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— CANADIAN IMMIGRATION BARRISTERS & SOLICITORS —

Foreign Worker Program Changes Affecting Fast Food Restaurant Employers

In order to obtain a work permit to Canada for a temporary foreign worker, employers must generally obtain a labour market opinion (LMO) in support of the work permit application. Although there are hundreds of exceptions to this requirement, the LMO exemptions are very specific, and consequently, the vast majority of work permit applicants to Canada will require an LMO to obtain a work permit.

The process of obtaining an LMO is not straightforward. In order to bring a foreign worker to Canada, an employer must demonstrate that Canadians and permanent residents are not available for the position. In order to demonstrate this, an employer must advertise the position in three credible venues, including the Canadian Job Bank, and demonstrate the "genuineness" of the employment of the foreign worker. The advertisements have specific requirements and advertising periods, and the employer must provide proof of substantial recruitment efforts, employment documentation, compliance with additional employment standards and reporting obligations. Employers are also subject to warrantless on-site investigations and audits.

Recently, the Canadian press has publicized a number of situations where temporary foreign workers have allegedly displaced Canadians in the food services sector. As a result of the negative press, the Canadian government has issued a moratorium on issuing LMOs within the fast food services industry.

The government has indicated that, effective immediately, all LMO applications for food service positions will no longer be considered if they fall into the following subcategory: "establishments primarily engaged in preparing meals, snacks and beverages, to customer order, for immediate consumption on and off the premises. This sub sector does not include food service activities that occur within establishments such as hotels, civic and social associations, amusement and recreation parks, and theatres. However, leased food-service locations in facilities such as hotels, shopping malls, airports and department stores are included." This subcategory does not include regular sit-down restaurants and licensed facilities.

For employers who have engaged temporary foreign workers within the fast food service industry, this new policy comes as a shock.

The new rule for the fast food service industry is that all previously submitted labour

market opinion applications for occupations related to sales and service in the fast food services sector will not be processed. Employers who have already paid the required government processing fee will be refunded. In situations where employers have applied for bulk LMOs for employees “to be named” the unused positions on the approved bulk LMO will also be suspended and will no longer valid for use in support of a Canadian work permit.

Current foreign workers with valid Canadian work permits that were issued through a positive decision on their labour market opinion application within the food and/or service sector may continue to work under the conditions of their Canadian work permit throughout its validity. Current holders of Canadian work permits working within these sectors will be allowed to continue their employment until completion of their work permit validity. However, we expect that there will continue to be further scrutiny in the form of compliance reviews and investigations for fast food and service sector employers currently employing foreign workers.

The government has created an anonymous “snitch” telephone number and email address for disgruntled Canadian workers or anyone to report employer displacement of Canadians in favour of temporary foreign works. In addition, the government has a dedicated a web site for the purpose of 'naming and shaming' delinquent employers: http://www.esdc.gc.ca/eng/jobs/foreign_workers/employers_revoked.shtml.

For further information about this moratorium and/or immigration employment obligations, please contact us at:



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