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What Does the Recent Controversy Mean for Canada's Temporary Foreign Worker Program?

By Warren Creates and Jacqueline Bonisteel

Over the past few weeks, Canada's Temporary Foreign Worker Program has been a hot topic for every major media outlet in the country. Reactions to recent controversy surrounding the program have ranged from virulent criticism to impassioned defense.

The debate has expanded to include questions about the economic necessity of outsourcing, the obligations of Canadian companies, and national identity in a globalized world. These are all fundamental issues reaching far beyond discussion of the merits of Canada's Temporary Foreign Worker Program. Even a major overhaul of the program would be only the tip of a very large iceberg. Nonetheless, such an overhaul is the simplest way for the federal government to address the criticism, so is likely to be the immediate result. The Temporary Foreign Worker Program was slated for change before the recent controversy erupted, but new policies and heightened enforcement measures are now likely to come very quickly.

The 2013 Federal Budget indicated that changes to the program would include measures to tighten up the Labour Market Opinion (LMO) process. LMOs are issued to employers by Service Canada to indicate that there is no Canadian available to fill the employer's job description. An LMO is required before an employer can hire a temporary foreign worker.

Specifically, the Budget called for fees to be imposed on employers who use the Temporary Foreign Worker Program. It also indicated that measures to increase the length and reach of the domestic advertising required would be introduced. An employer currently must advertise a position for a minimum of 14 days before bringing in a temporary foreign worker to fill it. Finally, following the earlier controversy surrounding a Mandarin language requirement for one employer's B.C. mining jobs, the government stated that it also intends to limit the permissibility of such non-official language restrictions.

The 2013 budget measures and [recent comments from Prime Minister Stephen Harper](#) mark a departure from the previous year's efforts to make it simpler for compliant employers to bring in temporary foreign workers. In April 2012, the federal government introduced a [pilot project](#) for employers looking to hire higher-skilled workers like managers and professionals. Assuming they had successfully obtained a positive LMO within the past two years and always been compliant with requirements, such employers became eligible to apply for an "accelerated" LMO. This allowed them to obtain an LMO more quickly, and also to offer wages that were up to 15% lower than the prevailing Canadian wage rate.



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Employers taking advantage of the accelerated LMO program were also required to consent to a compliance review. Those found non-compliant would no longer be eligible for the program and would also be included on a publicly-accessible list of companies found to have breached the requirements. To date, no employer has been “named and shamed” in this manner. This has been one target for recent media criticism. It is likely that, to avoid any further embarrassment, the government will ramp up the use of these compliance measures. The government has also [announced](#) that new regulations giving officials more power to conduct inspections and impose penalties are coming this summer. We can expect that new applications will be more closely scrutinized, and that violations of the program requirements will not go unpunished.

The ability to bring in temporary foreign workers to fill labour needs is vital to the success of many Canadian businesses. The government has acknowledged and encouraged this in the past, and will certainly continue to do so going forward. However, employers must be prepared for stricter monitoring and enforcement of the program.

Preparing thorough applications and paying close attention to compliance conditions will now be more important than ever. The Immigration Law Group at Perley-Robertson, Hill & McDougall LLP/s.r.l. has the expertise to assist both employers and potential employees with evaluating eligibility, preparing comprehensive application packages, addressing any potential complications, and advising on ongoing compliance requirements.

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