



# Temporary Foreign Worker Program

Kanata North BIA - May 2016



# Entry of Temporary Foreign Workers (TFW)

- TFWs can enter Canada through various streams under two distinct programs:
  1. **Temporary Foreign Worker Program (TFWP)** (ESDC-led; jointly administered with Immigration, Refugees and Citizenship Canada (IRCC))
    - Refers to only those streams under which foreign workers enter Canada at the request of employers following approval of a new Labour Market Impact Assessment (LMIA).
      - ESDC conducts LMIA's and employer inspections
      - IRCC assesses work permit applications and issues work permits
  2. **International Mobility Program (IMP)** (IRCC-led)
    - Includes streams under which foreign nationals are not subject to an LMIA, and whose primary objective is to advance Canada's broad economic and cultural national interest, rather than filling particular jobs.
      - IRCC works in partnership with ESDC and the Canada Border Services Agency (CBSA) on employer compliance activities



## Overview of the TFWP

- Legislated through the *Immigration and Refugee Protection Act* and *Regulations*, the TFWP helps to fill skills and labour gaps when qualified Canadians or permanent residents are not readily available. It is designed to ensure that Canadians have the first opportunity at available jobs.
- Employers that can demonstrate Canadians are unavailable, and meet other Program requirements, can receive permission from ESDC/Service Canada to hire a foreign national on a temporary basis.



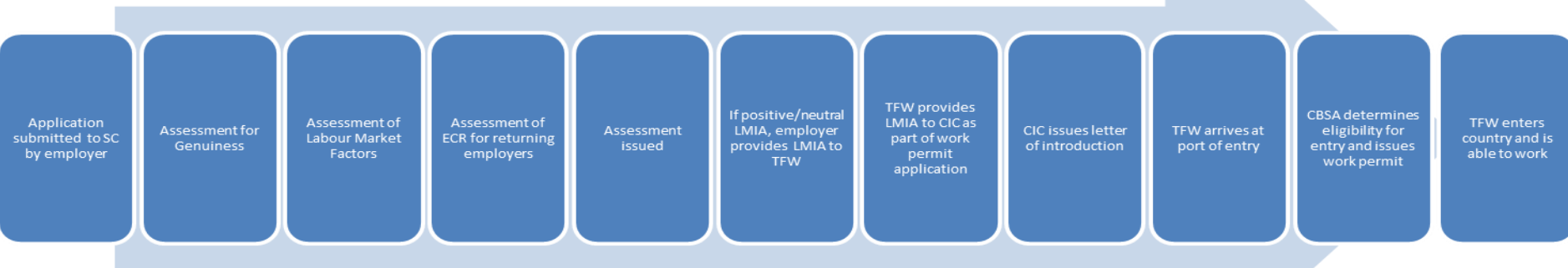
# What is a Labour Market Impact Assessment (LMIA)?

- ESDC reviews applications for LMIA's from employers who wish to hire TFWs, and assesses the likely impact these workers would have on the Canadian labour market.
- If Service Canada provides a positive LMIA to an employer, IRCC would then consider it along with the foreign worker's application for a work permit.
- LMIA's can also be provided to support certain permanent resident application streams via IRCC's Express Entry initiative (e.g., the Federal Skilled Worker Program, Federal Skilled Trades Program, Canadian Experience Class).



# Assessing an LMIA

- Once an application for an LMIA is received, it is assessed to determine if the hiring of a foreign national will have a “positive/neutral” or “negative” impact on the labour market.
- The assessments are based on three general categories:
  1. Genuineness
  2. Labour Market Factors
  3. Employer Compliance Review (ECR) – returning employer’s compliance related to previously employed TFWs



# Assessment of the Genuineness of a Job Offer

- Officers must consider four genuineness factors to ensure that employers and their job offers are legitimate.
  - i. Actively engaged
    - Is the offer coming from an employer that legally exists and operates a business related to the job offer being made?
  - ii. Reasonable employment need
    - Does the job offered to the TFW match the general type of work that is reasonably and usually part of employment in that business/sector?
  - iii. Ability to fulfill
    - Can the employer demonstrate that they are reasonably able to fulfill the terms of employment – including providing full-time work and paying the salary and benefits offered?
  - iv. Past compliance with F-P/T laws that regulate employment and recruitment
    - Is the employer (or 3rd party recruiter) compliant with F-P/T employment legislation in the province or territory where the job is offered?
- In addition to these factors, only English or French can be the requirement of a job unless justified (e.g., translator).



# LMIA Assessment Factors

- Service Canada Officers consider seven factors collectively to determine whether the employment of the TFW will result in a positive/neutral or negative impact on the labour market:
  - i. Will this employment result in job creation or retention for Canadians/permanent residents?
  - ii. Will this employment result in the transfer of knowledge and/or skills to Canadians/permanent residents?
  - iii. Will this employment result in the filling of a labour shortage?
  - iv. Are the wages consistent with the prevailing wage offered to Canadians/permanent residents for the same occupation in the region requested?
  - v. Has the employer made reasonable efforts to hire and train Canadians/permanent residents?
  - vi. Will this employment adversely affect the settlement of any labour dispute in progress or the employment of anyone involved in a dispute?
  - vii. Has the employer fulfilled or has made reasonable efforts to fulfill any commitments made as a condition of receiving a previous positive LMIA.
  
- In addition, an assessment is conducted of the genuineness of a job offer and a returning employer's past compliance with the TFWP.



# TFWP Streams

- Employers can apply to the TFWP under five streams:
  - 1) High Wage Stream
    - Wage rate offered to the TFW is at or above the provincial/territorial (P/T) median wage;
    - Employers are required to submit a Transition Plan which outline commitments to transition to a Canadian workforce.
  - 2) Low Wage Stream
    - Wage rate offered to the TFW is below the P/T median wage;
    - There is a cap on the percentage of low wage TFWs that can be part of an employer's workforce– 20% in 2015, 10% as of July 1, 2016;
    - Barring employers from applying for TFWs in lowest skill, lowest wage occupations in accommodation & food services and retail trade sectors in regions of high unemployment (6% or higher);
    - Unique worker protection measures including an employer-employee contract, transportation costs, health insurance, and ensuring that affordable accommodation is available;
    - Duration of LMIA is limited to a maximum of one year for all low-wage TFW positions, rather than previous two year period





## TFWP Streams (Cont'd)

### 3) Seasonal Agricultural Worker Program (SAWP)

- Workers must be from Mexico or other Caribbean countries covered under bi-lateral international agreements with ESDC;
- Activities must be related to on-farm primary agriculture;
- Agriculture products must be included in one of the 16 sectors on the National Commodities List;
- Positions can be in lower or higher-skilled occupations.

### 4) Agriculture Stream

- Similar to SAWP, but for countries without international agreements;
- Workers are from any country other than those covered under the SAWP.

### 5) Support for Permanent Residence (PR)

- Employers may also apply to the Program for an LMIA to support a foreign national's application for PR through IRCC's Express Entry Program. These LMIAs may be used solely to support a PR application or as a mechanism to allow a foreign national to work in Canada while they apply for PR (so-called "dual intent" LMIA applications).



# Transition Plans For Employers

- Employers applying for TFW positions in the High Wage Stream are required to submit a Transition Plan detailing efforts they will undertake to transition to a domestic workforce over time.
- **New Employers**
  - Must outline activities they will undertake to hire or train Canadians or permanent residents, or describe an activity to support permanent residence of TFWs that they currently, or are seeking to, employ.
  - Must commit to activities in at least one of the following categories:
    1. Activities to support the recruitment and training of Canadians, including minimum of three distinct activities related to hiring and/or training Canadians (e.g. Apprenticeships), and one additional distinct activity to engage an organization serving groups who are under-represented in the labour market (e.g. Immigrants, Aboriginals, youth, persons with disabilities)
    2. Activity supporting permanent residence of TFWs that they currently, or are seeking to, employ (e.g. Provincial Nominee Program)
- **Returning Employers**
  - Employers seeking to fill the same position at the same work location should demonstrate the steps taken to reduce reliance on TFWs based on the activities outlined in their previous Transition Plan and whether or not they have carried out all planned activities in their initial Plan.



# Recruitment Requirements

- Employers are required to demonstrate that they have made reasonable efforts to recruit and hire Canadians or permanent residents prior to seeking foreign nationals.
- Minimum recruitment requirements generally require that employers conduct a minimum of three distinct recruitment efforts, lasting at least four weeks - one method should be advertising on the Job Bank.
  - The High-Wage Stream requires one method to be national in scope and easily accessed by residents of any province or territory in Canada.
  - The Low-Wage Stream requires employers to target underrepresented groups – these include Indigenous Peoples, persons with disabilities, newcomers (recent immigrants and refugees), and youth.
- Advertisements should ensure that a job seeker is aware of who the employer is, where they would be working, and key details of the job and working conditions that would encourage Canadians or permanent residents to apply.
- In very limited circumstances, the minimum recruitment requirements may be waived if an employer can clearly demonstrate that they are not an effective method of recruitment for the occupation/position, or are not consistent with standard recruitment practices for the industry.
  - In these cases, employers should still demonstrate that reasonable efforts were made to hire or train Canadians or permanent residents for the positions requested through alternative recruitment methods.
  - Requests to waive the minimum recruitment requirements treated on a case-by-case basis.



# Stronger Enforcement and Tougher Penalties

- Increasing the number and scope of inspections
- Increasing detection and monitoring
- More criminal investigations
- Improved information sharing
- Proportionate consequences for employers who break the rules



# Compliance Regime

- **Employer Compliance Reviews (ECR) - LMIA process**
  - Could result in negative LMIA, ineligible to access TFWP or IMP for 2 years; name published; other positive LMIAs revoked
- **Review under Ministerial Instructions - Post-LMIA**
  - Could result in LMIA revocation, suspension lifted, or 'Refuse to Process' for 2 years if LMIA revoked because of providing false, misleading or inaccurate information
- **Employer Inspections – Post-LMIA**
  - Could result in 2 year ban from TFWP; Publication of employer's name on public ineligibility list; revocation of positive LMIAs
- **Administrative Monetary Penalties (AMPs) and Varied Bans**
  - Intended to promote compliance and deter employers from misusing the programs and mistreating foreign workers (effective December 1, 2015)
  - Includes: warning letters; opportunity for employers to voluntarily disclose non-compliance and potentially receive reduced consequence; AMPs of \$500 to \$100K per violation (maximum \$1M per employer/yr); replacement of existing 2 year ban with 1, 2, 5, and 10 year and permanent bans; and publication of the employer's name on a public list



# Compliance Best Practices

- Employers can exercise the following best practices to ensure they remain compliant
  - Review LMIA applications & supporting documentation carefully
  - Keep copies of LMIA applications and supporting documentation for 6 years
  - Work only with authorized third-party representatives (*this includes immigration consultants authorized under Section 91 of IRPA, and third party recruiters authorized by P/T legislation, where applicable*)
  - Inform ESDC immediately of any errors on the LMIA and annexes & keep track of when ESDC was informed
  - Regularly self-audit and immediately correct non-compliance
  - Disclose LMIA inaccuracies or non-compliance you discover
  - Keep records of exchanges with Service Canada
  - Keep well organized records relating to compliance with all TFWP conditions
  - Contact ESDC (in writing) when considering any changes to LMIA, including a slight change in job duties
  - Actively cooperate with ESDC during inspections
  - Regularly check the TFWP website for updates and changes



## Annex A: Provincial / Territorial Median Hourly Wages

<b>Table 1: Median Hourly Wages by Province/Territory</b>	
<b>Province</b>	<b>Wages as of April 29, 2016 (\$/hr)</b>
Alberta	\$25.38
British Columbia	\$22.60
Manitoba	\$20.00
New Brunswick	\$18.50
Newfoundland and Labrador	\$20.91
Northwest Territories	\$31.25
Nova Scotia	\$19.00
Nunavut	\$28.92
Ontario	\$22.00
Prince Edward Island	\$18.00
Quebec	\$20.60
Saskatchewan	\$22.80
Yukon	\$28.51
Source: Statistics Canada, Labour Force Survey, 2015	



## Annex B: Cap Exemptions for Short Duration TFWs

- In Spring 2015, the TFWP extended a cap exemption for short duration TFW positions considered “highly mobile” or “truly temporary” (120 days or less):
  - Part of a highly mobile workforce that regularly crosses inter-jurisdictional boundaries (e.g., provincial, territorial and/or international) as part of the business’ ongoing operations (i.e., highly mobile); or,
  - For a specific short-term period or singular event and will not be filled after the worker leaves the country (i.e., truly temporary).
- In February 2016, a one-time cap exemption was given to employers in seasonal industries for low-wage seasonal positions that are no more than 180 calendar days in length
  - For applications received on or after February 19, 2016, and no later than December 31, 2016;
  - Seasonal defined as when both the industry and the occupation experience significant fluctuations in labour demand between “peak” and “off-peak” periods, usually occurring on or around the same dates every year.

