

Mobility: immigration alert

May 2020

Canada

COVID-19: new legal requirements for employers of temporary foreign workers in Canada

Executive summary

In response to the current COVID-19 pandemic, the Canadian Government has passed new regulations imposing new conditions on employers of temporary foreign workers in Canada. With certain limited exceptions, foreign nationals, along with Canadians and permanent residents arriving in Canada, are subject to a mandatory 14-day self-isolation requirement. In order to better ensure compliance with this requirement, the following new compliance conditions are being imposed on employers of temporary foreign workers:

- ▶ The employer must not do anything that prevents the foreign national from complying with an order under the Quarantine or the Emergencies Acts;
- ▶ The employer must not do anything that prevents the foreign national from complying with provincial public health laws; and
- ▶ For the period of self-quarantine, the employer must provide the foreign national with their wages as set out in the offer of employment, or in the case of a Labour Market Impact Assessment (LMIA) based work permit, the approved LMIA. This requirement exists regardless of whether the foreign national is able to work during the quarantine period.

In addition to the above, there are further conditions imposed on employers of LMIA-based workers who also provide accommodation to their employees. The underlying goal of these additional conditions is to

ensure that safe accommodations are provided during quarantine and that the employees can safely practice social distancing during the period of quarantine.

Inspections

Service Canada has the authority to conduct an inspection, with or without prior notice, in order to verify the employer's compliance with conditions under the Temporary Foreign Worker Program (TFWP), including within the first 14 days of the temporary foreign worker's arrival. If selected, employers will be contacted by phone or email and have 48 hours to provide specific documentation by email or through an online portal.

The new regulations will impact Canadian employers who have hired a foreign national through the TFWP, specifically those who have obtained a work permit based on a positive LMIA immediately, Service Canada investigators will begin conducting inspections that will focus on employer's compliance with the new requirements, which are aimed at ensuring the safety of foreign workers during the COVID-19 pandemic.

During the course of the inspection, employers may be asked for a virtual tour of the accommodations (if applicable) and/or work facilities to verify compliance with these requirements. Some workers may also be contacted for interviews conducted by phone or video conference.



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EYG no. 002750-20Gb1

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If an illness related to COVID-19 is detected, Service Canada will provide this information to local public health officials who will take further action. In the event an employer is found non-compliant with their legal obligations, an Administrative Monetary Penalty (AMP) may be levied against the employer. The AMP can include monetary fines of up to CAD \$1 million, bans on hiring foreign workers and revocation of previously issued LMIA's.

Recommendation

We recommend that employers maintain detailed information about their employee's travel and arrival to Canada, and their 14-day quarantine or isolation plan. It is also important that employers pay the foreign national(s) wages, based on the wage indicated in their LMIA, or in the case of an LMIA-exempt permit, in accordance with the Offer of Employment registered with Immigration, Refugees and Citizenship Canada ("IRCC"). Should an employer provide accommodations, they must also ensure that workers are provided with cleaning and disinfecting supplies regularly, and that workers are separated from other workers who are not in isolation or under quarantine. In the event of an inspection, employers should be able to provide items such as proof of wages, photos of accommodations, photos of private isolation space and proof of adequate supply of sanitation products.

Conclusion

EY Law will continue to monitor the situation closely, including the possibility for further changes to the rules and regulations surrounding employer compliance inspections. For further details on these changes, please visit: <https://www.canada.ca/en/employment-social-development/services/foreign-workers/employer-compliance.html> or contact your EY Law professional.

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