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PUBLICATION

Employment and Social Development Canada Announces Further Changes to the LMO Process

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Background

As previously discussed in the June 2013 issue of Blaneys on Immigration, on April 29, 2013, the Minister of Human Resources and Skills Development ("HRSDC") and the Minister of Citizenship, Immigration and Multiculturalism announced that they would be introducing numerous changes to the Temporary Foreign Worker Program ("TFWP"). Employment and Social Development Canada ("ESDC"), formerly known as HRSDC, has now announced changes to the Labour Market Opinion ("LMO") application process, which are effective as of July 31, 2013. Each of these changes is described below.

LMO Application Fee

Effective July 31, 2013, employers who submit LMO applications on behalf of Temporary Foreign Workers ("TFWs") will be required to pay a processing fee of $275 CAD for each position requested; prior to this date, no fee applied to the filing of an LMO application. However, this LMO processing fee will not apply to positions under the Seasonal Agricultural Worker Program ("SAWP"), the Agriculture Stream, or on-farm primary agricultural positions listed under *National Occupational Classification* ("NOC") Codes 8251, 8252, 8253, 8254, 8256, 8431, 8432 and 8611.

Employers must now complete the LMO application and the processing fee payment form, and submit both items along with the required processing fee payment. The total payment must reflect the number of TFW positions requested on the LMO application. The processing fee payment (in Canadian dollars) can be made by:

- Certified cheque (payable to the Receiver General for Canada);
- Money order (postal or bank);
- Visa;

- MasterCard; or
- American Express.

Employers and third-party representatives may not attempt to recover the LMO processing fees from the TFWs who are the beneficiaries of the LMO application.

ESDC must receive the entire processing fee along with the required documents before it will assess the employer's LMO application. LMO applications received prior to July 31, 2013 will not be subject to the new processing fee. However, applications received with a postmark dated July 31, 2013 (or later) without the processing fee will not be assessed.

There will be no refund in the event of a negative LMO or if the application is withdrawn or cancelled since the fee covers the process to assess an application and not the outcome. Refunds will only be available if a fee was collected in error (i.e. an incorrect fee amount was processed).

Language Restrictions

Effective July 31, 2013, amendments to the *Immigration and Refugee Protection Regulations* (SOR/2002-227) come into force. As a result of these amendments, English and French are now the only languages that can be identified as a job requirement, both in LMO requests and in advertisements by employers applying to hire TFWs, unless employers can demonstrate that another language is essential for the job. However, the language restriction does not apply to positions under the SAWP, the Agriculture Stream, or on-farm primary agricultural positions listed under NOC Codes 8251, 8252, 8253, 8254, 8256, 8431, 8432 and 8611.

Advertising requirements are the primary mechanism used to ensure that Canadians are aware of employment opportunities and the language restriction will help ensure that Canadians are given every opportunity to apply for available jobs. The onus will be on employers to demonstrate that a language other than French or English is an essential requirement of the job.

Employers advertising a job for a position that legitimately requires a language other than English or French must clearly demonstrate, in writing, that the language requested is consistent with the regular activities of the job (i.e. a translation company hiring a translator to work in a language other than English or French, or a tour company catering to foreign tourists only in a non-official language).

ESDC staff will assess the employer's rationale for requesting a language other than English or French in relation to the occupation and information included in the LMO application. It will issue a negative LMO if the rationale does not demonstrate that the requested non-official language is an essential requirement of the job.

New Advertising Requirements

As of July 31, 2013, ESDC has increased the minimum recruitment requirements that employers will need to follow when submitting an LMO application. However, the new advertising requirements will not apply to:

- The Live-in Caregiver Program;
- Positions related to on-farm primary agriculture (specifically under NOC Codes 8251, 8252, 8253, 8254, 8256, 8431, 8432 and 8611);
- The SAWP; or
- The Agricultural Stream.

Employers must advertise available positions in Canada for at least four weeks before applying for an LMO; this requirement applies to all advertising methods. Previously, employers were only required to advertise for two weeks during the three months prior to the filing of the LMO application. In addition, for NOC 0 and A occupations, employers were permitted to conduct similar recruitment activities consistent with the practice within the occupation (with no minimum period specified), instead of advertising the position in the national Job Bank; the two week advertising period only applied if the employer chose to advertise in the national Job Bank.

HIGHER-SKILLED OCCUPATIONS

Under the new requirements, employers seeking to hire a TFW in a higher-skilled occupation (NOC 0, A, or B) must advertise:

- On the national Job Bank or its provincial/territorial counterpart in British Columbia, Saskatchewan, the Northwest Territories, Quebec or Newfoundland and Labrador:
- The advertisement must be posted for a minimum of four weeks starting from the first day the ad appears and is accessible to the general public.
- The advertisement must remain posted to actively seek qualified Canadians and permanent residents until the date that an LMO is issued.
- Using two or more additional methods of recruitment consistent with the normal practice for the occupation:
- As a minimum, employers must choose one method that is national in scope, since people in higher-skilled positions are often mobile and willing to re-locate for work; and
- Employers can choose one or more recruitment methods among these: (i) print media (national or provincial/territorial newspapers, national journals, magazines with national coverage, specialized journals, professional associations magazines, newsletters, etc.); (ii) general employment websites (i.e. canadastop100.com, vault.com, workopolis.com, monster.ca, etc.); and (iii) specialized websites dedicated to specific occupation profiles (i.e. accounting, marketing, biotechnology, education, engineering, etc.).
- The advertisement must be posted for a minimum of four weeks starting from the first day the ad appears and is accessible to the general public.

LOWER-SKILLED OCCUPATIONS

Under the new requirements, employers seeking to hire a TFW in a lower-skilled occupation (NOC C or D) must advertise:

- On the national Job Bank or its provincial/territorial counterpart in British Columbia, Saskatchewan, the Northwest Territories, Quebec or Newfoundland and Labrador:
- The advertisement must be posted for a minimum of four weeks starting from the first day the ad appears and is accessible to the general public.

- 2. The advertisement must remain posted to actively seek qualified Canadians and permanent residents until the date that an LMO is issued.
- Using two or more additional methods of recruitment consistent with the normal practice for the occupation:
- Employers can choose one or more recruitment methods among these: (i) print media (local newspapers, job boards, youth magazines etc.); and (ii) general employment websites (jobboom.com, workopolis.com, monster.ca, etc.).
- The advertisement must be posted for a minimum of four weeks starting from the first day the ad appears and is accessible to the general public.
- Targeting underrepresented groups:
- Employers can: (i) try to recruit workers from local or provincial/territorial employment centres, service centres for Aboriginal youth, new immigrants and people with disabilities; (ii) offer bursaries to attract students or youth, pursue online recruitment strategies, or undertake ongoing advertising and interviews in order to maintain a pre-screened applicant pool.

CONTENT OF ADVERTISEMENT

The advertisement must include the following information:

- Company operating name;
- Business address;
- Title of position;
- Job duties (for each position, if advertising more than one vacancy);
- Terms of employment (e.g. project based, permanent position);
- Wage (refer to Wages, Working Conditions and Occupations tab to determine the established rate for the specific occupation and geographic area);
- Benefits package being offered (if applicable);
- Location of work (local area, city or town);
- Contact information (telephone number, cell phone number, email address, fax number, or mailing address); and
- Skills requirements:
- Education; and
- Work experience.

Third-party representatives or recruiters can be the main contact for any job advertisements posted on behalf of the employer. However, the ad must be listed under the employer's Canada Revenue Agency Business Number.

PROOF OF ADVERTISEMENT

Employers will be required to demonstrate that they meet the advertising requirements by providing proof of advertisement and the results of their efforts to recruit Canadian citizens and permanent residents (i.e. a copy of advertisement and information to support where, when and for how long the position was advertised). Records of the employers' efforts should be kept for a minimum of 6 years. ESDC may request these documents in connection with future assessments.

New LMO Application Form

As of July 31, 2013, the new LMO application form includes additional questions that must be answered by the employer. These questions were added to help ensure that the TFWP is not used to facilitate the outsourcing of Canadian jobs.