



Canadian Association of
Professional Immigration Consultants

L'Association Canadienne des
Conseillers Professionnels en Immigration

***Review of Regulations
Amending the
Immigration and
Refugee Protection
Regulations
(Temporary Foreign
Workers)***

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About CAPIC

The Canadian Association of Professional Immigration Consultants (CAPIC) is the professional organization representing the interests of Canadian immigration and citizenship consultants. CAPIC has over 3400 members and advocates for competency, ethical conduct, and consumer protection in the immigration consulting industry.

CAPIC's mission is to lead, connect, protect, and develop the profession, serving the best interests of its members. It is the only association recognized by the Government of Canada as the voice of Canadian immigration and citizenship consultants.

CAPIC is a major immigration stakeholder and consults with federal and provincial governments on legislation, policy, and program improvements and changes.

Preamble

CAPIC is submitting this review in response to the public notice issued in the *Canada Gazette*, Part I, Volume 155, Number 28 regarding the *Regulations Amending the Immigration and Refugee Protection Regulations (Temporary Foreign Workers)*.

Executive Summary

CAPIC supports the proposed *Regulations Amending the Immigration and Refugee Protection Regulations* ("**Proposed Regulations**") and the Department of Citizenship and Immigration's efforts to increase protections for temporary foreign workers (TFWs), many of whom are particularly vulnerable in their working environments. CAPIC also appreciates that the Proposed Regulations will provide greater clarity for employers regarding their responsibilities, ensure greater compliance and help employers avoid costly reviews. CAPIC applauds measures to streamline regulatory overlap in the Temporary Foreign Worker Program (TFWP) and the International Mobility Program (IMP), which will provide greater clarity for workers, employers, and government officers.

CAPIC has also identified several areas of the Proposed Regulations where greater clarity is needed and recommends several actions which, if enacted, would support TFW rights while providing employers with more resources to avoid inadvertent non-compliance issues. With minor alterations, the Proposed Regulations will provide TFWs with stronger protection and enhance employers' existing compliance efforts.

Recommendations

The following recommendations are suggested to ensure the proposed amendments provide greater clarity for workers, clear compliance guidelines for employers, and enhance program integrity. Included in CAPIC's recommendations are a list of terms requiring greater clarification and definition, as well as several proposals intended to reduce audits and reviews. Further detail is also required to adequately explain how these amendments are impacted by the temporary measures implemented as a result of COVID-19 and the implications of temporary measures in potential future emergencies.

1.1 Providing information to temporary foreign workers about their rights in Canada

CAPIC agrees that providing TFWs with documentation about their employment rights in Canada is an essential part of their protection from abuse. Given the particular vulnerabilities of TFWs, CAPIC proposes that IRCC provide employment rights documentation directly to TFWs as part of their work permit issuance by the VISA post. The Proposed Regulations note that IRCC will provide information to employers who will in turn share that information with TFWs. However, a succinct summary of employment rights, prepared in the worker's first language (such as ESDC's "[Temporary foreign workers: Your rights are protected](#)" document, which is also available in Spanish), or in one of Canada's official languages, provided directly to the worker as part of the work permit package corresponds with the department's goal of enhancing worker protections.

Providing this information directly to workers removes additional steps, costs and compliance responsibilities from employers and ensures workers receive unobstructed information. Such documentation is provided directly to workers in other programs, such as pre-arrival services information sent via email prior to Confirmation of Permanent Residence (CoPR) issuance. This change would safeguard workers in the event of a potential non-compliant employer. To maximize understanding and increase accessibility, additional communication modes can also be explored, including video messaging.

1.2 Providing an employment agreement to the temporary foreign worker

The Proposed Regulations need greater clarity regarding "employment agreements". Employment agreements vary by region and some workers, such as C-13 service workers, intracompany transferees who work in Canada intermittently as an expansion of their role in their home countries, those working on service contracts, and the self-employed have terms of employment that typically place them outside the boundaries of employment agreements.

To accommodate both irregular types of employment described above and to fulfill the requirements of protecting TFWs, CAPIC recommends that employers be required to provide a copy of the Employment Agreement in situations where the employer has a direct relationship with the employee.

1.3 Amending the definition of "abuse" to include "reprisal" against temporary foreign workers

CAPIC believes that the inclusion of "reprisals" as a type of workplace abuse is a dangerous precedent without additional clarification of the term. Like other forms of workplace abuse, determining if an employer's action is a reprisal is difficult and challenging. Indicating what constitutes a reprisal is crucial for this inclusion. If such determinations cannot be made clearer, CAPIC recommends removing this term from the amendments.

1.4 Prohibit employers from charging or recovering fees for the provision of services in relation to an LMIA, employer compliance fee and recruitment fees and require that employers ensure that any recruiters they use do not charge these fees

Without a clearer definition of “recruitment fees” this provision is open to circumvention and abuse by employers and misinterpretation by department officers. The department’s objective can be achieved with greater precision about what constitutes recruitment service fees and clarifying in the Proposed Regulations that professional fees for immigration services are not included in this provision.

1.5 Protecting the health and safety of temporary foreign workers

b. Private health insurance for emergency medical care (TFWP only)

CAPIC recognizes the importance of this provision as an effort to protect vulnerable workers from existing gaps in provincial healthcare coverage. However, without additional information regarding coverage during in-Canada work permit renewals, the potential exists for inadvertent non-compliance as employers may not be aware when a worker’s provincial healthcare coverage ends. Employers would also benefit from this clarification, as processing delays for work permits might result in unintentional non-compliance failures, which lead to costly and unnecessary reviews.

2.1 Requiring documents from third parties

Greater definition of who is considered a “third party” and what their relationship is to the employer and the worker is needed. CAPIC is concerned that this measure, as currently written in the Proposed Regulations, undermines the rights of clients who choose to hire immigration consultants. Immigration consultants do not currently have regulations approving client confidentiality, while lawyers do. CAPIC recommends greater clarity regarding what triggers a third-party request.

2.2 Reducing timelines to respond to notices of preliminary findings

CAPIC proposes keeping the response time at 30 days and not reducing it to 15 days. For employers to adequately respond to a Notice of Preliminary Finding (NoPR), the proposed 15-day grace period must be amended. A standardized 30-day period for such reviews would allow employers time to obtain records and material from third parties and organize responses while eliminating the need for costly and time-consuming NoPR extension requests and reducing departmental burdens. CAPIC believes there is no cost benefit to the government or the employer by modifying the response time and that it may in fact cost the department and employers more to make this change.

2.3 Suspend processing of a request for an LMIA when there is reason to suspect employer non-compliance with certain regulatory conditions

CAPIC fully supports the government's goal to protect vulnerable workers from exploitation. Mechanisms and procedures for investigating and deciding allegations of abuse must be transparent for both the employer and the TFW to truly protect workers. CAPIC is concerned about the complex issue of foreign nationals knowingly paying for employment as a method to secure entry to Canada. While some foreign nationals are complicit in LMIA-buying schemes, many are often compelled to pay for legitimate

LMIA because they believe it is their only option to secure better paying jobs. With the department's stated goal of enhancing TFW protections, CAPIC believes this practice should be discouraged and properly policed. Introducing a complaints mechanism for TFWs to recover fees that should have been paid by the employer would enhance both worker protections and employer compliance.

2.4 New assessment requirements for employers applying for an LMIA

As part of the assessment requirements for new employers applying for an LMIA, the Proposed Regulations state that applicants "have not been an affiliate of an employer who is ineligible for the program". CAPIC suggests that defining criteria for "affiliate" be included in the amendments to provide employers and government officers with greater clarity on the types of relationships this requirement includes.

Regulatory analysis

Costs to employers

When calculating the compliance cost for employers, the cost analysis provided in the Proposed Regulations does not consider certain likely costs for small businesses. To ensure compliance, employers may be obliged to hire new or additional human resource specialists or counsel to review new requirements, such as the provision for employment contracts, and to ensure compliance with provincial and federal law. Compliance information is not presented in a convenient handbook, and those who have not hired outside counsel would be required to devote a significant amount of time to ensure compliance. The regulatory analysis in the Proposed Regulations should accurately address the financial and time commitment it requires of employers.

Provide proactive compliance guidance for employers

In the spirit of protecting the rights of TFWs, it is desirable employers comply with program requirements from the outset. Many employers hiring TFWs are unfamiliar with existing regulations for a variety of reasons and make preventable errors in terms of compliance. Such errors trigger reviews that are costly and time consuming for both the government and the employers to complete. The department can take a more proactive approach by providing short, easy to understand compliance guidance to employers. This guidance could include topics such as details about what type of documents are required for an ECR or a list of common compliance issues and errors. This information can take the form of fact sheets, checklists, or short instruction videos to provide broad accessibility and uptake. Additionally, such a proactive measure will curtail the burden and expense of compliance reviews.

Conclusion

The Proposed Regulations strengthen existing protections for TFWs while providing employers with additional clarity regarding their responsibilities and obligations. As a result, should these amendments be adopted, CAPIC anticipates greater TFW satisfaction, increased employer compliance, and a reduction in government investigations.

CAPIC has indicated that more detailed definitions of key terminology would further the department's goal of enhancing protections for TFWs. In addition, CAPIC has proposed minor improvements to the Proposed Regulations that would serve to enhance employer compliance and provide workers with unobstructed access to information pertaining to their rights.

CAPIC thanks the Department of Immigration for the preparation of these amendments, as well as IRCC and ESDC for the opportunity to participate in stakeholder consultation during this process.