



Alberta Construction Association

September 25, 2017

Honourable Ahmed Hussen
Minister of Immigration, Refugees and Citizenship
Minister@cic.gc.ca

Honourable Patty Hajdu
Minister of Employment, Workforce Development and Labour
Patty.Hajdu@parl.gc.ca

Dear Ministers:

The Alberta Construction Association represents 3000 member firms serving non-residential construction markets across Alberta and beyond. While our membership is committed to hiring Albertans first and Canadians next, the nature of our industry requires a well-functioning temporary foreign worker program. The appendix shares ACA's recommendations to further improve the Temporary Foreign Worker Program.

We would be pleased to discuss these recommendations with you.

Sincerely,

Paul Heyens
Chairman

cc. Canadian Construction Association

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Temporary Foreign Worker Program Advocacy

September 2017

Introduction

Continued access to skilled workers in the construction industry is required to ensure prosperity for Alberta, its New West Partnership neighbors, and Canada. Volatility in global commodity markets and planned investment, the project based nature of construction, and the long time to train experienced journey tradespersons means that Alberta's supply of skilled workers does not always match demand.

Temporary Foreign Workers (TFWs) are far more costly and administratively difficult than employing Canadians. The construction industry has well developed policies and human resource development investment programs in place that are designed to facilitate the employment of every Canadian that is ready, willing and able to be gainfully employed in Alberta. Each year the businesses in our industry invest millions of dollars to attract, develop, and retain Canadian workers, including partnerships with primary and secondary schools, youth career awareness initiatives, scholarships and tuition reimbursements for post-secondary students, pre-employment training programs targeted at youth, Aboriginals, and other underrepresented groups and extensive advertising and job fairs.

While the current downturn in Alberta's economic climate has eased the pressure on labour shortages, lack of domestic workers and the necessity to access the Temporary Foreign Worker Program (TFWP) remains for certain skillsets.

In the last several years, numerous changes have been made to the TFWP. However, the program remains in several aspects unresponsive to the project-based needs of the construction sector. This paper will provide a brief overview of the recent changes to the TFWP, and identify three key areas that require change: efficient processing, labour market information, and flexible employment.

Overview of Recent Changes to TFW Program

June 2014 Reform

Under considerable public pressure, the Harper government made significant changes to the TFWP. The application process was made more rigorous, new restrictions were introduced for low-wage workers, and the compliance process and possible penalties were enhanced.

The Labour Market Opinion (LMO) process was replaced with a new more comprehensive and rigorous Labour Market Impact Assessment (LMIA) process. Application fees were increased from \$275 to \$1000. In addition to the previously required information under the LMO process, employers must now provide additional information including the number of Canadians that applied, were interviewed, and explanations for why those Canadians were not hired.

The June 2014 reforms separated the program into high-wage and low-wage streams. Temporary foreign workers being paid under the provincial/territorial median wage are considered low-wage, while those paid over are considered high-wage. Additional requirements for both low-wage and high-wage workers were introduced.

The duration of work permits set out in LMIAs is limited to a maximum of 1-year for all low-wage positions. Employers with 10 or more employees applying for a new LMIA are subject to a cap of 10% on the proportion of their workforce that can consist of low-wage TFWs. Additionally, LMIA applications for certain low-wage positions will not be processed in economic regions with an unemployment rate at or above 6%. Employers hiring high-wage workers are required to submit transition plans outlining steps that will be taken to transition to a Canadian workforce.

The reforms increased the number of inspections – 1 in 4 employers of TFWs will be inspected each year. Additional powers were provided to inspectors to assess 21 program requirements in each case. Employers must now keep all documents related to their applications for 6 years to allow for verification of compliance.

If an employer breaks the rules, or is suspected of breaking the TFWP rules, ESDC has the authority to suspend or revoke the employer's LMIA. Furthermore, since early 2014, the names of employers whose LMIAs are suspended, revoked or fined are being added to a public Blacklist website.

HUMA Committee Recommendations

On 21 March 2016, the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA Committee) adopted a motion to study the TFW Program, focusing on the current program and ways to improve it.

The fourth report of the standing committee was released on September 2016 and made twenty one recommendations for changes to the TFWP in nine areas: LMIA application fee, processing and timelines regarding LMIA applications, TFWP streams, transition plans, cap on the proportion of low-wage TFWs, low-wage positions in the Accommodation, Food Services and Retail Trade sectors, employer-specific work permits, Seasonal Agricultural Worker Program, pathways to permanent residency for all migrant workers, monitoring and enforcement.

March 2017 Commitments

In response to the HUMA Committee report, the Trudeau government introduced a number of changes in the March 2017 federal budget.

Employers will be required to do more to hire Canadians. Special emphasis will be on youth, new permanent residents, women, indigenous people and the disabled. Heavy users of TFWP will assist government in developing sectoral plans to transition Canadians into the workforce through more use of outreach and training programs.

The fee structure of the LMIA application will be reviewed to ensure it adequately reflects the costs of providing this service to TFW employers.

Compliance will be improved through increased worksite inspections of employers, making sure workers know their rights and protections on arrival.

Additionally, the federal government has committed to improved communication with provinces and territories.

Changes Required

Despite the changes from 2014 to the present, the TFWP remains unresponsive to the needs of the construction industry, specifically to the challenges posed by project based work. Processing times remain uncertain and lengthy, and constrain workforce planning. Labour market information used in the LMIA process does not always adequately capture the actual availability of required skills. The TFWP also lacks flexibility that would enable TFWs to efficiently transfer to fill shortages in available projects, resulting in duplication of administrative work and unnecessary applications.

Efficient Processing

Processing times for LMIA approval are variable, and can be unacceptably long, especially given the nature of construction project scheduling. Workers are often needed for a specific phase of a project that must be completed before the rest of the project may advance. Uncertainty in processing time may mean that approval is granted for a TFW after that worker is no longer required.

The HUMA Committee report recognizes that “the length of time it takes ESDC/Service Canada to process LMIA applications affects companies’ productivity and ability to generate revenue, and has an impact on the temporary foreign workers themselves whose work permit renewals are dependent upon a positive LMIA”¹.

While the accelerated 10-day processing of LMIAs for in-demand, high-wage, or short term occupations is in place, it is not clear whether the ESDC service standard² is trending in a positive direction or is addressing the needs of the construction industry.

Given the enhanced compliance reporting, inspections, and penalties for misuse, a Trusted Employer stream with streamlined requirements could reduce processing times while ensuring that employers remain compliant with program requirements. This stream would only be open to approved employers that have a demonstrated track record of compliance. As noted in the HUMA committee report, this Trusted Employer stream could be modelled after programs currently in use in the United Kingdom, Ireland and Australia.

Solutions:

Implement recommendation 2 of HUMA Committee report for ESDC to increase speed and efficiency of the LMIA application process, and allocate adequate resources towards training and meeting service standards.

Implement recommendation 3 of the HUMA Committee report calling on ESDC to develop a Trusted Employer Program with the objective of reducing processing timelines for employers who have demonstrated trustworthiness in their use of the TFWP.

Allocate ESDC resources and staff to a more collaborative role as consultants to employers. This would greatly assist small employers as they do not have the resources or knowledge of the program resulting in applications returned or rejected on small technicalities.

¹ House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities. Fourth Report. September 2016. p. 28

² ESDC service standards. <https://www.canada.ca/en/employment-social-development/corporate/transparency/service-standards.html>. Accessed April 27, 2017

Labour Market Information

Existing labour market information used in processing LMIA applications does not always accurately reflect the availability of domestic labour with the required skillset. National Occupation Classification (NOC) codes aggregate different sub-occupations. This leads to situations where a specialized sub-occupation may be in shortage, while the NOC code as a whole may have a surplus of available workers.

Collection of labour market information is not timely, and can misrepresent availability of labour. While unemployment statistics may indicate a surplus of workers in a specific occupation, work that is in the bidding stage could require all of the surplus workers and create a shortage. Conversely, some workers may be required for finishing construction when the majority of the workforce has finished and may be unemployed. Improved coordination between government, the construction industry, and construction owners to incorporate known project data would improve labour market information.

Solutions:

Implement recommendation 11 of HUMA Committee report for ESDC, businesses, and stakeholders to continue to monitor labour market needs and invest in better collection and retention of labour market information in Canada to adequately assess labour market needs.

Implement recommendation 13 of the HUMA Committee report calling on ESDC to improve the collection of labour market data and review the geographic zones used for determining unemployment rates, with a view to aligning the labour market conditions of more localized economies with the requirements of the Temporary Foreign Worker Program. ACA acknowledges the recent ESDC / Alberta Labour pilot program as one initiative to apply additional LMI to determine eligibility.

Project Based Work Requires Flexible Employment

Due to the nature of the work in the construction industry, workers must be flexible; moving between projects in different locations and between employers who have successfully bid work is the norm. The current structure of the TFWP does not support this flexibility, resulting in unnecessary applications to the program. Allowing TFWs flexibility to move across projects in different work locations, and across cooperating approved employers would reduce the number of TFWs necessary, and administrative burden for both employers and TFWP program staff. The HUMA Committee report also recognizes that tying TFWs work permits to single employers increases the chance of abuse or program misuse³.

A successful example of this approach exists in Alberta, where TFWs are brought in to work on maintenance projects in the oil sands are issued a work permit that allows them to switch between employers that participate in The Alberta Council of Turnaround Industry Maintenance Stakeholders (ACTIMS)⁴. Expanding this approach to the construction industry by issuing sector-specific work permits where supported by labour market information would increase the efficiency of the program while reducing costs.

³ House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities. Fourth Report. September 2016. p. 18

⁴ Alberta Council of Turnaround Industry Maintenance Stakeholders. <http://www.actims.ca/page/faq>. Accessed April 27, 2017.



Solutions:

Implement recommendation 13 of HUMA Committee report for ESDC to take immediate steps to eliminate the requirement for an employer-specific work permit, subject to appropriate measures to ensure temporary foreign labour is only utilized within the existing provisions of LMIA process, including sector and geographic restrictions.