

SERVICE CANADA - TEMPORARY FOREIGN WORKER PROGRAM - WHAT'S NEW?

by Kenneth Ing

As of January 1, 2009, the "Occupations Under Pressure List Initiative" was replaced by new national advertising requirements.

National Advertising Standards

All occupations became subject to the same minimum advertisement requirements based on the National Occupational Classification ("NOC") system Skill Levels 0, A, B, C and D. Failure to comply with the requirements outlined below will result in the application for a Labour Market Opinion being denied.

For NOC 0 and A occupations, the minimum advertising efforts required were to advertise on the National Job Bank (or the equivalent in Saskatchewan, Quebec or the Northwest Territories) for a minimum of fourteen (14) calendar days, or conduct similar recruitment activities consistent with the practice within the occupation (e.g. internet job sites, journals, newsletters, national newspapers or by consulting unions or professional associations), during the three (3) month period prior to applying for a Labour Market Opinion.

For NOC B occupations, the minimum advertising efforts required were to advertise on the National Job Bank (or the equivalent in Saskatchewan, Quebec or the Northwest Territories) for a minimum of fourteen (14) calendar days during the three (3) months prior to applying for a Labour Market Opinion. The advertisement must include the employer's name, business address and wage ranges being offered.

For NOC C and D occupations (including live-in caregivers and seasonal agricultural workers), the minimum advertising efforts required were to advertise for a minimum of 14 days on the National Job Bank (or the equivalent in Saskatchewan, Quebec or the Northwest Territories) during the three (3) months prior to applying for a Labour Market Opinion; and conduct recruitment activities consistent with the practice in the occupation, during the three (3) months prior to applying for a Labour Market Opinion. The employer is expected to advertise for the equivalent of 14 days, choosing one or more of the following options: advertise in newspapers (e.g. a weekly ad during two to three weeks in journals, newsletters, national/regional newspapers, ethnic newspapers/newsletter or free local newspapers); advertise in the community (e.g. posting ads for two to three weeks in local stores, community resources centres, churches, or local regional employment centres); or advertise on Internet sites (e.g. posting during 14 days/two weeks on recognized Internet job sites – union, community resource centres or ethnic sites). All advertisements must include the employer's name, business address and wages being offered.

HRSDC/Service Canada reserves the right to require alternative or additional recruitment efforts either beyond the stipulated duration or broader advertisement basis, if HRSDC/Service Canada believes that additional effort would yield qualified Canadian citizens or permanent residents who are available to work in the occupation and region.

Proof of Advertisement Retention

The Canadian employer must be prepared to demonstrate that they have met the advertisement requirements by providing proof of advertisement and the results of the efforts to recruit Canadians or permanent residents as part of the Labour Market Opinion process. Records of these efforts must be kept for a minimum of six (6) years, as stipulated in certain provincial and federal legislation, such as the Income Tax Act.

Expedited Labour Market Opinion Pilot Project Amendments

As of March 16, 2009, employers participating in the Expedited Labour Market Opinion Pilot Project have been required to submit not only evidence of the recruitment efforts undertaken but also a completed questionnaire. The questionnaire provides HRSDC/Service Canada with information about lay-offs and recent departures of Canadians, permanent residents and temporary foreign workers as well as information on the results of recruitment efforts and why interested Canadians or permanent residents were not hired. These new requirements were initiated to help substantiate whether there is a legitimate need for temporary foreign workers. If the required documentation is not provided, the application will be denied.

Wage Rate Established Under a Collective Agreement

As of March 31, 2009, employers are required to offer a temporary foreign worker working in an unionized environment the same wage rate, as established under the collective bargaining agreement. In cases where benefits are offered to Canadians, those same benefits must also be extended to the foreign worker. These requirements apply to the regular Labour Market Opinion process and the Pilot project for Occupations Requiring Lower Levels of Formal Training (NOC C and D). They do not apply to the Expedited Labour Market Opinion Pilot project. In order to address unique circumstances, HRSDC/Service Canada maintains the discretion to set the prevailing wage rate that an employment must offer a temporary foreign worker whether or not the position is covered by a collective agreement.

Elimination of Labour Market Opinion Extension Form

As of April 27, 2009, HRSDC/Service Canada eliminated the Foreign Worker Application to extend a Labour Market Opinion. All employers participating in the Pilot projects for Occupations Requiring Lower-Levels of Formal Education (NOC C and D) and high-skilled Program streams will be required to submit a new Labour Market Opinion (LMO) application. For employers wishing to continue the employment of a foreign national beyond their current work permit, employers are requested to apply at least four months prior to the expiry to ensure that ample time exists for the processing of the new Labour Market Opinion and, if authorized, the subsequent work permit request.

Under the submission of the new Labour Market Opinion application, the employer may be asked to demonstrate proof of past compliance with the terms of previous offers of employment to temporary foreign workers (e.g. wages and working conditions). This information about compliance will be used to determine whether the new offer of employment will be respected. If the employer refuses to demonstrate proof of compliance with the terms of previous offers of employment, a negative Labour Market Opinion will be issued.

Monitoring Initiative

As of April 27, 2009, HRSDC/Service Canada will implement a "Monitoring Initiative" in which employers will be asked to participate. Two new consent clauses have been added to the Labour Market Opinion application form under the "Declaration of Employer" section. The initiative is designed to strengthen the integrity of the Temporary Foreign Worker Program. The information gathered, including the ability to demonstrate good standing by the employer, may be considered in future Labour Market Opinion applications.

Amendments to Live-in Caregiver Program

As of May 4, 2009, HRSDC/Service Canada made changes to the advertising requirements for the Live-in Caregiver Program. Employers are still required to advertise on the National Job Bank for fourteen (14) calendar days. A secondary source of advertisement is encouraged but no longer required.

All live-in caregiver applications must be accompanied with a Recruitment Report providing proof of advertisement on the National Job Bank and any other additional source and detail the number of respondents to the advertisement and the reasons why such respondents were not considered. The Recruitment Report must

be signed by the employer.

As of May 4, 2009, employers are also required to provide HRSDC/Service Canada with their CRA Business Number on their application for a Labour Market Opinion to hire a live-in caregiver. In addition, the employer will be required to submit an attestation signed by a guarantor, confirming the identity of the employer. If an employer chooses to use a third party representative, the Labour Market Opinion decision will only be sent to the employer. The third party representative will receive a letter notifying them that a Labour Market Opinion decision was issued to the employer. Employers are also required to submit a new application to HRSDC/Service Canada, which clearly indicates that they are requesting a new caregiver to replace a caregiver for which a positive Labour Market Opinion was previously issued. Failure to comply with this program requirement will result in a Labour Market Opinion application being denied.