



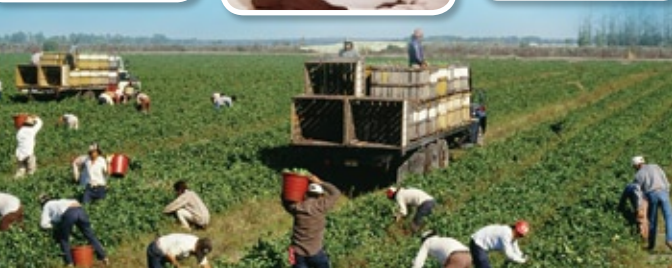
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Temporary Foreign Worker Program

Employer Compliance:

Requirements for the Temporary Foreign
Worker Program

NEW RULES



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What is the Temporary Foreign Worker Program?

The Temporary Foreign Worker Program (TFWP) enables Canadian employers to hire foreign workers on a temporary basis to fill immediate skills and labour shortages when Canadians and permanent residents are not available. Employers can recruit workers from any country into any lawful occupation as long as employers and workers meet specified program criteria and respect compliance requirements. Under these conditions, the employment of temporary foreign workers (TFWs) supports economic growth, and in turn helps create more opportunities for all Canadians.



New rules effective April 1, 2011

Employers of TFWs should be aware of their responsibilities under the *Immigration and Refugee Protection Act (IRPA)* and the *Immigration and Refugee Protection Regulations (IRPR)*. Effective April 1, 2011, as a result of amendments to the *IRPR*, the following changes apply:

- New criteria have been added to guide the genuineness assessment of a job offer to a TFW.
- Employers can be deemed ineligible, if during the two years preceding a labour market opinion (LMO) application, it is found that they have not provided wages, working conditions or an occupation to a TFW that were substantially the same (STS) as the terms and conditions of the job offer, and for which a reasonable justification has not been provided. If an employer is found to have failed an STS assessment, access to the TFWP may be denied for two years.

- A maximum cumulative duration of four years of work for most TFWs is now imposed, followed by a period of four years in which the worker would not be eligible to work in Canada.

What does it mean to be compliant?



Human Resources and Skills Development Canada (HRSDC)/Service Canada takes the integrity of the TFWP very seriously. Employers that hire TFWs are expected to be compliant with the Program, namely, to uphold the terms and conditions of employment set out in the LMO confirma-

tion letter and annex, which include, but may not be limited to the:

- wages (including deductions);
- working conditions (hours of work, overtime, and workplace safety insurance); and
- identified occupation (job duties and skill level).

Will employers be asked to demonstrate compliance?

Yes. In accordance with the April 1, 2011 amendments to the *IRPR*, returning employers seeking to hire TFWs, including live-in caregivers, have to demonstrate compliance before they are granted a positive LMO. To assess compliance, Service Canada staff examine previous offers of employment within the two years preceding the date of the receipt of a new LMO application. Employers must also comply with the new regulatory requirements for the genuineness assessment of a job offer to a TFW.

How can employers demonstrate they are compliant?

To be considered compliant, employers must demonstrate that the terms and conditions set out in previous LMO confirmation letters and annexes were met. Employers may be asked to provide additional documentation during an Employer Compliance Review (ECR) process, which involves an STS assessment under the new rules.

Failure to provide requested documents may result in a negative LMO.

To demonstrate compliance, employers may be asked to provide:

- **Payroll records** –
 - i. To ensure the appropriate prevailing wage and overtime are being paid;
 - ii. To make sure deductions are being made (Canada Pension Plan, Employment Insurance, Income Tax); and
 - iii. To explain any non-standard deductions.



- **Time sheets** – To ensure that workers are working the number of hours set out in the LMO confirmation letter and annex. In most cases this is usually defined as 30 or more hours per week.
- **A job description** – To ensure TFWs are working in approved occupations and under the same labour standards as their Canadian counterparts.
- **The temporary foreign worker's work permit** – To ensure the information on the work permit issued by Citizenship and Immigration Canada (CIC) accurately reflects the information on the LMO confirmation letter and annex.
- **Registration with provincial/territorial workplace safety** – Proof that the employer has registered for workplace safety insurance, to ensure that workers are covered in case of injury.

In the event the TFW is being or has been employed in occupations such as those requiring lower levels of formal training (National Occupational Classification (NOC) – skill level C and D), or hired under the Seasonal Agricultural Worker Program (SAWP) or the Live-in Caregiver Program (LCP), the following information will be requested:

- **Transportation cost** – Proof the employer has paid the worker's transportation costs from his/her current place of residence to the location of work in Canada, and proof the employer has or will pay the return transportation costs to the country of permanent residence.
- **Accommodation information** – Proof, for example, that the employer helped the TFW find suitable and affordable accommodation and, if the employer is providing the accommodation, a copy of the rental agreement (where applicable).

- **Private health insurance coverage (if applicable)** – Proof the employer paid for private health insurance until the TFW was eligible for provincial/territorial health insurance coverage.

Employers should keep a record of all documentation in order to facilitate the process for subsequent LMO applications.

What happens if employers are found to be non-compliant?

HRSDC/Service Canada and employers have a mutual responsibility to ensure TFWs are working under the terms and conditions of employment set out in the LMO confirmation letter and annex.

If it appears the employer has not fully upheld the terms and conditions of employment set out in the LMO confirmation letter and annex, the employer will have the opportunity to provide a rationale and undertake compensation.

HRSDC/Service Canada will work with the employer to

implement appropriate corrective action.

Employers may be found non-compliant if they refuse or only partially implement compensation.

If an employer is found to be non-compliant:

- HRSDC/Service Canada may issue a negative LMO and revoke any positions on confirmed LMOs for which work permits have not yet been issued by CIC.



- CIC may deem the employer ineligible to hire TFWs for two years. The employer's name, address and period of ineligibility may also be published as part of a list of ineligible employers posted on CIC's Web site.

Did you know?

- Changing the terms and conditions of employment agreed to in the LMO confirmation letter and annex could result in the employer being found non-compliant. To avoid this, employers should contact Service Canada staff for assistance when considering any changes, and note that:



- TFWs hired on a full-time basis are expected to work substantially the same number of hours per week and receive substantially the same wage as indicated in the LMO confirmation letter and annex.
 - TFWs employed in one location cannot work in another location without the employer applying for and receiving a new confirmed LMO, and the workers receiving a new work permit from CIC.
 - TFWs are expected to spend the majority of their time performing job duties that are consistent with the occupation specified in the LMO confirmation letter and annex. These job duties are assigned using a four-digit NOC code.
- Federal-provincial/territorial employment standards and workplace safety legislation

provide TFWs with the same rights and working conditions as Canadians and permanent residents. These protections and rights cannot be altered by any type of contractual agreement.

- HRSDC/Service Canada may consider employment standards and occupational health and safety violations in the genuineness assessment of a job offer on new LMO applications.
- Employers must review the wage of TFWs working in low-skilled occupations (NOC C and D) after one year of employment to ensure the correct prevailing wage is being paid.
- Payroll records (e.g. wages, deductions, holiday, and vacation pay) must be consistent with federal-provincial/territorial employment standards including payment and record keeping practices. Payments by cheque or electronic transfers provide a record to help verify that TFWs have been paid appropriately.
- As set out in the LMO application form, HRSDC/Service Canada may share the decision made on the application with federal-provincial/territorial governments for the purpose of the administration and enforcement of relevant legislation and regulations (e.g. employment standards, occupational health and safety, immigration, and third party recruitment).
- Under the *IRPA*, employers who employ “a foreign national in a capacity in which the foreign national is not authorized...to be employed,” may be fined up to \$50,000 and imprisoned for up to two years.

What other laws regulate the employment of temporary foreign workers?

TFWs have the same rights and protections as Canadians and permanent residents. Approximately 90% of all occupations are regulated by provinces and territories through employment standards and occupational health and safety legislation. The other 10% of occupations are federally regulated under the *Canada Labour Code*.

Employers, or any third party who recruited a TFW for the employer, must also abide by provincial/territorial laws regarding recruitment.



For further information please refer to the following government authorities or contact the nearest Service Canada Centre:

- Human Resources and Skills Development Canada – Temporary Foreign Worker Program
www.hrsdc.gc.ca/eng/workplaceskills/foreignworkers/index.shtml
- Service Canada contact information
www.hrsdc.gc.ca/eng/workplaceskills/foreignworkers/hrcc.shtml
- Citizenship and Immigration Canada
www.cic.gc.ca/english/work/index.asp
- Canada Border Services Agency
www.cbsa.gc.ca
- *Immigration and Refugee Protection Act*
laws.justice.gc.ca/en/I-2.5/index.html
- More information on the Amendments to the *Immigration and Refugee Protection Regulations*
www.gazette.gc.ca/rp-pr/p2/2010/2010-08-18/html/sor-dors172-eng.html
- Human Resources and Skills Development Canada – Federal Labour Program
www.hrsdc.gc.ca/eng/labour/index.shtml

- List of provincial and territorial ministries of labour contacts
www.hrsdc.gc.ca/eng/labour/employment_standards/ministries.shtml
- List of provincial and territorial occupational health and safety contacts
www.hrsdc.gc.ca/eng/labour/workers_compensation/wcb.shtml
- National Occupational Classification
www5.hrsdc.gc.ca/NOC/English/NOC/2006/Welcome.aspx
- Working in Canada
www.workingincanada.gc.ca
- Job Bank
www.jobbank.gc.ca