Amendments to the Immigration and Refugee Protection Regulations increase protections for foreign workers

September 26, 2022

Recently announced amendments to the *Immigration and Refugee Protection Regulations* (the *Regulations*) will strengthen protections for foreign workers, and seek to improve employer compliance with program requirements by improving transparency about foreign workers' rights, access to health care, and government oversight. Effective September 26, 2022, these amendments will effect both the Temporary Foreign Workers Program (TFWP) and the International Mobility Program (IMP).

Enhanced worker protections

One of the key effects of this legislative change will result in temporary foreign workers receiving: (i) greater transparency regarding their rights while working in Canada; and (ii) greater protections in terms of wages, healthcare and overall working conditions. The amended *Regulations* will include the following:

- Employers will now be required to provide temporary foreign workers with a copy of the most recent information regarding the worker's rights in Canada, on or before an individual's first day of work in Canada.
- Employers who hire foreign workers have a duty to make "reasonable efforts" to ensure employees are in a workplace free of "abuse". The definition of "abuse" will now be expanded to include "retaliatory behaviour" or "reprisal", to provide workers with more comprehensive protection.
- If a temporary foreign worker is injured or becomes ill at work, employers will be required to make "reasonable efforts" to provide access to health care services.
- Employers using the TFWP, in particular, must obtain and pay for private health insurance covering emergency medical care for temporary foreign workers until they are covered by the provincial or territorial health care regime. Since many temporary foreign workers endure administrative and legislative waiting periods prior to becoming eligible for public health coverage in Canada, this development means that employers will be responsible for ensuring that certain temporary foreign workers have health coverage from the outset of their employment.
- Employment agreements will have to be in either English or French, signed by both the employer and the employee, and provide for employment in the same

occupation, with the same wages and working conditions, as those set out in the offer of employment.

Heightened oversight of employers by the government

Additionally, government authorities will soon have increased freedom and ability to audit employers to ensure compliance with the requirements of programs that facilitate the employment of temporary foreign workers. Some of the notable compliance-based changes include:

- Subject to the *Privacy Act*, Employment and Social Development Canada (ESDC) and Immigration, Refugees and Citizenship Canada (IRCC) will now be able to compel documentation from any third party (including banks and payroll companies) which relates to employer compliance with certain regulatory conditions. ESDC and IRCC will now be empowered to compel documentation without the consent of the employer and/or the worker.
- ESDC will be able to assess whether workers have been offered the prevailing wage for the occupation and whether the worker's employment is likely to adversely affect the settlement of any labour dispute in progress under a pass/fail system. Failure to pass both criteria will result in a Labour Market Impact Assessment (LMIA) refusal.
- For employers using the IMP, ESDC will have the authority to collect personal information on employers and temporary foreign workers regarding compliance with IMP conditions. This information will also be shared with inspection officials.
- In the case of employers who have not used the TFWP in the past 6 years, ESDC will now be able to confirm if, within the last 2 years, the employer made reasonable efforts to provide an abuse-free workplace and was not an affiliate of an ineligible employer under the program.

The government of Canada introduced similar amendments to the *Regulations* in August 2021, but these new amendments represent a significant and more permanent step forward in terms of providing protections to temporary foreign worker through greater transparency and oversight.

For those employers considering hiring, or who have already hired temporary foreign workers, it is crucial to ensure compliance and awareness of any newly developing responsibilities and duties under the law. For further details regarding the full scope of the new amendments and their implications on employers in Canada, contact BLG.

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