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PUBLICATION

Employing Temporary Foreign Workers in Agri-Business During COVID-19

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There has been great controversy over Canadian employers bringing temporary foreign workers to Canada during the COVID-19 pandemic. Many Canadians are currently out of work and wonder why foreign workers are being given jobs instead of Canadians. However, in the midst of the pandemic, there is great need to sustain the food supply in Canada. Foreign workers from countries such as Mexico have the expertise needed to work in agri-business, whereas many Canadians do not.

In an effort to support food security during the uncertain time of COVID-19, the Government of Canada has decided to temporarily relax some requirements for employers seeking to bring in temporary foreign workers in the Agriculture, Food Processing, and Trucking industries. These relaxed requirements allow employers to get these vital workers to Canada, and keep them here longer, with less of the administrative burden that ordinarily goes hand-in-hand with Labour Market Impact Assessment applications (LMIAs). For example, the ordinary recruitment requirements for LMIAs in these industries are waived until October 31, 2020, the maximum duration of employment has been increased from 1 to 2 years, and no new Housing Inspection Reports are needed if the employer has a previously valid one.

However, being a Canadian employer with foreign workers during the COVID-19 emergency comes with added risks, responsibilities, and liabilities. It has been widely-reported by the mainstream media that some temporary foreign workers have been diagnosed with COVID-19 on farms in Ontario, with one COVID-19 reported death of a 32 year old foreign farm worker so far. To help avoid such outbreaks and catastrophic consequences, the Government has introduced new requirements for the employer to facilitate social distancing, both on the job and in housing. These requirements on employers are strict and subject to audits by Employment and Social Development Canada ("ESDC"). If found in contravention, the employer is subject to very strict penalties, including fines of up to $1 million, publication of the employer's business

name and details of the contravention, and a ban from hiring foreign workers in the future. Some of these new requirements are discussed below.

All temporary foreign workers touching down during COVID-19 must quarantine for a 14-day period. During this 14-day period, the employer is required to provide housing which ensures workers remain 2 meters apart. This includes providing adequate space for workers to be 2 meters apart in bedrooms, dining areas, kitchens, bathrooms, and all living spaces. Any time a new temporary foreign worker arrives and moves into the same housing as workers that are already there, all of the workers are required to re-start the quarantine period. The employer is required to also provide food during the quarantine period and pay all of the workers a minimum of 30 hours pay per week at the hourly rate of pay specified in the workers' LMIA or offer of employment, even if that workers' 14-day quarantine period is extended for any reason. In addition, the employer is required to provide space for any worker that needs to self-isolate, such as accommodation that is completely separate from where the other workers are housed. This requirement may force some employers without such separate spaces to commit to paying for a hotel if a worker needs to self-isolate.

Simply facilitating social distancing is not enough for the Canadian employer of temporary foreign workers. Employers must also monitor the health of workers on a daily basis who are in quarantine or any worker who becomes sick. The employer has a responsibility to contact local public health officials if any worker becomes symptomatic. The employer must also provide workers with access to tools to practice good hygiene. This includes provision of sanitation facilities and products such as soap, sanitizer, gloves and masks. In addition, employers must provide workers with information about how to properly social distance and sanitize to stop the spread of COVID-19, such as through signage or other informational booklets, in a language that the worker understands.

Employers must be more careful than ever before in the way they house and deal with temporary foreign workers. The requirements listed in this article are not exhaustive of all that is required from employers at this time. The immigration lawyers at Blaney McMurtry have experience responding to these COVID-19-related audits by the ESDC and would be happy to advise employers of temporary foreign workers about their new responsibilities, or to assist them in responding to audits.

The information contained in this article is intended to provide information and comment, in a general fashion, about recent cases and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific legal advice, please contact us.