



#2

 Human Resources and Skills Development Canada / Ressources humaines et Développement des compétences Canada

Now and Tomorrow
Excellence in Everything We Do



Seasonal Agricultural Worker Program

2010 REGIONAL MEETINGS

Temporary Foreign Worker Program
Human Resources and Skills Development Canada

Presentation Outline

- Changes to the *Immigration and Refugee Protection Regulations*.
- 2011 Wages for the SAWP
- Changes to the designated countries list for medical exams
- New inspection form for agricultural housing
- New LMO application for SAWP (March 2011)
- WCB enrollment
- Illegal transfers

2

Regulatory amendments

- Citizenship and Immigration Canada, in collaboration with HRSDC and the Canada Border Services Agency, have developed amendments to the *Immigration and Refugee Protection Regulations* (IRPR), particularly section 203, designed to improve the integrity of the Temporary Foreign Worker Program (TFWP) and better protect workers.
- The regulatory changes were published in the *Canada Gazette* in August and will come into force on April 1, 2011.

3

Regulatory amendments – What they do

- The new regulations expand the scope of the labour market opinion (LMO) issued by HRSDC/Service Canada.
- They provide more explicit authority for HRSDC/Service Canada to assess the genuineness of the job offer.
- They also provide a mechanism to sanction employers who have not upheld the terms of previous offers of employment to Temporary Foreign Workers (TFW).

4

Regulatory amendments – Additional Factors

In addition to providing an opinion on the potential labour market impacts of an employer's job offer to a foreign national, HRSDC/Service Canada will provide an opinion on the following additional factors:

- the genuineness of the job offer;
- new considerations for the Live-in Caregiver Program; and
- compliance with the terms of the previous LMOs ("Substantially the same").

5

Regulatory amendments – Additional Factors: Genuineness

The genuineness of a job offer will be determined by considering four factors:

- the employer's active engagement in their business;
- the employer's reasonable employment need;
- the employer's ability to fulfill the terms of the job offer; and
- the employer or third party's compliance with employment and recruitment legislation.

6

Regulatory amendments – Substantially the Same

HRSDC/Service Canada will provide a determination as to whether the employer provided a TFW in their employ in the two years preceding a new application with substantially the same (STS) terms and conditions of employment as those confirmed by HRSDC/Service Canada, including:

- occupation;
- wages; and
- working conditions.

A failure to comply with these terms without reasonable justification could result in a recommendation to CIC to deny service to that employer for 2 years.

7



Regulatory amendments – Maximum duration of stay

- The establishment of a maximum cumulative duration of four years of work in Canada with a work permit, followed by a period of at least four years of not working in Canada (primarily applicable to workers in low-skilled occupations), with exemptions under certain circumstances.
- Important: SAWP workers are exempted.

8

2011 Wages for the SAWP

- The Temporary Foreign Workers Directorate regularly reviews SAWP wages to ensure that wages being paid to temporary foreign agricultural workers are consistent with wages paid to Canadian agricultural workers performing comparable tasks.
- For the 2011 season, HRSDC is adjusting SAWP wages by the rate of inflation – the same approach used for the 2009 and 2010 season.
- 2011 SAWP wages will come into effect as of January 1st, 2011.

9

List of designated countries for medical exams

- On September 1, 2010, CIC announced a change to the list of designated countries for medical exams.
- Mexico is one of the 45 countries and territories from which most long-term visitors can now enter Canada without a medical exam.
- The medical exams are no longer required from agricultural workers from Mexico.
- The medical exams are still required from:
 - TFWs in occupation in which the protection of public health is essential – health sciences field and those working with children;
 - Permanent residents and refugees

10

List of designated countries for medical exams

- Impacts on the SAWP:
 - CIC's perspective:
 - The SAWP applications will continue to be received at the Canadian Embassy in Mexico with the only difference that no medical exam will be attached.
 - No anticipated effects on the processing times and assessment processes.
 - Employers' perspective?
 - Mexican government's perspective?

11

National Minimum Standards for Agricultural Accommodations under the TFWP

- New National Minimum Standards for Agricultural Accommodations were drafted by HRSDC, in consultation with Service Canada, to guide the appropriate government authority and/or appointed delegate in the inspection of the premises to be used for the housing of TFWs under the SAWP of the TFWP.
- The national minimum standards for agricultural accommodations endorsed by HRSDC are not necessarily a replacement for specific legislative or regulatory requirements that already exist within the appropriate government authority's jurisdiction.
- The inspection report has three possible outcomes: "pass," "pass with follow-up actions," and "fail."

12

National Minimum Standards for Agricultural Accommodations under the TFWP cont'd

- Mandatory areas addressed by the Inspection Report include:
 - rodent proof garbage container in kitchen(s);
 - fire extinguisher in kitchen(s);
 - smoke detectors outside each bedroom/sleeping area;
 - proof that water supply is safe to drink; and,
 - agreeing to provide onsite laundry or access to laundromat.

13

National Minimum Standards for Agricultural Accommodations under the TFWP cont'd

Manitoba Pilot (November 2009 –February 2010)

- Effective November 2009, any Manitoba employer providing accommodations to TFWs under the SAWP and the NOC C&D Pilot Project (primary agriculture positions only) were required to submit an Inspection Report with any new LMO application.
- 19 inspections were conducted (15 SAWP employers; 4 NOC C&D employers)

14

National Minimum Standards for Agricultural Accommodations under the TFWP cont'd

Key findings and conclusions from the Manitoba Pilot

- 100% of eligible employers (SAWP and NOC C&D) participated in the Pilot
- All employers with completed inspections received a "pass" inspection result.
- Employers were supportive of the efforts to establish minimum standards.
- Inspections were perceived as relevant to the health and safety needs of TFWs and understood by employers as necessary to participate in the TFWP.

15

New LMO application for SAWP (March 2011)

- In March 2011, all TFW program streams, including the SAWP, will have their own labour market opinion application form.
- This will help facilitate Integrity and Horizontal Coordination's review of past-compliance.
- Once the new version is implemented, all SAWP employers will be using the updated form when applying for workers.

16

Workers Compensation Board Enrollment

- It is a requirement of the program that all SAWP workers be enrolled in the applicable workers' compensation program.
- In some provinces, agricultural employers are specifically exempted from the requirement to participate in workers' compensation programs.
- In such cases where participation in workers' compensation schemes is not mandatory, it is still a requirement of the SAWP that these temporary foreign workers be enrolled in the applicable program and the employer must provide proof of the enrolment of his/her workers prior to the processing of an LMO request.

17

Transfers

- SAWP work permits are programmatic.
- Consequently, workers are free to move from one SAWP-participating employer to another without requiring a new work permit.
- Worker mobility is certainly a benefit to both employers and workers.
- Workers can move from one SAWP producer to another SAWP producer in either the same commodity or another commodity, thereby extending the period of time they are in Canada to work.

18

Transfers - Conditions

- Certain conditions are placed on this mobility:
 - The second employer must be another SAWP employer.
 - The second ER must have a valid LMO.
 - All transfers must be done with source country concurrence.

Informal transfers are not permitted.

19

Illegal Transfers

- Employers are not permitted to transfer workers informally or “share” workers. This is to ensure that all of the requirements of the program are maintained. Sharing workers informally contravenes the *Immigration and Refugee Protection Act* and is punishable by a fine of up to \$50,000 and imprisonment.

20

For Additional Information...

HRSDC's TFWP Internet site:

www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/index.shtml

CIC TFWP Internet site:

www.cic.gc.ca/english/work/index.asp