



HRSDC Announces Changes to Labour Market Opinion Application Procedures as of April 1, 2011

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Many questions remain unanswered regarding how the amendments to the Temporary Foreign Worker Program ("TFWP") will be implemented, despite the fact that these amendments become effective on April 1, 2011. Neither Citizenship and Immigration Canada ("CIC") nor the Canadian Border Services Agency ("CBSA") has provided any guidance on how these amendments will affect the processing of work permits. To date, only Human Resources and Skills Development Canada ("HRSDC") has provided any significant information on how these amendments will affect the TFWP.

HRSDC has announced that new Labour Market Opinion ("LMO") application forms will be available as of March 25, 2011; these new forms will be specific to each stream under the TFWP (i.e. Live-in Caregiver ("LCP") Program, Seasonal Agricultural Worker Program, etc.). Among other things, the new forms will require:

- 1) The Canada Revenue Agency ("CRA") business number of the employer;
- 2) A description of the employer's main business activities (not required for the LCP);
- 3) An explanation of how hiring a TFW meets the employment needs of the employer; and
- 4) A signed statement attesting that the employer will abide by the TFWP requirements.
- 5) All LMO applications submitted on or after April 1, 2011 must use these new forms.

As HRSDC will have the authority to conduct a genuineness assessment of any job offered to a TFW and to verify that returning employers have lived-up to employment requirements stipulated in previous LMO, employers may be asked to submit additional documentation to support their LMO application. A summary of this additional documentation appears below:

All Program Streams Except the LCP Stream

When applying for an LMO, all new employers to the TFWP will be required to provide a copy of their business licence or permit. They may be asked to provide other evidence of their business in lieu of or in addition to a business licence or permit.

The genuineness of the job offer made to the TFW will be assessed based on whether the:

- 1) Employer is actively engaged in the business in which the job offer is being made;

- 2) Job offered to the TFW meets the employment needs of the employer, and is consistent with the type of business the employer is engaged in;
- 3) Employer can fulfil the terms and conditions of the job offer; and
- 4) Employer, or the third party representative acting on behalf of the employer, is compliant with the relevant federal-provincial/territorial employment and recruitment legislation.

LCP Stream

As of April 1, 2011, the following documentation must now be submitted along with the new LMO application for all LCP stream cases:

- 1) Proof of age or disability for the person requiring care:
 - *Child* – long-form birth certificate or official adoption documents. If these are not available, any other official document issued by a government authority demonstrating the child to parent relationship (e.g. original birth certificate for children born abroad translated into English or French).
 - *Senior* – birth certificate, Old Age Security Identification Card, passport or any other official documents showing the date of birth of the senior requiring care.
 - *Disabled person* – medical certificate stating that the disabled person requires care (but not the nature of disability).
- 2) A detailed description of the private accommodations provided to the live-in caregiver.
- 3) An Option C-printout that any taxpayer can obtain from the CRA, proving that the employer has the income necessary to pay the live-in caregiver.

Employers may also be required to provide, if requested by HRSDC, a provincial workers compensation clearance letter or other appropriate provincial documentation.

The genuineness of the job offer made to the live-in caregiver will be assessed based on whether the employer:

- 1) Demonstrates a reasonable need for a full-time live-in caregiver to provide child care, elder care or care for a disabled person;
- 2) Can provide adequate, private accommodations to the live-in caregiver;
- 3) Has sufficient financial resources to pay the live-in caregiver.
- 4) The employer, or the third party representative who recruited the live-in caregiver on behalf of the employer, must be compliant with the relevant federal-provincial/territorial employment and recruitment legislation.

Additional Requirements for Returning Employers

All returning employers must demonstrate that they have met the terms and conditions of employment set out in previous LMO confirmation letters and annexes (if applicable). In addition, some employers may be required to submit documentation to support a more detailed employer compliance review including any or all of the following documents:

- 1) Payroll records;
- 2) Time sheets;

- 3) Job descriptions;
- 4) Copies of the employer-employee contract;
- 5) Collective agreements;
- 6) The TFW's work permit;
- 7) Provincial workers compensation clearance letter or other appropriate provincial documentation;
- 8) Receipts for private health insurance (if applicable);
- 9) Receipts for transportation costs; and
- 10) Information about accommodations provided by the employer;

If it appears that employers did not fully respect the terms and conditions of employment set out in the LMO confirmation letters and annexes (if applicable), the employer will have the opportunity to provide a rationale. In this case, HRSDC will work with the employer to implement the appropriate corrective action, which may include providing compensation to the TFW of live-in caregiver. Employers may be found non-compliant if they refuse to provide a rationale and/or provide only partial compensation to the TFW or live-in caregiver. ■