

# Improving the Temporary Foreign Worker Program

## Issue

Canada's future economic growth will be determined by our ability to access and retain workers with the necessary skills to strengthen our workforce. It will also be determined by establishing sound economic policy in conjunction with fuelling prosperity for all Canadian citizens. The Temporary Foreign Worker Program supports Canada's economic and labour market interests.

The Chamber network has watched, with growing concern, moves by the federal government to restrict businesses' ability to utilize the TFWP. Restrictions introduced under the previous government have been partially rolled back, such as the 4 in 4 out rule, but other issues such as the lengthy LMIA process have been kept or expanded.

## Background

### Modernizing LMIA applications

In order to hire a Temporary Foreign Worker, the employer must first request a Labour Market Impact Assessment (LMIA), through Service Canada. The LMIA process is the government's way of ensuring that hiring a foreign worker is not taking away employment opportunities for Canadians and permanent residents.

This process remains based on paper application forms, submitted through mail or fax, despite the movement towards electronic processing in many parts of government. Furthermore, feedback on the status of an application and the reasons for the rejection of unsuccessful applications are rarely available. This could be resolved through the adoption of an electronic portal where applications could be submitted, and tracked through their processing. This would also facilitate compliance with maximum processing times for all applications.

When reviewing LMIA applications, it is necessary for the administrative decision-makers to utilize some level of discretion. Subject to numerous rulings under Canadian administrative body of law, discretionary decisions must be exercised via a standard of reasonableness and subject to procedural fairness. Discretionary decisions made by the administration should be relevant, reasonable, and consistent, with the process being free of any abuse.

Unfortunately, this has not been the case with past Labour Market Opinion (recently renamed LMIA) applications.

It is imperative that the administrative decision-makers of the TFWP be subject to the standards outlined under Canadian administrative law, and that decisions made be subject to review and appeal when necessary. Decisions subject to review are made with an increased level of consideration.

### Implementing the September 2016 TFW Review Recommendations

In 2016, the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities completed their review on the status of the Temporary Foreign Worker program. This report contained a number of recommendations that would benefit business.

Among these reforms, the committee recommended a review of the LMIA process to increase speed and efficiency. The committee further recommended the implementation of a "Trusted Employer Program" which would grant an exemption to the LMIA requirement, if an employer has shown to be a trusted user of the program in the past.

Further, the committee recommended that employers and employees be allowed to change the responsibilities and scope of employment, if both parties consent and those do not negatively impact the employee. This change would permit increased flexibility, and job advancement for workers which would benefit both employees and employers alike. The committee recommended that high-wage employees should be exempt from the transition plan requirements of the TFW program, which would lighten the regulatory burden.

Lastly, the committee recommended that IRCC and the federal government review pathways from the TFW program towards permanent residency. Temporary foreign workers are a valuable source of potential future Canadians, and facilitating their transition towards permanent residency and citizenship is a key step to growing Canada's economy and the nation as a whole.

#### Retain flexibility for LMIA exemptions

In the near future, Canada will likely face a nation-wide demand for senior expertise due to increasing global competition for talent, retirement, as well as the need for foreign expertise in emerging Canadian industries. In order to ensure that TFW admissions meet the needs of local labour markets, the government should improve cooperation with provincial governments to ensure they are able to name segments of the labour market that are in demand, and which fit the economic development of their regions.

Training local talent to replace retired workers will take years and in the meantime, rapidly growing industries desperately need to fill the empty gap between newly trained labour and locally available senior talent. Therefore, annex agreements should be renegotiated to include only a limited list of industries and occupations where qualified Canadians are not available, in order to address immediate labour needs on a temporary basis, as well as employing the Global Skills Strategy categories for occupations facing a shortage in Canada, based on reliable labour market information for each region.

### **Recommendations**

That the federal government:

1. Ensure that any further changes to the TFWP reflect the needs of the economy on both a regional and a sectoral basis.
2. Modernize LMIA applications and feedback by:
  - a. Increasing the use of online applications with streamlined forms.
  - b. Instituting an appeal process for denied LMIA applications.
  - c. Giving clearly detailed explanations to applicants when LMIA applications are denied.
  - d. Removing restrictions for full-time employment on the LMIA application.
  - e. Setting a maximum processing time for all LMIA applications.
3. Implement Recommendations from the September 2016 HUMA TFW Report by:
  - a. Reviewing the LMIA process to increase speed and efficiency.
  - b. Implementing a "Trusted Employer Program" to reduce processing times for applications.
  - c. Permitting contract modifications for TFWs if both parties consent, to alter agreed-upon wages or change duties.
  - d. Exempting high-wage TFWs from the Transition Plan requirement.
  - e. Reviewing pathways to permanent residency for any TFW fulfilling a permanent labour market need.
4. Expand the use of Global Skills Strategy categories for occupation-specific work permits for TFWs that are excluded from the requirement to apply for an LMIA.
5. Include industry representatives in TFW Working Groups prescribed in the Annex Agreements.