, no overtime pay when warranted, a clear indication that no paid vacation or vacation pay will be provided when it is required, etc.), the employer should be contacted and informed that the labour market opinion application cannot be approved. The employer will then be given the opportunity to modify the application accordingly.



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### **Section 3.8.2.5.1 – Unionized work environment**

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.

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### Section 3.8.2.5.2 – Wages and Deductions clauses in the employment contract

The employer agrees to pay the employee, for his/her work, wages of \$\_\_\_\_\_ per week, or \$\_\_\_\_\_per hour. These shall be paid at intervals of \_\_\_\_\_.

The employer agrees to pay all taxes and submit all deductions payable as prescribed by law (including, but not limited to Employment Insurance, income tax and Canada Pension plan or Quebec Pension Plan).

The employer shall not recoup from the employee, through payroll deductions or any other means, any costs incurred in recruiting or retaining the employee. These include, but are not limited to, any amounts payable to a third-party recruiter.



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### **Section 3.8.2.6 – When applicable, review and adjustment of the worker's wages after 12 months of employment**

Employers that hired a foreign worker for more than a year, have to agree to review and adjust (if necessary) the worker's wages after 12 months of employment to ensure the worker continues to receive the prevailing wage rate of the occupation and region where he/she is employed.

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### **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.



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### 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.



## Temporary Foreign Worker Program Manual

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### 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



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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.

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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.



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It is recommended that you inform the CBSA and CIC of the date and time of the foreign worker's departure.

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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.



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### 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.



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### **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.

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### **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.



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### **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.

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### **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.



## **Temporary Foreign Worker Program Manual**

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### **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.

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### 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.

[http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/questions-answers/general.shtml#01t](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/questions-answers/general.shtml#01t)



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### 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.

[http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/questions-answers/general.shtml#01ad](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/questions-answers/general.shtml#01ad)

**\*NOTE: cost of recruitment cannot be paid by employee.**

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### 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.

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### **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.



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Section 3.8.9.8 – Comparative table between Seasonal Agricultural Workers Program and NOC C&D Agriculture

Criteria		Harmonization
		<b>SAWP</b>
		<b>Agricultural stream of NOC C&amp;D</b>
Bilateral Agreement		Canada to source country MOU
Contract		Employer-Employee-Government Agent
Transportation		Employer paid, partial recoupment from Employee* ≤ \$550 – Mexico ≤ \$492 – Caribbean
Accommodations		Employer provided & free to Employee*  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
Unionization		When farm is unionized, collective agreement prevails re: wages and working conditions
Recognition payment <sup>1</sup>		\$4/week ≤ \$128
Cost recovery		Caribbean. - \$2/work day Mex. – n/a
Recruitment		Provided by source country. 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
Provincial Insurance	Health	ON & QC – eligible from date of entry Rest of Canada – may or may not be eligible ; Employers required to register TFWs if eligible
Supplemental health insurance		Mexico. – RBC Ins Caribbean – self insured or private insurance
Workers comp.		Mandatory enrolment; Employer must provide proof where not mandatory by provincial legislation
Premature repat.		Section X of both Mexico & Caribbean. contract have provisions re: who pays
		Employer pays, regardless

<sup>1</sup> Applicable after five or more consecutive years of employment with the same employer.



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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.



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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](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lcpdir/lcpdir-2.shtml)

**Temporary Foreign Worker Program Manual****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:

<http://www5.hrsdc.gc.ca/NOC/English/NOC/2006/QuickSearch.aspx?val65=6474>



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### 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.

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### 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.



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### 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.

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### **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**

## **Temporary Foreign Worker Program Manual**

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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.



## Temporary Foreign Worker Program Manual

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### 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.

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### 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.



## Temporary Foreign Worker Program Manual

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### 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

## Temporary Foreign Worker Program Manual

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### 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 (unless the third party is on the Due Diligence List);
- 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 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.



## **Temporary Foreign Worker Program Manual**

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- 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.

## **Temporary Foreign Worker Program Manual**

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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).



## Temporary Foreign Worker Program Manual

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### 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 \(PDF 236 KB\)](#)" sheet must accompany the application form and remain in the employer's file. The signed 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 PO 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.

Please refer to related documents "Questions to confirm LMO application"; "Third Party Bulletin" and; "Due Diligence List"

## Temporary Foreign Worker Program Manual

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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.



## **Temporary Foreign Worker Program Manual**

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### **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.

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### 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.

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Human Resources and Skills Development Canada

## Foreign Live-in Caregivers

### 8. Extending a Work Permit

Human Resources and Skills Development Canada/Service Canada is not involved in extensions of work permits involving the same employer and live-in caregiver. An employer who wishes to retain their live-in caregiver beyond the work permit expiry date simply has to give the caregiver a letter confirming an offer of employment for a specific period of time confirming the continuation of the existing employment contract, or noting any revisions, such as increase in wages. The caregiver then obtains the Application for Extension of Work Permit from Citizenship and Immigration Canada (CIC), completes the application, includes a copy of the employer's letter of offer a copy of the original employment contract if applicable, as well as the applicable fee, and mails it to the Case Processing Centre, Vegreville. Refer to CIC's web site for more information .

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Date Modified: 2012-01-25



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### 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.

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### 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.

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### 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):**

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##### **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.



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### 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.



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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:



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- 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 Division, 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].



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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



## Temporary Foreign Worker Program Manual

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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



## Temporary Foreign Worker Program Manual

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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: [fw-pte.mb@servicecanada.gc.ca](mailto:fw-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



## Temporary Foreign Worker Program Manual

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listed in IRPR. 203 are respected in each jurisdiction, there is also an additional requirement bestowed 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](http://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**

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### **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.



## Temporary Foreign Worker Program Manual

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### 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.

## **Temporary Foreign Worker Program Manual**

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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.





## Human Resources and Skills Development Canada

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### Live-in Caregiver Program

1. Description
2. Requirements
3. Wages, Working Conditions and Occupation
4. Advertisement
5. How to Apply
6. Next Steps
- 

### Program Description

The Live-in Caregiver Program (LCP) allows families to hire a foreign live-in caregiver, often called a nanny, when Canadian citizens and permanent residents are not available.

Under the LCP, foreign live-in caregivers must:

- provide care on a full-time basis (minimum 30 hours per week) to:
  - children, under 18 years of age
  - elderly persons, 65 years of age or over, or
  - persons with disabilities
- live and work without supervision in the private household where the care is being provided; and
- meet the requirements set by Citizenship and Immigration Canada (CIC) and Human Resources and Skills Development Canada (HRSDC)/Service Canada for the LCP.

Employers must meet all the Program Requirements, the Wages, Working Conditions and Occupation and the Advertisement requirements.

Employers who wish to hire a housekeeper or a caregiver that resides outside the household must apply under the Stream for Lower-skilled Occupations.

**NOTE:**

Live-in caregivers working in Canada under the LCP:

- have up to 4 years, from the date of their arrival in Canada, to complete the employment requirement to be eligible to apply for permanent residency; and
- may choose between 2 options to calculate the number of hours of employment required to apply for permanent residency:
  - 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.

For more information, visit CIC.

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## Temporary Foreign Worker Program Manual

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### 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

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### 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**

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### **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.



## Temporary Foreign Worker Program Manual

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### Section 3.9.6.3 – Withdrawal of application

When the employer contacts the office to withdraw the application prior to the finalization of the assessment of the file, the Officer should note this as withdrawn with an explanation as to why the job offer has been withdrawn, e.g. the foreign worker is no longer interested, the employer has made alternate arrangements, etc.

\*If the employer is being advised of a refusal, or if the employer indicates during a call that they are not prepared to adhere to the program requirements, and the employer states they want to withdraw/close the request, the decision entered should **NOT** be a withdrawal, it should be a refusal with an explanation, i.e., employer states that he/she/they are not prepared to pay prevailing wages, employer states that they do not have private furnished accommodation, etc.

## Temporary Foreign Worker Program Manual

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### Section 3.9.6.4 – Cancellation and Revocation

Cancellations: An employer may require that an LMO be cancelled. In those situations, the cancellations require signed written direction from the employer for the file.

Revocations: The revocation of a LMO is a process specifically initiated by federal government officials (HRSDC/Service Canada/CIC/CBSA). It should not be confused with an employer initiated cancellation of LMOs. Prior to the issuance of a work permit, any LMO, including those with unused positions for which a work permit has not been issued can be revoked under the following circumstances:

- the employer has provided materially false or misleading information; or
- new facts come to light subsequent to the date of the issuance of the opinion that change the assessment of any of the factors set out in subsection 203(3) and that, in turn, change the opinion that the employment of the foreign national would likely have a neutral or positive effect on the labour market in Canada; or
- the opinion was based on a mistake as to some material fact.

Please refer to annex 6.4.1.4 for the directive "Guidelines for Revoking an LMO".



## Temporary Foreign Worker Program Manual

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### 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 to support additions to the Due Diligence list when applicable. 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.

It is important to note the difference between an employer's ineligibility for the program and fraudulent activity. If information pertaining to fraud associated with a confirmed LMO is received, revocation of the LMO may be possible. Please refer to Annex 6.4.1.4 for the directive "Guidelines for Revoking an LMO".

## Temporary Foreign Worker Program Manual

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### Section 3.9.7.1 – Due Diligence List

A "Third Party Bulletin" has been developed (see below) to address a variety of scenarios: forging information such as the employer's signature; falsifying an employer's information, such as the address and phone number; inflating the number of workers requested by the employer; and creating phantom companies to apply for and obtain LMOs. The scope of this bulletin does not include any other types of misrepresentation that do not relate directly to the LMO application, such as third parties charging fees to foreign workers.

#### Third Party Bulletin

Employers are permitted to authorize third-party representatives to act on their behalf for the purposes of requesting Labour Market Opinions (LMO). While the majority of third parties are helpful to employers there remain unscrupulous third parties that misrepresent employers as it relates to the content of LMO applications.

While there are several ways that third parties can misrepresent employers, this bulletin addresses the following scenarios: forging information such as the employer's signature; falsifying an employer's information, such as the address and phone number; inflating the number of workers requested by the employer; and creating phantom companies to apply for and obtain LMOs. The scope of this bulletin does not include any other types of misrepresentation that do not relate directly to the LMO application, such as third parties charging fees to foreign workers.

#### Procedure

##### Receipt of Complaints

*Step 1* - Without exception, this process will be initiated once the Temporary Foreign Worker Program receives an official letter of complaint from an employer identifying that a third party misrepresented her/his intentions.

There are three ways that complaint letters may be sent to Human Resources and Skills Development Canada:

1. **Proactive Contact with Employers** - Service Canada officers are directed that, at their discretion, they should conduct random phone calls to employers that have identified that they wish to use a third party. These calls will serve to verify the information on the LMO application and ensure that the employer is aware of its submission.

If Service Canada determines that the third party has misrepresented the employer as a result of the random phone call, the officer should prompt the employer to submit a letter describing the specific misrepresentation and the necessary corrections to the LMO.

2. **Letters Received Directly from Employers** - Unsolicited complaints about third party misrepresentation may be received directly from employers. These complaints must address misrepresentation by a third party within the context of an LMO application.
3. **Other Sources** - If complaints are received from other sources, such as workers, non-governmental organizations, or anonymous sources, Service Canada officers should contact the employer to verify the information provided in the initial complaint and the information in the LMO application in question.



## Temporary Foreign Worker Program Manual

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If the employer indicates that there was no misrepresentation on the part of the third party, no action will be taken; however, if the employer confirms that they were misrepresented by a third party, the officer should encourage the employer to submit a letter describing the specific misrepresentation and the necessary corrections to the LMO.

*Step 2* - The Service Canada officer must then call the employer to verify receipt of the letter and to verify the contents therein.

*Step 3* - The discrepancy identified by the employer is corrected in the system as per the letter (if possible) and a note in the system should be logged in the "Notes to Citizenship and Immigration Canada section" detailing what information was incorrect.

*Step 4* - The employer's letter is forwarded to National Headquarter (NHQ) for consideration for the 'due diligence list'.

*Step 5* - The third party information is compiled at NHQ and, when appropriate, placed on a list that will be accessible to TFWP Officers on the intranet.

If a new application is received naming a third party on the list, the officer is advised to proceed with the following steps.

*Step 6* - If another application is received naming the same third party on the "due diligence list" (the officer would know this by checking the intranet list) the Service Canada Officer makes a mandatory phone call to the employer to verify information on the application to ensure that it is correct using a list of pre-determined questions developed by NHQ.

*Step 7* - If the information is correct, no action is required.

If the information is incorrect the officer should ask the employer to submit written confirmation that it is incorrect and include the information necessary to make corrections in the system. The application should be placed on hold until the request is received (missing information flag placed).

## Temporary Foreign Worker Program Manual

### 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.



## Temporary Foreign Worker Program Manual

### 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.



Human Resources and  
Skills Development Canada

Ressources humaines et  
Développement des compétences Canada

Canada

## Human Resources and Skills Development Canada

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### Seasonal Agricultural Worker Program

#### Mexico and Caribbean 2012 Contracts

The following contracts and transfers must be completed, signed and submitted to Human Resources and Skills Development Canada/Service Canada to accompany a Labour Market Opinion for hiring workers from Commonwealth Caribbean countries or Mexico.

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#### Workers from Commonwealth Caribbean countries

##### **2012 employment contract for workers from Commonwealth Caribbean Countries (excluding those in British Columbia)**

[\(HTML\)](#) - [\(PDF 52KB, 7 pages\)](#)

##### **2012 employment contract for workers from Commonwealth Caribbean countries in British Columbia**

[\(HTML\)](#) - [\(PDF 48KB, 6 pages\)](#)

#### Caribbean Transfer Contracts

##### **2012 employment contract for workers from Commonwealth Caribbean countries who accept a transfer to a new employer**

[\(HTML\)](#) - [\(PDF 51KB, 6 pages\)](#)

##### **2012 employment contract for workers from Commonwealth Caribbean countries in British Columbia who accept a transfer to a new employer**

[\(HTML\)](#) - [\(PDF 44KB, 5 pages\)](#)

#### Workers from Mexico

##### **2012 employment contract for workers from Mexico (excluding those in British Columbia)**

[\(HTML\)](#) - [\(PDF 50KB, 7 pages\)](#)

Español [\(HTML\)](#) - [\(PDF 47KB, 7 pages\)](#)

##### **2012 employment contract for workers from Mexico in British Columbia**

[\(HTML\)](#) - [\(PDF 52KB, 6 pages\)](#)

Español [\(HTML\)](#) - [\(PDF 57KB, 6 pages\)](#)

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## Temporary Foreign Worker Program Manual

### 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](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](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/SAWPSheets/AB.shtml)

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Saskatchewan:

[http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/SAWPSheets/SK.shtml](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](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](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](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](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](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](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/SAWPSheets/PEI.shtml)



**Temporary Foreign Worker Program Manual****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.

**Temporary Foreign Worker Program Manual****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.



**Temporary Foreign Worker Program Manual****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.

## Temporary Foreign Worker Program Manual

### 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*.



**Temporary Foreign Worker Program Manual****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.

**Temporary Foreign Worker Program Manual****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.



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### 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

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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**.



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### 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 Trinidad/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](mailto:vacationworldtravel@shaw.ca) and [penny.cleary@rbc.com](mailto:penny.cleary@rbc.com) with a cc to [ruth.alexis@rbc.com](mailto:ruth.alexis@rbc.com))
- The email is to contain the following information:
  - 2010 SAWP Opinion Number;
  - SF Number;

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- 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)**



## Directives – Accelerated Labour Market Opinion Initiative

### Background:

In an effort to respond to employers' need for timely labour market opinion (LMO) processing, while balancing the need to enhance employer compliance and ensure effective labour market regulation, Human Resources and Skills Development Canada (HRSDC)/Service Canada is implementing a new Accelerated Labour Market Opinion (A-LMO) Initiative.

The two main objectives of the new A-LMO Initiative are to:

- improve the integrity of the Temporary Foreign Worker Program (TFWP) and labour market outcomes; and
- respond to the employers' needs for more efficient and timely LMO processing.

### Overview:

HRSDC has designed the A-LMO Initiative for returning employers who have a clean compliance record with the TFWP. The new A-LMO Initiative introduces efficiency measures by reducing the amount of paper-burden on employers in the application process, and by introducing attestations for specific assessment criteria that can be reviewed through a post-compliance review. It makes use of lessons learned from the former Expedited Labour Market Opinion (E-LMO) Pilot; the attestation-based application process developed for the Vancouver 2010 Olympic and Paralympic Winter Games, and shifts the focus to integrity measures in the employer compliance review process.

The A-LMO attestation-based application process includes a new approach for assessing prevailing wages rates. This key assessment is integral in determining whether a positive or negative A-LMO will be provided, or whether an employer's application should be assessed in the regular LMO process. Through the regular LMO process, HRSDC/Service Canada staff can request additional information and engage in a more extensive application review before issuing an LMO.

An A-LMO compliance review process is conducted once the temporary foreign worker (TFW) has been with the employer for an amount of time that provides for a reasonable basis for reviewing employer compliance. Employers are required to provide consent to participate in the A-LMO compliance review.

### Employer eligibility

Employer-eligibility criteria aim to mitigate risks to Program integrity, while providing a reasonably efficient pathway to employer's participation in the A-LMO process. Employers will be deemed eligible for the A-LMO application process, if they have:

- been issued at least one positive LMO in the previous two years;
- a clean record of compliance with the Program; and
- not been the subject of an investigation, an infraction, a serious complaint (including credible media reports), or of any unresolved violations or contraventions under provincial/territorial laws governing employment and recruitment.

Employers who meet the aforementioned criteria will have a note entered into their Foreign Worker System (FWS) profile to reflect that they meet the A-LMO employer eligibility criteria. To continue participating in the A-LMO Initiative, employers must continue to meet eligibility criteria, and therefore HRSDC/Service Canada staff will continue to assess these criteria for each A-LMO application.



## A-LMO parameters

Starting April 10, 2012 Service Canada will begin accepting A-LMO applications through the Web Service as well as paper-based applications for occupations in the National Occupational Classification (NOC) skill type 0, and skill level A and B with the exception of those in the Film and Entertainment, and the Agricultural sectors. The existing processes for these sectors will remain unaffected by the A-LMO Initiative.

## A-LMO application assessment

Employers applying under the A-LMO process will be required to provide essential information related to the positions they are staffing. However, the majority of the elements in the application will require employer attestations, and will not be subject to assessment at the application stage.

The attestations will apply to most LMO elements under the *Immigration and Refugee Protection Regulations* (IRPR), including:

- advertisement and recruitment efforts,
- working conditions,
- genuineness, and
- substantially the same (STS) factors.

The attestation-based application does not exempt employers from criteria normally assessed against evidence provided in regular LMO applications. The focus of the A-LMO Initiative is rather to provide a more efficient and timely process for eligible employers, and to strengthen Program integrity and labour market outcomes through a more rigorous employer compliance review process.

Not all assessment criteria can be covered in an attestation-based application, including the type of occupation an employer is seeking to fill, the wages the employer is offering, and the consistency of the job offer with the reasonable employment needs of the employer. Employers must, therefore, continue to provide details about the job offer in order to classify the job in accordance with the NOC coding system. Furthermore, employers must identify in the application the wage offered to the TFWs.

From an assessment perspective, the wage offered by the employer must be reasonable and be equal to or greater than the wage paid to Canadian citizens or permanent residents working in the same occupation at the same workplace. The wage offered by an employer will be evaluated against the wages published on the Working in Canada (WiC) Web site to ensure that it is at or above the prevailing rate.

## A-LMO compliance review

The employer's participation in the A-LMO process is contingent upon their consent to participate in a post- A-LMO compliance review. Employers must retain relevant documentation in order to demonstrate compliance with the positive A-LMO or LMO letters and annexes which reflects the attestations made within their A-LMO application.

An A-LMO compliance review may be conducted on any LMO previously issued by HRSDC/Service Canada to an employer participating in the A-LMO process, as long as the TFW worked for the employer within two years prior to the date of the review.

HRSDC/Service Canada staff will conduct the A-LMO compliance review to determine whether the wages, working conditions, or occupation identified on the LMO or A-LMO letters and annexes were provided to the TFW. Steps for conducting a compliance review on wages, based on the A-LMO wage methodology, are provided in the A-LMO Review directive. If the review finding indicates that the wages, working conditions, or occupation provided to a TFW are not STS, the employer will be given an opportunity to present justification and to provide compensation where required.



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During a review, an employer will also be expected to demonstrate compliance with the exact Program requirements including proof of:

- a labour shortage,
- payment of the prevailing wage,
- recruitment and advertisement,
- no ongoing labour dispute, and
- genuineness factors (e.g. ability to fulfill and past compliance).

Justifications and compensation may be required if non-compliance is detected with these criteria. Applicability of justifications and compensation to these criteria is described in the A-LMO Review directive.

In cases where an employer is found to be non-compliant as a result of an A-LMO review, the following will apply:

- non-compliant employers will become ineligible to access the A-LMO application process;
- revocation of LMOs or A-LMOs where work permits have not yet been issued;
- where possible by existing Memorandum of Understanding and Letters of Understanding, the review finding will be shared with federal/provincial/territorial partners;
- the review finding will be noted in the employer's FWS profile, and will prompt automatic level 2 genuineness and STS assessments at the time of the employer's next LMO application or for any pending LMO applications;
- TFWP staff at NHQ will examine cases of non-compliance to determine if there is a level of abuse or mistreatment of TFWs that would warrant transfer of the TFW to a new employer.

## Guidelines for issuing an A-LMO:

### Step 1: Program ineligibility and authorized third party representative

Similar to the guidelines for issuing an LMO, the first step under the A-LMO process is to ensure that the employer is eligible to participate in the TFWP. An employer, who is on Citizenship and Immigration Canada's (CIC) ineligibility list, remains ineligible for any type of LMO applications, including A-LMO.

In addition, when employers wish to be represented by a third party during the A-LMO process, HRSDC/Service Canada staff must determine if their third party representative is authorized to perform these services under s.91 of IRPA.

For more information on step 1, refer to section 3.5.2 of the TFWP Manual.

### Step 2: Employer eligibility to the A-LMO process

Any employer, who meets the eligibility criteria and who consents to participate in the A-LMO compliance review process, will have their application processed within 10 business days of receipt of application.

The first time an A-LMO application is submitted by an employer, a thorough verification of an employer's Program compliance history should be completed to ensure that the employer:

1. Has been issued at least one positive LMO in the last two years.

#### Ineligible due to Program history:

- employers who have not had a positive LMO for any skill level in the past two years based on the date the A-LMO application is made; and
- employers who have never submitted an LMO application.



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2. Has a clean record of compliance with the Program.

Ineligible compliance record:

- employers found non-compliant under the Monitoring Initiative (MI), the STS or the A-LMO process and did not provide justification and compensation;
- the employer has withdrawn from a previous MI, STS Employer Compliance Review (ECR) or an A-LMO compliance review;
- employers who received a previous negative LMO under R200(5)(d) regarding their past compliance with federal/provincial/territorial laws governing employment and recruitment.

3. Has no known risk factors.

Ineligible due to risk factors:

- employers with any "I3" or "I4" information noted in their employer FWS profile (as per the Intelligence Directive forthcoming);
- employers with a Risk Level of 3 (high) or 4 (very high);
- HRSDC/Service Canada staff has discretion to review individual records in the employer FWS profile. Individual records which reveal information that would normally prompt either a Level 2 Genuineness or Level 2 STS assessment will result in employer ineligibility. Consultation with NHQ, through Business Expertise Consultants, is recommended prior to determining an employer's ineligibility to the A-LMO process.

This verification of an employer's eligibility to apply under the A-LMO process is primarily completed by a thorough review of all FWS notes, and LMOs issued to employers and shared with CIC within the preceding two years. The employer must have had at least one positive LMO in the past two years. The positive LMO would not have to be restricted to a higher skilled occupation.

HRSDC/Service Canada staff may also consider any credible information regarding an employer's adherence to Program requirements. Service Canada Business Expertise Consultants must inform NHQ through the general inbox at: NC-TFWP\_PTET-INBOX-GD, when an employer has been found to be ineligible under the A-LMO process.

Employers must continue to meet the A-LMO eligibility requirements for subsequent A-LMO applications. However, HRSDC/Service Canada staff can consider current and subsequent information obtained since the employer's A-LMO eligibility was first established to ensure that an employer remains eligible under the A-LMO Initiative.

A system file of an employer to participate in the A-LMO Initiative may be flagged for a compliance review. A review flag leads to an increased likelihood of that employer undergoing a post-LMO compliance review. Before Service Canada can issue a positive A-LMO, they will be prompted within the FWS to decide whether a flag will be applied to that system file. It will not be possible to record a positive LMO without first indicating whether the system file is flagged for a review.

System files must be flagged for a review in the following circumstances:

- where the wage is below the wage published on the WiC Web site for that occupation up to 15% below that wage;
- the employer has a Risk Level of 2 (medium);
- where the employer was not found compliant during an ECR or an A-LMO compliance review after undertaking acceptable compensation;
- if there is any "I1" or "I2" information noted in the employer FWS profile;
- the employer has had previous LMOs revoked;
- a previous MI, STS ECR or an A-LMO compliance review was inconclusive;
- the employer became ineligible under the former E-LMO.



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## Employer ineligibility to the A-LMO process

Employers who do not meet all of the A-LMO eligibility requirements must be informed in writing through a FWS-generated letter, and also be informed that their application will be processed as a regular LMO application.

HRSDC/Service Canada staff can use standardized language to inform the employer of their ineligibility to A-LMO Initiative. To ensure that the A-LMO process remains an accelerated process, the letter should also indicate that Service Canada will send a follow-up letter to clarify all of the information that will be required to process the application as a regular LMO application. The employer will be directed to the Web site for information related to the Program requirements.

To transfer an A-LMO file to a regular LMO application, HRSDC/Service Canada staff must remove the A-LMO flag from the Request for Opinion (RFO) screen and then place the A-LMO file with the other LMO applications received on the same date.

When the application is ready to be processed as a regular LMO application, it can be reviewed in more detail to determine what information is missing to issue a positive LMO under the LMO directives.

HRSDC/Service Canada staff can reference the missing information directives to inform the employer of the information that is required to process the application.

## Recording assessment outcomes

HRSDC/Service Canada staff must document the outcome of their assessment in the relevant A-LMO sections within the FWS. Should the assessment outcome, or issues with the particular file, impact the assessment of future LMO or A-LMO applications received from that employer, it should be added in the 'employer notes' field of the FWS, referencing the system file number for which there were issues.

Following the assessment of **step 2** (*Employer eligibility to the A-LMO process*) under the A-LMO Initiative, the following information should be added in the 'notes to file' field:

- employer has met the A-LMO employer eligibility criteria and has agreed to participate in the A-LMO compliance review process; or
- employer has met the A-LMO employer eligibility criteria, but has not agreed to participate in the A-LMO compliance review process; or
- employer has not met the A-LMO employer eligibility criteria.

Any interaction with the employer that contributes to the outcome of the assessment, including any written correspondence with the employer, should also be added in the 'notes to file' field.

## **Step 3: Consistency with federal-provincial-territorial agreements**

Occupations that are exempted from an LMO are also exempted from an A-LMO. Refer to section 3.5.3 for directives on ensuring that issuing an A-LMO is consistent with any existing federal-provincial-territorial (FPT) agreement.

## **Step 4: Issuing an A-LMO**

Generally, the employer must attest to or provide sufficient information to satisfy the HRSDC/Service Canada staff that the employment of the foreign national will result in a neutral or positive effect on the labour market to receive a positive A-LMO. In the event that an employer does not provide the information required, a negative A-LMO can be issued **OR** the employer may choose to submit an application to be considered under the regular LMO process and formally withdraw the A-LMO application.



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There are two types of activities HRSDC/Service Canada staff will undertake before issuing a positive A-LMO. The first are those that require some up-front assessment to determine if the regulatory requirement is met. The remainder are completed through an employer's attestation that they have met the regulatory requirement.

### Regulatory factors that require some up-front assessment:

#### a) Actively engaged

**Assessing actively engaged:** *R200(5)(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*

The assessment of this criterion is important to ensure that the offer of employment is coming from an employer that legally exists and operates a business relating to the job offer made to the TFW. Assessment for this factor should follow the guidelines as described in section 3.5.4.1.2 of the TFWP Manual. Under the A-LMO Initiative, only returning employers with a clean record of compliance and where no known risk factors evident are eligible for an A-LMO process. As such, this factor should be assessed as a "Level 1". If a Level 1 assessment cannot be conducted (because risk factors are evident), then this application would be issued a negative A-LMO.

#### b) Reasonable employment need

**Assessing reasonable employment need:** *R200(5)(b) whether the offer is consistent with the reasonable employment needs of the employer*

Employers will be attesting that the job offer is consistent with their employment needs. This means that the job offered to the TFW matches the general type of work that is usually part of employment in that business/sector and whether the business is experiencing growth or attrition, conditions that would normally require the hiring of a new worker.

When assessing this factor, HRSDC/Service Canada staff must consider the:

- business activity the employer has described, and
- type of occupation the employer requested.

If there is no connection between the job offer and the employment needs of the business, a rationale can be requested directly from the employer in accordance with section 3.5.4.1.3 of the TFWP Manual. However, if the rationale cannot be obtained in a reasonable timeframe, or if there are other risk factors, the file should be assessed through the regular LMO process.

#### c) A-LMO wage methodology

Under the A-LMO Initiative, an employer is responsible for researching and understanding the prevailing wages posted on the WiC Web site for the occupation for which they are requesting an LMO. Employers have some flexibility to base their wage on what they pay their Canadian citizen and permanent resident employees. Employers that are selected for an A-LMO compliance review may be required to provide information and demonstrate that the wage paid to the TFW was equal to or greater than the wage paid to Canadian citizens or permanent residents in the same occupation with the same experience and skill sets.



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The process for assessing wage offers for an A-LMO is as follows:

- A wage that is not greater than 15% below the posted median wage will be accepted at the A-LMO application stage.
- Wages offered that are lower than 15% below the posted median wage will be issued a negative A-LMO.
- Wage offers between the posted median wage and 15% threshold are accepted, and will be flagged for a possible compliance review.
- If selected for a compliance review, the employer will have to demonstrate that the wage paid to the TFW is equal to or greater than the wages paid to Canadian citizens and permanent residents in the same occupation with the same experience and skill sets. See A-LMO Review directive.

## Exceptions:

### Unionized Positions

- If the employer indicates that the wage offer is within the collective bargaining agreement for the occupation and location, it should be accepted, even if it falls below the 15% threshold.
- Wage offers in the collective bargaining agreement that are not consistent with the posted average/median wage will be flagged for a compliance review. Please refer to section 3.3.1.1 of the TFWP Manual.

In instances of wage schedules established by provincial/territorial legislation (e.g. *Construction Industry Wages Act* in Manitoba) A-LMOs will be issued using the greater of:

- Up to 15% below the average/median wage for the occupation; or
- the wages set by the provincial/territorial legislation

When taking into account the 15% range below the posted median, the wage cannot go below the provincial/territorial minimum wage. This applies to all wage assessments.

## **NOTE:**

Not every single wage assessment that may arise is captured within the above-noted scenarios. As new scenarios are identified, they can be addressed on an ad hoc basis in consultation with NHQ.

Where an employer offers a wage that falls below the posted average/median, but not greater than 15% below the posted median, the employer may be selected for a compliance review. Employers that are selected for a compliance review will be required to document that the wage offered is consistent with the wage paid to their Canadian citizen and permanent resident workers in the same occupation with the same experience and skill sets.

Where an employer offers a wage that is greater than 15% below the posted median wage, the employer will receive a negative A-LMO based on wages along with any other additional information. Employers will be able to apply under the regular LMO process, where consideration can be given to other labour market effect factors described in sections 3.5.5.1.1 and 3.5.5.1.2 of the TFWP Manual.

## **Assessing the wage offered under the A-LMO process:**

The first step is to reference the published wage on the WiC Web site for the occupation in the economic region where the job is located. If the wage is equal to or greater than the posted average/median wage, the wage is deemed to be a prevailing wage for the occupation and the HRSDC/Service Canada staff can proceed to issue a positive A-LMO provided that there were no other reasons to issue a negative A-LMO.

If the wage falls below the published average/median wage on WiC, the HRSDC/Service Canada staff will move to the second step by multiplying the posted wage rate on WiC by 0.85 to determine the A-LMO wage threshold. If the wage offered on the A-LMO is greater than the threshold, the wage will be accepted as a prevailing wage. However, the employer will be flagged for the compliance review process.



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If the wage offered falls below the threshold, the HRSDC/Service Canada staff can proceed to issue a negative A-LMO.

## When labour market information is not available

There may be cases where HRSDC/Service Canada receives an application from an employer in a small town, and the only labour market information (LMI) available is for a neighbouring mid-size city. In these situations, HRSDC/Service Canada staff looks for LMI pertaining to the same job, in another small town in the same province/territory, to gain some insight as to whether wages and working conditions differ for that occupation between mid-size cities and smaller towns in the province. A lower wage rate may be appropriate for a TFW in the small town given that the cost of living is generally lower.

## Regulatory factors that are assessed through the employer attestations:

The essence of accelerating the LMO application process rests on accepting the attestations of an employer for the majority of the regulatory factors that are normally subject to assessment in more detail during the regular LMO application process.

To satisfy the remaining regulatory requirements and be issued an A-LMO under the Initiative, the employer must check off ALL of the attestations in the A-LMO application. HRSDC/Service Canada staff must verify that all attestations are checked, and ensure that they are entered accordingly into the FWS. The attestations an employer must make to receive a positive A-LMO include:

- Agree to participate in the A-LMO compliance review process;
- Attest that they have provided any TFWs they employed in the past two years with the wages, working conditions and employment in an occupation that are STS as those described in previous A-LMO or LMO letters and annexes;
- Will respect the terms and conditions under the A-LMO Initiative (for the compliance review);
- Is making a genuine job offer;
- Agree to pay, at minimum, the same wage as offered to their Canadian citizen and permanent resident workers in the same occupation with the same experience and skill sets ;
- Will provide generally accepted working conditions;
- Have conducted reasonable recruitment efforts to hire and/or train Canadian citizens and permanent residents; and
- Several other attestations, including lay offs, employment programs and union consultation.

## Issuing an A-LMO:

A positive A-LMO can be issued if the HRSDC/Service Canada staff is satisfied that:

- The employer is not listed on CIC's Web site as ineligible to participate in the TFWP;
- The employer meets the A-LMO employer eligibility criteria.
- The proposed employment of a foreign national is consistent with the terms and conditions of formal agreements under any FPT Annex.
- The occupation is classified under the NOC skill type 0, and skill level A or B, and is not related to the Agriculture or the Film and Entertainment sectors;
- The employer is actively engaged in the business in respect of which the job offer is made.
- The employer is offering a job that is consistent with the reasonable employment need of the employer.
- The employer is offering the prevailing wage as indicated on the WiC Web site.
- The employer has checked off ALL of the attestations included in the A-LMO application, consented to participate in a post A-LMO compliance review and signed the application.



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Once satisfied that the employer meets these requirements, the HRSDC/Service Canada staff can confirm the A-LMO application in the FWS and generate a letter. This letter will capture each and every detail the employer has attested to in order to ensure they understand their responsibilities vis-à-vis the attestations, and the documentation that may be requested if they are selected for an A-LMO compliance review.

A negative A-LMO can be issued by HRSDC/Service Canada staff if:

- The employer does not consent to participate in the A-LMO compliance review process.
- The employer has not checked off ALL of the attestations in the A-LMO application.
- The employer is not actively engaged in the business in respect of which the job offer is made.
- The employer is offering a job that is not consistent with the reasonable employment needs of the employer.
- The employer is offering wages that are greater than 15% below the wage for the occupation as indicated on the WiC Web site.

HRSDC/Service Canada staff must communicate the rationale for providing a negative A-LMO in the letter to the employers, and advise them of any applicable recourse options, such as applying under the regular LMO process.

### Documentation required for issuing an A-LMO

For the purposes of issuing an A-LMO (positive or negative), HRSDC/Service Canada staff must add a summary of the review and analysis of the application, that was done on the upfront assessment pieces, in the officer rationale section of the FWS, which should include:

- The information the HRSDC/Service Canada staff considered to determine whether the employer is actively engaged in the business and whether the job offer is consistent with the reasonable employment need.
- The wage analysis based on the published median wage and whether the employer was flagged for a compliance review.
- Any additional information requested from or provided by the employer that was used to issue the A-LMO.



Accelerated labour market opinion  
(A-LMO) application submitted

Final April 24, 2012

Step  
1

Is the employer's name on Citizenship and  
Immigration Canada's (CIC) ineligibility list?

No

Yes

Inform the employer of  
their ineligibility to the  
TFWP.

Step  
2

Does the employer meet the criteria for the A-LMO  
Initiative?

A-LMO criteria:

- Returning employers must have been issued at least 1 positive opinion in the previous 2 years;
- Clean compliance record; and
- No known risk factors (e.g. complaints).

No

A-LMO application  
transferred to the regular  
labour market opinion  
(LMO) process.

Yes

Step  
3

Is the job offer consistent with federal-provincial-  
territorial (FPT) agreements?

FPT consistency is determined by:

- FPT annexes; and
- The occupation described in the job offer.

No

Employer withdraws the  
LMO or negative LMO is  
issued (for applicable LMO  
exemptions described  
under an FPT annex).

Yes

Does the job offer meet the A-LMO criteria for providing a positive A-LMO?

Regulatory factors partially or fully assessed (officer review/determination):

- Actively engaged in the business (as per level 1 assessment under LMO process);
- Reasonable employment need (as per level 1 assessment under LMO process); and
- Prevailing wage (new wage methodology acceptable = wage 15% below median and above. Below median = flagged for a review. Below 15% less than median = negative LMO);

Regulatory factors covered under attestations:

- Remaining genuineness factors (ability to fulfill and comply with employment and recruitment legislation);
- "Substantially the same" (STS) factors (wages, working conditions and occupation);
- Reasonable efforts to hire and/or train (attesting to fulfilling minimum recruitment as per skill level); and
- No ongoing or pending labour dispute.

Based on the assessment, attestations and the employer's consent to participate in the A-LMO compliance review, HRSDC/Service Canada staff has the foundation for providing a positive LMO.

Yes

Officer provides a **positive opinion**  
under the A-LMO process.

No

Officer provides a **negative opinion** for the A-LMO.

Post LMO reviews



# Accelerated Labour Market Opinion (A-LMO) Eligibility Checklist

<b>Employer Information</b>	System File #:
Business name:	Employer ID:
Contact name:	Phone #:
Job title:	Alternate Phone #:
Email address:	Fax #:

## Step 2 of A-LMO application assessment

<b>A) Eligible Occupation</b>	<b>Eligible</b>	<b>Ineligible</b>
1. Does the occupation, identified on the A-LMO application, fall under a National Occupational Classification (NOC) 0, A or B skilled position (excluding all agriculture and film and entertainment sectors)?  If 'Yes', record that the employer is <b>eligible</b> .	<input type="checkbox"/>	<input type="checkbox"/>

<b>B) Employer History</b>	<b>Eligible</b>	<b>Ineligible</b>
2. Has the employer had at least 1 positive labour market opinion (LMO) in the previous 2 years?  If 'Yes', record that the employer is <b>eligible</b> .	<input type="checkbox"/>	<input type="checkbox"/>

<b>C) Compliance Record</b>	<b>Eligible</b>	<b>Ineligible</b>
3. Has the employer been found non-compliant on a previous Monitoring Initiative (MI) Employer Compliance Review (ECR)?  If 'Yes', record that the employer is <b>ineligible</b> .	<input type="checkbox"/>	<input type="checkbox"/>
4. Has the employer been found non-compliant on a previous 'Substantially the Same' (STS) ECR?  If 'Yes', record that the employer is <b>ineligible</b> .	<input type="checkbox"/>	<input type="checkbox"/>
5. Has the employer been found non-compliant on a previous A-LMO employer compliance review?  If 'Yes', record that the employer is <b>ineligible</b> .	<input type="checkbox"/>	<input type="checkbox"/>
6. Has the employer received a previous negative LMO under R200(5)(d) regarding their past compliance with federal/provincial laws that regulate employment/recruitment?  If 'Yes', record that the employer is <b>ineligible</b> .	<input type="checkbox"/>	<input type="checkbox"/>
7. Has the employer ever withdrawn from an MI ECR, a STS ECR, or an A-LMO compliance review?  If 'Yes', record that the employer is <b>ineligible</b> .	<input type="checkbox"/>	<input type="checkbox"/>

<b>D) Employer Information</b>	<b>Eligible</b>	<b>Ineligible</b>
8. Is there any 'I-3' or 'I-4' information noted in the employer profile?  If 'Yes', record that the employer is <b>ineligible</b> .	<input type="checkbox"/>	<input type="checkbox"/>
9. Does the employer have a Risk Level of 3 (high) or 4 (very high)?  If 'Yes', record that the employer is <b>ineligible</b> .	<input type="checkbox"/>	<input type="checkbox"/>
10. Is there any other information in the employer notes that would suggest a Level 2 Genuineness, or a Level 2 STS assessment should be conducted?  If 'Yes', record that the employer is <b>ineligible</b> .	<input type="checkbox"/>	<input type="checkbox"/>

Accelerated Labour Market Opinion (A-LMO) Eligibility Checklist

E) Eligible and Flagged for a Review

Complete this section only if the employer is found eligible based on sections A to D.

You will be required to record whether a review flag is activated for a system file before you can provide a positive A-LMO.

	Flag	No Flag
11. Did the employer offer a wage that falls between the median wage posted on the Working in Canada (WiC) Web site and the 15% threshold?  If 'Yes', select 'Flag'. Select 'Flag' if the wage is below median due to a CBA.	<input type="checkbox"/>	<input type="checkbox"/>
12. Does the employer have a Risk Level of 2 (medium)?  If 'Yes', select 'Flag'.	<input type="checkbox"/>	<input type="checkbox"/>
13. Is there any 'I-1' or 'I-2' information noted in the employer profile?  If 'Yes', select 'Flag'.	<input type="checkbox"/>	<input type="checkbox"/>
14. Has the employer had any previous LMOs revoked?  If 'Yes', select 'Flag'.	<input type="checkbox"/>	<input type="checkbox"/>
15. Has the employer ever been found compliant only after undertaking acceptable compensation during an ECR or an A-LMO compliance review?  If 'Yes', select 'Flag'.	<input type="checkbox"/>	<input type="checkbox"/>
16. Was the employer found non-compliant under the previous Expedited Labour Market Opinion Pilot?  If 'Yes', select 'Flag'.	<input type="checkbox"/>	<input type="checkbox"/>

G) Eligibility Finding

- ☐ Employer is eligible
- ☐ Employer is eligible and system file is flagged for a compliance review
- ☐ Employer is ineligible



## Accelerated Labour Market Opinion (A-LMO) Eligibility Checklist

<b>Employer Information</b>	System File #:
Business name:	Employer ID:
Contact name:	Phone #:
Job title:	Alternate Phone #:
Email address:	Fax #:

### Step 2 of A-LMO application assessment

A) Eligible Occupation	Eligible	Ineligible
<p>1. Does the occupation, identified on the A-LMO application, fall under a National Occupational Classification (NOC) 0, A or B skilled position (excluding all agriculture and film and entertainment sectors)?</p> <p>If 'Yes', record that the employer is <b>eligible</b>.</p>	<input type="checkbox"/>	<input type="checkbox"/>

B) Employer History	Eligible	Ineligible
<p>2. Has the employer had at least 1 positive labour market opinion (LMO) in the previous 2 years?</p> <p>If 'Yes', record that the employer is <b>eligible</b>.</p>	<input type="checkbox"/>	<input type="checkbox"/>

C) Compliance Record	Eligible	Ineligible
<p>3. Has the employer been found non-compliant on a previous Monitoring Initiative (MI) Employer Compliance Review (ECR)?</p> <p>If 'Yes', record that the employer is <b>ineligible</b>.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>4. Has the employer been found non-compliant on a previous 'Substantially the Same' (STS) ECR?</p> <p>If 'Yes', record that the employer is <b>ineligible</b>.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>5. Has the employer been found non-compliant on a previous A-LMO employer compliance review?</p> <p>If 'Yes', record that the employer is <b>ineligible</b>.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>6. Has the employer received a previous negative LMO under R200(5)(d) regarding their past compliance with federal/provincial laws that regulate employment/recruitment?</p> <p>If 'Yes', record that the employer is <b>ineligible</b>.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>7. Has the employer ever withdrawn from an MI ECR, a STS ECR, or an A-LMO compliance review?</p> <p>If 'Yes', record that the employer is <b>ineligible</b>.</p>	<input type="checkbox"/>	<input type="checkbox"/>

D) Employer Information	Eligible	Ineligible
<p>8. Is there any 'I-3' or 'I-4' information noted in the employer profile?</p> <p>If 'Yes', record that the employer is <b>ineligible</b>.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>9. Does the employer have a Risk Level of 3 (high) or 4 (very high)?</p> <p>If 'Yes', record that the employer is <b>ineligible</b>.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>10. Is there any other information in the employer notes that would suggest a Level 2 Genuineness, or a Level 2 STS assessment should be conducted?</p> <p>If 'Yes', record that the employer is <b>ineligible</b>.</p>	<input type="checkbox"/>	<input type="checkbox"/>

Accelerated Labour Market Opinion (A-LMO) Eligibility Checklist

E) Eligible and Flagged for a Review

Complete this section only if the employer is found eligible based on sections A to D.

You will be required to record whether a review flag is activated for a system file before you can provide a positive A-LMO.

	Flag	No Flag
11. Did the employer offer a wage that falls between the median wage posted on the Working in Canada (WiC) Web site and the 15% threshold?  If 'Yes', select 'Flag'. Select 'Flag' if the wage is below median due to a CBA.	<input type="checkbox"/>	<input type="checkbox"/>
12. Does the employer have a Risk Level of 2 (medium)?  If 'Yes', select 'Flag'.	<input type="checkbox"/>	<input type="checkbox"/>
13. Is there any 'I-1' or 'I-2' information noted in the employer profile?  If 'Yes', select 'Flag'.	<input type="checkbox"/>	<input type="checkbox"/>
14. Has the employer had any previous LMOs revoked?  If 'Yes', select 'Flag'.	<input type="checkbox"/>	<input type="checkbox"/>
15. Has the employer ever been found compliant only after undertaking acceptable compensation during an ECR or an A-LMO compliance review?  If 'Yes', select 'Flag'.	<input type="checkbox"/>	<input type="checkbox"/>
16. Was the employer found non-compliant under the previous Expedited Labour Market Opinion Pilot?  If 'Yes', select 'Flag'.	<input type="checkbox"/>	<input type="checkbox"/>

G) Eligibility Finding

- ☐ Employer is eligible
- ☐ Employer is eligible and system file is flagged for a compliance review
- ☐ Employer is ineligible



Eligibility Criteria - Refusal	Potential Canadian or Permanent Resident Workers Available - Refusal
<p>Further to your request for an accelerated labour market opinion (A-LMO), this letter is to inform you that:</p> <p>The A-LMO Initiative is intended for employers who have used the Temporary Foreign Worker Program (TFWP) in the past. To be eligible for this Initiative, you must have been issued a positive LMO and have a clean compliance record, which demonstrates that you have met all of the Program requirements within the last two years.</p> <p>The assessment of your A-LMO application indicates that you do not currently meet the eligibility criteria to participate in the A-LMO Initiative. Please note that while Service Canada is unable to proceed with an A-LMO assessment, your current application will still be processed as a regular LMO application to determine the potential impact of your job offer on the Canadian labour market.</p> <p>Service Canada will be contacting you in order to facilitate the assessment of your LMO application. Please ensure that you have met all of the TFWP requirements listed on our Web site at:  <a href="http://www.rhdcc-hrsrc.gc.ca/eng/workplaceskills/foreign_workers/index.shtml">http://www.rhdcc-hrsrc.gc.ca/eng/workplaceskills/foreign_workers/index.shtml</a></p> <p>If you require additional information on the TFWP, please contact us toll-free at <b>[varies by region]</b>.</p> <p>Sincerely,</p>	<p>Further to your request for an accelerated labour market opinion (A-LMO), this letter is to inform you that:</p> <p>The A-LMO Initiative is intended for employers who are unable to find qualified Canadian citizens or permanent residents to fill their short-term labour needs. Service Canada uses labour market information (LMI) to determine the occupations for which there is a potential supply of Canadian citizens or permanent residents in the province or the territory where the job is located.</p> <p>Current LMI indicates that your job offer may not fill a labour shortage and, as a result, Service Canada is unable to provide you with an A-LMO. Please note that while Service Canada is unable to proceed with an A-LMO assessment, your application will still be processed as a regular LMO application to determine the potential impact of your job offer on the Canadian labour market.</p> <p>Service Canada will be contacting you in order to facilitate the assessment of your LMO application. Please ensure that you have met all of the Temporary Foreign Worker Program (TFWP) requirements, specifically those pertaining to the advertisement and recruitment efforts you made to hire Canadian citizens or permanent residents. These requirements are listed on our Web site at:  <a href="http://www.rhdcc-hrsrc.gc.ca/eng/workplaceskills/foreign_workers/communications/advertrecrutment.shtml">http://www.rhdcc-hrsrc.gc.ca/eng/workplaceskills/foreign_workers/communications/advertrecrutment.shtml</a></p> <p>If you require additional information on the TFWP, please contact us toll-free at <b>[varies by region]</b>.</p> <p>Sincerely,</p>



Human Resources and  
Skills Development Canada

Ressources humaines et  
Développement des compétences Canada

Canada

Skills and Employment Branch



## **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)**

#### **4.3.1. Monitoring Initiative (MI)/ECR Directive**

##### **4.3.1.1. ECR Process**

**4.3.1.1.1. Step 1: Preparing for the review**

**4.3.1.1.2. Step 2: Employer contact**

**4.3.1.1.3. Step 3: Documenting ECRs in the FWS**

**4.3.1.1.4. Step 4: ECR assessment (receipt/review of documentation)**

**4.3.1.1.5. Step 5: Justification and/or Compensation**

**4.3.1.1.6. Step 6: Recommendation and requests for concurrence**

**4.3.1.1.7. Step 7: File close out**

### **4.4. Arranged Employment Opinion Directive**

#### **4.4.1. Consideration of Employer Compliance Reviews Results in the Assessment of Arranged Employment Opinion Applications**

### **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

**4.5.1.2. 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)**

**4.5.2.1. Letters and Enclosures**

**4.5.2.1.1.** MI – Initial Contact

**4.5.2.1.2.** Annex B – Enclosure (NOC 0, A & B)

**4.5.2.1.3.** Annex B – Enclosure (NOC C & D)

**4.5.2.1.4.** MI – Additional Information Required

**4.5.2.1.5.** MI - ECR Justification

**4.5.2.1.6.** MI - Compliant

**4.5.2.1.7.** MI - Compliant with Corrective Action

**4.5.2.1.8.** MI - Non-Compliant

**4.5.2.1.9.** MI - Inconclusive

**4.5.2.1.10.** MI -Withdrawal Acknowledgement

**4.5.2.2. Tools**

**4.5.2.2.1.** MI Checklist (NOC 0, A & B)

**4.5.2.2.2.** MI Checklist (NOC C & D)

**4.5.2.2.3.** STS and MI Tracker

**4.5.2.2.4.** MI Tracking Instructions

**4.5.2.2.5.** ECR Overview MI

**4.5.3. Revocation**

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Comments



Human Resources and  
Skills Development Canada

Ressources humaines et  
Développement des compétences Canada

## **Information/Complaints Directive**

**Program Integrity Division**

**Temporary Foreign Worker Directorate**

**Skills and Employment Branch**



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## 1. Purpose

The purpose of this directive is to provide a general frame of reference regarding the procedures to follow when information or complaints are received at Human Resources and Skills Development Canada (HRSDC) / Service Canada (SC) regarding the Temporary Foreign Worker Program (TFWP).

Unsolicited complaints and information inquires regarding the TFWP can be directed from Citizenship and Immigration Canada (CIC), Canada Border Services Agency (CBSA), Members of Parliament (MPs), Temporary Foreign Workers, third parties, other government departments or the general public to HRSDC/SC.

## 2. Definitions

### Unsolicited Complaint

For the purposes of this document, an unsolicited complaint is defined as personal information about an employer and/or a temporary foreign worker that is obtained by HRSDC/SC without having been requested.

### Information Inquiry

An information inquiry is a request for information by CIC or CBSA to HRSDC for the administration and enforcement of *Immigration and Refugee Protection Act (IRPA)*/ *Immigration and Refugee Protection Regulations (IRPR)*.

### Letter of Understanding

The Letters of Understanding (LOU) on Information Sharing allow HRSDC/SC to receive personal information on employers with confirmed Labour Market Opinions (LMOs) from Provincial/Territorial (P/T) officials on Labour Standards (LS) or Occupational Health and Safety (OHS) violations related to that employer.

In addition, a LOU permits HRSDC/SC to query P/T officials about LMO-related information associated with an employer that is under consideration for a LMO. The LOU also enables HRSDC/SC to transfer unsolicited information from a variety of sources to the appropriate provincial/territorial ministry on the plaintiff's behalf.

The LOU also permits the P/Ts to query HRSDC on employer complaints and permits HRSDC to forward the complaints to the P/Ts.

### Memorandum of Understanding

The Memorandums of Understanding (MOU) on Information Sharing allow HRSDC/SC to receive personal information on employers with confirmed LMOs from federal officials, such as CIC and CBSA.

For up to date information on the status of our signed and pending information sharing agreements, please go to <http://intracom.hq-ac.prv/hrib-dirh/fw/common/fpt-agreements/fpt-agreements.shtml>



### 3. Authorities

#### 3.1 Our Authorities

The ability to share information obtained by HRSDC is governed by the *DHRSD Act*, the *Privacy Act*, and information sharing agreements between HRSDC and other federal and provincial bodies.

HRSDC is permitted to collect personal information under section 4 of the *Privacy Act* that relates directly to its operating programs or activities.

Part 4 of the *DHRSD Act*, Protection of Personal Information, governs personal information release authorities. This section of the *Act* also includes guidelines on making information available to members of parliament, provincial authorities and foreign states.

HRSDC is able to disclose personal information that it collects for the TFWP under four subsections of the *Department of Human Resources and Skills Development Act (DHRSD Act)*. These sections are 34(1), 35(2), 35(3) and 36(1).

Reference to the *DHRSD Act*, is located at: <http://laws.justice.gc.ca/eng/H-5.7/page-1.html>

- Section 34(1) permits personal information to be made available for the “administration or enforcement of the program for which it was obtained or prepared”, which is limited to providing Arranged Employment Opinions (AEO) and Labour Market Opinions (LMOs).
- Section 35(2) permits personal information to be made available “to a prescribed federal institution...for the administration or enforcement of prescribed federal or provincial law or activity if the Minister considers it advisable and the information is made available subject to conditions agreed upon by the Minister and the federal institution”. In conjunction with section 34(1) of the *DHRSD Act*, section 35(2) permits the disclosure of personal information by HRSDC to CIC for the administration and enforcement of the entire *Immigration and Refugee Protection Act (IRPA)*, as long as the information is made available subject to conditions agreed upon between HRSDC and CIC.
- Section 35(3) permits personal information to be made available to any other person or body that the Minister considers advisable. The information is made available for the same purpose and it is subject to conditions agreed upon by the Minister and the federal institution.
- Section 36(1) permits personal information to be made available to “the government of a province, or to a public body created under the law of a province, for the administration or enforcement of a federal law or activity or a provincial law if the Minister considers it advisable and the information is made available subject to conditions agreed upon by the Minister and the government or body.”

For up to date information on the status of our signed and pending information sharing agreements, please go to <http://intracom.hq-ac.prv/hrib-dirh/fw/common/fpt-agreements/fpt-agreements.shtml>



### 3.2 Collection, Disclosure and Storage of Unsolicited Information

HRSDC is governed by the Department of Human Resources and Skills Development Act (DHRSDA), Privacy Act (PA) and the TFWP Record Disposition Authority 2007/002 (RDA) pertaining to the retention and disposal of information. All unsolicited personal information in both electronic and paper formats used in the decision making process (confirming, cancelling or revoking a LMO or conducting a compliance review in any capacity) must be retained for 7 years; otherwise there is no obligation to keep the information.

As per the Information Delegation and Classification Guide, information will be collected, transmitted and stored under the classification of Protected 'B'. Otherwise, the information must be destroyed as defined in the classification guide created to help us further understand our obligations in terms of retention and disposition.

Most information received has a Protected 'B' security rating; however it is important for information that HRSDC/SC cannot action that it is disposed of in accordance with the Information Delegation and Classification Guide. Similarly, though many of the complaints/inquires we receive would generally fall under the Protected 'B' rating, care must be taken to ensure the information is protected accordingly.

The guide can be found at the following link: <http://intracom.hq-ac.prv/hrrib-dirh/fw/common/fpt-agreements/fpt-agreements.shtml>

### 4. Types of Information/Complaints Received

There are generally five types of requests for information/complaints received by HRSDC/SC:

1. A formal request for information from CIC, CBSA, Royal Canadian Mounted Police (RCMP) or for subpoenas.
2. Requests from Ministerial Correspondence, Parliamentarian or the Province.
3. Request for advice/guidance from Service Canada.
4. 'For Your Information' note from CIC, CBSA or SC where no action is required.
5. Information/Complaint from the public.

Often information/complaints received could prove to be valuable in upholding the integrity of the TFWP when a link to an ER to whom HRSDC/SC has either received an LMO application from an ER or where HRSDC/SC has previously issued a confirmed LMO to the ER who may be the subject of the information/complaint. Once a link to the TFWP has been established, and in order to determine the reliability of the information, the I-System ('I' for integrity/information) of grading information has been developed.

Codes I1, I2, I3 and I4 are to be used as follows for each:

- I1 – Information/complaint was received (written or oral), however the information could not be substantiated as related to the TFWP and/or an ER to whom either an application has



been received or a confirmed LMO has been issued, and therefore is considered to have a "negligible effect". To be scored with a "1" for tracking purposes.

- I2 – Information/complaint was received from an anonymous source (written or oral) with ties connected to the foreign worker(s), employer or third parties involved.
- I3 – Information/complaint was received from a single source with ties to the foreign worker(s), employer or third party involved (written, oral or official/sworn document).
- I4 – Allegation comes from more than one source with ties to the foreign worker(s), employer or third party involved (written, oral, official/sworn document or signed by a member of a professional association).

If the information/complaint is deemed to be of no relevance to the administration of our program, it should be destroyed as per the RDA (see section 3.2). Any information that SC deems to be noteworthy for NHQ should be forwarded via the NC-TFWP\_PTET-INBOX. Furthermore, should SC receive information and is unsure how to proceed with it, it should also be forwarded to the NC-TFWP\_PTET-INBOX.

For information/complaint where a link to the TFWP can be substantiated, HRSDC/SC should indicate in the "Employer Notes" section the appropriate code (I2, I3 or I4). HRSDC/SC may also include factual information, such as, "*HRSDC/SC received a complaint on this employer. Issues include unpaid overtime worked and unsafe working conditions*". However care must be taken to ensure the identity of the source is protected (see section 5.0 for additional information).

#### **4.1 Formal Request for Information**

All CIC and CBSA, requests must be forwarded to NHQ via the NC-CIC\_Exchange-GD Inbox. This generic e-mail account was set up in June 2008 after the rising volume in correspondence from our partners highlighted the need to formalize a mechanism for them to have easy access to NHQ/SC HRSDC program officials. This central generic e-mail account is available to be used by CIC/CBSA officials to send any emails concerning LMOs.

Once the request is received, NHQ assumes the lead role for responding to the request. At times, NHQ may require additional information from SC. In these cases, a formal request for information is sent via WebCims stipulating the specific action required and a corresponding BF date.

All requests for information received by SC and originating from sources other than CIC and CBSA, like the RCMP or subpoenas for example must be forwarded to NHQ via the NC-TFWP\_PTET-INBOX. NHQ will also take the lead to action these requests.

Ad hoc e-mails sent to accounts other than these general mailboxes should not to be actioned. Service Canada is to redirect all CIC and CBSA e-mails received in personal accounts to the NC-CIC\_Exchange-GD. For example, if a CBSA officer sends a request for information to a SC officer's e-mail account directly, the SC officer is to ask the CBSA officer to resubmit their request through the CIC inbox. In situations where SC is unsure of how to proceed with the



request, they can submit the information directly to NHQ via the NC-TFWP\_PTET-INBOX.

All RCMP requests should be forwarded to the attention of Susan Seeger, Manager of Access to Information and Privacy, where it can be determined if the request meets the requirements of a disclosure under the *Privacy Act*.

For additional information on the handling of information/complaints with our federal partners, please refer to the following documents:



TFWP Bulletin - CIC  
Info Shari...



HRSDC-CIC MOU  
FINAL 22 SEPT 20..



TFWP Bulletin -  
CBSA Info Shar...



TFWP Bulletin -  
RCMP Info Shar...

#### **4.2 Requests from Ministerial Correspondence, Parliamentarians or province**

All Ministerial correspondence received at NHQ pertaining to the TFWP is forwarded to the TFW/LMI Director General Office to prepare a response. Similarly, Ministerial Correspondence received by SC is actioned following regional procedures outlined by their office. In preparing a response, NHQ may require additional information from SC. Where this is the case, a formal request will be made via WebCims.

For requests submitted by parliamentarians, in 2009 a "Telephone Inquiries Resolution Service for Parliamentarians" was established for the exclusive use by registered parliamentarians and their staff. Parliamentarians can forward their request by either calling 1-866-603-0115 or by submitting a fax at 1-613-946-9900. The hours of operation are 8:00 am to 7:00pm Eastern Time, and responses are provided within ten business days.

For complaints/inquires submitted by a province, HRSDC/SC must ensure that a LOU with that province exists, and the information forwarded pertains to our administration requirements of the TFWP.

#### **4.3 Request for Advice/Guidance from Service Canada**

All requests for advice or guidance from SC should be forwarded directly to NHQ via the NC-TFWP\_PTET-INBOX. Although we do recognize there may be instances where an email is sent directly to a NHQ officer, NHQ may request that SC resubmit their request formally via the NC-TFWP\_PTET-INBOX. In this way, information may be more easily shared with other regions to help ensure consistent processing. In most cases, NHQ will strive to respond to SC's request in five business days. Cases that require more research and co-ordination between parties will be handled in the time needed to provide satisfactory feedback to SC. NHQ will inform SC of any unreasonable delays experienced in providing a response.

#### **4.4 "For your information" note**



All correspondence received by HRSDC/SC from our partners for the purpose of information only is to be analysed and evaluated in order to establish whether the information is required for program purposes.

If HRSDC/SC is able to substantiate the information is necessary for the purposes of administering the program it should be added to the FWS (see section 4).

#### **4.5 Information/Complaint from public**

When information/complaints are received from the public by HRSDC/SC, the information should be analysed and evaluated in order to establish whether the information may be relevant to the administration of the TFWP.

Should the information be deemed relevant, please refer to section 5.0 on the process for handling this type of information.

### **5. Following up on information/complaint**

The first step in determining whether further consideration can be given to the information/complaint, is to establish whether HRSDC/SC has either issued a previous confirmed LMO or has received a new LMO application for the employer to whom the information/complaint is directed against. In certain instances, the information/complaint may be directed to a potential third party representative or to a TFW. In either case, it is suggested that HRSDC/SC conduct a thorough search of the FWS to establish whether a confirmed LMO had been issued, or a new LMO application has been received for the ER who may be represented by the 3<sup>rd</sup> party in question, or the TFW name(s) appear(s) on the previously issued confirmed LMO.

Once HRSDC/SC has established a basis to follow-up with the employer following receipt of the information/complaint, in accordance with the Supreme Court decision (Leipert)<sup>1</sup>, the identity of the complainant must be protected. Any information that might reveal the identity of a complainant must not be divulged and should therefore be handled in such a way that would prevent disclosure.

Care should be taken to remove, where possible, all reference to complainant or complainant information during discussions with the employer and in documentation. The informant privilege rule provides complainants with certain guarantees. Without consent of the complainant, HRSDC is legally bound not to disclose any information that might indicate the identity of a complainant.

Once HRSDC/SC has linked the information/complaint to a specific employer, the following process should be considered:

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<sup>1</sup> As a result of the 1997 decision of the Supreme Court of Canada in R. v. Leipert, Insurance Services amended their procedures for handling third party information. Specific details on the Court decision can be found at the following site: <http://scc.lexum.umontreal.ca/en/1997/1997rcs1-281/1997rcs1-281.html>. Additional information on the procedures established by Service Canada can be found at the following site: [http://intracom.hq-ac.prv/en/ei/reference\\_material/manuals\\_guides/protection\\_leads.shtml](http://intracom.hq-ac.prv/en/ei/reference_material/manuals_guides/protection_leads.shtml).



- If a pending LMO application exists, however no previously confirmed LMOs have been issued, consider requesting additional information/clarity from the employer which relates to the specific facts pertaining to the information/complaint.
- If a pending LMO application exists and previously confirmed LMOs have been issued, consider an assessment of the factor, "Substantially the Same" (STS) for the ER. Refer to the STS Directive for guidance on conducting an assessment of STS.
- If no pending application has been received, determine if the ER has been issued a confirmed LMO. Where a previously issued LMO had been issued and the ER had consented to participating in the Monitoring Initiative (MI), consider a compliance review on the existing LMO. Refer to the MI-Employer Compliance Review (ECR) Directive for guidance on conducting a compliance review.
- If no pending application has been received and where on previous LMOs the employer has not consented to MI, enter in the "Employer Notes" section of the FWS (as per section 4.0). This information could be used, should the ER submit a new LMO application, in considering a possible assessment of STS.
- Where a confirmed LMO exists and where an existing LOU/MOU is in place, HRSDC/SC may also want to consider transferring the information to the appropriate provincial authority. For instance, if the concerns address employment standards such as wages, overtime, working conditions, etc., which fall under provincial jurisdiction, the officer may, where a LOU is operational, to transfer the information by completing the information contained in the "Complaint Registration Form".<sup>2</sup> Please note that HRSDC/SC must provide only the information contained in the information/complaint on the Complaint Registration Form. Where no information is available, that section should remain blank. HRSDC/SC is not permitted to forward the original information/complaint directly to the province.
- Where an LOU/MOU is not in place, the complainant should be advised to submit their complaint/allegation to an appropriate provincial/federal institution.

*Please note that regardless of whether a LOU/MOU is in place, it is always good practice to encourage the complainant to contact the appropriate provincial/federal authorities directly.*

- In situations where neither a previously confirmed LMO nor a new LMO application for the employer can be located, the information/complaint is considered not to be related to the TFWP and no further administrative action can be considered and should be disposed of as per Section 3.2.

Annex A describes how complaints/inquires from difference sources are handled at NHQ.

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<sup>2</sup> Please refer to Annex B – Complaint Registration Form, on what information can be forwarded to the province.



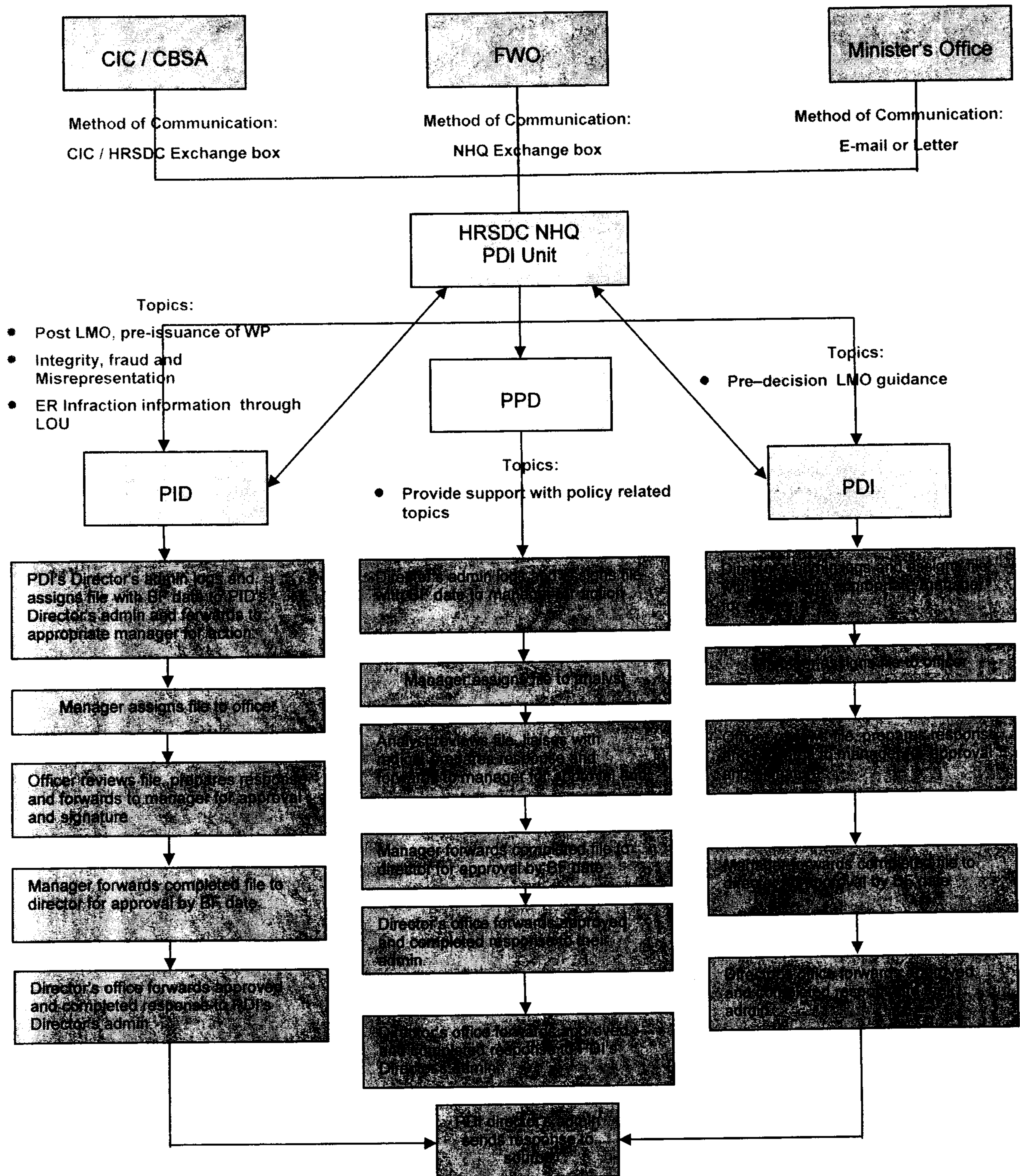
## **6. Contacts**

Campion Carruthers, Director  
Program Integrity Division  
819-953-3404

Radmila Duncan, Manager  
Quality and Compliance Review Unit  
Program Integrity Division  
819-997-8557



## Annex A - NHQ Process for Handling Complaint/Inquires from Different Sources





## TEMPORARY FOREIGN WORKER PROGRAM COMPLAINT REGISTRATION FORM

<b>SECTION A – COMPLAINANT INFORMATION</b> <i>(where provided)</i>		
Anonymous <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <span><input type="checkbox"/> YES</span> <span><input type="checkbox"/> NO, proceed with Section A</span> </div>		
Last Name:		First or Given Name:
Street Address:	City and Province:	Postal Code:
Telephone No.:		Fax No.:
<b>SECTION B – EMPLOYER INFORMATION</b>		
Name of Employer, Company or Business:		
Street Address:	City and Province:	Postal Code:
Telephone No.:		Fax No.:
<b>SECTION C – THIRD PARTY INFORMATION</b> <i>(where provided)</i>		
Name of Company or Business:		
Street Address:	City and Province:	Postal Code:
Telephone No.:		Fax No.:

## SECTION D – FOREIGN WORKER INFORMATION *(where provided)*

Is the foreign worker the complainant?

☐ YES

☐ NO, proceed with Section D

Last Name:

First or Given Name:

Street Address:

City and Province:

Postal Code:

Telephone No.:

Fax No.:

## SECTION E – INFORMATION ABOUT COMPLAINT

Complaint concerns: (check all that apply)

☐ Employment Standards   ☐ Occupational Health and Safety

☐ Other, specify: \_\_\_\_\_

Nature of Complaint:

Continued on separate page YES ☐

## FOR HRSDC USE ONLY

Name of Official Receiving:

Telephone No.:

Department, Branch:

Date Received:

Forwarded to:



## **Policy Guideline for the Sharing of Information with Citizenship and Immigration Canada (CIC)**

### **PURPOSE**

Human Resources and Skills Development Canada (HRSDC) and Service Canada (SC) receive requests from a variety of federal partners regarding the sharing of personal information related to Arranged Employment Opinions (AEO) and Labour Market Opinions (LMO). This guideline is intended to provide functional direction regarding the authorities to share information with CIC.

### **BACKGROUND**

On September 19, 2005, a tripartite Letter of Understanding (LOU) between HRSDC, CIC and the CBSA was signed, with an extension letter dated March 29, 2006. Since the signing of the LOU, it was determined that separate Memoranda of Understanding (MOUs) between HRSDC and CIC and HRSDC and the CBSA would be more advantageous to meet the expanded parameters under which the departments can share personal information.

Two bilateral MOUs have been developed: between HRSDC and CIC and between HRSDC and the CBSA. The MOU between HRSDC and CIC was signed on November 16<sup>th</sup>, 2009.

The Memorandum of Understanding 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 Temporary Foreign Worker Program (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 sharing 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.

### **AUTHORITIES RELATED TO HRSDC'S DISCLOSURE OF PERSONAL INFORMATION TO CIC**

HRSDC is able to disclose personal information that it collects for the TFWP to CIC under two subsections of the *Department of Human Resources and Skills Development Act (DHRSD Act)*. These sections are 34(1) and 35(2) and the distinction is important.

- **Section 34(1)** permits personal information to be made available to CIC for the "administration or enforcement of the program for which it was obtained or prepared", which is limited to providing Arranged Employment Opinions (AEO) and Labour Market Opinions (LMOs); and
- **Section 35(2)** permits personal information to be made available "to a prescribed federal institution...for the administration or enforcement of prescribed federal or provincial law or activity if the Minister considers it advisable and the information



is made available subject to conditions agreed upon by the Minister and the federal institution". In other words, in conjunction with section 3 of the *DHRSD Act*, section 35(2) permits the disclosure of personal information by HRSDC to CIC for the administration and enforcement of the entire *Immigration and Refugee Protection Act (IRPA)*, as long as the information is made available subject to conditions agreed upon between HRSDC and CIC.

**POLICY GUIDELINE: ANNEX B OF MOU - SECTION 34(1)**

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.**

*Administrative uses for information disclosed under 34(1):* This includes confirming information provided on an AEO or LMO application in relation to the processing of a work permit or verifying any information that the employer supplied on its application for an LMO or AEO. CIC has access to AEO/LMO information via CAIPS/FOSS for the purposes of issuing work permits. Based on system limitations, limited AEO/LMO information is available in CAIPS/FOSS and the system does not allow for searches using employer name.

Under 34(1), CIC is able to request any additional information provided by the employer with the AEO/LMO application for assessing a work permit application. This would include paper files and the associated information that may not be included in CAIPS/FOSS but is contained within the Foreign Worker System (FWS).

*Enforcement uses for information disclosed under 34(1):* This would include any other information that would confirm or verify that the employer did not misrepresent themselves to HRSDC in applying for an AEO or LMO, which may have resulted in a Service Canada officer issuing a different opinion.

CIC's anti-fraud unit may request information under section 34(1) for the purposes of investigating the AEO or LMO but not for the purposes of the work permit or anything else which is unrelated to the AEO or LMO.

**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 and constitutes a written request under Section 35(2).

**POLICY GUIDELINE: ANNEX C OF MOU - SECTION 35(2)**

HRSDC can disclose personal information to CIC for the administration and enforcement of **OTHER** provisions of *IRPA*. Any information given under Section 35(2) that is to be used for such *IRPA* enforcement activity requires a written request. For example, 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.



All written requests from CIC under 35(2) must specifically state the purposes for which they need the information, the section of *IRPA/IRPR* they would be enforcing, and if the information would be subsequently disclosed to another party.

### **OPERATIONAL CONSIDERATIONS**

*Information disclosed under 34(1):*

Corresponding Operational Bulletins will be forthcoming to instruct Regions how to handle such requests from CIC.

*Information disclosed under 35(2):*

Corresponding Operational Bulletins will be forthcoming to instruct Regions how to handle such requests from CIC.

**Related Policy Guidelines:** Policy Guidelines for the Sharing of Information with CBSA

**Contact:**

Temporary Foreign Worker Program Inbox  
[NC-TFWP\\_PTET-INBOX@hrsdc-rhdcc.gc.ca](mailto:NC-TFWP_PTET-INBOX@hrsdc-rhdcc.gc.ca)

**Prepared by:**

Althea Williams, Director  
Krista McCracken, A/Manager  
Policy and Program Design Division, HRSDC-NHQ

**Date:**

July 1, 2010

**Attachments:**

Appendix A – Annex B and C from the HRSDC-CIC MOU which outline the data elements and types of information that can be disclosed to CIC

Appendix B – Sections 82 & 203 of *IRPR*

### **APPENDIX A**

## Annex B and Annex C of the HRSDC-CIC MOU

### ANNEX B

#### Information elements to be disclosed by Human Resources and Skills Development Canada (HRSDC) to Citizenship and Immigration Canada (CIC) under subsection 34(1) of the DHRSD Act

HRSDC has authority under subsection 34(1) of the *DHRSD Act* to make Personal Information available to CIC for the administration or enforcement of the program for which it was obtained or prepared.

Information listed in the table is available electronically and, when shared with CIC, will be shared electronically unless the original document(s) needs to be shared. Additional information, including Personal Information that is not specially listed in the table may be shared with CIC for the purposes of the administration or enforcement that is related to HRSDC's responsibilities under sections 82 and 203 of the *IRPR*.

Piece of Data	Technical Field Name	Description
System File Number	System_file_number	The system assigned unique file identifier
Pre-approval status	Arrangement_id	0 – not processed under pre-approval (if arrangement_id is null) 1 – processed under pre-approval (if arrangement_id is not null)
Pre-approval Number	Arrangement_id	The unique identifier for the pre-approval
HRSDC/SC Office Number	Hrc_number	The number of the HRC office that prepared the record
Employer Name	Organization_name	The name of the employer Note – for files processed under a Group of Employers project, this will be overwritten with the project name
Employer Address	Address_line_1	The street address of the employer
Employer City	City	The employer's city
Employer Province / State	Province_code_en State_code_en	The employer's province or state
Employer Postal Code	Postal_code	The employer's postal code
Employer Country	Country_id Other_country_text	The employer's country
Employer Phone Number 1	Area_code + phone_number	The employer's phone number with area code
Employer Phone Number 2	Area_code + phone_number	Employer's fax number with area code
Employer Electronic Mail Address	Email_address	E-mail address for the employer
Employer Website	Web_site	Website for the employer's business (if any)
Application Receive Date	Request_received_date	Date the HSRDC Opinion request was received in an HRSDC Office
Application Creation Date	Date_created	Date the HSRDC Opinion file was created in FWS
Application Updated Date	Date_updated	Date the HRSDC Opinion file was last updated
Third Party Representative Name	Name	The name of the third party representative



<b>Piece of Data</b>	<b>Technical Field Name</b>	<b>Description</b>
Third_Party Business Name	Third_party_name	The name of the third party company
Third_Party Address	Address_line_1	The street address where the third party is located
Third_Party City	City	The city where the third party is located
Third Party Province / State	Province_code_en State_code_en	The province/state in which the third party is located
Third Party Postal Code	Postal_code	The postal code for the third party
Third Party Phone Number 1	Area_code + phone_number	The phone number (with area code) of the third party representative
Third Party Phone Number 2	Area_code + phone_number	The fax number (with area code) of the third party representative
Third Party Electronic Mail Address	Email_address	The e-mail address of the third party representative
Number of TFW Positions Requested	Number_of_positions	The number of positions requested under a particular NOC and/or job description
Program Stream	Program_id	Flag to identify whether this request was made under the Live-in Caregiver Program
Temporary or Permanent Request	Request_type_id	Flag to indicate whether the request is for temporary or "arranged employment"
Duration of Employment	Duration_of_employment	The duration of employment
Duration of Employment – Associated Period	Duration_unit_code_en	The period associated with the duration (e.g. months, days, years, etc...)
Opinion Validity Date	Current_conf_exp_date	The employment offer "valid to" date. In the FWS, this is known as the "Confirmation Expiry Date" This is actually the date by which the FW must apply to CIC, as is stated on the confirmation letter
Language Requirements	Oral_language_id Written_language_id	The language requirements of the job
Number of Employment Locations	Employment_locations	The number of locations of employment
Employment Location(s)	Location_line_1	The venue of the first job location
Job Requirements	Position_description	The requirements (educational and other) of the job
NOC Code	Noc_code	The NOC code associated with the job that the foreign worker has been requested under
NOC Job Title / Description	Noc_title	The job title associated with the NOC code (as entered by HRSDC)
Job Duties	Position_description	The duties of the job
Wage	Wage	The monetary wage of the job
Wage Period	Wage_unit_id	The period associated with the wage (e.g. per year, per week, per month, etc...)
Hours	Hours_per_week	Number of hours of work per week
Benefits	Benefits	List of benefits
Issuing Officer	Name_to_print	The name of the FW officer who made the decision
Decision	Decision_id	The decision made on the Opinion request
Decision Date	Opinion_status_date	The date the decision was made by HRSDC
CIC Notes	Cic_note_text	The text of "CIC Notes"
Foreign Worker Last Name	Last_name	The family name of the foreign worker

Piece of Data	Technical Field Name	Description
Foreign Worker First Name	First_name	The given name of the foreign worker
Foreign Worker Country of Residence	Country_number	The foreign worker's country of residence (at the time of application to HRSDC)
Foreign Worker Birth Date	Birth_date	The foreign worker's date of birth
Gender of Foreign Worker	Gender_id	The gender of the foreign worker (male, female, or unspecified)

## ANNEX C

### **Information to be disclosed by Human Resources and Skills Development Canada (HRSDC) to Citizenship and Immigration Canada (CIC) under subsection 35(2) of the *DHRSD Act***

Where section 34(1) of the *DHRSD Act* does not apply, HRSDC has authority under subsection 35(2) of the *DHRSD Act* to make Personal Information available to CIC for the administration or enforcement of the *IRPA* or the *IRPR*.

Disclosures under Annex C may be made on HRSDC's own initiative or by written request from CIC. A written request from CIC will include, at a minimum, the following information: the requesting officer name, the requesting officer position, requesting officer contact information (telephone and/or email), description of personal information elements requested, legislative statute and associated section reference(s) and purpose (description of enforcement activity) for which the information will be used.

Information listed in the table of Annex B may be disclosed under section 35(2). This information will be made available electronically unless the original document(s) needs to be shared.

Personal Information contained in the following documents related to an LMO may also be disclosed under section 35(2), in either paper or electronic format:

- the application form
- the third party representative authorization form and contract between third party and employer
- proof of advertising
- employer/employee contract
- correspondence between HRSDC/Service Canada and employer or authorized third party
- labour market decision letter issued to the employer
- guarantor attestation for Live-In Caregiver stream
- Employer Compliance Review (ECR) Findings, including:
  - employer name and contact information
  - job title, occupation and NOC codes
  - results of findings, including areas of non-compliance and associated corrective actions to be undertaken
  - outcome of non-compliance
  - ECR period



Personal Information contained in the following documents related to an AEO may also be disclosed under section 35(2), in either paper or electronic format:

- the application form
- the third party representative authorization form and contract between third party and employer
- the offer of permanent employment to the foreign national
- copies of remittance forms issued by the Canada Revenue Agency (CRA) itemizing source deductions for the previous 12 months (form number PD7A) as well as CRA T4 "Summary of remuneration paid" for the previous tax year
- CRA Notice of Assessment
- Signed T2 (corporate Income Tax Return) and T2124
- business licenses spanning 12 months or a commercial lease agreement for the business location
- correspondence between HRSDC/Service Canada and employer or authorized third party related to the application

## **APPENDIX B**

## EXCERPT OF *IRPR* – 82 & 203

Section 82 (2) – The AEO provided by HRSDC is based on the following factors:

- (c) The skilled worker does not intend to work in Canada before being issued a permanent resident visa and does not hold a work permit and
  - (i) The employer has made an offer to employ the skilled worker on an indeterminate basis the permanent resident visa is issued to the skilled worker, and
  - (ii) An officer has approved that offer of employment based on an opinion provided to the officer by HRSDC at the request of the employer or an officer that
    - A) The offer of employment is genuine,
    - B) The employment is not part-time or seasonal employment, and
    - C) The wages offered to the skilled worker are consistent with the prevailing wage rate for the occupation and the working conditions meet generally acceptable Canadian standards.

Section 203 (3) – The LMO provided by HRSDC is 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 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.



**MEMORANDUM OF UNDERSTANDING  
ON INFORMATION SHARING**

**BETWEEN**

**CITIZENSHIP AND IMMIGRATION CANADA**  
(herein referred to as "CIC")

**AND**

**HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA**  
(herein referred to as "HRSDC")

**FOR THE ADMINISTRATION OF THE TEMPORARY FOREIGN WORKER  
PROGRAM AND THE FEDERAL SKILLED WORKER PROGRAM**

**PREAMBLE:**

WHEREAS CIC is responsible for the administration of the *Immigration and Refugee Protection Act (IRPA)* and the *Immigration and Refugee Protection Regulations (IRPR)* with respect to the Temporary Foreign Worker Program and the Federal Skilled Worker Program, and in the course of carrying out this responsibility, is authorized to collect certain Personal Information;

WHEREAS under section 82 of the *IRPR*, HRSDC provides Arranged Employment Opinions (AEOs) with respect to offers of employment from employers to Federal Skilled Workers, and in the course of carrying out this responsibility, is authorized to collect certain Personal Information;

WHEREAS under section 203 of the *IRPR*, HRSDC provides Labour Market Opinions (LMOs) to assess the impact that temporary foreign workers may have on the Canadian labour market, and in the course of carrying out this responsibility, is authorized to collect certain Personal Information;

WHEREAS section 8 of the *Canadian Charter of Rights and Freedoms* guarantees a constitutional protection against unjustified state intrusions on the reasonable expectations of an individual to privacy;

WHEREAS pursuant to paragraph 8(2)(a) of the *Privacy Act (PA)*, CIC has the authority to disclose information to HRSDC for the administration or enforcement of the Temporary Foreign Worker Program (TFWP) and Federal Skilled Worker Program (FSWP);

WHEREAS pursuant to subsection 34(1) of the *Department of Human Resources and Skills Development Act (DHRSD Act)*, HRSDC has the authority to make Personal Information available to CIC for the administration or enforcement of the *IRPA* or the *IRPR* that is related to HRSDC's responsibilities of providing AEOs or LMOs under the *IRPR*;

WHEREAS pursuant to subsection 35(2) of the *DHRSD Act*, HRSDC has the authority to make Personal Information available to CIC for the administration or enforcement of the *IRPA* and *IRPR*, subject to the conditions agreed to herein;

WHEREAS CIC and HRSDC recognize that in the joint administration of, and responsibility for the Temporary Foreign Worker Program and Federal Skilled Worker Program, sharing information is essential to carrying out their respective roles and responsibilities under the *IRPA* and the *IRPR*;



**THEREFORE**, the Participants have reached the following understanding:

## **1.0 DEFINITIONS**

### **1.1** For the purposes of this MOU,

“Arranged Employment Opinion” or “AEO” is an opinion provided by HRSDC under section 82 of the Immigration and *Refugee Protection Regulations* (*IRPR*) and upon which a determination by an officer of CIC means an offer of indeterminate employment in Canada;

“Federal Skilled Worker” means a member of the federal skilled worker class or an applicant in the federal skilled worker class;

“Federal Skilled Worker Program” or “FSWP” or “FSW Program” refers to those duties and functions exercised by officials of HRSDC and CIC in carrying out their respective responsibilities under the *IRPA* and the *IRPR*, more specifically Part 6 of the Regulations, with respect to the entry of skilled workers into Canada to work in indeterminate employment for an employer in Canada;

“Labour Market Opinion” or “LMO” is an opinion provided by HRSDC under section 203 of the *IRPR* and upon which a determination by an officer of CIC as to whether a job offer is genuine and whether the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada is based;

“Participant” means HRSDC or CIC, and “Participants” means HRSDC and CIC;

“Personal Information” means Personal Information as defined in section 3 of the *Privacy Act*;

“Secondary release” refers to the release of Personal Information to any person or body other than the Participants to this MOU;

“Temporary Foreign Worker” or “TFW” refers to any foreign national who seeks to engage work in Canada or is authorized to work in Canada; and

“Temporary Foreign Worker Program” or “TFWP” or “TFW Program” refers to those duties and functions exercised by officials of HRSDC and CIC in carrying out their respective responsibilities under the *IRPA* and the *IRPR*, more specifically Part 11 of the Regulations, with respect to the entry of foreign nationals into Canada, on a temporary basis, to work for an employer in Canada.

### **1.2** Words used in this MOU which are not defined in the MOU but are defined in the *IRPA* or the *IRPR* have the same meaning as in the *IRPA* or the *IRPR*. Where a definition given in the MOU is inconsistent with a definition given in the *IRPA* or *IRPR*, the definition found in the *IRPA* or *IRPR* will prevail.

## **2.0 PURPOSE**

### **2.1** The purposes of this MOU are to:

- (a) authorize the exchange of Personal Information between the Participants and to authorize, in certain cases, the secondary release of personal information;
- (b) identify Personal Information, the terms and conditions and associated legislation under which that information can be shared



- between CIC and HRSDC for the administration of their responsibilities under the *IRPA* and *IRPR*; and
- (c) identify mechanisms for effecting the sharing of Personal Information between CIC and HRSDC.

### **3.0 INFORMATION TO BE PROVIDED BY CIC TO HRSDC**

- 3.1 CIC will make Personal Information outlined in Annex A available to HRSDC upon request, or on its own initiative, as appropriate.
- 3.2 HRSDC will use and disclose Personal Information provided by CIC pursuant to this MOU in accordance with the terms and conditions set out in section 5.0.

### **4.0 INFORMATION TO BE PROVIDED BY HRSDC TO CIC**

- 4.1 HRSDC will make Personal Information outlined in Annex B available to CIC upon request, or on its own initiative, as appropriate. Such disclosures are permitted under subsection 34(1) of the *DHRSD Act*.
- 4.2 HRSDC will make Personal Information outlined in Annex C available to CIC upon written request, or on its own initiative, as appropriate. Such disclosures are permitted under subsection 35(2) of the *DHRSD Act*.
- 4.3 Under subsection 35(3) of the *DHRSD Act*, the Minister of HRSD considers it advisable for CIC to make Personal Information obtained from HRSDC under subsection 35(2) available to the Canada Border Services Agency (CBSA), so long as the Personal Information is used for the same purposes for which it was disclosed to CIC from HRSDC. The CBSA shall not further disclose the Personal Information.
- 4.4 CIC will use and disclose the Personal Information pursuant to this MOU in accordance with the terms and conditions set out in section 5.0.

### **5.0 CONDITIONS FOR THE USE AND DISCLOSURE OF PERSONAL INFORMATION**

- 5.1 HRSDC and CIC may not use the Personal Information that they obtain from each other under this MOU for a purpose other than that for which they obtained it, unless:
- i. with the written consent of the individual to whom that information relates,
  - ii. with the written consent of the Participant that provided the information,
  - iii. in a form that cannot reasonably be expected to identify the individual to whom it relates, or
  - iv. if authorized by law.
- 5.2 HRSDC and CIC may not disclose to any person or body the Personal Information that they obtain from each other under this MOU for a purpose other than that for which they obtained it, unless:
- i. with the written consent of the individual to whom that information relates,
  - ii. with the written consent of the Participant that provided the information,
  - iii. in a form that cannot reasonably be expected to identify the individual to whom it relates; or
  - iv. if authorized by law.



- 5.3 HRSDC may make Personal Information available to CIC for research or statistical purposes on a case-by-case basis upon being satisfied that the conditions set out in section 38 and 39 of the *DHRSD Act*, as outlined in Annex D, are met.
- 5.4 Each Participant will ensure that no Personal Information received under this MOU is disclosed to a third party otherwise than permitted under this MOU (i.e. paragraph 4.3), unless authorized by law or there is a written arrangement between HRSDC or CIC and the third party which imposes obligations that are similar in scope to those that are imposed upon the receiving Participant under this MOU, with respect to the protection of this information.

## **6.0 MODE OF INFORMATION EXCHANGE**

- 6.1 Information identified under this MOU will be provided in a mutually agreed format, frequency and manner.
- 6.2 The Participants are committed to ensuring that the information shared between them under this arrangement is reliable and is provided in a timely, secure and confidential manner, and to working together in achieving this goal.

## **7.0 INFORMATION MANAGEMENT**

- 7.1 Personal Information exchanged under this MOU will be collected, used, retained, disclosed, destroyed or disposed of, and otherwise administered in accordance with applicable legislation including the *Charter of Rights and Freedoms*, the *Privacy Act*, the *Access to Information Act*, the *Library and Archives of Canada Act*, the *DHRSD Act*, the *Department of Citizenship and Immigration Act*, the *IRPA* and *IRPR*, the Government of Canada Security Policy, and applicable departmental policies and protocols and supporting operating directives and guidelines, covering the administrative, technical and physical safeguarding of the Personal Information.
- 7.2 The Participants will take all reasonable measures to observe the information management requirements mentioned in paragraph 7.1 to ensure the confidentiality and integrity of Personal Information exchanged under this arrangement and to safeguard such information against accidental or unauthorized access, disclosure, use, modification and deletion.
- 7.3 The Participant will promptly notify the other Participant of any accidental or unauthorized access, modification, deletion, disclosure or use of the Personal Information and will furnish the other Participant with full details of the accidental or unauthorized access, modification, deletion, disclosure or use of that information. Notification under this paragraph will be made in accordance with paragraph 11.1.
- 7.4 In the event of an occurrence described in paragraph 7.3, the Participant concerned will promptly take all reasonable steps to rectify the situation and to prevent a recurrence of the event.
- 7.5 Where there are deficiencies in either Participant's information management practices affecting compliance with the requirements of paragraph 7.1 or where concerns regarding the integrity of Personal Information exchanged under this MOU are identified, that Participant will take appropriate corrective action to remedy these deficiencies.
- 7.6 The Participants acknowledge that they are, and remain, subject to their respective internal audit risk-based plans and procedures in carrying out the



activities under this MOU in order to ensure compliance with their own program goals and statutory mandate.

- 7.7 The Participants will, on a periodic and mutually agreed upon basis and format, audit their respective information management practices and procedures at intervals not greater than 5 years to ensure:

- a) compliance with the requirements of paragraph 7.1, and
- b) the confidentiality and integrity of the information exchanged under this MOU.

The Participants agree to provide a copy of their respective audit reports to the other in accordance with paragraph 11.1.

## **8.0 ACCURACY OF INFORMATION**

- 8.1 The participants will use their best efforts to ensure the completeness and accuracy of the Personal Information provided to the other under this MOU.

## **9.0 TERMINATION**

- 9.1 The Participants reserve the right to terminate this MOU unilaterally in the event of non-compliance with applicable legislation, the principle of confidentiality and the use of the information set out in this MOU, with the Government of Canada directives and policies governing security, privacy, access to information and related matters relevant to the operation of this MOU.

- 9.2 Either signatory may terminate this MOU pursuant to paragraph 9.1 by providing written notice of their intention to terminate the MOU along with the reasons for terminating the MOU in accordance with paragraph 11.1. The other Participant will have thirty (30) days from the date of receipt to remedy the situation to the satisfaction of the Participant who provided the notice, failing which the MOU will be terminated upon the expiry of the 30 day period.

- 9.3 This MOU may be terminated for any other reason at any time upon ninety (90) days written notice by either of the Participants in accordance with paragraph 11.1.

## **10.0 AMENDING PROCEDURES**

- 10.1 This MOU, including its annexes, may be amended at any time with written mutual consent of both Participants. Amendments can be made by the following representatives and do not require the approval of the signatories of this MOU:

For HRSDC: Director General, Temporary Foreign Worker Directorate  
For CIC: Director General, Immigration Branch

## **11.0 NOTIFICATION**

- 11.1 Any notice, information or document to be provided under this MOU may be sent to the address of the Participant's representative as follows:

Address for notice to HRSDC: Director General  
Temporary Foreign Worker Directorate  
140 Promenade du Portage, Phase IV  
Gatineau, QC K1A 0J9

Address for notice to CIC:

Director General  
Immigration Branch  
Jean Edmonds Tower South, 365 Laurier  
West, Ottawa, ON K1A 1L1

## **12.0 DISPUTE RESOLUTION**

- 12.1 The Participants will make all reasonable efforts, in good faith, to promptly resolve any disagreement arising from this MOU. Any unresolved disagreement with respect to this MOU will be referred to the Participant's representative identified in paragraph 11.1 for consideration and resolution. If those officials are not able to resolve the disagreement, it will be resolved by the signatories of this MOU.

## **13.0 EFFECTIVE DATE**

- 13.1 Effective on the date of last signature, this MOU replaces the Letter of Understanding signed on September 19, 2005, and its extension on March 29, 2006, as it pertains to information sharing between the Participants to this MOU, for the administration of the TFWP and the FSWP.
- 13.2 Information sharing between HRSDC and the CBSA for the administration or enforcement of the TFWP and the FSWP are governed by a separate MOU between HRSDC and the CBSA.

## **14.0 SIGNATURES**

In Witness whereof, this MOU has been signed by the Participants:

For HRSDC

For CIC

\_\_\_\_\_  
Ms. Janice Charette  
Deputy Minister, HRSDC

\_\_\_\_\_  
Mr. Neil Yeates  
Deputy Minister, CIC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



## ANNEX A

### Information elements to be disclosed by Citizenship and Immigration Canada (CIC) to Human Resources and Skills Development Canada (HRSDC)

CIC has the authority under section 8(2)(a) of the *Privacy Act*, as a consistent use to disclose Personal Information to HRSDC to carry out its duties and responsibilities under the *IRPA* and the *IRPR*.

Personal Information made available to HRSDC under this authority would be used by HRSDC to fulfill its roles and responsibilities under the TFWP and the FSWP.

The data elements listed below will be electronically transmitted to HRSDC. Additional information, including Personal Information that is not specifically listed in the table or original document(s), may be shared by CIC with HRSDC for the purposes of HRSDC fulfilling its roles and responsibilities under the TFWP and the FSWP.

Piece of Data	Data Warehouse Name	Description
Surname	surname	The client's family name
Given name	given_name	The client's given name
Last country of permanent residence	clrp	The client's last country of permanent residence
Citizenship	citizenship	The citizenship of the client
HRSDC file number	found in WP remarks	The file number issued by HRSDC
Date received	application_received_dt	The date that the application for a work permit was received by CIC visa office
Overseas decision	fdec-cd	The work permit decision that was made overseas
Date of overseas decision	fdec_dt	The date that the work permit decision was made overseas
Work Permit Number	doc_no_a and doc_no_n	The reference number associated with a work permit
Date document was issued	sign_dt	The date that the work permit was issued
Expiry date of document	val_until_dt	The expiry date of the work permit
Destination province	dst_prov	The destination province of the client
Destination city	dst_city	The destination city of the client
NOC code	occupation	The NOC code associated with the job that the foreign worker has been requested under
Job title	derived from Corporate Tables	The job title associated with the NOC code
Employer name	employer_nme	The name of the employer
Employer address	employer_address_In	The employer's address
Employer city	employer_city	The employer's city
Employer province		The employer's province
Employer name	emp_name	The name of a second employer
Employer address	emp_street	The address of a second employer
Employer city	emp_city	The city of a second employer
Employer province	emp_prov	The province of a second employer



**Information elements to be disclosed by Human Resources and Skills Development Canada (HRSDC) to Citizenship and Immigration Canada (CIC) under subsection 34(1) of the *DHRSD Act***

HRSDC has authority under subsection 34(1) of the *DHRSD Act* to make Personal Information available to CIC for the administration or enforcement of the program for which it was obtained or prepared.

Information listed in the table is available electronically and, when shared with CIC, will be shared electronically unless the original document(s) needs to be shared. Additional information, including Personal Information that is not specially listed in the table may be shared with CIC for the purposes of the administration or enforcement that is related to HRSDC's responsibilities under sections 82 and 203 of the *IRPR*.

Piece of Data	Technical Field Name	Description
System File Number	System_file_number	The system assigned unique file identifier
Pre-approval status	Arrangement_id	0 – not processed under pre-approval (if arrangement_id is null) 1 – processed under pre-approval (if arrangement_id is not null)
Pre-approval Number	Arrangement_id	The unique identifier for the pre-approval
HRSDC/SC Office Number	Hrc_number	The number of the HRC office that prepared the record
Employer Name	Organization_name	The name of the employer Note – for files processed under a Group of Employers project, this will be overwritten with the project name
Employer Address	Address_line_1	The street address of the employer
Employer City	City	The employer's city
Employer Province / State	Province_code_en State_code_en	The employer's province or state
Employer Postal Code	Postal_code	The employer's postal code
Employer Country	Country_id Other_country_text	The employer's country
Employer Phone Number 1	Area_code + phone_number	The employer's phone number with area code
Employer Phone Number 2	Area_code + phone_number	Employer's fax number with area code
Employer Electronic Mail Address	Email_address	E-mail address for the employer
Employer Website	Web_site	Website for the employer's business (if any)
Application Receive Date	Request_received_date	Date the HSRDC Opinion request was received in an HRSDC Office
Application Creation Date	Date_created	Date the HSRDC Opinion file was created in FWS
Application Updated Date	Date_updated	Date the HRSDC Opinion file was last updated
Third Party Representative Name	Name	The name of the third party representative
Third_Party Business Name	Third_party_name	The name of the third party company
Third_Party Address	Address_line_1	The street address where the third party is located
Third_Party City	City	The city where the third party is located
Third Party Province / State	Province_code_en State_code_en	The province/state in which the third party is located
Third Party Postal Code	Postal_code	The postal code for the third party
Third Party Phone Number 1	Area_code + phone_number	The phone number (with area code) of the third party representative
Third Party Phone Number 2	Area_code + phone_number	The fax number (with area code) of the third party representative
Third Party Electronic Mail Address	Email_address	The e-mail address of the third party representative
Number of TFW Positions Requested	Number_of_positions	The number of positions requested under a particular NOC and/or job description



Piece of Data	Technical Field Name	Description
Program Stream	Program_id	Flag to identify whether this request was made under the Live-in Caregiver Program
Temporary or Permanent Request	Request_type_id	Flag to indicate whether the request is for temporary or "arranged employment"
Duration of Employment	Duration_of_employment	The duration of employment
Duration of Employment – Associated Period	Duration_unit_code_en	The period associated with the duration (e.g. months, days, years, etc...)
Opinion Validity Date	Current_conf_exp_date	The employment offer "valid to" date. In the FWS, this is known as the "Confirmation Expiry Date" This is actually the date by which the FW must apply to CIC, as is stated on the confirmation letter
Language Requirements	Oral_language_id Written_language_id	The language requirements of the job
Number of Employment Locations	Employment_locations	The number of locations of employment
Employment Location(s)	Location_line_1	The venue of the first job location
Job Requirements	Position_description	The requirements (educational and other) of the job
NOC Code	Noc_code	The NOC code associated with the job that the foreign worker has been requested under
NOC Job Title / Description	Noc_title	The job title associated with the NOC code (as entered by HRSDC)
Job Duties	Position_description	The duties of the job
Wage	Wage	The monetary wage of the job
Wage Period	Wage_unit_id	The period associated with the wage (e.g. per year, per week, per month, etc...)
Hours	Hours_per_week	Number of hours of work per week
Benefits	Benefits	List of benefits
Issuing Officer	Name_to_print	The name of the FW officer who made the decision
Decision	Decision_id	The decision made on the Opinion request
Decision Date	Opinion_status_date	The date the decision was made by HRSDC
CIC Notes	Cic_note_text	The text of "CIC Notes"
Foreign Worker Last Name	Last_name	The family name of the foreign worker
Foreign Worker First Name	First_name	The given name of the foreign worker
Foreign Worker Country of Residence	Country_number	The foreign worker's country of residence (at the time of application to HRSDC)
Foreign Worker Birth Date	Birth_date	The foreign worker's date of birth
Gender of Foreign Worker	Gender_id	The gender of the foreign worker (male, female, or unspecified)

**Information to be disclosed by Human Resources and Skills Development  
Canada (HRSDC) to Citizenship and Immigration Canada (CIC)  
under subsection 35(2) of the *DHRSD Act***

Where section 34(1) of the *DHRSD Act* does not apply, HRSDC has authority under subsection 35(2) of the *DHRSD Act* to make Personal Information available to CIC for the administration or enforcement of the *IRPA* or the *IRPR*.

Disclosures under Annex C may be made on HRSDC's own initiative or by written request from CIC. A written request from CIC will include, at a minimum, the following information: the requesting officer name, the requesting officer position, requesting officer contact information (telephone and/or email), description of personal information elements requested, legislative statute and associated section reference(s) and purpose (description of enforcement activity) for which the information will be used.

Information listed in the table of Annex B may be disclosed under section 35(2). This information will be made available electronically unless the original document(s) needs to be shared.

Personal Information contained in the following documents related to an LMO may also be disclosed under section 35(2), in either paper or electronic format:

- the application form
- the third party representative authorization form and contract between third party and employer
- proof of advertising
- employer/employee contract
- correspondence between HRSDC/Service Canada and employer or authorized third party
- labour market decision letter issued to the employer
- guarantor attestation for Live-In Caregiver stream
- Employer Compliance Review (ECR) Findings, including:
  - employer name and contact information
  - job title, occupation and NOC codes
  - results of findings, including areas of non-compliance and associated corrective actions to be undertaken
  - outcome of non-compliance
  - ECR period

Personal Information contained in the following documents related to an AEO may also be disclosed under section 35(2), in either paper or electronic format:

- the application form
- the third party representative authorization form and contract between third party and employer
- the offer of permanent employment to the foreign national
- copies of remittance forms issued by the Canada Revenue Agency (CRA) itemizing source deductions for the previous 12 months (form number PD7A) as well as CRA T4 "Summary of remuneration paid" for the previous tax year
- CRA Notice of Assessment
- Signed T2 (corporate Income Tax Return) and T2124
- business licenses spanning 12 months or a commercial lease agreement for the business location
- correspondence between HRSDC/Service Canada and employer or authorized third party related to the application



***Department of Human Resources and Skills Development Act:  
Sections 38 and 39***

**38.** Information may be made available for research or statistical purposes to any person or body, including a person or body referred to in subsection 35(2) or (3) or section 36, if

- (a) the Minister is of the opinion that the research or statistical purposes are consistent with the principles set out in paragraphs 39(1)(a) to (e);
- (b) the Minister is of the opinion that the purpose for which the information is made available cannot reasonably be accomplished unless the information is provided in a form that may identify the individual to whom it relates; and
- (c) the information is made available subject to conditions set out in an agreement between the Minister and the person or body, and the person or body undertakes in the agreement not to subsequently disclose the information in a form that could reasonably be expected to identify the individual to whom it relates.

**39. (1)** The use of information by the Minister and by public officers of the Department for policy analysis, research or evaluation purposes shall be guided by the following principles:

- (a) the object of the policy analysis, research or evaluation is consistent with the powers, duties and functions of the Minister;
- (b) the use of the information is consistent with any agreement under which the information was obtained;
- (c) the results of the policy analysis, research or evaluation will be made available only in accordance with the provisions of this Part and any agreements under which the information was obtained;
- (d) the policy analysis, research or evaluation would be difficult or impossible if the information were not used; and
- (e) the policy analysis, research or evaluation is in the public interest.

## **Policy Guideline for the Sharing of Information with the Canada Border Services Agency (CBSA)**

### **PURPOSE**

Human Resources and Skills Development Canada (HRSDC) and Service Canada (SC) receive requests from a variety of federal partners regarding the sharing of personal information related to Arranged Employment Opinions (AEO) and Labour Market Opinions (LMO). This guideline is intended to provide functional direction regarding the authorities to share information with the CBSA.

### **BACKGROUND**

On September 19, 2005, a tripartite Letter of Understanding (LOU) between HRSDC, CIC and the CBSA was signed, with an extension letter dated March 29, 2006. Since the signing of the LOU, it was determined that separate Memoranda of Understanding (MOUs) between HRSDC and CIC and HRSDC and the CBSA would be more advantageous to meet the expanded parameters under which the departments can share information.

Two bilateral MOUs have been developed between HRSDC and CIC and HRSDC and the CBSA. The MOU between HRSDC and the CBSA is still under negotiation. However, HRSDC is still able to share information directly with the CBSA for the purposes of administration and enforcement of the AEO and LMO processes.

### **AUTHORITIES RELATED TO HRSDC'S DISCLOSURE OF PERSONAL INFORMATION TO THE CBSA**

HRSDC is able to disclosure personal information that it collects for the TFWP to the CBSA under subsections 34(1) of the *Department of Human Resources and Skills Development Act (DHRSD Act)*.

- **Section 34(1)** permits personal information to be made available to the CBSA for the "administration or enforcement of the program for which it was obtained or prepared", which is limited to providing arranged employment opinions (AEO) and labour market opinions (LMOs).

### **POLICY GUIDELINE – SECTION 34(1)**

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.

*Administrative uses for information disclosed under 34(1):* This includes confirming information provided on an AEO or LMO application in relation to the processing of a work permit or verifying any information that the employer supplied on its application for purposes of issuing work permits. Based on system limitations, limited AEO/LMO



information is available in CAIPS/FOSS and the system does not allow for searches using employer name.

Under 34(1), the CBSA is able to request any additional information provided by the employer with the AEO/LMO application for assessing a work permit application. This would include paper files and the associated information that may not be included in CAIPS/FOSS but is contained within the Foreign Worker System (FWS).

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 has at the date of issuance, may have rendered a different decision.

*Enforcement uses for information disclosed under 34(1):* This would include any other information that would confirm or verify that the employer did not misrepresent themselves to HRSDC in applying for an AEO or LMO, which may have resulted in a Service Canada officer issuing a different opinion. Examples of misrepresentation by the employer can be found in Appendix B.

The CBSA may request information under section 34(1) for the purposes of investigating the AEO or LMO but **not** for the purposes of the work permit or anything else which is unrelated to the AEO or LMO.

**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 *DHRSD Act* to extend authorities to permit the disclosure of personal information for purposes **outside** of IRPR 82 or 203.

### **OPERATIONAL CONSIDERATIONS**

A corresponding Operational Bulletin will be forthcoming to instruct Regions how to handle such requests from the CBSA.

**Related Policy Guidelines:** Policy Guidelines for the Sharing of Information with CIC

**Contact:** Temporary Foreign Worker Program Inbox  
[NC-TFWP\\_PTET-INBOX@hrsdc-rhdcc.gc.ca](mailto:NC-TFWP_PTET-INBOX@hrsdc-rhdcc.gc.ca)

**Prepared by:** Althea Williams, Director  
Krista McCracken, A/Manager  
Policy and Program Design Division, HRSDC-NHQ

**Date:** July 1, 2010

**Attachments:**

Appendix A – Data elements and types of information that can be disclosed from HRSDC to the CBSA

Appendix B – examples of misrepresentation by the employer

Appendix C – Sections 82 & 203 of *IRPR*



## APPENDIX A

### ANNEX B

#### **Information elements to be disclosed by Human Resources and Skills Development Canada (HRSDC) to the Canada Border Services Agency (CBSA)**

HRSDC has authority under subsection 34(1) of the *DHRSD Act* to make Personal Information, available to the CBSA for the administration or enforcement of the program for which it was obtained or prepared.

Information listed in the table is available electronically and, when shared with the CBSA, will be shared electronically unless the original document(s) needs to be shared. Additional information, including Personal Information, that is not specially listed in the table, may be shared with the CBSA for the purposes of the administration or enforcement of the program for which it was obtained or prepared if and when necessary.

<b>Piece of Data</b>	<b>Technical Field Name</b>	<b>Description</b>
System File Number	System_file_number	The system assigned unique file identifier.
Request for Opinion Status	Arrangement_id	0 – not processed under pre-approval (if arrangement_id is null) 1 – processed under pre-approval (if arrangement_id is not null)
Request for Opinion Number	Arrangement_id	The unique identifier for the pre-approval
HRSDC/SC Office Number	Hrc_number	The number of the HRC office that prepared the record.
Employer Name	Organization_name	The name of the employer Note – for files processed under a Group of Employers project, this will be overwritten with the project name
Employer Address	Address_line_1	The street address of the employer
Employer City	City	The employer's city
Employer Province / State	Province_code_en State_code_en	The employer's province or state
Employer Postal Code	Postal_code	The employer's postal code
Employer Country	Country_id Other_country_text	The employer's country
Employer Phone Number 1	Area_code + phone_number	The employer's phone number with area code.
Employer Phone Number 2	Area_code + phone_number	Employer's fax number with area code.
Employer Electronic Mail Address	Email_address	E-mail address for the employer
Employer Website	Web_site	Website for the employer's business (if any)
Application Receive Date	Request_received_date	Date the HSRDC Opinion request was received in an HRSDC Office

<b>Piece of Data</b>	<b>Technical Field Name</b>	<b>Description</b>
Application Creation Date	Date_created	Date the HSRDC Opinion file was created in FWS.
Application Updated Date	Date_updated	Date the HSRDC Opinion file was updated
Third Party Representative Name	Name	The name of the third Participant contact name
Third_Party Business Name	Third_Participant_name	The name of the third Participant company
Third_Party Address	Address_line_1	The street address where the third Participant is located
Third_Party City	City	The city where the third Participant is located
Third Party Province / State	Province_code_en State_code_en	The province/state in which the third Participant is located
Third Party Postal Code	Postal_code	The postal code for the third Participant
Third Party Phone Number 1	Area_code + phone_number	The phone number (with area code) of the third Participant contact
Third Party Phone Number 2	Area_code + phone_number	The fax number (with area code) of the third Participant contact
Third Party Electronic Mail Address	Email_address	The e-mail address of the third Participant
Number of TFW Positions Requested	Number_of_positions	The number of positions requested under a particular NOC and/or job description
Program Stream	Program_id	Flag to identify whether this request was made under the Live-in Caregiver Program
Temporary or Permanent Request	Request_type_id	Flag to indicate whether the request is for temporary or "arranged employment".
Duration of Employment	Duration_of_employment	The duration of employment
Duration of Employment – Associated Period	Duration_unit_code_en	The period associated with the duration (e.g. months, days, years, etc...)
Opinion Validity Date	Current_conf_exp_date	The employment offer "valid to" date. In the FWS, this is known as the "Confirmation Expiry Date".
Language Requirements	Oral_language_id Written_language_id	The language requirements of the job.
Number of Employment Locations		The number of locations of employment
Employment Location(s)	Location_line_1	The venue of the first job location.
Job Requirements	Position_description	The requirements (educational and other) of the job.
Job Duties	Position_description	The duties of the job.
Wage	Wage	The monetary wage of the job.
Wage Period	Wage_unit_id	The period associated with the wage (e.g. per year, per week, per month, etc...)



<b>Piece of Data</b>	<b>Technical Field Name</b>	<b>Description</b>
Hours	Hours_per_week	Number of hours of work per week
Benefits		List of benefits
Issuing Officer	Name_to_print	The name of the FW officer who made the decision
Decision	Decision_id	The decision made on the Opinion request.
Decision Date	Opinion_status_date	The date the decision was made by HRSDC.
CIC Notes	Cic_note_text	The text of "CIC Notes"
Foreign Worker Last Name	Last_name	The family name of the foreign worker
Foreign Worker First Name	First_name	The given name of the foreign worker
Foreign Worker Country of Residence	Country_number	The foreign worker's country of residence (at the time of application to HRSDC)
Foreign Worker Birth Date	Birth_date	The foreign worker's date of birth
Gender of Foreign Worker	Gender_id	The gender of the foreign worker (male, female, or unspecified)

## APPENDIX B

### EXAMPLES OF MISREPRESENTATION BY THE EMPLOYER

Examples of misrepresentation by the employer resulting in additional AEO/LMO information requested by the CBSA, could include, but not limited to the following:

- Misrepresentation of the advertising requirements. The employer did not properly advertise for the minimum amount of time required, but indicated otherwise on their application.
- Misrepresentation of paying the prevailing wage indicated on the LMO application. The amount indicated on the application does not match employer payroll records.
- Misrepresentation of working conditions by the employer. The job description of position indicates certain working conditions and the actual working conditions the worker is subjected to are not meeting generally acceptable Canadian standards.
- Misrepresentation by the employer regarding any labour dispute in progress. The employer did not accurately provide the status of dispute, but a fraudulent document from the union stating a settlement had occurred.
- Misrepresentation of employer/employee relationship (i.e. indicates that it is employer for program purposes as per tripartite directive and is in reality a placement agency).

The above examples relate more to the CBSA, as the CBSA is the 'investigative arm' of CIC and therefore, would require the AEO/LMO documentation to investigate any possible misrepresentation by the employer on the application.

When assessing the genuineness of the job offer factor for AEOs, the following factors are considered by HRSDC:

- Business location must be on Canadian soil;
- Business entity, an employer/employee relationship must be present with evidence (CRA must have evidence of collecting EI and CPP premiums from the employer);
- Employer must have employed someone for a minimum of 1 year prior to the AEO application;
- Employer cannot be a placement agency;
- Previous AEO applications are taken into consideration, relative to size of the business and the number of requests in the past 2 years;
- Reasons for new hire, linked to attrition or growth; and
- Consistency between position offered and company.

Any intentional inaccuracies of any of the above factors by the employer would constitute examples of misrepresentation. The above examples are in addition to the CBSA requests for records that are illegible or information that was not complete in the system.



**APPENDIX C**  
**EXCERPT OF IRPR – 82 & 203**

Section 82 (2) – The AEO provided by HRSDC is based on the following factors:

- (c) The skilled worker does not intend to work in Canada before being issued a permanent resident visa and does not hold a work permit and
  - (i) The employer has made an offer to employ the skilled worker on an indeterminate basis the permanent resident visa is issued to the skilled worker, and
  - (ii) An officer has approved that offer of employment based on an opinion provided to the officer by HRSDC at the request of the employer or an officer that
    - i. The offer of employment is genuine,
    - ii. The employment is not part-time or seasonal employment, and
    - iii. The wages offered to the skilled worker are consistent with the prevailing wage rate for the occupation and the working conditions meet generally acceptable Canadian standards.

Section 203 (3) – The LMO provided by HRSDC is based on the following factors:

1. Whether the employment of the foreign national is likely to result in direct job creation or job retention for Canadian citizens of permanent residents;
2. 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. Whether the employment of the foreign national is likely to fill a labour shortage;
4. 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;
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 national is likely to adversely affect the settlement of any labour dispute in progress, or the employment of any person involved in the dispute.

## **Policy Guideline for the Sharing of Personal Information with the Royal Canadian Mounted Police (RCMP)**

### **PURPOSE**

Human Resources and Skills Development Canada (HRSDC) and Service Canada (SC) receive requests from a variety of federal partners regarding the sharing of personal information related to Arranged Employment Opinions (AEO) and Labour Market Opinions (LMO). This guideline is intended to provide functional direction regarding the authorities to share information with the RCMP.

### **BACKGROUND**

Prior to 2005, HRSDC was governed by section 8(2)(e) of the *Privacy Act* for disclosing personal information to a federal institution. With the renewal of the *Department of Human Resources and Skills Development (DHRSD) Act* in 2005, the disclosure of personal information to a federal institution that was obtained by the Foreign Worker Program is governed by Part 4 of the *DHRSD Act*. Section 8(2)(e) of the *Privacy Act* is no longer applicable for releasing personal information by HRSDC to the RCMP.

### **POLICY GUIDELINE**

Section 35(2) of the *DHRSD Act* permits HRSDC to make personal information available to the "...Minister or a public officer of a prescribed federal institution for the administration or enforcement of a prescribed federal law or activity or a provincial law or activity if the Minister considers it advisable, and the information is made available subject to conditions agreed upon by the Minister and the federal institution".

Therefore, in order to meet the requirements for the disclosure of personal information:

1. the RCMP must be identified in the *DHRSD Regulations*, and
2. a Memorandum of Understanding (MOU) between HRSDC and the RCMP is required.

The RCMP is named as a prescribed federal institution under section 3(h) of the *DHRSD Regulations*. However, 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 *DHRSD Act*. **The requests may be forwarded to the attention of Susan Seeger, Manager of Access to Information and Privacy, where it can be determined if the request meets the requirements of a disclosure under the *Privacy Act*.**

**Contact:**

Temporary Foreign Worker Program Inbox  
[NC-TFWP\\_PTET-INBOX@hrsdcc.gc.ca](mailto:NC-TFWP_PTET-INBOX@hrsdcc.gc.ca)

**Prepared by:**

Althea Williams, Director  
Krista McCracken, A/Manager  
Policy and Program Design Division, HRSDC-NHQ

**Date:**

July 1, 2010





## **LMO REVOCATION DIRECTIVE**

**Program Integrity Division**

**Temporary Foreign Worker Directorate**

**Skills and Employment Branch**

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## **1. Purpose**

The purpose of this directive is to define the roles and responsibilities of National Headquarters (NHQ) and Regional Headquarters (RHQ) in conducting revocations of confirmed Labour Market Opinions (LMO) and to outline what information is required to determine whether a LMO confirmation should be revoked.

## **2. Scope**

This document outlines the procedures that support the responsibilities of the Quality and Compliance Review Unit (QCR) and Service Canada (SC) regions regarding the LMO revocation process as it relates to the Temporary Foreign Worker Program (TFWP).

## **3. Background**

### **3.1 Temporary Foreign Worker Program**

Every year, tens of thousands of foreign workers enter Canada to work temporarily in jobs in response to short-term regional, occupational and sectoral skill and labour needs when Canadians are not available. Human Resources and Skills Development Canada (HRSDC) and Citizenship and Immigration Canada (CIC) work to ensure that the employment of foreign workers supports economic growth and helps create more opportunities for all Canadians and permanent residents of Canada.

For many employment positions, a LMO confirmation is required from HRSDC to support a CIC work permit application from a foreign worker.

### **3.2 Revocation of Labour Market Opinion**

Revoking a LMO confirmation involves overturning a labour market opinion confirmation in light of new information, and changing the opinion from “positive” or “neutral” to “negative”. A LMO confirmation may only be revoked if some or all of the work permits have not yet been issued to the foreign workers. However, where revocation is not possible, details regarding the new information should be noted in the Temporary Foreign Worker System (TFWS).

The revocation of a LMO confirmation is a process specifically initiated by HRSDC. It should not be confused with an employer’s request for the withdrawal of a LMO application or the cancellation of a LMO after a confirmation has been issued.

### **3.3 Source of new information**

There are various sources of new information that could lead to the revocation of a LMO confirmation. These include information received from Service Canada (SC) regions,



Citizenship and Immigration Canada (CIC), Canada Border Services Agency (CBSA), other government departments, media coverage (e.g. newspapers, radio, television) and individuals.

The information can be received by mail, in-person, telephone or electronically. Due to a Supreme Court decision (Leipert)<sup>1</sup>, the identity of all third party informants must be protected. Any information that might reveal the identity of an informant must not be divulged and should therefore be kept in such a way that would prevent disclosure.

Care should be taken to remove, where possible, all reference to the complainant or complainant information during discussions with the employer and in documentation. The Informant privilege rule provides complainants with certain guarantees. Without consent of the complainant, HRSDC is legally bound to not disclose any information that might indicate the identity of a complainant.

### **3.4 Regulatory Authority to Issue a LMO**

As per Section 203(1) of the *Immigration and Refugee Protection Regulations* (IRPR), work permit applications are assessed, in part, on the basis of a LMO provided to CIC by HRSD/SC Officers, where one is required.

*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) and (ii), an officer shall determine, on the basis of an opinion provided by the Department of Human Resources Development, if the job offer is genuine and if the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada.*

HRSDC/SC is mandated under section 203(3) of the IRPR to base the LMO on the following six specific 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 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*

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<sup>1</sup> As a result of the 1997 decision of the Supreme Court of Canada in *R. v. Leipert*, Insurance Services amended their procedures for handling third party information. Specific details on the Court decision can be found at the following site: <http://scc.lexum.umontreal.ca/en/1997/1997rcs1-281/1997rcs1-281.html>. Additional information on the procedures established by Service Canada can be found at the following site: [http://intracom.hq-ac.prv/en/ei/reference\\_material/manuals\\_guides/protection\\_leads.shtml](http://intracom.hq-ac.prv/en/ei/reference_material/manuals_guides/protection_leads.shtml).



*(f) whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute.*

HRSDC/SC is accountable for providing an opinion in a way that is reasonable and consistent, taking into account its mandate under the IRPR, the facts and information available and the factors set out in section 203(3) of the IRPR.

### **3.5 Principles**

- Every LMO confirmation is subject to revocation if the circumstances warrant it.
- The revocation decision by NHQ is made in conjunction with regional consultation.

## **4. Standard Procedures**

This section outlines the procedures for region-initiated LMO revocations (4.2) and NHQ-initiated LMO revocations (4.3).

### **4.1 Guidelines for a revocation**

The revocation of a LMO confirmation is initiated by HRSDC/SC and should not be confused with an employer initiated cancellation of confirmed LMOs.

Prior to the issuance of a work permit, any LMO confirmation, including those that have been partially used, can be revoked under the following three circumstances:

1. The employer has provided materially false or misleading information.
  - refers to the applicant deliberately and knowingly providing untrue statements on any part of the LMO application, (e.g. applicant states the available position is for a food counter attendant when in fact it is for a cook); or
2. New facts come to light subsequent to the date of the issuance of the opinion that change the assessment of any of the factors set out in subsection 203(3) and that, in turn, change the opinion that the employment of the foreign national would likely have a neutral or positive effect on the labour market in Canada;
  - refers to the discovery of facts that did not exist at the time of application (e.g. since the issuance of the LMO, the employer (ER) has filed for bankruptcy and laid off all of its employees yet refuses to cancel unused LMOs); or
3. The opinion was based on an unintentional error as to some material fact.
  - refers to a mistake made by the applicant either as a result of an oversight or lack of knowledge of the program requirements. (e.g. the ER states that the position is for 40 hrs a week. After the LMO is confirmed, the ER calls SC stating

that they meant 40hrs bi-weekly on the application form. The ER now no longer qualifies for the TFWP.)

## 4.2 Regional Roles and Responsibilities for RHQ initiated revocations

Where revocation seems warranted, TFWP Regional Consultants are to submit the "LMO Revocation Request Form" to NHQ via the SC-NHQ Inbox.

It is strongly recommended that, prior to submitting a formal request for revocation, RHQ notify NHQ via the NC-TFWP\_PTET-INBOX as soon as possible, identifying the ER, briefly outlining what information has lead to a possible revocation and any and/or all LMO(s) confirmation number(s) that may be affected. Once NHQ is advised, CIC will be contacted to verify if work permits have been issued against the position(s) stated on the LMO confirmation(s) in question.

In addition, officers are to include the following statement under the "Employer Notes" and "Notes to CIC" fields in the FWS: *"A revocation is under consideration"*. This note will serve to alert CIC, in circumstances where TFWs have initiated contact with a Canadian Embassy/Consulate, as well as to inform other officers who may be processing a LMO application from the same employer. Once NHQ has received the WP information from CIC, RHQ will be notified immediately. Officers are reminded that work permit information must be included in the RHQ recommendation request to NHQ along with all other information.

If all positions on the LMO confirmation have been used (no other WP left to be issued), then revocation is not an option. However, as per the Information/Complaints Directive, the information should be recorded on the ER file and consideration could be given to conduct a compliance review, should the ER submit a new LMO application.

The attached LMO Revocation Request Form template is to be completed and sent with supporting documentation to NHQ for review.



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The revocation request form has instructions included in all fields in ***bold red italics***. These instructions clarify what information is being requested and help maintain uniformity in the requests submitted.

The information provided to NHQ must be detailed. RHQ is to outline the nature of the new information that came to light, how it came about, and what steps were taken to verify the accuracy of the new information.

In the province of Quebec, Service Canada and the Ministère de l'Immigration et des Communautés culturelles (MICC) will exchange information relevant to revoking any LMO confirmation. SC-Quebec will seek MICC concurrence prior to sending a completed LMO Revocation Request Form to NHQ for decision.



It is standard practice for the ER to be contacted for all revocation requests. When preparing the request form, the region is to contact the ER and allow them to respond to the facts leading to the possible revocation. All information gathered from this communication must be included in the form to be submitted to NHQ.

Below is a copy of a completed form with examples.



## LABOUR MARKET OPINION REVOCATION REQUEST FORM

<b>ORIGINATOR NHQ/REGION:</b> <i>Manitoba</i>	<b>DATE REQUESTED:</b> <i>August 1, 2010</i>
<b>NHQ/REGIONAL CONSULTANT CONTACT NAME:</b> <i>Bob Smyth</i>	<b>PHONE:</b> <i>(204) 555-1212</i>
<b>SYSTEM FILE (SF#):</b> <i>SF#: 7515838</i> <b>HRSDC OPINION NUMBER:</b> <i>RFO #750275</i> <b>NUMBER OF POSITIONS LISTED ON LMO:</b> <i>Two positions.</i> <b>NUMBER OF POSITIONS ISSUED WORK PERMITS:</b> <i>1 WP</i> <b>NOC CODE(S) AND JOB TITLE(S) INVOLVED:</b> <i>NOC 6242 - Cook</i>	
<b>GROUND(S) FOR REVOCATION:</b> <p>The following new facts have come to light subsequent to the date of issuance of the opinion that have changed the assessment of any of the factors set out in subsection 203(3) and that, in turn, change the opinion that the employment of the foreign national would likely have a neutral or positive effect on the labour market in Canada.</p> <ul style="list-style-type: none"><li>➤ <i>The restaurant went out of business and is now closed.</i></li><li>➤ <i>All employees have been laid off.</i></li><li>➤ <i>No jobs exist for any potential temporary foreign worker.</i></li></ul> <p><i>With these new facts, the following factors in subsection 203 (3) are no longer met:</i></p> <ul style="list-style-type: none"><li><i>(c) whether the employment of the foreign national is likely to fill a labour shortage</i></li><li><i>(d) [...] whether the working conditions meet generally acceptable Canadian standards</i></li></ul>	
<b>BACKGROUND:</b> <ul style="list-style-type: none"><li>➤ <i>On 25 March 2010, XYZ Inc. applied for a LMO for a total of 2 cook positions. The LMO decisions were confirmed on 25 March 2010 (LMO # 7515838).</i></li><li>➤ <i>On 24 April 2010, new information came to light by way of a newspaper clipping announcing the closing of XYZ Inc. It indicated that this was to take effect immediately, affecting approximately 20 workers.</i></li><li>➤ <i>CIC has confirmed the following about the LMO:</i> <i>LMO # 7515838 has 2 positions.</i><ul style="list-style-type: none"><li>• <i>1 has been issued visa/WPs</i></li></ul></li><li>➤ <i>Since the issuance of the LMO, the ER's labour market needs have drastically changed to the point where the restaurant has closed.</i></li><li>➤ <i>Communication with the ER confirmed that:</i><ul style="list-style-type: none"><li>• <i>The restaurant is now closed.</i></li><li>• <i>All Canadian employees, over 20 of them, have been laid off.</i></li></ul></li></ul>	



**RECOMMENDATION:**

Recommend to revoke SF # **7515838** based on:

- ***Restaurant is closed.***
- ***No jobs exist at present time.***

**NHQ RESPONSE:** REVOKE: **X** or DO NOT REVOKE: ☐

*(For NHQ use only)*

**DECISION DATE:** *(For NHQ use only)* **August 1, 2010**

**RATIONALE FOR NHQ DECISION:**

*(For NHQ use only)*

***No longer a continued need for FWs.***

TFWP Director, Program Integrity Division

Signature: ***For NHQ use only.***

Director General, TFW/LMI Directorate

Signature: ***For NHQ use only.***

**Canada**

#### **4.3 NHQ Roles and Responsibilities for RHQ initiated revocations**

NHQ will review the revocation request and determine whether or not a revocation is warranted.

NHQ will attempt to contact the ER for all revocation requests in order to provide the ER with an opportunity to respond to the facts leading to the possible revocation. All information gathered from this communication will be included in the request form submitted to NHQ senior management.

NHQ may need to contact CIC to verify if work permits have been issued against all of the position(s) stated on the LMO confirmation(s) in question, in instances where RHQ has forwarded the LMO Revocation Request Form, prior to receiving confirming from NHQ regarding the status of the WP(s) from CIC. Where NHQ had confirmed with CIC that work permits have been issued against all such positions, then no revocation will be issued. However, where CIC provides confirmation that work permits have not been issued for one or more such positions, then a 'confirmed revocation' may be considered. At times, it may not be possible to obtain WP status from CIC immediately, however, based on the reliability and facts pertaining to the new information and where NHQ considers that there may be a risk of work permits being issued, a "revocation subject to confirmation" may be considered.

Once all necessary information has been received and reviewed, and revocation remains a consideration, the following steps will be taken:

1. NHQ will update the "Notes to CIC" field in the FWS as:

*This LMO is REVOKED as of yyyy-mm-dd. No further work permits should be issued.*

- *New facts came to light subsequent to the date of the issuance of the opinion on yyyy-mm-dd that changed the assessment of that opinion.*

*[Pick the circumstance that applies]*

- 1. The employer has provided materially false or misleading information; or*
- 2. New facts come to light subsequent to the date of the issuance of the opinion that change the assessment of any of the factors set out in subsection 203(3) and that, in turn, change the opinion that the employment of the foreign national would likely have a neutral or positive effect on the labour market in Canada; or*
- 3. The opinion was based on a mistake as to some material fact.*

Please note that it remains CIC's responsibility to communicate the revocation information in accordance with their information sharing agreements and their departmental governing legislation related to the handling of personal information.

2. NHQ will update the "ER notes" section in the FWS as:

*This LMO is REVOKED as of yyyy-mm-dd.*

*New facts came to light subsequent to the date of the issuance of the opinion on yyyy-mm-dd that changed the assessment of that opinion. [Pick the circumstance that applies].*

- 1. The employer has provided materially false or misleading information; or*
- 2. New facts come to light subsequent to the date of the issuance of the opinion that change the assessment of any of the factors set out in subsection 203(3) and that, in turn, change the opinion that the employment of the foreign national would likely have a neutral or positive effect on the labour market in Canada; or*
- 3. The opinion was based on a mistake as to some material fact.*

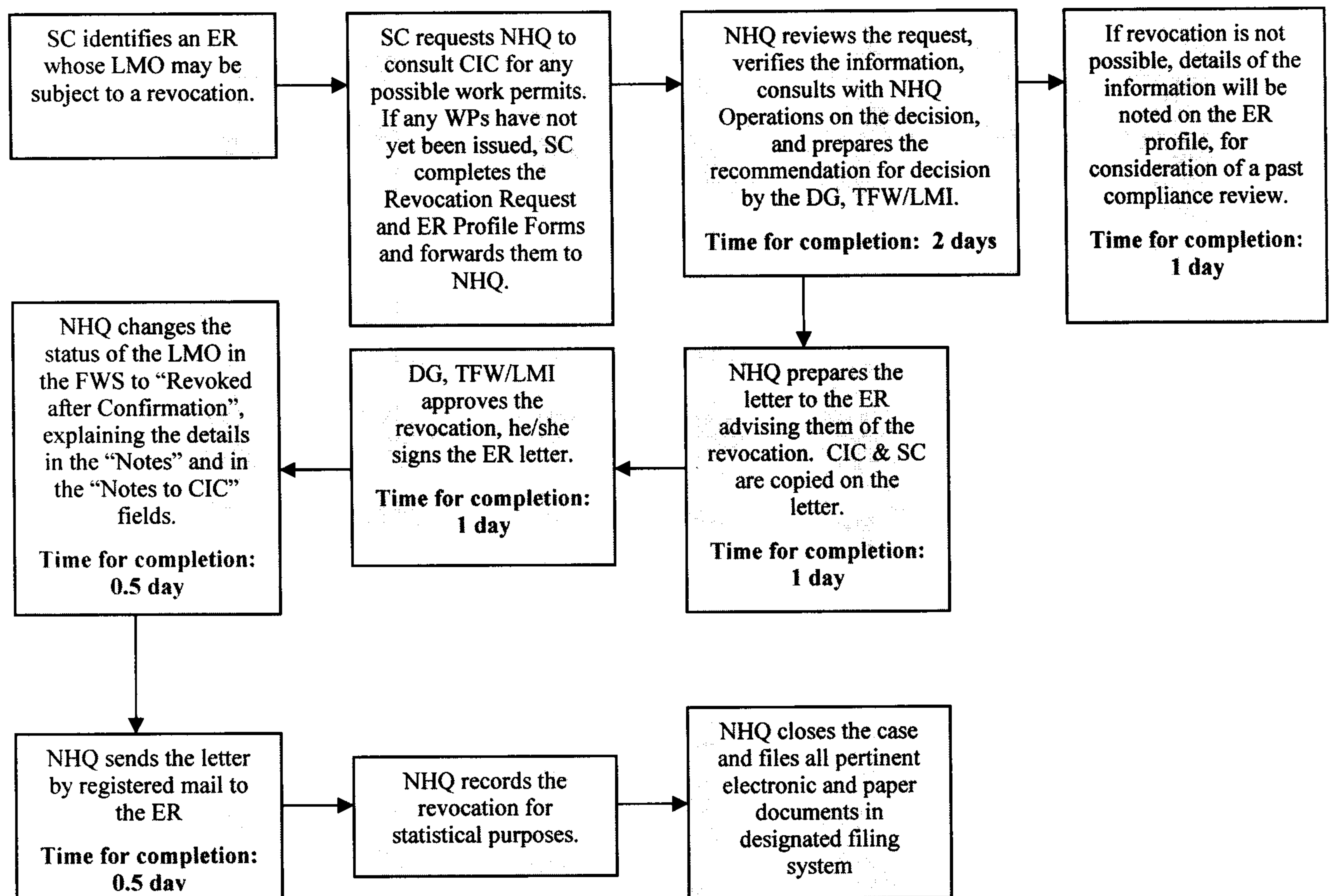
*For more details, please see registered letter to ER and revocation request form which have been scanned into the FWS under the ER profile.*

3. NHQ will issue a registered letter to the employer informing them of the revocation and the reasons for it. The letter will also state that a reassessment of the previously confirmed LMO has resulted in a negative opinion. A copy of the letter will be sent to the CIC Director of the Temporary Resident Program Delivery division and to SC-Region. A hard copy of the letter will be retained in the HRSDC NHQ TFWP Program Integrity Division director's files. All written correspondence to the ER will be scanned into the FWS under the Employer Profile and a comment will be placed in the Employer Notes field indicating that a letter has been sent to the employer by NHQ.



#### 4.4 Process Map for RHQ initiated revocations

The following flowchart represents the process for region-initiated revocations. The goal is to have the revocation process completed accurately and approved within 5 days. The time elapsed begins when NHQ-Program Integrity Division receives the completed template from the region.



#### 4.5 NHQ Roles and Responsibilities for NHQ initiated revocations

Information that leads to consideration of a LMO revocation may be received from CIC or CBSA through information-sharing memoranda of understanding (MOU). Information may also be received from provinces through the information-sharing letters of understanding (LOU) HRSDC. In these cases, NHQ will prepare the LMO Revocation Request Form, in consultation with SC-Regions.

Where revocation seems warranted, NHQ will conduct research to verify the new information, including contacting the employer. RHQ will be consulted and will assist NHQ in providing information if and when requested. NHQ will contact CIC NHQ to inquire if any work permits have been issued against the positions stated on the LMO confirmation in question. Until such time as WP status can be confirmed, NHQ will include the following statement under the "Employer Notes" and "Notes to CIC" fields in the FWS: *"A revocation is under consideration"*. This note will serve to alert CIC, in instances where TFWs have initiated contact with a Canadian Embassy/Consulate, as well as to inform FWOs who may be processing a LMO application from the same employer

Once all information has been verified, NHQ will complete the Request for Revocation form in detail, outlining the nature of the new information, how it came about, and what steps were taken to verify the accuracy of the new information.

The attached LMO Revocation Request Form template is to be completed for review.



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FWI-TEI\FWP-PTE

The revocation request form has instructions included in all fields in ***bold red italics***. These instructions clarify what information is being requested and help maintain uniformity in the requests submitted.

Below is a copy of the form complete with examples.





## LABOUR MARKET OPINION REVOCATION REQUEST FORM

ORIGINATOR NHQ/REGION: <i>NHQ</i>	DATE REQUESTED: <i>May 17, 2010</i>
NHQ/REGIONAL CONSULTANT CONTACT NAME: <i>Jane Smith</i>	PHONE: <i>819 956 5555</i>
SYSTEM FILE (SF#): <i>7345100</i> HRSDC OPINION NUMBER: <i>589100</i> NUMBER OF POSITIONS LISTED ON LMO: <i>10</i> NUMBER OF POSITIONS ISSUED WORK PERMITS: <i>0</i> NOC CODE(S) AND JOB TITLE(S) INVOLVED: <i>7611 – Construction Helper/Labourer (Interior Finisher)</i>	
<b>GROUND(S) FOR REVOCATION:</b> <ul style="list-style-type: none"><li><i>New facts have come to light subsequent to the date of the issuance of the opinion that have changed the assessment of any of the factors set out in subsection 203(3) and that, in turn, change the opinion that the employment of the foreign national would likely have a neutral or positive effect on the labour market in Canada.</i></li><li><i>There are three factors in subsection 203 (3) that are no longer met:</i><ul style="list-style-type: none"><li><i>(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;</i></li><li><i>(b) whether the employment of the foreign national is likely to result in the creation or</i> <i>transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;</i></li><li><i>(c) whether the employment of the foreign national is likely to fill a labour shortage.</i></li></ul></li></ul>	
<b>BACKGROUND:</b> <ul style="list-style-type: none"><li><i>On February 18 2010, Building Inc. applied for a LMO for 10 Construction Helper/Labourer positions. The LMO decision was confirmed for the 10 positions on March 30, 2010.</i></li><li><i>Since the decision, 4 work permit applicants, citing this LMO, have been refused on bona fides. The remaining 6 have not been processed in the system. No work permits have been issued for positions at Building Inc.</i></li><li><i>Efforts to reach the primary contact listed on the LMO have been unsuccessful. Further investigative efforts by Citizenship and Immigration Canada, as well as Service Canada regional have revealed:</i></li><li><i>Building Inc. was registered was dissolved in April 2010.</i></li></ul>	

- ***The primary contact information and address for the employer are incorrect.***

**RECOMMENDATION:**

- ***Recommend to revoke SF # 7345100 based on:***
  - ***Company dissolved in April 2010 (there is no employer)***
  - ***Primary Contact for LMO cannot be contacted at information listed on LMO, and unable to substantiate a continued need for temporary foreign workers.***

**NHQ RESPONSE:** REVOKE: ☒ or DO NOT REVOKE: ☐

**DECISION DATE:** *5 July 2010*

**RATIONALE FOR NHQ DECISION:**

- ***Employer no longer exists.***
- ***Primary contact for LMO cannot be located – unable to substantiate continued need for FWs.***

TFWP Director, Program Integrity Division

Signature: ***As required***

Director General, TFW/LMI Directorate

Signature: ***As required***

**Canada**

Once all necessary information has been received and reviewed, and revocation remains a consideration, the following steps will be taken:

1. NHQ will update the "Notes to CIC" field in the FWS as:

*This LMO is REVOKED as of yyyy-mm-dd. No further work permits should be issued.*

- *New facts came to light subsequent to the date of the issuance of the opinion on yyyy-mm-dd that changed the assessment of that opinion.*

*[Pick the circumstance that applies]*

1. *The employer has provided materially false or misleading information; or*
2. *New facts come to light subsequent to the date of the issuance of the opinion that change the assessment of any of the factors set out in subsection 203(3) and that, in turn, change the opinion that the employment of the foreign national would likely have a neutral or positive effect on the labour market in Canada; or*



3. *The opinion was based on a mistake as to some material fact.*

Please note that it remains CIC's responsibility to communicate the revocation information in accordance with their information sharing agreements and their departmental governing legislation related to the handling of personal information.

2. NHQ will update the "ER notes" section in the FWS as:

*This LMO is REVOKED as of yyyy-mm-dd.*

*New facts came to light subsequent to the date of the issuance of the opinion on yyyy-mm-dd that changed the assessment of that opinion. [Pick the circumstance that applies].*

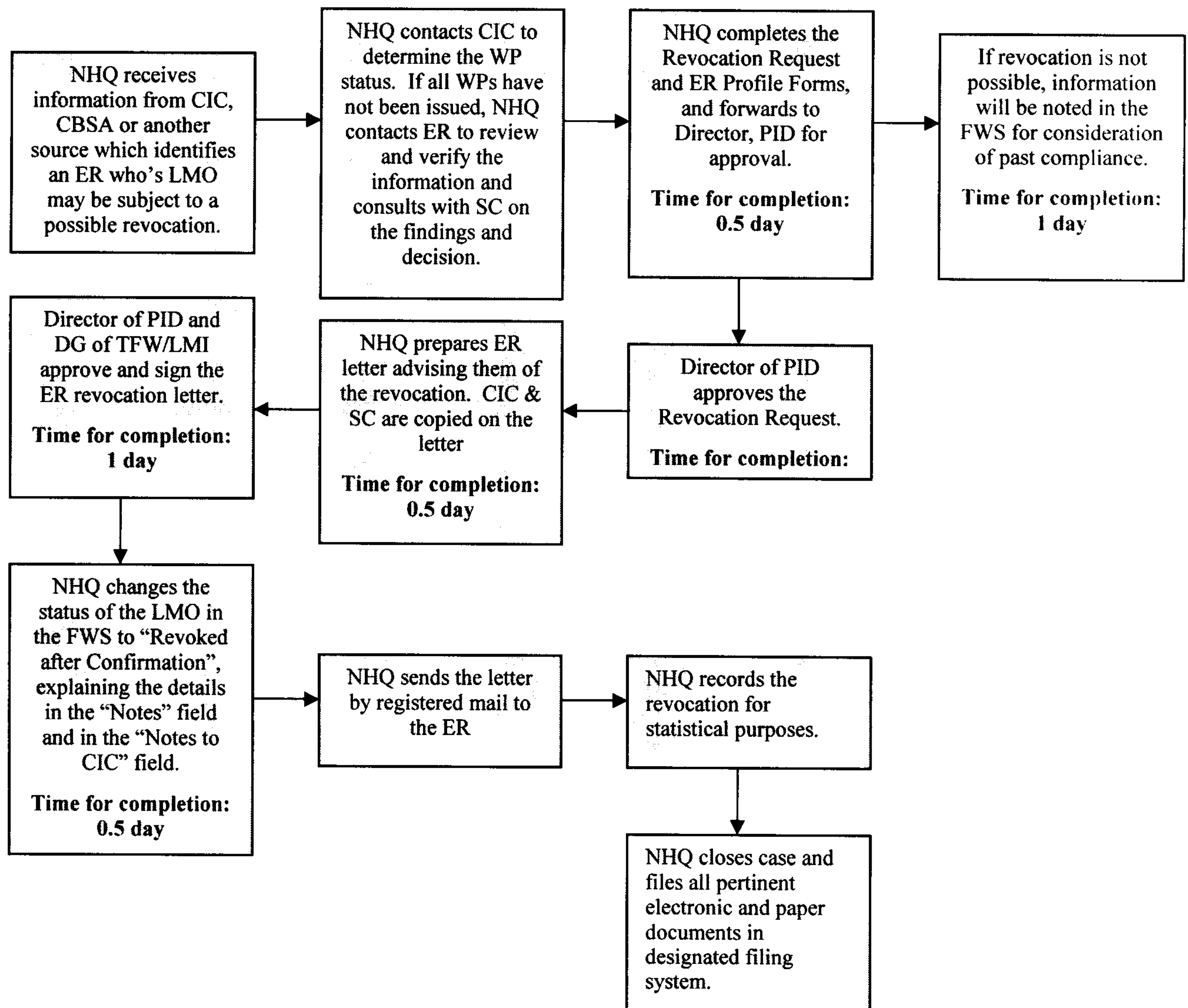
1. *The employer has provided materially false or misleading information; or*
2. *New facts come to light subsequent to the date of the issuance of the opinion that change the assessment of any of the factors set out in subsection 203(3) and that, in turn, change the opinion that the employment of the foreign national would likely have a neutral or positive effect on the labour market in Canada; or*
3. *The opinion was based on a mistake as to some material fact.*

*For more details, please see registered letter to ER and revocation request form which have been scanned into the FWS under the ER profile.*

3. NHQ will issue a registered letter to the employer informing them of the revocation and the reasons for it. The letter will also state that a reassessment of the previously confirmed LMO has resulted in a negative opinion. A copy of the letter will be sent to the CIC Director of the Temporary Resident Program Delivery division and to SC-Region. A hard copy of the letter will be retained in the HRSDC NHQ TFWP Program Integrity Division director's files. All written correspondence to the ER will be scanned into the FWS under the Employer Profile and a comment will be placed in the Employer Notes field indicating that a letter has been sent to the employer by NHQ.

#### 4.6 Process Map for NHQ initiated revocations

The following flowchart represents the process for NHQ-initiated revocations. The goal is to ensure the revocation is completed accurately and approved within 5 days.





## **4.7 Considerations**

Revoking a LMO confirmation is a serious action, and should only be taken when circumstances warrant it. Where a decision to revoke a LMO confirmation could have damaging consequences to an employer, it will be important to note those consequences and any options that exist to mitigate them.

Any such pertinent notes should be recorded in the ER's file to maintain an accurate documentation of the steps taken regarding the revocation and to archive records for future reference.

Some examples of damaging consequences include, but are not limited to:

- A restaurant's opening is dependant on the Foreign Worker (FW) cook who was scheduled to arrive for the event. The ER will lose thousands of dollars for every day that the restaurant remains closed beyond the scheduled opening.
- The construction of a bridge is halted without the 30 FW welders that were going to work on the project. This in turn will result in the foremen, engineers and architects being laid-off and the local economy will no longer benefit from the construction project. In addition, the ER might lose the project to another company who has the manpower to bring it to completion.
- A meat processing plant functions on a seasonal schedule. The 100 FWs where scheduled to arrive at the peak of the season. Should they not arrive at the plant in time, the ER will not be able to replace the FWs in time to process all the meat. As the ER's main income is generated during a very short time frame, loss of the FWs would mean a year's loss in revenue.

## **4.8 Tracking system**

All revocations must be tracked by NHQ for statistical as well as informational purposes. The tracking sheet for revocations is on the U: drive at the following location: U:\SEB-DGCE\TFW-TET\DIP-PID\Div\QCRU\REVOCATIONS

Once a LMO confirmation is revoked, NHQ must record it on the tracking sheet by entering all in the information requested by the cell headers. A new sheet will be created in the document for each calendar year.

## **4.9 Collection, Disclosure and Storage of Unsolicited Information Related to Revocations**

HRSDC is governed by the Department of Human Resources and Skills Development Act (DHRSDA), Privacy Act (PA) and the TFWP Record Disposition Authority 2007/002 (RDA) pertaining to the retention and disposal of information. All unsolicited personal information in both electronic and paper formats used in the decision making process (confirming, cancelling or revoking a LMO or conducting a compliance review in any capacity) must be retained for 7 years; otherwise there is no obligation to keep the information.

As per the Information Delegation and Classification Guide, information will be collected, transmitted and stored under the classification of Protected 'B'. Otherwise, the information must be destroyed as defined in the classification guide created to help us further understand our obligations in terms of retention and disposition.

Most information received has a Protected 'B' security rating; however it is important for information that HRSDC/SC cannot action that it is disposed of in accordance with the Information Delegation and Classification Guide. Similarly, though many of the complaints/inquires we receive would generally fall under the Protected 'B' rating, care must be taken to ensure the information is protected accordingly.

The guide can be found at the following link: <http://intracom.hq-ac.prv/hrib-dirh/fw/common/fpt-agreements/fpt-agreements.shtml>

## **5. Contacts**

Campion Carruthers, Director  
Program Integrity Division  
819-953-3404

Radmila Duncan, Manager  
Quality and Compliance Review Unit  
Program Integrity Division  
819-997-8557





## LABOUR MARKET OPINION REVOCATION REQUEST FORM

**ORIGINATOR NHQ/REGION:**

*Specify which region.*

**DATE REQUESTED:**

*Date request sent to NHQ.*

**NHQ/REGIONAL CONSULTANT CONTACT**

**NAME:** *State name of contact.*

**PHONE:** *Phone number for contact.*

**SYSTEM FILE (SF#):**

**HRSDC OPINION NUMBER:**

**NUMBER OF POSITIONS LISTED ON LMO:**

**NUMBER OF POSITIONS ISSUED WORK PERMITS:**

**NOC CODE(S) AND JOB TITLE(S) INVOLVED:**

**GROUND(S) FOR REVOCATION:**

*State the new facts and which IRPR factors are no longer met.*

**BACKGROUND:**

*Write in detail all the circumstances regarding this LMO.*

**RECOMMENDATION:**

- To revoke SF # ##### based on:  
*State very briefly the facts that warrant the recommendation to revoke.*

**NHQ RESPONSE:** REVOKE: ☐ or DO NOT REVOKE: ☐

*For NHQ use only.*

**DECISION DATE:** *For NHQ use only.*

**RATIONALE FOR NHQ DECISION:**

*For NHQ use only.*

TFWP Director, Program Integrity Division

Signature: *For NHQ use only.*

Director General, TFW/LMI Directorate

Signature: *For NHQ use only.*

**Canada**

## Temporary Foreign Worker Program Manual

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### Section 4.3.1 – Monitoring Initiative/Employer Compliance Review Directive

**Purpose:**

The purpose of this directive is to provide a detailed step-by-step process to guide officers on conducting ECRs under the MI of the TFWP.

Please note that the section on STS is the main source for procedures on how to conduct ECRs in accordance with the April 1, 2011, changes to the IRPR, and links to relevant sections are provided throughout this document.

MI-ECRs are based on an existing LMO confirmation where the employer has consented to participate. An STS-ECR must be conducted on new LMO applications for returning employers, in accordance with Section 203(1)(e) of IRPR.

**Background:**

The MI was launched on April 27, 2009. The objective of MI is to enhance employer compliance by fostering positive and consistent relationships between employers and HRSDC/Service Canada by educating and providing support to employers in order to encourage compliance. The initiative is voluntary and employers are encouraged to participate by indicating their consent on the LMO application form. The benefits of this initiative are:

- compliance promotion;
- provide employers an opportunity to establish a compliance history;
- fraud deterrence;
- information gathering (i.e. industry, program);
- information gathering on one-off or infrequent users of the TFWP;
- identification of risk indicators in employer profiles; and
- identification of TFWP policy issues to be addressed.

**Guiding Principles:**

An employer must have consented to participating in MI and be a first-time user of the TFWP. An ECR may be carried out only where a work permit has been issued to a TFW who has commenced his employment with a selected consenting employer. The ECR should generally take 30 days complete. However, where an employer is required to provide justification and/or compensation and to allow the employers sufficient time to respond, an additional 30 days may be provided.

Employer compliance is assessed against the terms of employment as stipulated in the LMO Confirmation Letter and associated Annex. The concept of STS will be used to determine compliance. Only where that is not the case, would justification and/or compensation be required.

**Sampling Methodology:**

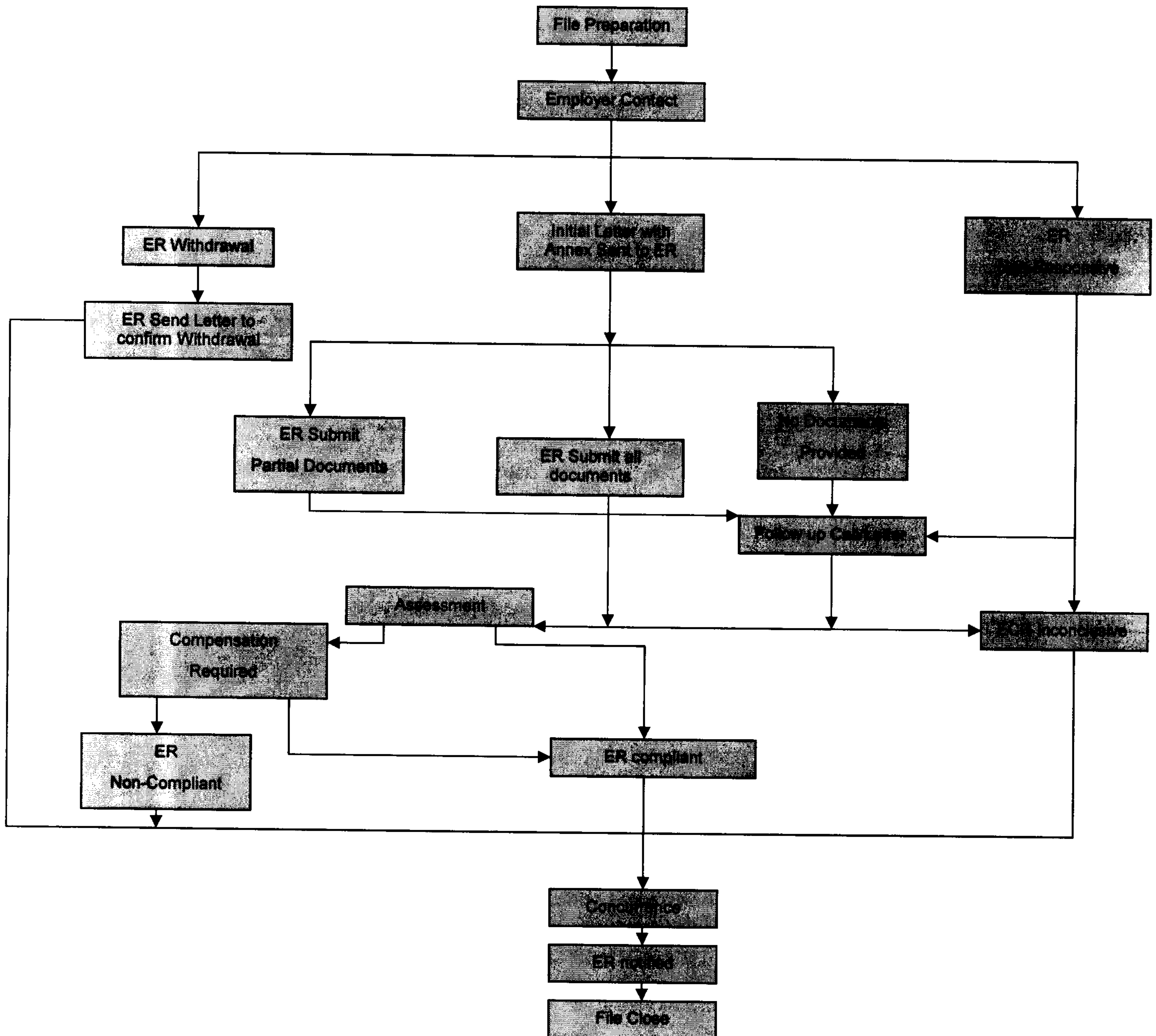
To support the TFWP employer compliance monitoring, an integrated method to identify employers for document based (Level II) compliance reviews will be based on (i) risk factors, and (ii) a representative sample of employers. MI-ECRs are considered to be Level II ECRs.



## **Temporary Foreign Worker Program Manual**

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Effective April 1, 2011, MI-ECRs will continue to be based on current practices and will continue to exclude LCP, SAWP, Quebec and short-term duration occupations; however, to complement and not duplicate efforts, MI will be restricted to first-time employers. NHQ will provide a new list of first-time employers that have agreed to participate in MI. The list will be regularly updated and provided to regions by NHQ.

**Temporary Foreign Worker Program Manual****Section 4.3.1.1 – Employer Compliance Review Process**



## Temporary Foreign Worker Program Manual

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### Section 4.3.1.1.1 - Step 1: Preparing for the Review

1. Using the list provided by NHQ, new MI-ECR files should be prepared for each employer.
2. Complete the Tracking Spreadsheet (including employer names, etc). using the MI Tracking Instructions found at the links below:

[STS MI Tracker](#)

[MI Tracking Instructions](#)

3. Complete Sections 1 & 2 of the ECR Checklist using information from the FWS and a copy of the employer/employee contract (where required) submitted by the employer at time of application is obtained and added to the file.

**Note:** Employer files contain Protected 'B' information and must be kept in a locked cabinet.

Region
W-T
ON
QC
Atlantic

P/T
AB
BC
MB
NB
NL
NS
NT
NU
ON
PE
QC
SK
YT

NHQ
N/A
Y
N

Compensation
Wages
Working Conditions
Occupation
N/A



## MI – ECR TRACKING SPREADSHEET INSTRUCTIONS

This document is designed as a guide to the STS & MI Tracker. It describes each column and how to fill it out; using the drop down features, adding scores or putting in dates. To reduce the length of the tracker, titles under the result section have been shortened.

Under the **Employer information** section:

<b>Column A</b>	FW Officer's initials
<b>Column B</b>	ER name should be exactly the same as on FWS and the Checklist
<b>Column C</b>	ER identification number on FWS
<b>Column D</b>	Use the drop down feature to select the province or territory
<b>Column E</b>	System File number of the LMO selected for review

Under **30 Day Limit** section:

<b>Column F</b>	Date of initial contact with ER concerning the ECR
<b>Column G</b>	Automatic count 30 working days from initial contact date
<b>Column H</b>	FWO put in the actual end date of the review

Under **Justification / Compensation 30 Day Limit** (if necessary):

<b>Column I</b>	Date of contact with ER regarding Justification / Compensation
<b>Column J</b>	Automatic count 30 working days from contact date
<b>Column K</b>	FWO put in the actual end date of the review

Under the **Result** section: Enter "1" in the appropriate column and it will add up on the **TOTAL** line. No need to adjust the totals, there are formulae already in place.

<b>L</b>	<b>COMPL.</b>	Compliant
<b>M</b>	<b>COMPL.wJ</b>	Compliant with Justification
<b>N</b>	<b>COMPL.wC</b>	Compliant with Compensation
<b>O</b>	<b>NON-COMPL.</b>	Non Compliant
<b>P</b>	<b>INCONCL.</b>	Inconclusive
<b>Q</b>	<b>WITHDR.</b>	Withdrawal

Under **NHQ Concurrence** (if necessary):

<b>Column R</b>	Put in the date RHQ requests concurrence from NHQ
<b>Column S</b>	Put in the date RHQ receives concurrence from NHQ
<b>Column T</b>	Use the drop down feature to select Y,N or N/A

Under **Comments** section:

<b>Column U</b>	Use the drop down feature to select Compensation (if necessary)
<b>Column V</b>	Additional information used to support the decision
<b>Column V– Reason for MI</b>	<b>On the risk based tracker sheet</b> Explanation for MI selection; for example: Complaints, MI outcome, Third party on Due Diligence List, etc.

When forwarding the Spreadsheet to NHQ, **please highlight** the added information so that it is clear what new data needs to go into the Status Report that is sent to the Director.

## Temporary Foreign Worker Program Manual

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### Section 4.3.1.1.2 - Step 2: Employer Contact

The following steps are to be followed when making contact with an employer"

- contact employer using the call script as a guide;
- thank the employer for consenting to participate in the MI;
- convey expectations and indicate availability for follow-up discussions;
- provide a short description of the documents that will be required for the review; and
- verify the title, e-mail address and fax number of the contact person.

The following script can be used to guide the call:

"Hi, my name is \_\_\_\_\_ and I'm calling from Service Canada, Temporary Foreign Worker Program in (**Region/NHQ**).

The purpose of this call is to let you know that \* **name of company** \* has been selected for an Employer Compliance Review. Your application for a Labour Market Opinion dated \*\* indicated your consent to participate in the Monitoring Initiative.

An Employer Compliance Review involves a review of key documents to assess whether or not the employer of a Temporary Foreign Worker has been compliant with the terms and conditions of employment as stipulated in the LMO Confirmation Letter and associated Annex.

Can you please confirm if the following foreign worker(s) is/ are currently working for you, or have worked for you in the past?

1. \_\_\_\_\_ (**name of worker(s) whose documents will be reviewed**).
2. \_\_\_\_\_

As a follow-up to this call, I will send you a letter of introduction and a list of documents you are required to submit. If you have any questions, feel free to contact me, my name and telephone number will be on the letter".



## **Temporary Foreign Worker Program Manual**

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### **Section 4.3.1.1.3 - Step 3: Documenting Employer Compliance Reviews in the Foreign Worker System**

For detailed instructions on documenting ECRs in the FWS, please refer to the section on initiating an STS ECR.

## Temporary Foreign Worker Program Manual

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### Section 3.5.5.2.5 - Initiating the Substantially the Same Employer Compliance Review

Conversations and details concerning STS ECRs must be recorded in the Employer Notes field and the Notes to File field of the FWS.

When an employer is undergoing a Level I STS ECR (attestation) or Level II STS ECR (random or risk-based), an entry should always be made in the Employer Notes field indicating that the employer is undergoing an STS ECR and in which SF the notes for that ECR can be found.

When an employer has been selected to undergo a Level I STS ECR, the employer has offered an affirmative attestation on the LMO application and no risk-based triggers have been noted in the employer profile, the Service Canada officer must make the following notation in the Notes to File section for the current LMO application:

“Employer selected for STS ECR based on attestation. Positive STS ECR based on attestation”.

In cases where an employer has been selected to undergo a Level II STS ECR but has not responded to the attestation question and/or has risk-based triggers noted in the employer profile, a Level II ECR (risk-based) should be considered. Details on the Level II ECR (random or risk-based) are found in section 3.5.5.2.4.



## Temporary Foreign Worker Program Manual

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### Section 4.3.1.1.4 - Step 4: Employer Compliance Review Assessment (receipt/review of documentation)

The primary documents to be used in the MI-ECR are the LMO Confirmation Letter and associated Annex. To demonstrate compliance, all employers will be required to comply with the following factors:

- payment of the **wage agreed in the LMO**;
- proof that **working conditions** meet applicable federal and provincial standards; and
- description of **occupation/work duties**.

Employers who have hired a TFW in one of the low skill (NOC C&D) occupations and documentation will be required to demonstrate compliance with the following additional factors:

- signed employer/employee **contract** (by both the employer and TFW);
- payment of return **transportation (two-way)**;
- ensure availability of suitable and affordable **accommodations**, and
- hospital and **medical care** insurance until TFW is covered by provincial health insurance.

The ECR Assessment for MI is the same as for STS ECRs.

## Temporary Foreign Worker Program Manual

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### Section 4.3.1.1.5 - Step 5: Justification and/or Compensation

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. 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.

Based on the justification, the Service Canada staff may determine that the employer is required to undertake a compensating measure in order to remain compliant with the TFWP. Compensation **may include any** action the employer must take to address any discrepancy in the wages, working conditions or occupation committed to in the original LMO and may not necessarily be financial in nature.

Please refer to section 3.5.5.2.8 for complete information on justification and compensation.



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### Section 4.3.1.1.6 - Step 6: Recommendation and Requests for Concurrence

RHQ Concurrence is required for all MI-ECRs prior to advising the employer of the outcome. These include:

- Employer has been deemed compliant and not required to undertake compensation:
  - Employer submits requested documentation and demonstrates compliance with TFWP
  - **Recommendation:** finalize review and deem employer compliant.
- Employer has been deemed compliant after undertaking compensation:
  - Employer submits requested documentation
  - Employer provides justification, undertakes compensation, provides proof (where necessary) and subsequently demonstrates compliance with TFWP
  - **Recommendation:** finalize review and deem employer compliant with compensation.
- Employer has provided partial information:
  - Employeey provides only partial information during the review period
  - **Recommendation:** findings from the review are inconclusive and compliance cannot be determined.
- Employer has withdrawn their participation in MI:
  - Request the employer to send written correspondence stating reason for withdrawal from the MI-ECR process.

NHQ and RHQ Concurrence is required prior to advising the employer of the outcome **only where:**

- Employer has been deemed non-compliant:
  - Employer submits requested documentation which indicates they have not complied with the LMO and associated Annex;
  - Employer does not provide justification ;or
  - Employer provides justification, however, after being given the opportunity to undertake the appropriate compensation, is either non-responsive, refuse or attempt, but do not undertake, the compensation within the timeline
  - **Recommendation:** finalize review and deem ER non-compliant with the TFWP.

The 30-day review period will not be extended and the compliance status of the ECR will be determined based on the information submitted at end of the 30-day period.

If additional information arises at a future date, and an employer is then found to be non-compliant with the program requirements, any LMO may be revoked if some or all of the work permits have not yet been issued. For more information, please refer to the LMO Revocation Process Directive.



## **LMO REVOCATION DIRECTIVE**

**Program Integrity Division  
Temporary Foreign Worker Directorate  
Skills and Employment Branch**



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## **1. Purpose**

The purpose of this directive is to define the roles and responsibilities of National Headquarters (NHQ) and Regional Headquarters (RHQ) in conducting revocations of confirmed Labour Market Opinions (LMO) and to outline what information is required to determine whether a LMO confirmation should be revoked.

## **2. Scope**

This document outlines the procedures that support the responsibilities of the Quality and Compliance Review Unit (QCR) and Service Canada (SC) regions regarding the LMO revocation process as it relates to the Temporary Foreign Worker Program (TFWP).

## **3. Background**

### **3.1 Temporary Foreign Worker Program**

Every year, tens of thousands of foreign workers enter Canada to work temporarily in jobs in response to short-term regional, occupational and sectoral skill and labour needs when Canadians are not available. Human Resources and Skills Development Canada (HRSDC) and Citizenship and Immigration Canada (CIC) work to ensure that the employment of foreign workers supports economic growth and helps create more opportunities for all Canadians and permanent residents of Canada.

For many employment positions, a LMO confirmation is required from HRSDC to support a CIC work permit application from a foreign worker.

### **3.2 Revocation of Labour Market Opinion**

Revoking a LMO confirmation involves overturning a labour market opinion confirmation in light of new information, and changing the opinion from "positive" or "neutral" to "negative". A LMO confirmation may only be revoked if some or all of the work permits have not yet been issued to the foreign workers. However, where revocation is not possible, details regarding the new information should be noted in the Temporary Foreign Worker System (TFWS).

The revocation of a LMO confirmation is a process specifically initiated by HRSDC. It should not be confused with an employer's request for the withdrawal of a LMO application or the cancellation of a LMO after a confirmation has been issued.

### **3.3 Source of new information**

There are various sources of new information that could lead to the revocation of a LMO confirmation. These include information received from Service Canada (SC) regions,



Citizenship and Immigration Canada (CIC), Canada Border Services Agency (CBSA), other government departments, media coverage (e.g. newspapers, radio, television) and individuals.

The information can be received by mail, in-person, telephone or electronically. Due to a Supreme Court decision (Leipert)<sup>1</sup>, the identity of all third party informants must be protected. Any information that might reveal the identity of an informant must not be divulged and should therefore be kept in such a way that would prevent disclosure.

Care should be taken to remove, where possible, all reference to the complainant or complainant information during discussions with the employer and in documentation. The Informant privilege rule provides complainants with certain guarantees. Without consent of the complainant, HRSDC is legally bound to not disclose any information that might indicate the identity of a complainant.

### **3.4 Regulatory Authority to Issue a LMO**

As per Section 203(1) of the *Immigration and Refugee Protection Regulations* (IRPR), work permit applications are assessed, in part, on the basis of a LMO provided to CIC by HRSD/SC Officers, where one is required.

*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) and (ii), an officer shall determine, on the basis of an opinion provided by the Department of Human Resources Development, if the job offer is genuine and if the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada.*

HRSDC/SC is mandated under section 203(3) of the IRPR to base the LMO on the following six specific 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 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*

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<sup>1</sup> As a result of the 1997 decision of the Supreme Court of Canada in *R. v. Leipert*, Insurance Services amended their procedures for handling third party information. Specific details on the Court decision can be found at the following site: <http://scc.lexum.umontreal.ca/en/1997/1997rcs1-281/1997rcs1-281.html>. Additional information on the procedures established by Service Canada can be found at the following site: [http://intracom.hq-ac.prv/en/ei/reference\\_material/manuals\\_guides/protection\\_leads.shtml](http://intracom.hq-ac.prv/en/ei/reference_material/manuals_guides/protection_leads.shtml).

*(f) whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute.*

HRSDC/SC is accountable for providing an opinion in a way that is reasonable and consistent, taking into account its mandate under the IRPR, the facts and information available and the factors set out in section 203(3) of the IRPR.

### **3.5 Principles**

- Every LMO confirmation is subject to revocation if the circumstances warrant it.
- The revocation decision by NHQ is made in conjunction with regional consultation.

## **4. Standard Procedures**

This section outlines the procedures for region-initiated LMO revocations (4.2) and NHQ-initiated LMO revocations (4.3).

### **4.1 Guidelines for a revocation**

The revocation of a LMO confirmation is initiated by HRSDC/SC and should not be confused with an employer initiated cancellation of confirmed LMOs.

Prior to the issuance of a work permit, any LMO confirmation, including those that have been partially used, can be revoked under the following three circumstances:

1. The employer has provided materially false or misleading information.
  - refers to the applicant deliberately and knowingly providing untrue statements on any part of the LMO application, (e.g. applicant states the available position is for a food counter attendant when in fact it is for a cook); or
2. New facts come to light subsequent to the date of the issuance of the opinion that change the assessment of any of the factors set out in subsection 203(3) and that, in turn, change the opinion that the employment of the foreign national would likely have a neutral or positive effect on the labour market in Canada;
  - refers to the discovery of facts that did not exist at the time of application (e.g. since the issuance of the LMO, the employer (ER) has filed for bankruptcy and laid off all of its employees yet refuses to cancel unused LMOs); or
3. The opinion was based on an unintentional error as to some material fact.
  - refers to a mistake made by the applicant either as a result of an oversight or lack of knowledge of the program requirements. (e.g. the ER states that the position is for 40 hrs a week. After the LMO is confirmed, the ER calls SC stating



that they meant 40hrs bi-weekly on the application form. The ER now no longer qualifies for the TFWP.)

#### 4.2 Regional Roles and Responsibilities for RHQ initiated revocations

Where revocation seems warranted, TFWP Regional Consultants are to submit the "LMO Revocation Request Form" to NHQ via the SC-NHQ Inbox.

It is strongly recommended that, prior to submitting a formal request for revocation, RHQ notify NHQ via the NC-TFWP\_PTET-INBOX as soon as possible, identifying the ER, briefly outlining what information has lead to a possible revocation and any and/or all LMO(s) confirmation number(s) that may be affected. Once NHQ is advised, CIC will be contacted to verify if work permits have been issued against the position(s) stated on the LMO confirmation(s) in question.

In addition, officers are to include the following statement under the "Employer Notes" and "Notes to CIC" fields in the FWS: *"A revocation is under consideration"*. This note will serve to alert CIC, in circumstances where TFWs have initiated contact with a Canadian Embassy/Consulate, as well as to inform other officers who may be processing a LMO application from the same employer. Once NHQ has received the WP information from CIC, RHQ will be notified immediately. Officers are reminded that work permit information must be included in the RHQ recommendation request to NHQ along with all other information.

If all positions on the LMO confirmation have been used (no other WP left to be issued), then revocation is not an option. However, as per the Information/Complaints Directive, the information should be recorded on the ER file and consideration could be given to conduct a compliance review, should the ER submit a new LMO application.

The attached LMO Revocation Request Form template is to be completed and sent with supporting documentation to NHQ for review.



U:\WSB-CMT\  
FWI-TE\FWP-PTE

The revocation request form has instructions included in all fields in ***bold red italics***. These instructions clarify what information is being requested and help maintain uniformity in the requests submitted.

The information provided to NHQ must be detailed. RHQ is to outline the nature of the new information that came to light, how it came about, and what steps were taken to verify the accuracy of the new information.

In the province of Quebec, Service Canada and the Ministère de l'Immigration et des Communautés culturelles (MICC) will exchange information relevant to revoking any LMO confirmation. SC-Quebec will seek MICC concurrence prior to sending a completed LMO Revocation Request Form to NHQ for decision.

It is standard practice for the ER to be contacted for all revocation requests. When preparing the request form, the region is to contact the ER and allow them to respond to the facts leading to the possible revocation. All information gathered from this communication must be included in the form to be submitted to NHQ.

Below is a copy of a completed form with examples.





## LABOUR MARKET OPINION REVOCATION REQUEST FORM

ORIGINATOR NHQ/REGION: <i>Manitoba</i>	DATE REQUESTED: <i>August 1, 2010</i>
NHQ/REGIONAL CONSULTANT CONTACT NAME: <i>Bob Smyth</i>	PHONE: <i>(204) 555-1212</i>
SYSTEM FILE (SF#): <i>SF#: 7515838</i> HRSDC OPINION NUMBER: <i>RFO #750275</i> NUMBER OF POSITIONS LISTED ON LMO: <i>Two positions.</i> NUMBER OF POSITIONS ISSUED WORK PERMITS: <i>1 WP</i> NOC CODE(S) AND JOB TITLE(S) INVOLVED: <i>NOC 6242 - Cook</i>	
<b>GROUND(S) FOR REVOCATION:</b> <p>The following new facts have come to light subsequent to the date of issuance of the opinion that have changed the assessment of any of the factors set out in subsection 203(3) and that, in turn, change the opinion that the employment of the foreign national would likely have a neutral or positive effect on the labour market in Canada.</p> <ul style="list-style-type: none"><li>➤ <i>The restaurant went out of business and is now closed.</i></li><li>➤ <i>All employees have been laid off.</i></li><li>➤ <i>No jobs exist for any potential temporary foreign worker.</i></li></ul> <p><i>With these new facts, the following factors in subsection 203 (3) are no longer met:</i></p> <ul style="list-style-type: none"><li><i>(c) whether the employment of the foreign national is likely to fill a labour shortage</i></li><li><i>(d) [...] whether the working conditions meet generally acceptable Canadian standards</i></li></ul>	
<b>BACKGROUND:</b> <ul style="list-style-type: none"><li>➤ <i>On 25 March 2010, XYZ Inc. applied for a LMO for a total of 2 cook positions. The LMO decisions were confirmed on 25 March 2010 (LMO # 7515838).</i></li><li>➤ <i>On 24 April 2010, new information came to light by way of a newspaper clipping announcing the closing of XYZ Inc. It indicated that this was to take effect immediately, affecting approximately 20 workers.</i></li><li>➤ <i>CIC has confirmed the following about the LMO:</i> <i>LMO # 7515838 has 2 positions.</i><ul style="list-style-type: none"><li>• <i>1 has been issued visa/WPs</i></li></ul></li><li>➤ <i>Since the issuance of the LMO, the ER's labour market needs have drastically changed to the point where the restaurant has closed.</i></li><li>➤ <i>Communication with the ER confirmed that:</i><ul style="list-style-type: none"><li>• <i>The restaurant is now closed.</i></li><li>• <i>All Canadian employees, over 20 of them, have been laid off.</i></li></ul></li></ul>	

**RECOMMENDATION:**

Recommend to revoke SF # 7515838 based on:

- ***Restaurant is closed.***
- ***No jobs exist at present time.***

NHQ RESPONSE: REVOKE: X or DO NOT REVOKE: ☐

*(For NHQ use only)*

DECISION DATE: *(For NHQ use only)* **August 1, 2010**

**RATIONALE FOR NHQ DECISION:**

*(For NHQ use only)*

***No longer a continued need for FWs.***

TFWP Director, Program Integrity Division

Signature: ***For NHQ use only.***

Director General, TFW/LMI Directorate

Signature: ***For NHQ use only.***

**Canada**

#### **4.3 NHQ Roles and Responsibilities for RHQ initiated revocations**

NHQ will review the revocation request and determine whether or not a revocation is warranted.

NHQ will attempt to contact the ER for all revocation requests in order to provide the ER with an opportunity to respond to the facts leading to the possible revocation. All information gathered from this communication will be included in the request form submitted to NHQ senior management.

NHQ may need to contact CIC to verify if work permits have been issued against all of the position(s) stated on the LMO confirmation(s) in question, in instances where RHQ has forwarded the LMO Revocation Request Form, prior to receiving confirming from NHQ regarding the status of the WP(s) from CIC. Where NHQ had confirmed with CIC that work permits have been issued against all such positions, then no revocation will be issued. However, where CIC provides confirmation that work permits have not been issued for one or more such positions, then a 'confirmed revocation' may be considered. At times, it may not be possible to obtain WP status from CIC immediately, however, based on the reliability and facts pertaining to the new information and where NHQ considers that there may be a risk of work permits being issued, a "revocation subject to confirmation" may be considered.

Once all necessary information has been received and reviewed, and revocation remains a consideration, the following steps will be taken:

1. NHQ will update the "Notes to CIC" field in the FWS as:

*This LMO is REVOKED as of yyyy-mm-dd. No further work permits should be issued.*



- *New facts came to light subsequent to the date of the issuance of the opinion on yyyy-mm-dd that changed the assessment of that opinion.*

*[Pick the circumstance that applies]*

- 1. The employer has provided materially false or misleading information; or*
- 2. New facts come to light subsequent to the date of the issuance of the opinion that change the assessment of any of the factors set out in subsection 203(3) and that, in turn, change the opinion that the employment of the foreign national would likely have a neutral or positive effect on the labour market in Canada; or*
- 3. The opinion was based on a mistake as to some material fact.*

Please note that it remains CIC's responsibility to communicate the revocation information in accordance with their information sharing agreements and their departmental governing legislation related to the handling of personal information.

2. NHQ will update the "ER notes" section in the FWS as:

*This LMO is REVOKED as of yyyy-mm-dd.*

*New facts came to light subsequent to the date of the issuance of the opinion on yyyy-mm-dd that changed the assessment of that opinion. [Pick the circumstance that applies].*

- 1. The employer has provided materially false or misleading information; or*
- 2. New facts come to light subsequent to the date of the issuance of the opinion that change the assessment of any of the factors set out in subsection 203(3) and that, in turn, change the opinion that the employment of the foreign national would likely have a neutral or positive effect on the labour market in Canada; or*
- 3. The opinion was based on a mistake as to some material fact.*

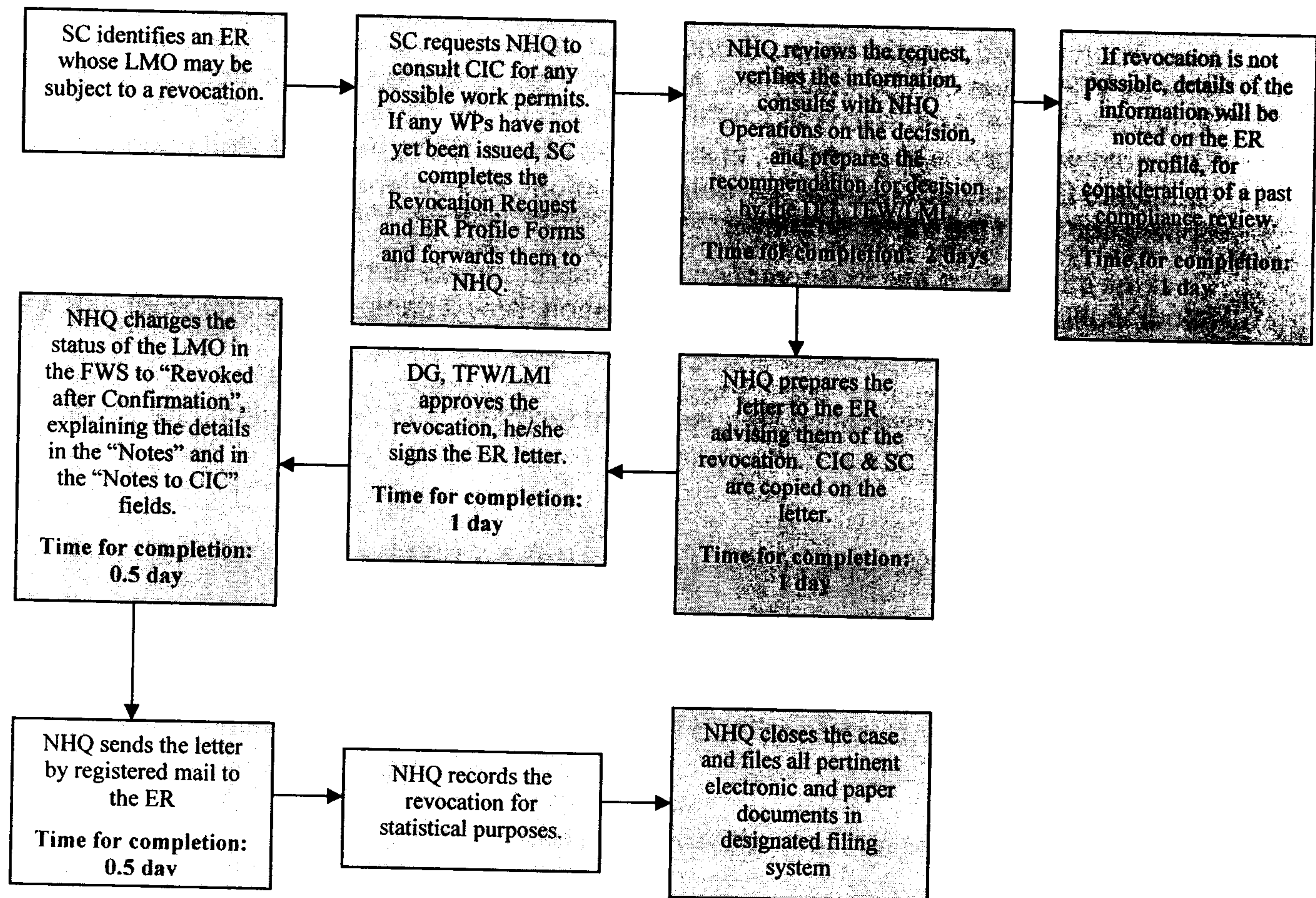
*For more details, please see registered letter to ER and revocation request form which have been scanned into the FWS under the ER profile.*

3. NHQ will issue a registered letter to the employer informing them of the revocation and the reasons for it. The letter will also state that a reassessment of the previously confirmed LMO has resulted in a negative opinion. A copy of the letter will be sent to the CIC Director of the Temporary Resident Program Delivery division and to SC-Region. A hard copy of the letter will be retained in the HRSDC NHQ TFWP Program Integrity Division director's files. All written correspondence to the ER will be scanned into the FWS under the Employer Profile and a comment will be placed in the Employer Notes field indicating that a letter has been sent to the employer by NHQ.



#### 4.4 Process Map for RHQ initiated revocations

The following flowchart represents the process for region-initiated revocations. The goal is to have the revocation process completed accurately and approved within 5 days. The time elapsed begins when NHQ-Program Integrity Division receives the completed template from the region.





#### 4.5 NHQ Roles and Responsibilities for NHQ initiated revocations

Information that leads to consideration of a LMO revocation may be received from CIC or CBSA through information-sharing memoranda of understanding (MOU). Information may also be received from provinces through the information-sharing letters of understanding (LOU) HRSDC. In these cases, NHQ will prepare the LMO Revocation Request Form, in consultation with SC-Regions.

Where revocation seems warranted, NHQ will conduct research to verify the new information, including contacting the employer. RHQ will be consulted and will assist NHQ in providing information if and when requested. NHQ will contact CIC NHQ to inquire if any work permits have been issued against the positions stated on the LMO confirmation in question. Until such time as WP status can be confirmed, NHQ will include the following statement under the "Employer Notes" and "Notes to CIC" fields in the FWS: *"A revocation is under consideration"*. This note will service to alert CIC, in instances where TFWs have initiated contact with a Canadian Embassy/Consulate, as well as to inform FWOs who may be processing a LMO application from the same employer

Once all information has been verified, NHQ will complete the Request for Revocation form in detail, outlining the nature of the new information, how it came about, and what steps were taken to verify the accuracy of the new information.

The attached LMO Revocation Request Form template is to be completed for review.



U:\WSB-CMT\  
FWI-TEI\FWP-PTE

The revocation request form has instructions included in all fields in ***bold red italics***. These instructions clarify what information is being requested and help maintain uniformity in the requests submitted.

Below is a copy of the form complete with examples.



## LABOUR MARKET OPINION REVOCATION REQUEST FORM

<b>ORIGINATOR NHQ/REGION:</b> <i>NHQ</i>	<b>DATE REQUESTED:</b> <i>May 17, 2010</i>
<b>NHQ/REGIONAL CONSULTANT CONTACT NAME:</b> <i>Jane Smith</i>	<b>PHONE:</b> <i>819 956 5555</i>
<b>SYSTEM FILE (SF#):</b> <i>7345100</i> <b>HRSDC OPINION NUMBER:</b> <i>589100</i> <b>NUMBER OF POSITIONS LISTED ON LMO:</b> <i>10</i> <b>NUMBER OF POSITIONS ISSUED WORK PERMITS:</b> <i>0</i> <b>NOC CODE(S) AND JOB TITLE(S) INVOLVED:</b> <i>7611 – Construction Helper/Labourer (Interior Finisher)</i>	
<b>GROUND(S) FOR REVOCATION:</b> <ul style="list-style-type: none"><li><i>New facts have come to light subsequent to the date of the issuance of the opinion that have changed the assessment of any of the factors set out in subsection 203(3) and that, in turn, change the opinion that the employment of the foreign national would likely have a neutral or positive effect on the labour market in Canada.</i></li><li><i>There are three factors in subsection 203 (3) that are no longer met:</i><ul style="list-style-type: none"><li><i>(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;</i></li><li><i>(b) whether the employment of the foreign national is likely to result in the creation or</i> <i>transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;</i></li><li><i>(c) whether the employment of the foreign national is likely to fill a labour shortage.</i></li></ul></li></ul>	
<b>BACKGROUND:</b> <ul style="list-style-type: none"><li><i>On February 18 2010, Building Inc. applied for a LMO for 10 Construction Helper/Labourer positions. The LMO decision was confirmed for the 10 positions on March 30, 2010.</i></li><li><i>Since the decision, 4 work permit applicants, citing this LMO, have been refused on bona fides. The remaining 6 have not been processed in the system. No work permits have been issued for positions at Building Inc.</i></li><li><i>Efforts to reach the primary contact listed on the LMO have been unsuccessful. Further investigative efforts by Citizenship and Immigration Canada, as well as Service Canada regional have revealed:</i></li><li><i>Building Inc. was registered was dissolved in April 2010.</i></li></ul>	



- ***The primary contact information and address for the employer are incorrect.***

**RECOMMENDATION:**

- ***Recommend to revoke SF # 7345100 based on:***
  - ***Company dissolved in April 2010 (there is no employer)***
  - ***Primary Contact for LMO cannot be contacted at information listed on LMO, and unable to substantiate a continued need for temporary foreign workers.***

**NHQ RESPONSE:** REVOKE: ☒ or DO NOT REVOKE: ☐

**DECISION DATE:** 5 July 2010

**RATIONALE FOR NHQ DECISION:**

- ***Employer no longer exists.***
- ***Primary contact for LMO cannot be located – unable to substantiate continued need for FWs.***

TFWP Director, Program Integrity Division

Signature: ***As required***

Director General, TFW/LMI Directorate

Signature: ***As required***

**Canada**

Once all necessary information has been received and reviewed, and revocation remains a consideration, the following steps will be taken:

1. NHQ will update the "Notes to CIC" field in the FWS as:

*This LMO is REVOKED as of yyyy-mm-dd. No further work permits should be issued.*

- *New facts came to light subsequent to the date of the issuance of the opinion on yyyy-mm-dd that changed the assessment of that opinion.*

*[Pick the circumstance that applies]*

1. *The employer has provided materially false or misleading information; or*
2. *New facts come to light subsequent to the date of the issuance of the opinion that change the assessment of any of the factors set out in subsection 203(3) and that, in turn, change the opinion that the employment of the foreign national would likely have a neutral or positive effect on the labour market in Canada; or*

3. *The opinion was based on a mistake as to some material fact.*

Please note that it remains CIC's responsibility to communicate the revocation information in accordance with their information sharing agreements and their departmental governing legislation related to the handling of personal information.

2. NHQ will update the "ER notes" section in the FWS as:

*This LMO is REVOKED as of yyyy-mm-dd.*

*New facts came to light subsequent to the date of the issuance of the opinion on yyyy-mm-dd that changed the assessment of that opinion. [Pick the circumstance that applies].*

1. *The employer has provided materially false or misleading information; or*
2. *New facts come to light subsequent to the date of the issuance of the opinion that change the assessment of any of the factors set out in subsection 203(3) and that, in turn, change the opinion that the employment of the foreign national would likely have a neutral or positive effect on the labour market in Canada; or*
3. *The opinion was based on a mistake as to some material fact.*

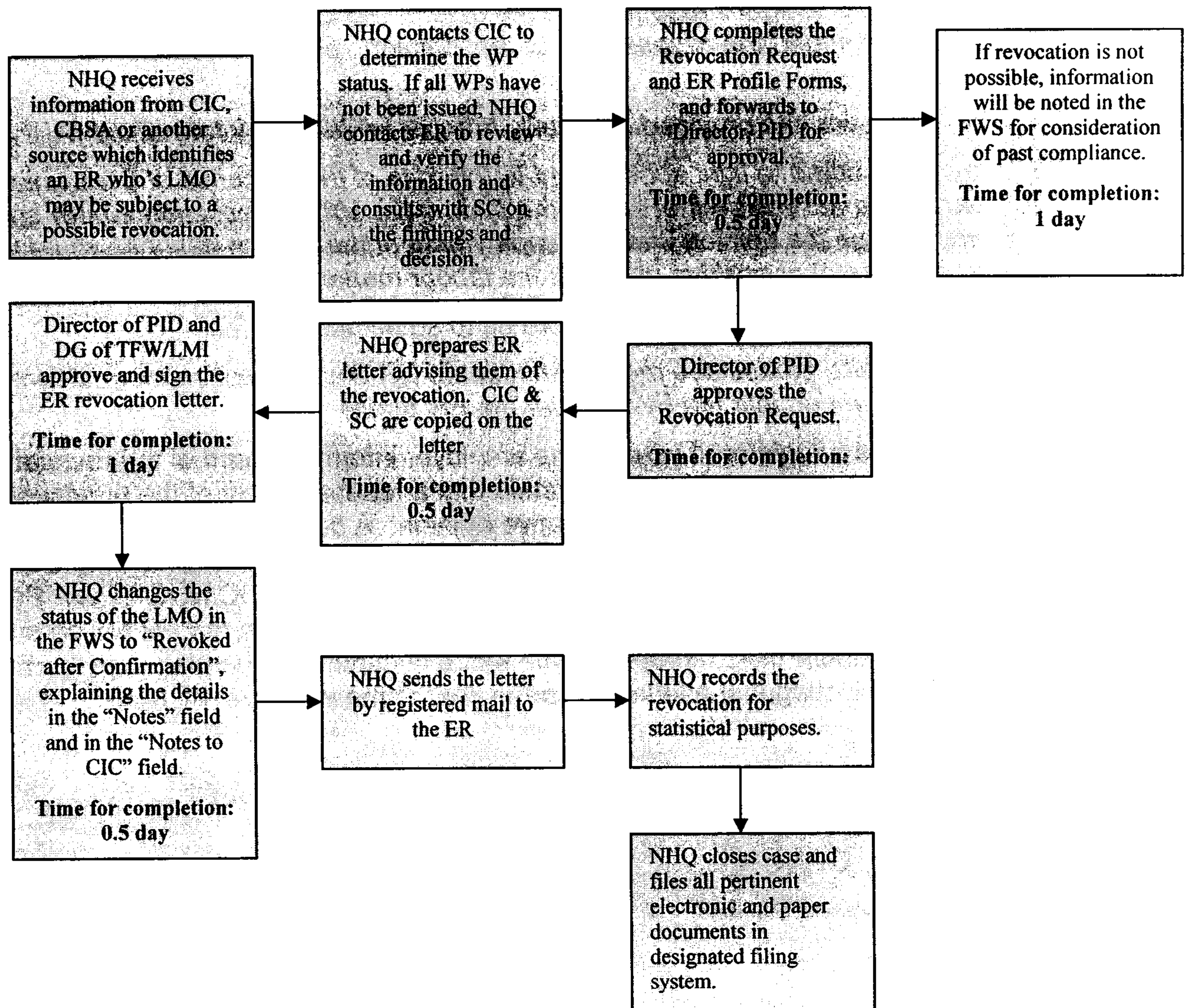
*For more details, please see registered letter to ER and revocation request form which have been scanned into the FWS under the ER profile.*

3. NHQ will issue a registered letter to the employer informing them of the revocation and the reasons for it. The letter will also state that a reassessment of the previously confirmed LMO has resulted in a negative opinion. A copy of the letter will be sent to the CIC Director of the Temporary Resident Program Delivery division and to SC-Region. A hard copy of the letter will be retained in the HRSDC NHQ TFWP Program Integrity Division director's files. All written correspondence to the ER will be scanned into the FWS under the Employer Profile and a comment will be placed in the Employer Notes field indicating that a letter has been sent to the employer by NHQ.



## 4.6 Process Map for NHQ initiated revocations

The following flowchart represents the process for NHQ-initiated revocations. The goal is to ensure the revocation is completed accurately and approved within 5 days.





## **4.7 Considerations**

Revoking a LMO confirmation is a serious action, and should only be taken when circumstances warrant it. Where a decision to revoke a LMO confirmation could have damaging consequences to an employer, it will be important to note those consequences and any options that exist to mitigate them.

Any such pertinent notes should be recorded in the ER's file to maintain an accurate documentation of the steps taken regarding the revocation and to archive records for future reference.

Some examples of damaging consequences include, but are not limited to:

- A restaurant's opening is dependant on the Foreign Worker (FW) cook who was scheduled to arrive for the event. The ER will lose thousands of dollars for every day that the restaurant remains closed beyond the scheduled opening.
- The construction of a bridge is halted without the 30 FW welders that were going to work on the project. This in turn will result in the foremen, engineers and architects being laid-off and the local economy will no longer benefit from the construction project. In addition, the ER might lose the project to another company who has the manpower to bring it to completion.
- A meat processing plant functions on a seasonal schedule. The 100 FWs were scheduled to arrive at the peak of the season. Should they not arrive at the plant in time, the ER will not be able to replace the FWs in time to process all the meat. As the ER's main income is generated during a very short time frame, loss of the FWs would mean a year's loss in revenue.

## **4.8 Tracking system**

All revocations must be tracked by NHQ for statistical as well as informational purposes. The tracking sheet for revocations is on the U: drive at the following location: U:\SEB-DGCE\TFW-TET\DIP-PID\Div\QCRU\REVOCATIONS

Once a LMO confirmation is revoked, NHQ must record it on the tracking sheet by entering all in the information requested by the cell headers. A new sheet will be created in the document for each calendar year.

## **4.9 Collection, Disclosure and Storage of Unsolicited Information Related to Revocations**

HRSDC is governed by the Department of Human Resources and Skills Development Act (DHRSDA), Privacy Act (PA) and the TFWP Record Disposition Authority 2007/002 (RDA) pertaining to the retention and disposal of information. All unsolicited personal information in both electronic and paper formats used in the decision making process (confirming, cancelling or revoking a LMO or conducting a compliance review in any capacity) must be retained for 7 years; otherwise there is no obligation to keep the information.



As per the Information Delegation and Classification Guide, information will be collected, transmitted and stored under the classification of Protected 'B'. Otherwise, the information must be destroyed as defined in the classification guide created to help us further understand our obligations in terms of retention and disposition.

Most information received has a Protected 'B' security rating; however it is important for information that HRSDC/SC cannot action that it is disposed of in accordance with the Information Delegation and Classification Guide. Similarly, though many of the complaints/inquires we receive would generally fall under the Protected 'B' rating, care must be taken to ensure to ensure the information is protected accordingly.

The guide can be found at the following link: <http://intracom.hq-ac.prv/hrib-dirh/fw/common/fpt-agreements/fpt-agreements.shtml>

## **5. Contacts**

Campion Carruthers, Director  
Program Integrity Division  
819-953-3404

Radmila Duncan, Manager  
Quality and Compliance Review Unit  
Program Integrity Division  
819-997-8557

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### Section 4.3.1.1.7 - Step 7: File Close Out

Once concurrence (NHQ and/or RHQ) has been received, the following file close-out steps must be followed:

- notify the employer of the findings of the review by a letter sent through the FWS;
- update Tracking Spreadsheet indicating what compensation was taken (if applicable); and
- store file in a locked cabinet (location TBD locally).

**Note:** ECR non-compliance letters are to be prepared and sent to the employer by the regional Service Canada staff, with NHQ manager's signature.

For more information, please refer to section on Federal/Provincial employment information.



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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

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					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



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						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 of 4 years from the date of the last entry.

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			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



## Temporary Foreign Worker Program Manual

		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  <i>Personal emergency leave:</i> 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 <i>unpaid</i> annual leave	Maternity - 18 Parental - 52 Adoption – 52	

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	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.



Temporary Foreign Worker Program Manual

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						exceeds 40 hours.				
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- 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*

## Temporary Foreign Worker Program Manual

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### Section 4.4.1 – Consideration of Employer Compliance Review Results in the Assessment of Arranged Employment Opinion Applications

#### Purpose:

The purpose of this directive is to establish how to apply Employer Compliance Review (ECR) results from confirmed Labour Market Opinions (LMOs) in the assessment of the genuineness of an Arranged Employment Opinion (AEO) application.

#### Authority:

Arranged employment is defined in s. 82(1) of the Immigration and Refugee Protection Regulations (IRPR) as “an offer of indeterminate employment in Canada.” As further specified in Section 82(2), qualifying arranged employment offers provide 10 points toward an individual's permanent residency application under the Federal Skilled Worker Program (FSWP). Offers of arranged employment must be for skilled occupations (i.e. skills levels A and B and skill type 0 of the National Occupational Classification).

The role of HRSDC/Service Canada in Arranged Employment is to provide an opinion at the request of an employer or an Immigration Officer, based on the following factors set out in Section 82(2)(c)(ii):

- (A) the offer of employment is genuine;
- (B) the employment is not part-time or seasonal employment, and
- (C) the wages offered to the skilled worker are consistent with the prevailing wage rate for the occupation and the working conditions meet generally accepted Canadian standards.

#### Background:

The purpose of an ECR is to examine whether an employer has upheld the terms of the offer of employment to a Temporary Foreign Worker (TFW), as set out in the Labour Market Opinion (LMO) confirmation letter and annex. More specifically, HRSDC/Service Canada examines whether the employer provided the wages, working conditions, and occupation to the foreign worker that were articulated in the LMO confirmation letter and annex. For low skilled occupations, employers should also demonstrate proof of transportation cost, accommodation information, private health insurance, workplace safety insurance and a signed employer-employee contract.

There are two main avenues whereby HRSDC/Service Canada officers are currently engaging employers in ECRs:

- where an employer has consented to participate in an Employer Compliance Review of the existing employment offer through the Monitoring Initiative; and
- where an employer who has previously received an LMO or E-LMO confirmation submits a subsequent Application for an LMO.

An employer who demonstrates that the wages, working conditions, occupation and other terms of employment provided to a TFW were consistent with those indicated in the LMO confirmation letter and annex is found “compliant”.



## Temporary Foreign Worker Program Manual

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Where an officer determines that the wages, working conditions or occupation provided are not consistent with the LMO confirmation the employer is offered an opportunity to undertake corrective measures. An employer who submits proof of having undertaken satisfactory corrective measures is found “compliant with corrective measures.” Employers who are deemed compliant with corrective measures may be flagged for subsequent ECRs to ensure that they continue to provide wages, working conditions and occupation with other LMO confirmations in the future.

Where the employer is unwilling to take corrective measures or is uncooperative with the ECR process, they are found “non-compliant.” Should an employer who has been previously been found non-compliant under an ECR submit a subsequent LMO application, the employer will be asked to submit proof of having undertaken the corrective measures identified through the ECR before an LMO confirmation will be issued. Failure to do so will result in the LMO application being refused.

Typically, an ECR takes 14 to 55 days to complete. A time limit may be imposed in order to close out files, where employers are non-cooperative.

### Guidelines:

As part of the assessment of genuineness for an AEO application, Service Canada officers have the authority to consider information in relation to whether an employer has been found through an ECR to have upheld the terms of previous offers of employment for which a LMO confirmation was issued.

In order to assess the genuineness of an AEO application, Centre of Specialization (CoS) officers in St. John should refer to information on the Foreign Worker System (FWS) database. CoS officers assessing an AEO application should search FWS to determine whether the employer has an existing employer profile. If so, officers should consult the “employer notes” for information on any ECRs conducted on previous confirmed LMOs for the employer (e.g. whether there is an ECR in progress, results of any previous completed ECRs).

A CoS officer should interpret ECR results as follows:

- A finding of compliant should be taken as a positive indication of the genuineness of the employer’s arranged employment offer. Officers should proceed with assessment of the AEO application in the usual manner.
- A finding of compliant with corrective measures should be carefully analyzed. For example, officers may wish to consider the following questions in determining the significance of the ECR results:

*How long ago was the ECR conducted? Are its results likely to reflect current working conditions with the employer?*

*How many ECRs has the employer undergone? What were the results of each?  
Has the employer undertaken corrective measures in relation to all ECRs where Service Canada identified corrective measures were required?*

*What occupations were subject to the ECR? Are workers in the occupations identified in the AEO application likely to be subjected to similar working conditions?*

## Temporary Foreign Worker Program Manual

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Officers may also wish to contact the Service Canada region that conducted the ECR(s) to seek further information.

- A finding of non-compliant should be interpreted as information that brings into doubt the genuineness of the employer's arranged employment offer. If an employer who has previously been found non-compliant through an ECR subsequently submits an AEO application, CoS officers should refuse the AEO application on the basis of its lack of genuineness as demonstrated by non compliance with ECR.

Cos officers should send the attached refusal letter, indicating that in order for the employer's AEO application to be assessed, he/she will need to provide a letter from the Service Canada region that conducted the ECR that confirms that the employer has undertaken corrective measures and/or is now considered compliant.

A pending ECR found in the FWS should not necessarily delay processing of an AEO application. However, CoS officers may wish to contact the Service Canada region conducting the ECR for further information before proceeding with processing. For example, where an employer has been uncooperative with an ECR process and the review process is approaching the 55-day close-out mark, CoS officers may wish to wait for the outcome of the ECR process in order to allow the AEO application to be assessed based on most current information. On the other hand, where an ECR has only recently been initiated, CoS officers should proceed with the assessment of the AEO application as per the regular procedure. National Headquarters (NHQ) is available to assist Service Canada regions where additional guidance is required.

CoS officers assessing AEO applications are instructed not to initiate an ECR in relation to a previously issued LMO confirmation considering both processes operate under separate directives.

This directive has been drafted to account for HRSDC/Service Canada's current authorities. A revised directive will be issued prior to April 1, 2011, to account for new authorities as a result of amendments to the *Immigration and Refugee Protection Regulations*.

**Effective Date:** November 1, 2010

**Contact:** NC-TFWP PTET-INBOX@hrsdc-rhdcc.gc.ca



Substantially the Same (STS)  
EMPLOYER COMPLIANCE REVIEW - INITIAL CONTACT

4.5.1.1.1

INSERT CURRENT ADDRESS e.g. Service Canada Centre # 1234  
e.g. Regional Headquarters – ON  
e.g. 4900 Yonge Street  
e.g. Suite 200  
e.g. North York, ON M2N 6A8

INSERT CURRENT DATE e.g. 2004-12-31

INSERT EMPLOYEE NAME e.g. Susan Smith  
e.g. The ABC Company  
e.g. 123, Carling Avenue  
e.g. Suite 400  
e.g. Ottawa, ON K2K 1K1

ER ID #

Dear INSERT EMPLOYEE NAME e.g. Susan Smith:

As discussed during our telephone conversation of [REDACTED], the purpose of this letter is to inform you, as an employer of temporary foreign workers (TFWs), of your responsibilities under the *Immigration and Refugee Protection Act and Regulations* (IRPA/R). In accordance with the April 1, 2011 amendments to the *IRPR*, all employers who have employed a TFW during the period beginning two years immediately preceding the application and who are seeking to hire TFWs, must demonstrate that the terms and conditions set out in previous Labour Market Opinion (LMO) confirmation letters and annexes were met. Namely, that they have provided substantially the same (STS) wages, working conditions and occupation as identified in the previous LMO confirmation letter and annex.

As part of our employer compliance review please find the enclosed checklist to be completed and a list of documents to be provided. The information can be submitted by fax, e-mail or regular mail. When submitting documents that may contain personal information such a social insurance number, the name of an employee other than the TFW, or personal financial codes/bank account numbers, as an employer, it is your obligation to protect personal information. Please ensure care is taken to avoid the inclusion of this personal information. Once your documentation has been reviewed, it may be necessary to contact you for further clarification.

During the review, where it is found that you have not provided wages, working conditions or an occupation to a TFW that were substantially the same as the terms of employment as stipulated on the LMO confirmation letter and annex of the previous job offer, you will have the opportunity to provide a rationale and undertake corrective actions. HRSDC/Service Canada will work with you to implement the appropriate compensation. Should you not provide a reasonable justification, refuse or only partially implement compensation, you may be deemed ineligible for the Temporary Foreign Worker Program (TFWP). If you are found to have failed a STS assessment, access to the TFWP may be denied for two years. And finally, where there is reason to believe that you may not have fully adhered to the requirements of the TFWP, and the activity involves the legislative responsibilities of other agencies, HRSDC/Service Canada may share this information with the relevant federal and/or provincial/territorial bodies where appropriate authorities exist.

Your cooperation is appreciated and we look forward to receiving the documentation by [REDACTED].

Documentation may be submitted by facsimile at [REDACTED] or sent to the officer listed below at the following address:

[REDACTED] e.g. Service Canada Centre # 1234  
[REDACTED] e.g. Regional Headquarters – ON  
[REDACTED] e.g. 4900 Yonge Street  
[REDACTED] e.g. Suite 200  
[REDACTED] e.g. North York, ON M2N 6A8

Should you have any questions, please do not hesitate to contact me at [REDACTED] or by e-mail at [REDACTED]

**Substantially the Same (STS)  
EMPLOYER COMPLIANCE REVIEW - INITIAL CONTACT**

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Sincerely,

[REDACTED] e.g. Jane Thompson  
[REDACTED] e.g. FW Specialist  
[REDACTED] e.g. Tel: (819) 953-8086 Ext. 451  
[REDACTED] e.g. Fax: (819) 953-8085  
[REDACTED] e.g. Email: jorge.aceytuno@hrsdc-rhdcc.gc.ca  
[http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/index.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/index.shtml)



## ANNEX A

### COMPLIANCE REVIEW DOCUMENTATION

Employer ID: [REDACTED]  
Employer Name: [REDACTED]

The information we are requesting is related to the TFW(s) listed below:

System File #	Full Name	Date of Birth (dd-mm-yy)	Position (NOC)	Total # of hours worked per week	Hourly Wage	First day of work dd-mm-yy (if applicable, last day of work)	Copy of Work Permit (attached)
[REDACTED]	[REDACTED]		[REDACTED]				<input type="checkbox"/>

PLEASE COMPLETE THIS FORM AND RETURN IT WITH ANNEX B AND THE REQUESTED DOCUMENTATION BY |

4.5.4.2

**Annex B - Enclosure**

**Please complete this form and return it with the requested documentation. The information requested relates to the TFW (s) listed in Annex A.**

*Please note that it is the employer's obligation to protect personal information, such as: a social insurance number, the name(s) of employees other than the TFW, employee numbers (if applicable), personal financial codes/bank account numbers, and insurance policy numbers. This information should not be included in the documentation submitted.*

**The review period will cover the two years immediately preceding the date on which your current LMO application was received. Only submit documentation for transactions which occurred within the last two years of submitting your current LMO application.**

**1) Wages**

To demonstrate compliance, please submit:

- ☐ A copy of three consecutive payroll statements for the TFW(s) listed, which should include at a minimum:
  - (a) the total number of hours worked,
  - (b) hourly wage, and
  - (c) all deductions.
- ☐ Timesheets that correspond to the payroll statements provided
- ☐ Please explain any discrepancy on the payroll statements (for example, the difference between the anticipated number of hours to be worked at the time of application, and the actual total number of hours worked as indicated on the payroll records).

Where applicable, please also provide:

- ☐ Copy of a Collective Bargaining Agreement.
- ☐ Copy of a Work-sharing Agreement.
- ☐ Copy of Record of Employment, if the TFW(s) is/are no longer in your employ.

**2) Working conditions - workplace insurance**

To demonstrate compliance, please provide proof of registration or clearance letter from your applicable provincial compensation organization

- ☐ Proof attached

**3) Occupation**

Please provide a description of duties performed by the TFW.

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## Annex B - Enclosure

Please complete this form and return it with the requested documentation. The information requested relates to the temporary foreign worker(s) (TFWs) listed in Annex A.

*Please note that it is the employer's obligation to protect personal information, such as: a social insurance number, the name(s) of employees other than the TFW, employee numbers (if applicable), personal financial codes/bank account numbers, and insurance policy numbers. This information should not be included in the documentation submitted.*

The review period will cover the two years immediately preceding the date on which your current LMO application was received. Only submit documentation for transactions which occurred within the last two years of submitting your current LMO application.

**1) Wages:** To demonstrate compliance, please submit:

- ☐ A copy of three consecutive payroll statements for the TFW(s) listed, which should include at a minimum:
  - (a) the total number of hours worked,
  - (b) hourly wage, and
  - (c) all deductions.
- ☐ Timesheets that correspond to the payroll statements provided
- ☐ Please explain any discrepancy on the payroll statements (for example, the difference between the anticipated number of hours to be worked at the time of application, and the actual total number of hours worked as indicated on the payroll records).

Where applicable, please also provide:

- ☐ Copy of a Collective Bargaining Agreement.
- ☐ Copy of a Work-sharing Agreement.
- ☐ Copy of Record of Employment, if the TFW(s) is/are no longer in your employ.

**2) Working conditions:**

**a) Workplace Insurance:** To demonstrate compliance, please provide proof of registration or clearance letter from applicable provincial compensation organization

☐ Proof attached

**b) Employer/Employee Contract:** To demonstrate compliance, please submit a signed copy of the employer/employee contract for each TFW. *(Please note, the copy must be signed by the TFW and employer)*

☐ Proof attached

**c) Accommodations:** To demonstrate compliance, please provide details on how you ensured that suitable and affordable accommodations were available.

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If you are providing accommodation for the TFW(s), please attached a copy of the rental agreement (listing monthly costs and method for collecting rent), signed by the landlord and the TFW(s).

☐ Proof attached

**d) Coverage of Transportation costs:** To demonstrate compliance, please submit:

- ☐ Proof that you paid for transportation costs for each of the TFWs listed to come to Canada
  - Proof can be a copy of a bank processed cheque or a credit card statement, as well as a travel itinerary.
- ☐ For each TFW, a signed letter, on company letterhead, addressed to HRSDC/SC confirming your commitment to pay transportation costs to return to their country of residence.
- ☐ For each TFW who has already left Canada, please provide proof that you covered transportation costs for them to return to their country of residence.
  - Proof can be a copy of a bank processed cheque or a credit card statement, as well as a travel itinerary.

**e) Health Care Coverage:** To demonstrate compliance with this factor, please submit:

- ☐ Proof that the TFW(s)'s health care coverage was provided at the employer's expense until the TFW was eligible for public health care coverage.
  - Proof can be in the form of a copy of a statement or other proof of payment to a health insurance company (Blue Cross or other). The TFW's name should appear on the form.

If you did not subscribe to health care coverage, please explain why not:

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### 3) Occupation

To demonstrate compliance, please provide:

- ☐ A description of duties performed by the TFWs



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**SUBSTANTIALLY THE SAME (STS)  
EMPLOYER COMPLIANCE REVIEW – ADDITIONAL INFORMATION REQUIRED**

[REDACTED] e.g. Service Canada Centre # 1234  
[REDACTED] e.g. Regional Headquarters – ON  
[REDACTED] e.g. 4900 Yonge Street  
[REDACTED] e.g. Suite 200  
[REDACTED] e.g. North York, ON M2N 6A8

[REDACTED] e.g. 2004-12-31

[REDACTED] e.g. Susan Smith  
[REDACTED] e.g. The ABC Company  
[REDACTED] e.g. 123, Carling Avenue  
[REDACTED] e.g. Suite 400  
[REDACTED] e.g. Ottawa, ON K2K 1K1

ER ID # [REDACTED]

45.1.1.4

Dear [REDACTED] e.g. Susan Smith:

The purpose of this letter is to first thank you for your cooperation in submitting the requested documents as outlined in the letter that was sent to your attention on [REDACTED], informing you, as a returning employer of your obligation to demonstrate that you have provided substantially the same wages, working conditions and occupations in order that Service Canada can complete the assessment of your LMO application that you submitted on [REDACTED].

Enclosed with the letter was a list of documents that were to be submitted to confirm your compliance with the Temporary Foreign Worker Program (TFWP) as set out in the LMO confirmation letter(s) and annex(es) for the System File(s) listed in the attached annex A.

Upon assessing the documentation submitted for the temporary foreign worker(s) noted in Annex A, [REDACTED], we have determined that we do not have sufficient information to confirm your compliance with all of the requirements of the TFWP. As a result, we require the following corresponding documents by [REDACTED]:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



**SUBSTANTIALLY THE SAME (STS)**

1. If the worker(s) is/are injured or ill as a result of work, the employer should provide the following information for the worker(s):

Your cooperation is appreciated and we look forward to receiving the required documents by [REDACTED] [REDACTED]. You will be notified in writing of the results of the review upon completion.

Please note that it is the employer's obligation to protect personal employee information. A detailed list of information not to be submitted is found in the Annex B enclosure.

Should you have any questions, please feel free to contact me at [REDACTED] or by e-mail at [REDACTED].

Sincerely,

[REDACTED] e.g. Jane Thompson  
 [REDACTED] e.g. FW Specialist  
 [REDACTED] e.g. (819) 953-8086 Ext. 451  
 [REDACTED] e.g. Fax: (819) 953-8085  
 [REDACTED] e.g. Email: jorge.aceytuno@hrsdc-rhdcc.gc.ca  
[http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/index.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/index.shtml)

ANNEX A

COMPLIANCE REVIEW DOCUMENTATION

Employer ID: [REDACTED]  
Employer Name: [REDACTED]

The information that we are requesting is related to the(se) TFW(s):

System File #	Full Name	Date of Birth (dd-mm-yy)	Position (NOC)	Total # of hours worked per week	Hourly Wage	First day of work dd-mm-yy (if applicable, last day of work)	Copy of Work Permit (attached)
[REDACTED]	[REDACTED]		[REDACTED]				<input type="checkbox"/>

PLEASE COMPLETE THIS FORM AND RETURN IT WITH ANNEX B AND THE REQUESTED DOCUMENTATION.



## SUBSTANTIALLY THE SAME (STS) EMPLOYER COMPLIANCE REVIEW – JUSTIFICATION

[REDACTED] e.g. Service Canada Centre # 1234  
[REDACTED] e.g. Regional Headquarters – ON  
[REDACTED] e.g. 4900 Yonge Street  
[REDACTED] e.g. Suite 200  
[REDACTED] e.g. North York, ON M2N 6A8

4.5.1.65

[REDACTED] e.g. 2004-12-31

ER ID # [REDACTED]

[REDACTED] e.g. Susan Smith  
[REDACTED] e.g. The ABC Company  
[REDACTED] e.g. 123, Carling Avenue  
[REDACTED] e.g. Suite 400  
[REDACTED] e.g. Ottawa, ON K2K 1K1

Dear [REDACTED] e.g. Susan Smith:

The purpose of this letter is to first thank you for your cooperation in submitting the requested document on [REDACTED], as well as, to convey the findings of the substantially the same (STS) Employer Compliance Review (ECR) conducted as a result of your selection for a STS assessment.

Based on the documents you provided we have determined that you have not met the requirements under the *Immigration and Refugee Protection Regulations (IRPR)* section (1.1) with regards to

[REDACTED]:

[REDACTED]

[REDACTED]

[REDACTED]

Failure to submit a detailed justification by [REDACTED] will result in a refusal of your LMO application and you will be ineligible for the Temporary Foreign Worker Program (TFWP) for 2 years. Moreover, your justification may require you to take further compensation in order to remain eligible.

As your company may be selected for future compliance reviews, we recommend that you retain thorough documentation to support your ongoing compliance.

Please note that it is the employer's obligation to protect personal employee information.

Should you have any questions, please feel free to contact me at [REDACTED] or by e-mail at [REDACTED]

Sincerely,

[REDACTED] e.g. Jane Thompson  
[REDACTED] e.g. FW Specialist  
[REDACTED] e.g. Tel: (819) 953-8086 Ext. 451  
[REDACTED] e.g. Fax: (819) 953-8085  
[REDACTED] e.g. Email: jorge.aceytuno@hrsdc-rhdcc.gc.ca  
[http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/index.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/index.shtml)

**SUBSTANTIALLY THE SAME (STS)  
EMPLOYER COMPLIANCE REVIEW – PROOF OF COMPENSATION**

e.g. Service Canada Centre # 1234  
e.g. Regional Headquarters – ON  
e.g. 4900 Yonge Street  
e.g. Suite 200

e.g. North York, ON M2N 6A8

43,116.

e.g. 2004-12-31

ER ID #

e.g. Susan Smith  
e.g. The ABC Company  
e.g. 123, Carling Avenue  
e.g. Suite 400

e.g. Ottawa, ON K2K 1K1

Dear e.g. Susan Smith:

As per our request, we have determined that your justification does not meet the requirements under the *Immigration and Refugee Protection Regulations* (IRPR) section (1.1) with regards to:

[REDACTED]:

[REDACTED]

[REDACTED]

[REDACTED]

In order to remain eligible for the Temporary Foreign Worker Program (TFWP) you are required to submit documentation by [REDACTED] that demonstrates the compensation has been given to the Temporary Foreign Worker. Failure to submit proof of compensation by [REDACTED] will result in a refusal of your LMO application and you will be ineligible for the Temporary Foreign Worker Program (TFWP) for 2 years.

As your company may be selected for future compliance reviews, we recommend that you retain thorough documentation to support your ongoing compliance.

Please note that it is the employer's obligation to protect personal employee information.

Should you have any questions, please feel free to contact me at [REDACTED] or by e-mail at [REDACTED]

Sincerely,

e.g. Jane Thompson  
e.g. FW Specialist

e.g. Tel: (819) 953-8086 Ext. 451

e.g. Fax: (819) 953-8085

e.g. Email: jorge.aceytuno@hrsdc-rhdcc.gc.ca

[http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/index.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/index.shtml)



**Substantially The Same**  
**Employer Compliance Review Checklist – NOC 0 A & B**

<b>Employer Information</b>		<b>ECR ID:</b> <small>(EWS generated)</small>
Name of Business:	Employer ID:	
Contact Name: <b>0-5-1-2-1</b>	Phone #:	
Title:	Alternate Phone #:	
Email Address:	Fax #:	
NAICS:		
Region conducting the review:	Name of Reviewing Officer:	

<b>STS- ECR Information</b>	
Date-stamp of new LMO:	SF # of new LMO:
Trigger for Level 2: Non-Random (ESM): <input type="checkbox"/> Random: <input type="checkbox"/>	If non-random, state specific trigger:
SF # (s) for STS review:	Total # of positions reviewed:
Total # of positions on LMO:	Total # of positions issued a WP:
<b>Review period must fall within 2 years of the date-stamp on new LMO application</b>	
Name(s) of the TFW(s) being reviewed:	NOC and Job Title:
If employer withdraws from the Monitoring Initiative, provide date and reason:	

A) Wages	Yes	No	N/A
1. Did the ER provide 3 consecutive payroll statements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Do the wages listed on the payroll statements match the LMO confirmation letter and Annex?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If no, was it more than 2% below the agreed upon wage?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If no, was it less than 2% below the agreed upon wage?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. If the TFW worked overtime, were they compensated accordingly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>For Section A:</b>			
<i>Has the ER provided justification?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Does the justification fit within IRPR?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Was compensation required?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Did the ER undertake compensation?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Was ER found compliant?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

B) Working Conditions	Yes	No	N/A
4. Did the ER include corresponding time sheets?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Does the number of hours of work for each TFW match the LMO confirmation letter and Annex?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Were benefits, for which the TFW was required to contribute towards, listed on the Annex of the LMO Confirmation letter (i.e. dental)? If no skip to next section	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Do these deductions for the same benefits appear on the TFW's payroll statements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



Substantially The Same  
Employer Compliance Review Checklist – NOC 0 A & B

Worker's Compensation Plan			
8. Did the ER provide proof of registration under the relevant P/T insurance or worker's compensation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Work Permit Information			
9. Did ER provide a copy of the WP?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
For Section B:			
Has the ER provided justification?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the justification fit within IRPR?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was compensation required?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did the ER undertake compensation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was ER found compliant?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C) Occupation	Yes	No	N/A
10. Do the job duties that the employer provided match what was listed on the LMO confirmation letter and associated annex?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
For Section C:			
Has the ER provided justification?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the justification fit within IRPR?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was compensation required?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did the ER undertake compensation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was ER found compliant?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Recommendation:
If justification was required, reason provided by ER:  <input type="checkbox"/> Change in law <input type="checkbox"/> Change in Collective Agreement <input type="checkbox"/> Change due to dramatic change in economic conditions <input type="checkbox"/> Good faith error in interpretation, followed by compensation <input type="checkbox"/> Unintentional administrative error, followed by compensation

Documents verified for each selected TFW:
Wages: <input type="checkbox"/> Minimum of 3 consecutive Payroll Statements <input type="checkbox"/> Copy of collective bargaining agreement (if applicable) <input type="checkbox"/> Record of Employment (if applicable) <input type="checkbox"/> Work Sharing Agreement (if applicable) <input type="checkbox"/> Other: _____
Working Conditions: <input type="checkbox"/> Corresponding Timesheets <input type="checkbox"/> Proof of registration or clearance letter from applicable P/T authority. <input type="checkbox"/> Copy of EE's Work Permit <input type="checkbox"/> Signed Employer/Employee Contract (if applicable) <input type="checkbox"/> Details of Accommodation requirements, in accordance with program stream <input type="checkbox"/> Adequate proof of transportation requirements, in accordance with program stream <input type="checkbox"/> Proof of adequate health care coverage, and in accordance with program stream



4.5.1.2.2

Monitoring Initiative

Employer Compliance Review Checklist – NOC C & D

Recommendation:

If justification was required, reason provided by ER:

☐ Change in law

☐ Change in Collective Agreement

☐ Change due to dramatic change in economic conditions

☐ Good faith error in interpretation, followed by compensation

☐ Unintentional administrative error, followed by compensation

Documents verified for each selected TFW:

Wages:

☐ Minimum of 3 consecutive Payroll Statements

☐ Copy of collective bargaining agreement (if applicable)

☐ Record of Employment (if applicable)

☐ Work Sharing Agreement (if applicable)

☐ Other: \_\_\_\_\_

Working Conditions:

☐ Corresponding Timesheets

☐ Proof of registration or clearance letter from applicable P/T authority.

☐ Copy of EE's Work Permit

☐ Signed Employer/Employee Contract (if applicable)

☐ Details of Accommodation requirements, in accordance with program stream

☐ Adequate proof of transportation requirements, in accordance with program stream

☐ Proof of adequate health care coverage, and in accordance with program stream

Occupation

☐ List of duties performed by the TFW(s)

Was compensation required? Yes ☐ No ☐ N/A ☐ If yes:

☐ Wages

☐ Working Conditions

☐ Occupation

Comments: (For instance, if compensation was required, please specify action taken by employer, if revocation is recommended, if referral to P/T authorities is required, etc)

RHQ Recommendation:

☐ Compliant ☐ Compliant with Justification ☐ Compliant with Compensation ☐ Inconclusive

☐ Non-compliant ☐ Revocation

Prepared and Recommended by: \_\_\_\_\_ Date: \_\_\_\_\_

Regional approval by: \_\_\_\_\_ Date: \_\_\_\_\_

For NHQ use only:

Program Officer concur with RHQ recommendation: Yes: ☐ No: ☐ Date: \_\_\_\_\_

Name/Signature: \_\_\_\_\_

TFWP-PID Manager: Yes: ☐ No: ☐ Date: \_\_\_\_\_

Name/Signature: \_\_\_\_\_

Program Integrity Director: Yes ☐ No: ☐ Date: \_\_\_\_\_

Name/Signature: \_\_\_\_\_

TFWP-LMI DG concurrence: Yes: ☐ No: ☐ Date: \_\_\_\_\_

Name/Signature: \_\_\_\_\_

**Monitoring Initiative**  
**Employer Compliance Review Checklist – NOC C & D**

**RHQ Final Decision:**

- ☐ Compliant ☐ Compliant with Justification ☐ Compliant with Compensation ☐ Inconclusive  
☐ Non-compliant ☐ Revocation

**NHQ referral to CIC by:**

**Date:**



Region
W-T
ON
QC
Atlantic

P/T
AB
BC
MB
NB
NL
NS
NT
NU
ON
PE
QC
SK
YT

NHQ
N/A
Y
N

Compensation
Wages
Working Conditions
Occupation
N/A

## STS - ECR TRACKING SPREADSHEET INSTRUCTIONS

This document is designed as a guide to the STS & MI Tracker. It describes each column and how to fill it out; using the drop down features, adding scores or putting in dates. Under the result section, titles have been shortened using abbreviations.

Under the **Employer information** section:

<b>Column A</b>	FW Officer's initials
<b>Column B</b>	ER name should be exactly the same as on FWS and the Checklist
<b>Column C</b>	ER ID
<b>Column D</b>	Use the drop down feature to select the province or territory

Under **STS information** section:

<b>Column E</b>	System File number of the current pending LMO application
<b>Column F</b>	System File number of the LMO selected for review

Under **30 Day Limit** section:

<b>Column G</b>	Date of initial contact with ER concerning the ECR
<b>Column H</b>	Automatic count 30 working days from initial contact date
<b>Column I</b>	FWO put in the actual end date of the review

Under **Justification / Compensation 30 Day Limit** (if necessary):

<b>Column J</b>	Date of contact with ER regarding Justification / Compensation
<b>Column K</b>	Automatic count 30 working days from contact date
<b>Column L</b>	FWO put in the actual end date of the review

Under the **Result** section: Enter "1" in the appropriate column and it will add up on the **Total**. No need to adjust the totals, there are formulae already in place.

<b>M</b>	<b>STS</b>	Positive STS
<b>N</b>	<b>STSwJ.</b>	Positive STS with Justification
<b>O</b>	<b>STSwC</b>	Positive STS with Compensation
<b>P</b>	<b>NEG STS</b>	Negative STS
<b>Q</b>	<b>Not STS/Ret GEN.</b>	Not STS / Return to Genuineness
<b>R</b>	<b>Inconcl/Ret GEN.</b>	Inconclusive / Return to Genuineness
<b>S</b>	<b>APPL. Canc./Withdr</b>	Employer Cancels or Withdraws LMO Application

Under **NHQ Concurrence** (if necessary):

<b>Column T</b>	Put in the date RHQ requests concurrence from NHQ
<b>Column U</b>	Put in the date RHQ receives concurrence from NHQ
<b>Column V</b>	Use the drop down feature to select Y,N or N/A

Under **Comments** section:

<b>Column W</b>	Use the drop down feature to select Compensation (if necessary)
<b>Column X</b>	Additional information used to support the decision
<b>Column X – Reason for STS</b>	<b>On the Risk based tracker sheet:</b> Explanation for STS selection; for example: Complaints, MI outcome, Third party on Due Diligence List, etc.

When forwarding the Spreadsheet to NHQ, please **highlight** the added information so that it is clear what new data needs to go into the Status Report that is sent to the Director.



## MONITORING INITIATIVE EMPLOYER COMPLIANCE REVIEW - INITIAL CONTACT

[INSERT HRC OFFICE #] e.g. Service Canada Centre # 1234  
[INSERT OFFICE NAME] e.g. Regional Headquarters – ON  
[INSERT OFFICE ADDRESS LINE 1] e.g. 4900 Yonge Street  
[INSERT OFFICE ADDRESS LINE 2] e.g. Suite 200  
[INSERT OFFICE CITY, PROVINCE, POSTAL CODE] e.g. North York, ON M2N 6A8

[INSERT CURRENT DATE] e.g. 2004-12-31

[INSERT ECR PRIMARY CONTACT NAME] e.g. Susan Smith  
[INSERT EMPLOYER BUSINESS NAME] e.g. The ABC Company  
[INSERT EMPLOYER ADDRESS LINE 1] e.g. 123, Carling Avenue  
[INSERT EMPLOYER ADDRESS LINE 2] e.g. Suite 400  
[INSERT EMPLOYER CITY, PROVINCE, POSTAL CODE] e.g. Ottawa, ON K2K 1K1

ER ID # [INSERT EMPLOYER ID]

Dear [INSERT ECR PRIMARY CONTACT NAME] e.g. Susan Smith:

Following-up on our telephone conversation on [INSERT PHONE CALL TO EMPLOYER DATE], I would like to take this opportunity to thank you for your consent and agreement to participate in the Monitoring Initiative (MI). This Initiative is intended to help Human Resources and Skills Development Canada (HRSDC)/Service Canada strengthen the integrity of the Temporary Foreign Worker Program (TFWP).

The TFWP is jointly managed by Citizenship and Immigration Canada (CIC), HRSDC and Service Canada; it was implemented to assist employers in meeting short-term labour and skills needs when Canadians/Permanent Residents are not available.

Your participation in the MI will provide you with an opportunity to demonstrate your compliance with the terms of employment as stipulated on the Labour Market Opinion (LMO) Confirmation Letter and associated annex. Moreover, your participation will provide you with an opportunity to better understand your responsibilities as an employer of one or more Temporary Foreign Workers (TFWs).

As discussed during our telephone conversation, you are one of a number of employers randomly selected for an Employer Compliance Review. Please find the enclosed checklist to be completed and a list of documents to be returned to validate your compliance. Please submit the information by fax, e-mail or regular mail, as per below. Once your documentation has been reviewed, it may be necessary to contact you for further clarification.

During the review, if an initial finding of non-compliance is determined, HRSDC/Service Canada will work with you to undertake appropriate compensation, to address any irregularities. Once you have undertaken the agreed-upon compensation, and submitted proof to this effect, you will be deemed compliant. Where there is reason to believe that you may not have fully adhered to the requirements of the TFWP, and the activity involves the legislative responsibilities of other agencies, HRSDC/Service Canada may share this information with the relevant federal and/or provincial/territorial bodies where appropriate authorities exist.

Your cooperation is appreciated and we look forward to receiving the documentation by [INSERT INITIAL RESPONSE REQUIRED BY DATE].

Please note that it is the employer's obligation to protect personal employee information.

Documentation may be submitted by facsimile at [INSERT OFFICER FAX NUMBER] or sent to our attention at the following address:

[INSERT HRC OFFICE #] e.g. Service Canada Centre # 1234  
[INSERT OFFICE NAME] e.g. Regional Headquarters – ON  
[INSERT OFFICE ADDRESS LINE 1] e.g. 4900 Yonge Street  
[INSERT OFFICE ADDRESS LINE 2] e.g. Suite 200  
[INSERT OFFICE CITY, PROVINCE, POSTAL CODE] e.g. North York, ON M2N 6A8



**ANNEX A**

**COMPLIANCE REVIEW DOCUMENTATION**

Employer ID: [INSERT EMPLOYER ID]  
Employer Name: [INSERT EMPLOYER NAME]

The information that we are requesting is related to the(se) TFW(s):

System File #	Full Name	Date of Birth (dd-mm-yy)	Position (NOC)	Total # of hours worked per week	Hourly Wage	First day of work dd-mm-yy (if applicable, last day of work)	Copy of Work Permit (attached)
[INSERT SF #]	[INSERT FW NAME]		[INSERT NOC #]				<input type="checkbox"/>

PLEASE COMPLETE THIS FORM AND RETURN IT WITH ANNEX B AND THE REQUESTED DOCUMENTATION.



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**Annex B - Enclosure**

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**Please complete this form and return it with the requested documentation. The information requested relates to the TFW (s) listed in Annex A.**

*Please note that it is the employer's obligation to protect personal information, such as: a social insurance number, the name(s) of employees other than the TFW, employee numbers (if applicable), personal financial codes/bank account numbers, and insurance policy numbers. This information should not be included in the documentation submitted.*

**The review period will cover the two years immediately preceding the date on which your current LMO application was received. Only submit documentation for transactions which occurred within the last two years of submitting your current LMO application.**

**1) Wages**

To demonstrate compliance, please submit:

- ☐ A copy of three consecutive payroll statements for the TFW(s) listed, which should include at a minimum:
    - (a) the total number of hours worked,
    - (b) hourly wage, and
    - (c) all deductions.
  - ☐ Timesheets that correspond to the payroll statements provided
  - ☐ Please explain any discrepancy on the payroll statements (for example, the difference between the anticipated number of hours to be worked at the time of application, and the actual total number of hours worked as indicated on the payroll records).
- 
- 
- 

Where applicable, please also provide:

- ☐ Copy of a Collective Bargaining Agreement.
- ☐ Copy of a Work-sharing Agreement.
- ☐ Copy of Record of Employment, if the TFW(s) is/are no longer in your employ.

**2) Working conditions - workplace insurance**

To demonstrate compliance, please provide proof of registration or clearance letter from your applicable provincial compensation organization

- ☐ Proof attached

**3) Occupation**

Please provide a description of duties performed by the TFW.

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## Annex B - Enclosure

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**Please complete this form and return it with the requested documentation. The information requested relates to the temporary foreign worker(s) (TFWs) listed in Annex A.**

*Please note that it is the employer's obligation to protect personal information, such as: a social insurance number, the name(s) of employees other than the TFW, employee numbers (if applicable), personal financial codes/bank account numbers, and insurance policy numbers. This information should not be included in the documentation submitted.*

**The review period will cover the two years immediately preceding the date on which your current LMO application was received. Only submit documentation for transactions which occurred within the last two years of submitting your current LMO application.**

**1) Wages:** To demonstrate compliance, please submit:

- ☐ A copy of three consecutive payroll statements for the TFW(s) listed, which should include at a minimum:
    - (a) the total number of hours worked,
    - (b) hourly wage, and
    - (c) all deductions.
  - ☐ Timesheets that correspond to the payroll statements provided
  - ☐ Please explain any discrepancy on the payroll statements (for example, the difference between the anticipated number of hours to be worked at the time of application, and the actual total number of hours worked as indicated on the payroll records).
- 
- 
- 

Where applicable, please also provide:

- ☐ Copy of a Collective Bargaining Agreement.
- ☐ Copy of a Work-sharing Agreement.
- ☐ Copy of Record of Employment, if the TFW(s) is/are no longer in your employ.

**2) Working conditions:**

**a) Workplace Insurance:** To demonstrate compliance, please provide proof of registration or clearance letter from applicable provincial compensation organization

☐ Proof attached

**b) Employer/Employee Contract:** To demonstrate compliance, please submit a signed copy of the employer/employee contract for each TFW. *(Please note, the copy must be signed by the TFW and employer)*

☐ Proof attached



**c) Accommodations:** To demonstrate compliance, please provide details on how you ensured that suitable and affordable accommodations were available.

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If you are providing accommodation for the TFW(s), please attached a copy of the rental agreement (listing monthly costs and method for collecting rent), signed by the landlord and the TFW(s).

☐ Proof attached

**d) Coverage of Transportation costs:** To demonstrate compliance, please submit:

- ☐ Proof that you paid for transportation costs for each of the TFWs listed to come to Canada
  - Proof can be a copy of a bank processed cheque or a credit card statement, as well as a travel itinerary.
- ☐ For each TFW, a signed letter, on company letterhead, addressed to HRSDC/SC confirming your commitment to pay transportation costs to return to their country of residence.
- ☐ For each TFW who has already left Canada, please provide proof that you covered transportation costs for them to return to their country of residence.
  - Proof can be a copy of a bank processed cheque or a credit card statement, as well as a travel itinerary.

**e) Health Care Coverage:** To demonstrate compliance with this factor, please submit:

- ☐ Proof that the TFW(s)'s health care coverage was provided at the employer's expense until the TFW was eligible for public health care coverage.
  - Proof can be in the form of a copy of a statement or other proof of payment to a health insurance company (Blue Cross or other). The TFW's name should appear on the form.

If you did not subscribe to health care coverage, please explain why not:

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### 3) Occupation

To demonstrate compliance, please provide:

- ☐ A description of duties performed by the TFWs

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## MONITORING INITIATIVE EMPLOYER COMPLIANCE REVIEW – ADDITIONAL INFORMATION REQUIRED

[INSERT HRC OFFICE #] e.g. Service Canada Centre # 1234  
[INSERT OFFICE NAME] e.g. Regional Headquarters – ON  
[INSERT OFFICE ADDRESS LINE 1] e.g. 4900 Yonge Street  
[INSERT OFFICE ADDRESS LINE 2] e.g. Suite 200  
[INSERT OFFICE CITY, PROVINCE, POSTAL CODE] e.g. North York, ON M2N 6A8

[INSERT CURRENT DATE] e.g. 2004-12-31

[INSERT ECR PRIMARY CONTACT NAME] e.g. Susan Smith  
[INSERT EMPLOYER BUSINESS NAME] e.g. The ABC Company  
[INSERT EMPLOYER ADDRESS LINE 1] e.g. 123, Carling Avenue  
[INSERT EMPLOYER ADDRESS LINE 2] e.g. Suite 400  
[INSERT EMPLOYER CITY, PROVINCE, POSTAL CODE] e.g. Ottawa, ON K2K 1K1

ER ID # [INSERT EMPLOYER ID]

Dear [INSERT ECR PRIMARY CONTACT NAME] e.g. Susan Smith:

We first want to thank you for your cooperation in submitting the requested documents as outlined in the letter that was sent to your attention on [INSERT INITIAL LETTER SENT DATE], informing you, as an employer who has consented and agreed to participate in the Monitoring Initiative (MI), of your selection for an employer compliance review.

Enclosed with the letter was a list of documents that were to be submitted to confirm your compliance with the Temporary Foreign Worker Program (TFWP).

The purpose of this correspondence is to convey the findings to date of the ECR conducted with the information you provided [INSERT PARTIAL DOCUMENTS RECEIVED DATE], as a result of your participation in the Temporary Foreign Worker Program's (TFWP) Monitoring Initiative.

Upon assessing the documentation submitted for the temporary foreign worker(s) noted in Annex A Enclosure, it has been determined that we do not have sufficient information to confirm compliance with all of the requirements of the TFWP. Therefore, we require the following corresponding documents:

[INSERT LIST OF SELECTED DOCUMENTS (example of 7 possible documents are listed below)]

**WAGES** – Please submit as proof, three consecutive payroll records and timesheets for the foreign worker(s) noted in Annex A. This will help us determine if they are being paid the correct wage as indicated in the LMO Confirmation Letter and corresponding annex and any accrued overtime.

**PAYMENT OF TRANSPORTATION COSTS** – Please submit as proof of payment of the foreign worker(s) initial transportation to Canada. This can be in the form of a copy of a cancelled cheque or credit card statement. If the foreign Worker(s) has/have returned to their home country, proof of payment for the return trip is also required. If the foreign worker(s) is still in your employ, a signed letter on company letterhead stating your obligation and intention to pay return transportation to their home country is acceptable.

**WORKING CONDITIONS AND WORKPLACE SAFETY** – Please provide proof of registration with your applicable provincial compensation organization (e.g. Workplace Safety and Insurance Board).

**EMPLOYER-EMPLOYEE CONTRACT** – Please provide a copy of the contract signed by yourself and the foreign worker.

**PRIVATE HEALTH CARE** – Please provide proof that supplementary private health care coverage was provided to the foreign worker(s) at your expense from the day the worker(s) started employment until they were eligible for applicable provincial health coverage. (e.g. Sun Life Financial).

**ACCOMMODATIONS** – Please provide details on how you ensured that suitable and affordable accommodations were



## MONITORING INITIATIVE EMPLOYER COMPLIANCE REVIEW – ADDITIONAL INFORMATION REQUIRED

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available to the foreign worker(s).

**JOB DESCRIPTION** – Please provide the official job title and detailed description that clearly outlines the foreign worker(s) duties and work performed.

Your cooperation is appreciated and we look forward to receiving the required documents by **[INSERT PARTIAL RESPONSE REQUIRED BY DATE]**. You will be notified in writing of the results of the compliance review upon receipt and assessment of the additional documents.

Please note that it is the employer's obligation to protect personal employee information.

Should you have any questions, please feel free to contact me at **[INSERT OFFICER PHONE #]** or by e-mail at **[INSERT OFFICER EMAIL ADDRESS]**.

Sincerely,

**[INSERT OFFICER NAME]** e.g. Jane Thompson  
**[INSERT OFFICER JOB TITLE]** e.g. FW Specialist  
**[INSERT OFFICER PHONE NUMBER WITH EXTENSION (if applicable)]** e.g. (819) 953-8086 Ext. 451  
**[INSERT OFFICER FAX NUMBER (if applicable)]** e.g. Fax: (819) 953-8085  
**[INSERT OFFICER EMAIL ADDRESS (if applicable)]** e.g. Email: jorge.aceytuno@hrsdc-rhdcc.gc.ca  
[http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/index.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/index.shtml)



ANNEX A

COMPLIANCE REVIEW DOCUMENTATION

Employer ID: [INSERT EMPLOYER ID]  
Employer Name: [INSERT EMPLOYER NAME]

The information that we are requesting is related to the(se) TFW(s):

System File #	Full Name	Date of Birth (dd-mm-yy)	Position (NOC)	Total # of hours worked per week	Hourly Wage	First day of work dd-mm-yy <i>(if applicable, last day of work)</i>	Copy of Work Permit (attached)
[INSERT SF #]	[INSERT FW NAME]		[INSERT NOC #]				<input type="checkbox"/>

PLEASE COMPLETE THIS FORM AND RETURN IT WITH ANNEX B AND THE REQUESTED DOCUMENTATION.

## MONITORING INITIATIVE (MI) EMPLOYER COMPLIANCE REVIEW – JUSTIFICATION

[INSERT HRC OFFICE #] e.g. Service Canada Centre # 1234  
[INSERT OFFICE NAME] e.g. Regional Headquarters – ON  
[INSERT OFFICE ADDRESS LINE 1] e.g. 4900 Yonge Street  
[INSERT OFFICE ADDRESS LINE 2] e.g. Suite 200  
[INSERT OFFICE CITY, PROVINCE POSTAL CODE] e.g. North York, ON M2N 6A8

[INSERT CURRENT DATE] e.g. 2004-12-31

ER ID # [INSERT EMPLOYER ID]

[INSERT ECR PRIMARY CONTACT NAME] e.g. John Doe  
[INSERT EMPLOYER BUSINESS NAME] e.g. Employer's company name  
[INSERT EMPLOYER ADDRESS LINE 1] e.g. 123, Somewhere St.  
[INSERT EMPLOYER ADDRESS LINE 2] e.g. Suite 400  
[INSERT EMPLOYER CITY, PROVINCE POSTAL CODE] e.g. Anytown, ON X1X X1X

Dear [INSERT ECR PRIMARY CONTACT NAME] e.g. John Doe:

The purpose of this letter is to first thank you for your cooperation in submitting the requested document on [INSERT DOCUMENTS RECEIVED DATE], as well as, to convey the findings of the Monitoring Initiative (MI) Employer Compliance Review (ECR) conducted as a result of your having consented and agreed to participate in MI.

Upon assessing the documentation submitted for the temporary foreign worker(s) noted in Annex A Enclosure, it has been determined that you have not met the requirements of the Temporary Foreign Worker Program (TFWP) for the following reason:

[SELECT REASON BELOW]

WAGES

PAYMENT OF TRANSPORTATION COSTS

WORKING CONDITIONS AND WORKPLACE SAFETY

EMPLOYER-EMPLOYEE CONTRACT

PRIVATE HEALTH CARE

ACCOMMODATIONS

JOB DESCRIPTION

Failure to submit a detailed justification by [INSERT RESPONSE REQUIRED BY DATE] will result a finding of non-compliance with the terms of the TFWP. Moreover, if accepted, your justification may require you to take further compensation in order to remain eligible for future consideration of LMO applications.

As your company may be selected for future compliance reviews, we recommend that you retain thorough documentation to support your ongoing compliance.

Please note that it is the employer's obligation to protect personal employee information.

Should you have any questions, please feel free to contact me at [INSERT OFFICER PHONE #] or by e-mail at [INSERT OFFICER EMAIL ADDRESS].

Sincerely,



## MONITORING INITIATIVE (MI) EMPLOYER COMPLIANCE REVIEW – JUSTIFICATION

---

[INSERT OFFICER NAME] e.g. John Doe  
[INSERT OFFICER JOB TITLE] e.g. FW Specialist  
[INSERT OFFICER PHONE NUMBER WITH EXTENSION (if applicable)] e.g. Tel: (555) 555-5555 Ext. 555  
[INSERT OFFICER FAX NUMBER (if applicable)] e.g. Fax: (555) 555-5555  
[INSERT OFFICER EMAIL ADDRESS (if applicable)] e.g. Email: xxxxx.xxxxxxxx@hrsdc-rhdcc.gc.ca  
[http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/index.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/index.shtml)

## MONITORING INITIATIVE EMPLOYER COMPLIANCE REVIEW - COMPLIANT

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[INSERT HRC OFFICE #] e.g. Service Canada Centre # 1234  
[INSERT OFFICE NAME] e.g. Regional Headquarters – ON  
[INSERT OFFICE ADDRESS LINE 1] e.g. 4900 Yonge Street  
[INSERT OFFICE ADDRESS LINE 2] e.g. Suite 200  
[INSERT OFFICE CITY, PROVINCE POSTAL CODE] e.g. North York, ON M2N 6A8

[INSERT CURRENT DATE] e.g. 2004-12-31

[INSERT ECR PRIMARY CONTACT NAME] e.g. Susan Smith  
[INSERT EMPLOYER BUSINESS NAME] e.g. The ABC Company  
[INSERT EMPLOYER ADDRESS LINE 1] e.g. 123, Carling Avenue  
[INSERT EMPLOYER ADDRESS LINE 2] e.g. Suite 400  
[INSERT EMPLOYER CITY, PROVINCE POSTAL CODE] e.g. Ottawa, ON K2K 1K1

ER ID # [INSERT EMPLOYER ID]

Dear [INSERT ECR PRIMARY CONTACT NAME] e.g. Susan Smith:

The purpose of this letter is to first thank you for your cooperation in submitting the requested documents, as well as, to convey the findings of the Employer Compliance Review (ECR) conducted as a result of your voluntary participation in the Temporary Foreign Worker Program's Monitoring Initiative.

The documentation has been reviewed, and we are pleased to inform you that you have demonstrated adherence to requirements of the Temporary Foreign Worker Program.

As your company may be selected for future compliance reviews, we recommend that you retain thorough documentation to support your ongoing compliance.

Should you have any questions, please feel free to contact me at [INSERT OFFICER PHONE #] or by e-mail at [INSERT OFFICER EMAIL ADDRESS].

Sincerely,

[INSERT OFFICER NAME] e.g. Jane Thompson  
[INSERT OFFICER JOB TITLE] e.g. FW Specialist  
[INSERT OFFICER PHONE NUMBER WITH EXTENSION (if applicable)] e.g. Tel: (819) 953-8086 Ext. 451  
[INSERT OFFICER FAX NUMBER (if applicable)] e.g. Fax: (819) 953-8085  
[INSERT OFFICER EMAIL ADDRESS (if applicable)] e.g. Email: jorge.aceytuno@hrsdc-rhdcc.gc.ca  
[http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/index.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/index.shtml)



## MONITORING INITIATIVE EMPLOYER COMPLIANCE REVIEW - COMPLIANT WITH CORRECTIVE ACTIONS

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[INSERT HRC OFFICE #] e.g. Service Canada Centre # 1234  
[INSERT OFFICE NAME] e.g. Regional Headquarters – ON  
[INSERT OFFICE ADDRESS LINE 1] e.g. 4900 Yonge Street  
[INSERT OFFICE ADDRESS LINE 2] e.g. Suite 200  
[INSERT OFFICE CITY, PROVINCE POSTAL CODE] e.g. North York, ON M2N 6A8

[INSERT CURRENT DATE] e.g. 2004-12-31

ER ID # [INSERT EMPLOYER ID]

[INSERT ECR PRIMARY CONTACT NAME] e.g. Susan Smith  
[INSERT EMPLOYER BUSINESS NAME] e.g. The ABC Company  
[INSERT EMPLOYER ADDRESS LINE 1] e.g. 123, Carling Avenue  
[INSERT EMPLOYER ADDRESS LINE 2] e.g. Suite 400  
[INSERT EMPLOYER CITY, PROVINCE POSTAL CODE] e.g. Ottawa, ON K2K 1K1

Dear [INSERT ECR PRIMARY CONTACT NAME] e.g. Susan Smith:

The purpose of this letter is to first thank you for your cooperation in submitting the requested documents, as well as, to convey the findings of the Employer Compliance Review (ECR) conducted as a result of your voluntary participation in the Temporary Foreign Worker Program's Monitoring Initiative.

The documentation has been reviewed, and we acknowledge that the necessary compensation has been undertaken. We are pleased to inform you that you have demonstrated adherence to the requirements of the Temporary Foreign Worker Program.

As your company may be selected for future compliance reviews, we recommend that you retain thorough documentation to support your ongoing compliance.

Should you have any questions, please feel free to contact me at [INSERT OFFICER PHONE #] or by e-mail at [INSERT OFFICER EMAIL ADDRESS].

Sincerely,

[INSERT OFFICER NAME] e.g. Jane Thompson  
[INSERT OFFICER JOB TITLE] e.g. FW Specialist  
[INSERT OFFICER PHONE NUMBER WITH EXTENSION (if applicable)] e.g. Tel: (819) 953-8086 Ext. 451  
[INSERT OFFICER FAX NUMBER (if applicable)] e.g. Fax: (819) 953-8085  
[INSERT OFFICER EMAIL ADDRESS (if applicable)] e.g. Email: jorge.aceytuno@hrsdc-rhdcc.gc.ca  
[http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/index.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/index.shtml)



## MONITORING INITIATIVE EMPLOYER COMPLIANCE REVIEW – NON COMPLIANT

[INSERT HRC OFFICE #] e.g. Service Canada Centre # 1234  
[INSERT OFFICE NAME] e.g. Regional Headquarters – ON  
[INSERT OFFICE ADDRESS LINE 1] e.g. 4900 Yonge Street  
[INSERT OFFICE ADDRESS LINE 2] e.g. Suite 200  
[INSERT OFFICE CITY, PROVINCE, POSTAL CODE] e.g. North York, ON M2N 6A8

[INSERT CURRENT DATE] e.g. 2004-12-31

[INSERT ECR PRIMARY CONTACT NAME] e.g. Susan Smith  
[INSERT EMPLOYER BUSINESS NAME] e.g. The ABC Company  
[INSERT EMPLOYER ADDRESS LINE 1] e.g. 123, Carling Avenue  
[INSERT EMPLOYER ADDRESS LINE 2] e.g. Suite 400  
[INSERT EMPLOYER CITY, PROVINCE, POSTAL CODE] e.g. Ottawa, ON K2K 1K1

ER ID # [INSERT EMPLOYER ID]

Dear [INSERT ECR PRIMARY CONTACT NAME] e.g. Susan Smith:

The purpose of this letter is to convey the findings of the Employer Compliance Review (ECR) conducted on the information you provided as a result of your voluntary participation in the Temporary Foreign Worker Program (TFWP) Monitoring Initiative (MI).

Upon assessing the documentation you have submitted it has been determined that you have not demonstrated compliance with the terms of employment as stipulated on the Labour Market Opinion (LMO) confirmation letter and associated annex. Moreover, you have not provided proof that sufficient compensation has been undertaken for:

[INSERT LIST OF FACTORS]:  
WAGES,  
PAYMENT OF TRANSPORTATION,  
WORKING CONDITIONS AND WORKPLACE SAFETY,  
EMPLOYER/EMPLOYEE CONTRACT,  
PRIVATE HEALTH CARE,  
ACCOMMODATIONS,  
JOB DESCRIPTION]

Your TFWP employer file has been updated to reflect the non-compliance outcome which will be taken into consideration at the time you submit future LMO applications. Refusal to provide information at the time of your next application may result in a negative LMO. Furthermore, any unfilled positions on the LMO under this current review, as well as any unfilled positions on previously approved LMOs, may be revoked.

You will find attached for information purposes a booklet on employer compliance; I trust that this information will be useful to you in understanding how HRSDC/Service Canada assesses employer compliance.

Should you have any questions, please feel free to contact me at [INSERT OFFICER PHONE #] or by e-mail at [INSERT OFFICER EMAIL ADDRESS].

Sincerely,

[INSERT OFFICER NAME] e.g. Jane Thompson  
[INSERT OFFICER JOB TITLE] e.g. FW Specialist  
[INSERT OFFICER PHONE NUMBER WITH EXTENSION (if applicable)] e.g. Tel: (819) 953-8086 Ext. 451  
[INSERT OFFICER FAX NUMBER (if applicable)] e.g. Fax: (819) 953-8085  
[INSERT OFFICER EMAIL ADDRESS (if applicable)] e.g. Email: jorge.aceytuno@hrsdc-rhdcc.gc.ca  
[http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/index.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/index.shtml)



## MONITORING INITIATIVE EMPLOYER COMPLIANCE REVIEW - WITHDRAWAL

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[INSERT HRC OFFICE #] e.g. Service Canada Centre # 1234  
[INSERT OFFICE NAME] e.g. Regional Headquarters – ON  
[INSERT OFFICE ADDRESS LINE 1] e.g. 4900 Yonge Street  
[INSERT OFFICE ADDRESS LINE 2] e.g. Suite 200  
[INSERT OFFICE CITY, PROVINCE, POSTAL CODE] e.g. North York, ON M2N 6A8

[INSERT CURRENT DATE] e.g. 2004-12-31

[INSERT ECR PRIMARY CONTACT NAME] e.g. Susan Smith  
[INSERT EMPLOYER BUSINESS NAME] e.g. The ABC Company  
[INSERT EMPLOYER ADDRESS LINE 1] e.g. 123, Carling Avenue  
[INSERT EMPLOYER ADDRESS LINE 2] e.g. Suite 400  
[INSERT EMPLOYER CITY, PROVINCE, POSTAL CODE] e.g. Ottawa, ON K2K 1K1

ER ID # [INSERT EMPLOYER ID]

Dear [INSERT ECR PRIMARY CONTACT NAME] e.g. Susan Smith:

The purpose of this letter is to acknowledge your withdrawal from the Monitoring Initiative of the Temporary Foreign Worker Program (TFWP).

As the Monitoring Initiative has been designed to strengthen the integrity of the TFWP, we do hope you will consider participating should your company submit future applications for temporary foreign workers.

Your TFWP employer file has been updated to reflect your withdrawal. You will find attached for information purposes a booklet on employer compliance; I trust that this information will be useful to you in understanding how Human Resources and Skills Development Canada (HRSDC)/Service Canada assesses employer compliance.

You should also be aware that HRSDC/Service Canada may request information on past compliance at the time that you submit a future LMO application. This assessment is separate from the Monitoring Initiative. Refusal to provide information may result in a negative LMO.

Should you have any questions, please feel free to contact me at [INSERT OFFICER PHONE #] or by e-mail at [INSERT OFFICER EMAIL ADDRESS].

Sincerely,

[INSERT OFFICER NAME] e.g. Jane Thompson  
[INSERT OFFICER JOB TITLE] e.g. FW Specialist  
[INSERT OFFICER PHONE NUMBER WITH EXTENSION (if applicable)] e.g. Tel: (819) 953-8086 Ext. 451  
[INSERT OFFICER FAX NUMBER (if applicable)] e.g. Fax: (819) 953-8085  
[INSERT OFFICER EMAIL ADDRESS (if applicable)] e.g. Email: jorge.aceytuno@hrsdcc.gc.ca  
[http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/index.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/index.shtml)



# Monitoring Initiative

## Employer Compliance Review Checklist – NOC O, A & B

Employer Information		ECR ID: (FWS generated)
Name of Business:	Employer ID:	
Contact Name:	Phone #:	
Title:	Alternate Phone #:	
Email Address:	Fax #:	
NAICS:		
Region conducting the review:	Name of Reviewing Officer:	

MI- ECR Information	
Trigger for Level 2: Non-Random (ESM): <input type="checkbox"/> Random: <input type="checkbox"/>	If non-random, state specific trigger:
SF # (s) for MI review:	Total # of positions reviewed:
Total # of positions on LMO:	Total # of positions issued a WP:
Name(s) of the TFW(s) being reviewed:	NOC and Job Title:
If employer withdraws from the Monitoring Initiative, provide date and reason:	

A) Wages	Yes	No	N/A
1. Did the ER provide 3 consecutive payroll statements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Do the wages listed on the payroll statements match the LMO confirmation letter and Annex?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If no, was it more than 2% below the agreed upon wage?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If no, was it less than 2% below the agreed upon wage?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. If the TFW worked overtime, were they compensated accordingly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>For Section A:</b>			
<i>Has the ER provided justification?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Does the justification fit within IRPR?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Was compensation required?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Did the ER undertake compensation?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Was ER found compliant?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

B) Working Conditions	Yes	No	N/A
4. Did the ER include corresponding time sheets?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Does the number of hours of work for each TFW match the LMO confirmation letter and Annex?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Were benefits, for which the TFW was required to contribute towards, listed on the Annex of the LMO Confirmation letter (i.e. dental)? If no skip to next section	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Do these deductions for the same benefits appear on the TFW's payroll statements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Worker's Compensation Plan</b>			
8. Did the ER provide proof of registration under the relevant P/T insurance or worker's compensation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



Monitoring Initiative

Employer Compliance Review Checklist – NOC O, A & B

Work Permit Information			
9. Did ER provide a copy of the WP?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
For Section B:			
Has the ER provided justification?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the justification fit within IRPR?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was compensation required?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did the ER undertake compensation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was ER found compliant?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C) Occupation	Yes	No	N/A
10. Do the job duties that the employer provided match what was listed on the LMO confirmation letter and associated annex?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
For Section C:			
Has the ER provided justification?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the justification fit within IRPR?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was compensation required?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did the ER undertake compensation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was ER found compliant?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Recommendation:
If justification was required, reason provided by ER:
<div><input type="checkbox"/> Change in law</div> <div><input type="checkbox"/> Change in Collective Agreement</div> <div><input type="checkbox"/> Change due to dramatic change in economic conditions</div> <div><input type="checkbox"/> Good faith error in interpretation, followed by compensation</div> <div><input type="checkbox"/> Unintentional administrative error, followed by compensation</div>

Documents verified for each selected TFW:
Wages:
<div><input type="checkbox"/> Minimum of 3 consecutive Payroll Statements</div> <div><input type="checkbox"/> Copy of collective bargaining agreement (if applicable)</div> <div><input type="checkbox"/> Record of Employment (if applicable)</div> <div><input type="checkbox"/> Work Sharing Agreement (if applicable)</div> <div><input type="checkbox"/> Other: _____</div>
Working Conditions:
<div><input type="checkbox"/> Corresponding Timesheets</div> <div><input type="checkbox"/> Proof of registration or clearance letter from applicable P/T authority.</div> <div><input type="checkbox"/> Copy of EE's Work Permit</div>
Occupation
<div><input type="checkbox"/> List of duties performed by the TFW(s)</div>

Was compensation required? Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> If yes:
<div><input type="checkbox"/> Wages</div> <div><input type="checkbox"/> Working Conditions</div> <div><input type="checkbox"/> Occupation</div>

Region
W-T
ON
QC
Atlantic

P/T
AB
BC
MB
NB
NL
NS
NT
NU
ON
PE
QC
SK
YT

NHQ
N/A
Y
N

Compensation
Wages
Working Conditions
Occupation
N/A



## MI – ECR TRACKING SPREADSHEET INSTRUCTIONS

This document is designed as a guide to the STS & MI Tracker. It describes each column and how to fill it out; using the drop down features, adding scores or putting in dates. To reduce the length of the tracker, titles under the result section have been shortened.

Under the **Employer information** section:

<b>Column A</b>	FW Officer's initials
<b>Column B</b>	ER name should be exactly the same as on FWS and the Checklist
<b>Column C</b>	ER identification number on FWS
<b>Column D</b>	Use the drop down feature to select the province or territory
<b>Column E</b>	System File number of the LMO selected for review

Under **30 Day Limit** section:

<b>Column F</b>	Date of initial contact with ER concerning the ECR
<b>Column G</b>	Automatic count 30 working days from initial contact date
<b>Column H</b>	FWO put in the actual end date of the review

Under **Justification / Compensation 30 Day Limit** (if necessary):

<b>Column I</b>	Date of contact with ER regarding Justification / Compensation
<b>Column J</b>	Automatic count 30 working days from contact date
<b>Column K</b>	FWO put in the actual end date of the review

Under the **Result** section: Enter "1" in the appropriate column and it will add up on the **Summary**. No need to adjust the totals, there are formulae already in place.

<b>L</b>	<b>COMPL.</b>	Compliant
<b>M</b>	<b>COMPL.wJ</b>	Compliant with Justification
<b>N</b>	<b>COMPL.wC</b>	Compliant with Compensation
<b>O</b>	<b>NON-COMPL.</b>	Non Compliant
<b>P</b>	<b>INCONCL.</b>	Inconclusive
<b>Q</b>	<b>WITHDR.</b>	Withdrawal

Under **NHQ Concurrence** (if necessary):

<b>Column R</b>	Put in the date RHQ requests concurrence from NHQ
<b>Column S</b>	Put in the date RHQ receives concurrence from NHQ
<b>Column T</b>	Use the drop down feature to select Y,N or N/A

Under **Comments** section:

<b>Column U</b>	Use the drop down feature to select Compensation (if necessary)
<b>Column V</b>	Additional information used to support the decision
<b>Column V– Reason for MI</b>	<b>On the risk based tracker sheet</b> Explanation for MI selection: for example: Complaints, MI outcome. Third party on Due Diligence List, etc.

When forwarding the Spreadsheet to NHQ, **please highlight** the added information so that it is clear what new data needs to go into the Status Report that is sent to the Director.

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ECR Overview

☐ Substantially the Same ECR

☐ Monitoring Initiative ECR

Employer :  
Employer ID :

Factors	Was the employer found Compliant? (if not specify)	Justification and/or Compensation
Wages		
Working Conditions		
Occupation		
<input type="checkbox"/> Random (ECR Determiner Tool list) <input type="checkbox"/> Non-Random (risk-based) Trigger:		# of positions reviewed:
Comments:		
RHQ Recommendation: <input type="checkbox"/> Compliant <input type="checkbox"/> Compliant with Justification <input type="checkbox"/> Compliant with Compensation <input type="checkbox"/> Inconclusive <input type="checkbox"/> Non-compliant (negative STS)		





Human Resources and  
Skills Development Canada

Ressources humaines et  
Développement des compétences Canada

Canada

Skills and Employment Branch



## 5. Quality Assurance

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*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

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Comments

## Temporary Foreign Worker Program Manual

### 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.



## Temporary Foreign Worker Program Manual

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.

## Temporary Foreign Worker Program Manual

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### 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.



## Temporary Foreign Worker Program Manual

### 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?



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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

IMPACT	PROBABILITY		
	High		
	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<sup>1</sup> 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.

<sup>1</sup> 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.



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### 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



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- 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.

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### Section 5.5.1 – When to assess Risk

#### TFWP Risk Assessment and Risk Management Guidelines<sup>1</sup>

**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.

<sup>1</sup> Based on Risk Management Handbook, HRSDC, June 2008, available on HRSDC Intranet



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**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

**Temporary Foreign Worker Program Manual****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?



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### Section 5.6 – policy to Service Delivery Continuum

English Text	Texte français
<p>POLICY TO SERVICE DELIVERY CONTINUUM</p> <p>Quality Assurance in the Temporary Foreign Worker Program</p> <p>OVERARCHING GOVERNMENTAL &amp; DEPARTMENTAL CONSIDERATIONS: ECONOMIC, SOCIAL, POLITICAL &amp; BUREAUCRATIC</p>	<p>LIGNE DE CONDUITE LIÉE À LA POURSUITE DES MESURES DE PRESTATION DE SERVICES</p> <p>Assurance de la qualité dans le Programme des travailleurs étrangers temporaires</p> <p>CONSIDÉRATIONS GOUVERNEMENTALES ET MINISTÉRIELLES PRIMORDIALES : ÉCONOMIQUES, SOCIALES, POLITIQUES ET BUREAUCRATIQUES</p>
<p>Speech from the Throne, Budget</p> <ul style="list-style-type: none"> <li>Set out government's broad direction, and specific undertakings</li> </ul>	<p>Discours du Trône, budget</p> <ul style="list-style-type: none"> <li>Établir la direction générale du gouvernement et les engagements précis</li> </ul>
<p><u>MO, DMO, CABINET AND/OR CENTRAL AGENCY DIRECTION</u></p> <p>Provide direction on broad governmental or departmental priorities and implementation of Budget and Speech from the Throne undertakings.</p> <p>For example;</p> <ul style="list-style-type: none"> <li>Statutory authorities including Regulations</li> <li>Provides funding and authorities through TB decision</li> </ul>	<p><u>DIRECTION DU CM, DU CSM, DU CABINET OU DE L'ORGANISME CENTRALE</u></p> <p>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 :</p> <ul style="list-style-type: none"> <li>Autorisations légales, y compris les règlements</li> <li>Fournir les fonds et les autorisations par la décision du CT</li> </ul>
<p><u>STRATEGIC POLICY</u></p> <p>Seeks Cabinet direction on funding and authority &amp; reports back on results. Provides direction on instruments choice and program</p>	<p><u>POLITIQUE STRATÉGIQUE</u></p> <p>Consulte la direction du cabinet quant aux fonds et à l'autorité et établie un rapport sur les</p>

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<p>outcomes sought. For example:</p> <ul style="list-style-type: none"> <li>• MC's TB Submissions</li> <li>• RPP &amp; DPR</li> <li>• RMAF/RBAF</li> <li>• Jurisprudence</li> <li>• CIC Annual Immigration Plan</li> <li>• Research &amp; experimentation results, data</li> </ul>	<p>résultats. Fournir une direction sur le choix d'instruments et les résultats visés par le programme. Par exemple :</p> <ul style="list-style-type: none"> <li>• Soumissions des MC au CT</li> <li>• RPP et RMR</li> <li>• CGRR ou CVAR</li> <li>• Jurisprudence</li> <li>• Plan annuel d'immigration du CIC</li> <li>• Résultats des recherches et des essais, données</li> </ul>
<p><u>PROGRAM POLICY AND DESIGN</u></p> <p>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:</p> <ul style="list-style-type: none"> <li>• RMAF/RBAF</li> <li>• TFWP Strategy/Plan</li> <li>• Inter-governmental agreements</li> <li>• SWAP, LCP, AEP, Skilled Pilot, etc...</li> <li>• Advertising/recruitment, Prevailing Wage,</li> </ul>	<p><u>CONCEPTION DE POLITIQUES ET DE PROGRAMMES</u></p> <p>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 :</p> <ul style="list-style-type: none"> <li>• CGRR ou CVAR</li> <li>• Stratégie ou plan du PTET</li> <li>• Ententes intergouvernementales</li> <li>• PVT, PAFR, PEA et Pilote qualifié, entre autres</li> <li>• Publicité et recrutement, salaire courant</li> </ul>
<p><u>OPERATIONAL DIRECTIVES:</u></p> <p>Provide direction to align activity for reaching determined outputs. For example;</p>	<p><u>DIRECTIVES OPÉRATIONNELLES :</u></p> <p>Fournir une orientation pour aligner les activités en vue d'obtenir les résultats</p>



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<ul style="list-style-type: none"> <li>• TFWS</li> <li>• Templates</li> <li>• Glossaries</li> <li>• Training material</li> </ul>	<p>prédéterminés. Par exemple :</p> <ul style="list-style-type: none"> <li>• STET</li> <li>• Gabarits</li> <li>• Glossaires</li> <li>• Matériel de formation</li> </ul>
<p><u>SERVICE STANDARDS</u></p> <p>Set out activity and outputs standards. For example:</p> <ul style="list-style-type: none"> <li>• Response times</li> <li>• Forms usage</li> <li>• Clear language</li> </ul>	<p><u>NORMES DE SERVICE</u></p> <p>Établir les normes pour les activités et les extrants. Par exemple :</p> <ul style="list-style-type: none"> <li>• Délais de réponse</li> <li>• Utilisation de formulaires</li> <li>• Langage clair</li> </ul>
<p><u>CLIENT INTERFACE</u></p> <p>Provision of service and delivery of LMO to CIC employer.</p> <ul style="list-style-type: none"> <li>• LMO &amp; AEO with reasons for granting or denial</li> </ul>	<p><u>RELATION AVEC LE CLIENT</u></p> <p>Prestation de service et émission d'AMT aux employeurs de CIC</p> <ul style="list-style-type: none"> <li>• AMT et AER avec les raisons de l'approbation ou du refus</li> </ul>
<p>Clients needs</p> <p>Client sophistication</p> <p>Labour Market variances</p> <p>Knowledge transfers, continuous learning</p>	<p>Besoins des clients</p> <p>Sophistication du client</p> <p>Écarts dans le marché du travail</p> <p>Transfert des connaissances, Acquisition continue du savoir</p>
<p><u>UNDERLYING CONTEXTUAL CONSIDERATIONS:</u></p> <p>CIC/CBSA Policies, IM/IT Systems, Economic Cycles, Jurisdiction, F/P/T &amp; International Agreements, Elections/Transitions, Stakeholder positions, Media, QA Reports, Audits &amp; Evaluations</p>	<p><u>CONSIDÉRATIONS CONTEXTUELLES SOUS-JACENTES :</u></p> <p>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</p>
<p><u>EVIDENCE</u></p>	<p><u>PREUVE</u></p>
<ul style="list-style-type: none"> <li>• Civil society dialogue, Media</li> <li>• Stakeholder consultations</li> <li>• Ministerial recom'dations</li> <li>• Parl Comm'tees</li> <li>• Academics, Think Tanks</li> </ul>	<ul style="list-style-type: none"> <li>• Dialogue entre les sociétés civiles, média</li> <li>• Consultations avec les intervenants</li> <li>• Recommandations ministérielles</li> <li>• Comités parlementaires</li> </ul>

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<ul style="list-style-type: none"> <li>Political Parties' platforms</li> </ul>	<ul style="list-style-type: none"> <li>Universitaires, groupes d'analystes</li> <li>Plateformes des partis politiques</li> </ul>
<ul style="list-style-type: none"> <li>Economic Action Plan</li> <li>OGD context</li> <li>Research &amp; experimentation, StatsCan &amp; EI Admin. Data</li> <li>Stakeholder consultations</li> <li>Program evaluations</li> <li>MTP</li> </ul>	<ul style="list-style-type: none"> <li>Plan d'action économique</li> <li>Contexte des autres ministères</li> <li>Recherche et essais, StatCan et administration des données de l'AE</li> <li>Consultations avec les intervenants</li> <li>Évaluations des programmes</li> <li>Planification à moyen terme</li> </ul>
<ul style="list-style-type: none"> <li>Program authorities</li> <li>FPR Legislation (e.g. ESA, Canada Labour Code, WSIB)</li> <li>Program Authorities</li> <li>Monitoring and compliance reports</li> <li>Program eval'ns</li> <li>Jurisprudence/Legal Opinions/Advice</li> <li>Stakeholder consultations</li> </ul>	<ul style="list-style-type: none"> <li>Responsables des programmes</li> <li>Législation féd., prov. et reg. (p.ex. ESE, Code canadien du travail et CSPAAT)</li> <li>Responsables des programmes</li> <li>Rapports de surveillance et de conformité</li> <li>Évaluations des programmes</li> <li>Jurisprudence, avis juridiques et conseils</li> <li>Consultations avec les intervenants</li> </ul>
<ul style="list-style-type: none"> <li>Program Authorities</li> <li>Program Policy</li> <li>Org'n structure &amp; infrastructure</li> <li>Quality Assurance reports</li> </ul>	<ul style="list-style-type: none"> <li>Responsables des programmes</li> <li>Politique relative aux programmes</li> <li>Structure et infrastructure de l'org</li> <li>Rapports sur l'assurance de la qualité</li> </ul>
<ul style="list-style-type: none"> <li>Speed of Service monthly reports</li> <li>Program authorities</li> <li>Client feedback</li> </ul>	<ul style="list-style-type: none"> <li>Rapports mensuels sur la rapidité du service</li> <li>Responsables des programmes</li> <li>Rétroaction du client</li> </ul>
<ul style="list-style-type: none"> <li>Performance measures</li> <li>File reviews</li> <li>Media, civil society dialogue</li> <li>Stakeholder consultations</li> <li>Think tanks, academic research</li> </ul>	<ul style="list-style-type: none"> <li>Mesures de rendement</li> <li>Examens de dossier</li> <li>Dialogue entre les sociétés civiles et les médias</li> <li>Consultations avec les intervenants</li> </ul>

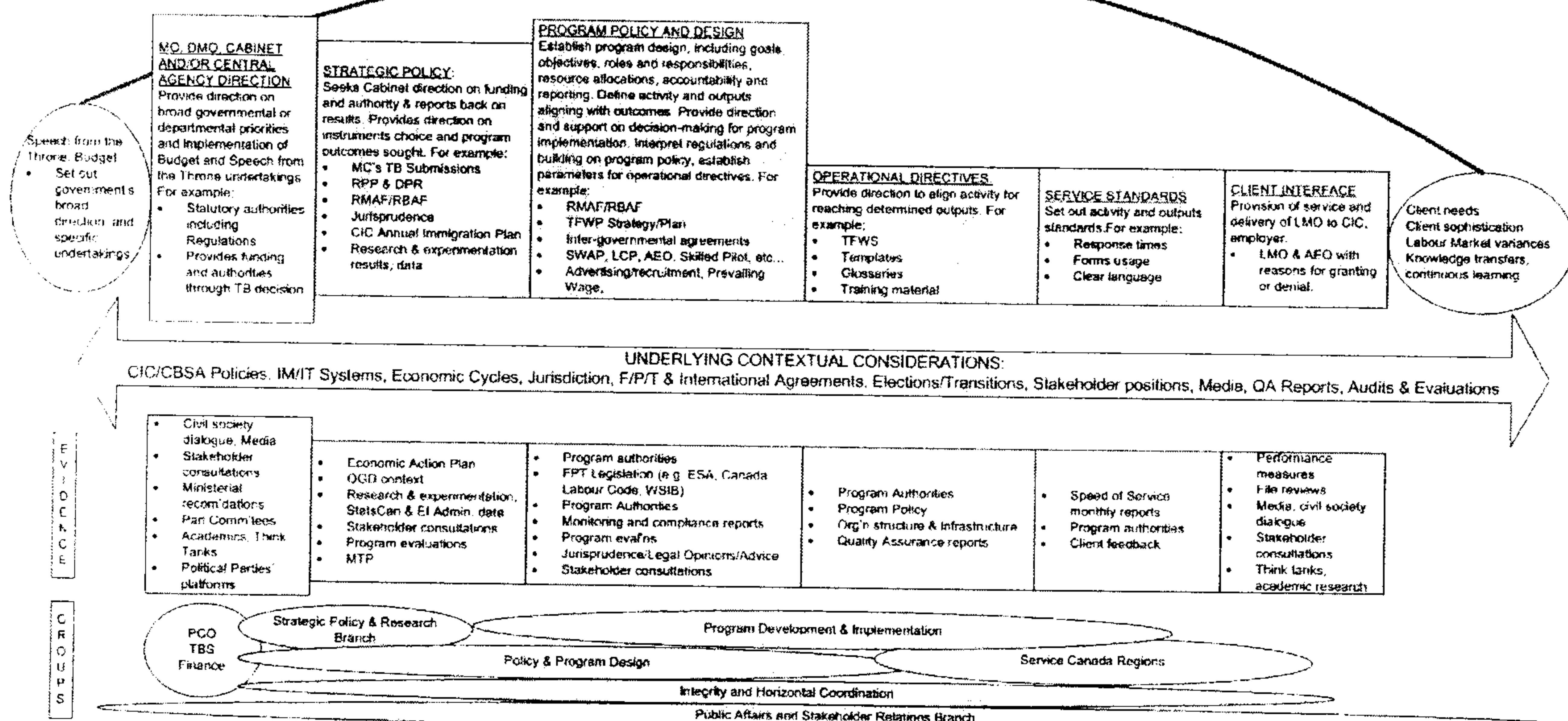


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	<ul style="list-style-type: none"> <li>Groupes d'analystes et recherche universitaire</li> </ul>
<u>GROUPS</u>	<u>GROUPE</u>
PCO TBS Finance	BCP SCT Finance
Strategic Policy & Research Branch	Direction générale de la politique et de la recherche stratégique
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

## POLICY to SERVICE DELIVERY CONTINUUM Quality Assurance in the Temporary Foreign Worker Program

OVERARCHING GOVERNMENTAL & DEPARTMENTAL CONSIDERATIONS: ECONOMIC, SOCIAL, POLITICAL & BUREAUCRATIC



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### 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.



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### 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



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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.



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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](mailto:rene.maillet@hrsdc-rhdcc.gc.ca) or David McCluskey at 604-854-5852 (extension 264) or [david.mccluskey@servicecanada.gc.ca](mailto:david.mccluskey@servicecanada.gc.ca), both part of the TFWP of the Skills and Employment Branch.