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Changes to the Temporary Foreign Worker Program

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Effective July 31, 2013 the Federal Government announced new rules relating to the temporary foreign worker program. It has advised that the changes are being made to ensure that Canadians are given the first chance at available jobs. The changes include the following:

1. Employers must now pay a processing fee for a Labour Market Opinion (“LMO”) of \$275 for each position requested. This is estimated to cover the cost of the LMO. The only exemptions from the processing fee are for employees who are hired under agricultural programs.
2. Employers are not permitted to ask for language skills other than English or French in applications for temporary foreign workers. There is an exemption to this restriction if an employer is able to demonstrate that a language other than English or French is an essential requirement for the job. If an employer is advertising a position that legitimately requires a language other than English or French, it must clearly demonstrate, in writing, that the language requested is consistent with the regular activities of the job. The examples given are a translation company hiring a translator to work in a language other than English or French or a tour company catering to foreign tourists only in a non-official language.
3. There are new advertising requirements. As of July 31, 2013 employers will need to make a greater effort to find Canadians before being eligible to apply for temporary foreign workers. All positions must be advertised for at least four weeks before applying for an LMO. In addition, the employer must continue to advertise the position during the LMO process. When recruiting for a higher skilled occupation, one of the methods of advertisement must be national in scope. In recruiting for a lower skilled occupation, employers must demonstrate that they made efforts to target underrepresented groups in the labour force.
4. There are new application forms that must be used when applying for an LMO after July 31, 2013 both for the higher and lower skilled occupation classes. The new application form includes a section relating to outsourcing of Canadian jobs. A negative LMO will be issued if the assessment indicates that hiring a temporary foreign worker will have a negative impact on the Canadian labour market or if an employer has not complied with all of the program requirements.

It must be noted that the LMO process is required to be followed when initially hiring a foreign worker and when applying to extend the employment of a foreign worker at the time his or her work permit is due to expire. Prior to obtaining an extension of a work permit, an employer must go through the LMO process with respect to that position, including advertising the position. The advertisement must contain all details of the position, including the employer’s name and salary being provided for the position. Given the length of time that the advertisement must run, the current LMO processing time and the processing time for obtaining a renewed work permit, an employer should start advertising the position 6 to 8 months before a current employee’s work permit expires.

If you have any questions with respect to applications for LMO’s or hiring temporary foreign worker, please contact:

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