



Welcome

I'm pleased to share with you the first issue of Aikins' Immigration Law newsletter. Each month I will share my thoughts on changes in regulation, industry trends and other aspects that may affect your daily role or how you do business.

I would be very pleased to hear feedback and I welcome your suggestions for future articles.

If you would prefer not to receive these emails, please let me know and I will promptly remove you from our distribution list.

Kind regards,

A handwritten signature in black ink, appearing to read 'R. Reis Pagtakhan'.

R. Reis Pagtakhan

New Federal Regulations Affecting Temporary Foreign Workers: The Human Resources Impact

On April 1, 2011, new regulations will become law that will affect the employment of temporary foreign workers in Canada (workers in Canada who are neither Canadian citizens nor permanent residents). These regulations, made to the Immigration and Refugee Protection Act Regulations, will apply nationally.

Some of the more significant changes are as follows:

1. Most foreign workers will now be limited to four years of work in Canada. In order to “reset” the clock back to zero, a foreign worker must wait four years before reapplying. Obviously, this time cap will have a great impact on companies that hire foreign workers.
2. Certain foreign workers, including those working pursuant to international agreements such as NAFTA and those who would “create or maintain significant social, cultural, or economic benefits”, are exempt from the four year cap.
3. Employers hiring foreign workers will have to prove their job offers are genuine. One of the many factors that will be considered is whether the employer and any recruiter acting on the employer's behalf complied with certain federal and provincial laws. This will require employers to take great care to ensure that the work of their recruiters is adequately monitored. At a minimum, contracts with recruiters should include conditions designed to ensure compliance with federal and provincial laws.

4. Employers will be required to pay foreign workers and provide working conditions to that foreign worker which are substantially the same as what was in the company's offer of employment. An employer that fails to do so without justification may be barred from hiring temporary foreign workers for two years. Because of this, all correspondence between a foreign worker and employer should be carefully scrutinized to ensure that there is no ambiguity in what is actually in the offer of employment.
 5. Names of employers who are barred from using the temporary foreign worker program because of a violation of the regulations will be published. This "blacklist" will be available on Citizenship and Immigration Canada's website for the public to view.
 6. Because of the national impact of these regulations, companies with offices and operations in various jurisdictions could be "blacklisted" as a result of the conduct of other offices. As a result, company wide procedures when dealing with foreign workers should be clearly developed to ensure compliance.
 7. If an employer finds itself on the "blacklist", the company bar on hiring foreign workers will affect all levels of applications. As a result, a failure to comply with the conditions regarding the hiring of a lower skilled foreign worker can result in a company being barred from hiring a foreign national to become president or CEO of the company.
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The Impact on Mergers and Acquisitions

While changes to the Immigration and Refugee Protection Act Regulations for temporary foreign workers have an obvious human resources impact, an underreported impact is on potential corporate mergers and acquisitions.

If a company that is the focus of a merger or acquisition (the "target company") relies on multiple foreign workers or even a small number of key foreign workers for its operations, merger and acquisition professionals will want to ensure compliance with the new regulations.

Purchasers of businesses will also want to ensure that the target company's key human resource will be able to continue to work for the newly owned company after a merger or acquisition transaction is completed. In addition, purchasers of businesses – especially non-Canadian purchasers - may want to ensure that the target company is not on the immigration "blacklist" so that they can move their personnel in Canada to work with the newly acquired company.

Due diligence in these types of transactions may require the review of all contracts with foreign workers, work permits, labour market opinions, agreements with recruiters and, in Manitoba, all applications filed under the Worker Recruitment and Protection Act.

The failure to deal with these issues could result in difficulties in concluding these types of transactions. In addition, in financing transactions, it is possible that lenders could be less willing to lend if they determine that key employees who are responsible for the success of the company would be legally prohibited from staying with the company going forward.