



## Changes to Labour Market Opinion (LMO) Applications

by Suzanne Bailey

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Traditionally, foreign workers strive to apply for Work Permits under international treaties, such as NAFTA, intra-company transfers (pursuant to the IRPA Regulations), working holiday programs, etc. When these easier and more facilitative methods to obtain a Work Permit are not available, the only means usually left for a foreign worker to obtain a Work Permit is to find a prospective employer in Canada, willing to file a Labour Market Opinion (“LMO application”) on his behalf to Service Canada. The LMO application is sent by the employer to the Service Canada office in the province where the foreign national seeks to work.

To succeed on an LMO application, the employer must first advertise the position within Canada to see if it can find qualified Canadians or Permanent Residents for the job. Certain categories are exempt from the general advertising rule, but most positions require it. Overall, Service Canada has a “Canadians first” policy and only if the employer can satisfy Service Canada that it has met the advertising requirements will the LMO application succeed.

If the LMO application succeeds, the employer is given a positive Confirmation to hire the foreign national. Thereafter, the foreign national applies for a Work Permit at a port of entry (airport/border crossing) or through a Canadian Consulate/Canadian High Commission abroad.

Recently, in May 2010, Service Canada/HRSDC revised the minimum advertising requirements for LMO applications. The most significant change is the more onerous advertising requirements for Skill Level “B” occupations under the NOC (National Occupational Classification). Previously these NOC Skill Level “B” occupations (such as Electrical Trades, Automotive Service Technicians, Medical Technologists, Sales and Service Supervisors, etc.) required the employer to advertise only on Canada’s National Job Bank for 14 consecutive days (which advertising is free). However, in May 2010, Service Canada/HRSDC imposed an additional requirement for a second set of advertising for a minimum of 14 days, “consistent with the practice within the occupation”. Examples of such additional advertising include advertising on “recognized internet job sites, journals, newsletters or national newspapers or by consulting unions or professional associations”.

Of significance is that this second advertising requirement for NOC Level “B” occupations can result in substantial expense to the employer, which they did not previously incur. The net effect of this change is that it is now harder for Canadian employers to hire foreign nationals in occupations at NOC Skill Level “B”, despite there being a shortage of Canadian workers in these occupations.

While the advertising requirements for NOC Skill Level “B” positions have changed, the minimum advertising requirements for NOC Skill Level “O” and “A” occupations remain essentially the same as before, i.e. the employer can advertise on the National Job Bank for a minimum of 14 days or

conduct other recruitment activities consistent with the practice of that occupation (internet job sites, journals, newsletters or national newspapers, etc.).

For NOC Skill Level “B”, “C” and “D” occupations, Service Canada has now provided guidelines on the contents of the advertisement. It must now include:

- the company operating name;
- job duties (for each position, if advertising for more than one vacancy);
- wage range (i.e. an accurate range of wages being offered to Canadians and permanent residents). The wage range must always include the prevailing wage for the position;
- the location of work (local area, city, or town); and
- the nature of the position (i.e. project based, or permanent position).

Many employers will not have an issue with the new contents requirements of the advertisements. However, some employers will be resistant to publishing salaries for confidentiality reasons, not wishing their existing employees to know the salary of other workers and also not wishing to disclose their salaries to competitors. Currently, Service Canada has not provided an option for employers not wishing to publish salaries.

In addition to the new guidelines for advertising, Service Canada/HRSDC has published more detailed information regarding advertising criteria specific to the province of Quebec. Foreign workers destined to Quebec should review those specific requirements prior to submitting an LMO application in that province.

As noted above, there are certain categories where the advertising requirements for LMO applications are either waived or varied. There is a finite number of categories, specifically 15 cases. If none of these apply, then the general rule of advertising governs. The 15 advertising variations are restricted to:

- Academics;
- Camp Counsellors;
- Collective Bargaining Agreement that Stipulates Internal Recruitment;
- Employer Associations;
- Entertainment Sector;
- Exotic Dancers;
- Foreign Government;
- IT Specialists;
- International Graduates;
- Live-in Caregivers;
- Live-in Caregivers in Emergency Situations;
- Owners/Operators;
- Seasonal Agricultural Workers;
- Specialized Service Technicians/Specialized Service Providers; and
- Warranty Work.

Of the above-noted categories, the following are new as of May 2010: (1) Collective Bargaining Agreement that Stipulates Internal Recruitment; (2) Employer Associations; (3) Live-in Caregivers in Emergency Situations; and (4) Specialized Service Technicians/Specialized Service Providers.

Employers and foreign workers should review whether these advertising variations apply to their specific case prior to the employer embarking on advertising, which as noted above, can be quite expensive. ■