

Employers Experiencing Increased Enforcement in Response to Audit of Temporary Foreign Worker Program

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A Report of the Office of the Auditor General (Report) regarding an audit of Canada's Temporary Foreign Worker Program (TFWP) has found that while Employment and Social Development Canada (ESDC) has successfully reduced the number of Temporary Foreign Workers (TFWs) since 2013, ESDC had been relatively lax in its review of the market needs for TFWs and in conducting enforcement and compliance reviews of employers. In response, ESDC has undertaken to make changes to the TFWP and improve oversight. Employers that use the TFWP have experienced an increase in enforcement and compliance activities as a result.

Report Findings

ESDC is tasked with vetting applications made by employers to hire TFWs, assessing the labour impact of hiring TFWs, ensuring program compliance of employers, and measuring and reporting program results. The audit looked into each of these functions and made the following findings:

- ESDC effectively reduced the number of TFWs from 163,000 in 2013 to just over 90,000 in 2015.
- ESDC failed to ensure TFWs were being hired only as a last resort.
- ESDC did not consider labour market information sufficiently well to determine whether jobs could be filled by Canadians, but instead relied on information provided by the employers.
- ESDC did not adequately identify and deal with employers that were not following program requirements.
- ESDC did not measure the results or impact of the program and did not know what impact the program had on the labour market.

In response to the findings in the Report and to the recommendations it made, ESDC has undertaken to make changes to the TFWP and improve oversight. Employers who use the TFWP have experienced an increase in enforcement and compliance activities as a result.

ESDC Response to the Report

The Report credited the reduction in the number of TFWs to the economic downturn in addition to the reform measures implemented by ESDC in 2014. These measures included: reducing the length of stay for low-wage occupations from two years to one year; capping the number of low-wage TFWs an employer could hire at 20 per cent of its workforce; considering only applications for TFWs in accommodation, food, and retail sectors where the unemployment rate was lower than 6 per cent; and requiring transition plans from most employers in order to reduce their reliance on TFWs over time. These reforms applied to all TFW sectors except the primary agriculture sector which has continued to see an increase in the number of TFWs.

The Report also found that most employers who applied to hire TFWs did not adequately demonstrate reasonable efforts to train existing employees, hire unemployed Canadians, or make adequate efforts to appeal to under-represented groups for jobs. In response to these findings, ESDC committed to review its policies, provide officers with appropriate guidance to strengthen the verification of employer recruitment efforts, increase the requirements for employers to reach out to under-represented groups, and achieve national consistency in processing Labour Market Impact Assessments (LIMAs) through a quality assurance pilot program.

Despite agreements with other government departments, the report found that ESDC did not provide Employment Insurance (EI) information to program officers and detrimentally restricted program officers' access to Records of Employment (ROE) to only the preceding 90 days. The audit found that a thorough examination of this information revealed some employers were laying off Canadian workers while hiring more TFWs. In response to the Report, ESDC pointed to its partnership with Statistics Canada to collect information on job vacancies and wages, the grants and contribution programs it has available to reduce barriers experienced by some Canadians to securing these jobs, and its development of a systematic approach to better integrate labour market information for use in LMIA processing.

ESDC's practice to randomly choose employers to inspect was found to be ineffective, prompting it to implement a comprehensive risk-based model in April 2017. The Audit discovered that although ESDC reported it had commenced 173 on-site inspections, it had only completed 13. Additionally, the on-site inspections were found to be flawed because they often lacked an interview component and employers were informed well in advance of an on-site inspection. Again, ESDC committed to undertaking an assessment of the risks and benefits of conducting unannounced on-site inspections by April 2018.

Finally, the audit found that ESDC had not collected sufficient data nor conducted significant analyses of the impact of the program on the labour market, including any unintended consequences. ESDC pointed to its performance measurement strategy, completed in January 2017, as hopefully leading to improvements in this area.

Takeaway for Employers

The new policies adopted by ESDC in response to the Report will likely affect the information an employer must provide to have its application to hire TFWs approved

and may also affect other aspects of the TFWP, such as more frequent inspections conducted by ESDC, including unannounced, on-site visits by inspectors.

Please contact your BLG Business Immigration lawyer for further details on how these changes could impact your company's operations.

By

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