



**CORPORATE IMMIGRATION
LAW FIRM**

Significant Proposed Changes to Temporary Foreign Worker Program

Citizenship and Immigration Canada ("CIC") has proposed amendments to the *Immigration and Refugee Protection Regulations* that, if approved, will further complicate the Temporary Foreign Worker ("TFW") Program.

The amendments, according to CIC, are required to address the growing problem of employers failing to abide by commitments made to TFWs. In order to prevent TFW exploitation, CIC is proposing stricter employer monitoring mechanisms. In addition, the length of time during which a foreign worker can work in Canada is being capped to underscore that employment of TFWs is meant to be just that – temporary. Significant proposed amendments include:

- The addition of factors to help determine if an offer of employment is genuine. Employers will need to show that (1) they are actively engaged in the business in which the offer is being made; (2) the offer is consistent with the reasonable employment needs of the employer; (3) the employer is reasonably able to fulfill the offer's terms; and (4) the employer has complied with federal or provincial laws that regulate employment in the province where the foreign national will work. Genuineness will need to be addressed for all employer-specific work permits, even intra-company transfers.
- The introduction of a denial of service provision. If an employer has been found to have offered "significantly different" wages, occupations or working conditions than those originally offered and approved, within the last two years, the employer will not be able to hire any more temporary foreign workers for a two year period.
- The introduction of a maximum cumulative time of work in Canada for temporary foreign workers of four years. This will not apply to foreign workers entering Canada to perform work pursuant to international agreements (e.g., NAFTA); to foreign workers intending to perform work "that would create or maintain significant social, cultural, or economic benefits or opportunities for Canadian citizens and permanent residents"; or to workers who, having worked in Canada for four years, have then left Canada for a six year period. The maximum cumulative time of work will apply to TFWs working in Canada pursuant to labour market opinions.

These amendments, if approved, could introduce a new level of government intrusiveness into the temporary foreign worker hiring process, by multiple government departments. Employment law advice will also be needed to confirm that the employer has complied with federal or provincial laws that regulate employment in the province where the foreign national will work. Finally, the potential cost of a mistake by the employer in the hiring or labour market opinion application processes is very high – an outright prohibition on hiring foreign workers for a two year period.

We will continue to monitor the progress of these suggested amendments and to consider their ramifications for our clients. If you have any questions or concerns we invite you to contact us.



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