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Temporary Foreign Worker Program -- Monitoring Initiative

In January 2009 Service Canada/HRSDC sprung new policies regarding advertising requirements on unsuspecting employers in Canada. Both immigration practitioners and employers scrambled in an attempt to comply with the new rules which were unclear and poorly communicated by the Department. In fact, even their own staff in offices across the country were not up to speed at the time the program was implemented. Although some aspects of the new advertising requirements such as disclosing salary ranges in advertising for all NOC skill level B occupations are quite unpalatable to many major employers in the country, things have settled to an extent as employers, counsel and Service Canada staff become more familiar with the requirements.

On April 27, 2009 Service Canada/HRSDC introduced a new foreign worker application form and under the new "Declaration of Employer" section they have added in new section entitled "Agreement to Participate in the Monitoring Initiative". Employers are requested to check a box that they either agree or do not agree to participate in the initiative. The initiative does not apply to employers in Québec but it does apply to everyone else. As with the January announcements, the April 27, 2009 announcement was given without warning and with very little information about the implications of the monitoring initiative.

The April 27, 2009 announcement also disclosed that extensions of LMO's would no longer be a process but rather, a new LMO application would have to be made, requiring you advertise.

Nowhere on the new application form does it state that the Monitoring Initiative is voluntary. This is relegated to one short three word sentence at the very end of the Monitoring Initiative Fact Sheet which is on the website. It says "Participation is voluntary." To put this in some perspective however, there was a statement issued on the website as follows:

"The Initiative is designed to strengthen the integrity of the Temporary Foreign Worker Program. Your participation will help you gain a better understanding of your responsibilities as an employer of temporary foreign workers. It will also provide you with an opportunity to demonstrate your good-standing with the program, which may be considered in the assessment of future Labour Market Opinion application(s)".

The department also says that information gathered as a result of employer participation in the initiative, including the employer's ability to demonstrate good standing, may be considered in future LMO applications.

If an employer does volunteer to take part in the Initiative they may be asked to submit documentation demonstrating that they have respected the terms of their offer of employment to foreign workers; report to the Department any recent and anticipated arrivals, layoffs and/or departures of Canadians, permanent residents and temporary foreign workers; and allow Service Canada/HRSDC officers to enter the workplace for on-site consultations. Participation by employers applies only to the specific LMO application. However, the department also indicates that their officers may contact employers for other reasons not related to this Initiative.

Service Canada/HRSDC indicates that if an employer is found to be offside, they will work with the employer to "undertake appropriate corrective measures". They also indicate that they will share information with other relevant federal and/or provincial/territorial authorities where they find reason to believe that you, as an employer, are in violation of relevant employment legislation.

Before agreeing to participate employers should consider their potential liability as a result of on-site visits, the potential for disclosure of personal information related to employees, the disclosure of the employer's policies and practices, other privacy issues, the strain on their resources to comply with the government's request for information, documentation and site visits, and the potential for Service Canada to discover during a site visit a violation under another agency's jurisdiction and the risk this information will be shared with the other agency.



Barbara Jo (BJ) Caruso

Email: caruso@cimmigrationlaw.com

T Direct: 416.368.6222



Harry Goslett

Email: goslett@cimmigrationlaw.com

T Direct: 416.368.1222



Brenda Wong

Email: wong@cimmigrationlaw.com

T Direct: 416.368.2333



Ernest Wheeler

Email: wheeler@cimmigrationlaw.com

T Direct: 416.368.7444

Corporate Immigration Law Firm | 57 Bay Street, Suite 404, Toronto, Ontario, Canada M5H 2T7
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