



Temporary Foreign Worker Program

CFA Roundtable

May 3, 2018

Objectives

- Demystify the compliance regime
 - Evolution of the compliance regime and factors shaping the way forward.
 - Basics of the compliance regime
 - More in-depth look at recent questions raised by the agriculture sector
 - Facts and figures
- Engage in a dialogue on what works well and ideas for improvement.



A Brief History on the Compliance Regime

- The compliance regime has evolved since its inception in 2011 when it was predominantly undertaken through administrative reviews and focused on wages, occupation and working conditions.
 - December 31, 2013 - Expanded inspection authorities allowing integrity officers to: assess up to 21 conditions (an increase from 3), conduct on-site inspections (with or without notice) and interview workers; (Annex A)
 - December 1, 2015 - An administrative monetary penalty (AMP) and ban regime was established allowing the Department to apply consequences that are commensurate with the type and severity of employer non-compliance;
 - April 1, 2017 - Implemented a predictive model to target resources using a risk-based approach; and
 - February 27, 2018 - Budget 2018 announced funding to implement unannounced inspections in areas of highest risk.



Shaping the Way Forward

- The 2016 Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA) report on the Temporary Foreign Worker Program concluded that government services do not sufficiently support temporary foreign workers. Recommendations included:
 - Information sharing with provinces and territories; and
 - On-site inspections.
- The Auditor General's Spring Report (2017) made similar recommendations:
 - Conduct more on-site inspections;
 - Explore the feasibility of implementing unannounced on-site inspections;
 - Implement a risk-based approach for inspections;
 - Streamline administrative decision-making processes; and
 - Develop and finalize Information Sharing Agreements with provinces.
- Feedback from employers, TFWs and environmental scans serve to provide insight for change.



The Basics About the Compliance Regime

- ESDC is mandated to undertake employer compliance activities.
 - Potential criminal matters are forwarded to law enforcement agencies such as the Royal Canadian Mounted Police and the Canada Border Services Agency.
- As of 2017-18, compliance activities primarily consist of on-site inspections, but also include a smaller number of administrative reviews (in total approx. 2800 cases per year or about 10% of employers with a positive LMIA)
 - Inspections can be conducted with or without advanced notice.
- Administrative reviews and inspections may be triggered for three reasons:
 1. There is reason to suspect non-compliance;
 2. There has been past non-compliance; and
 3. The employer has been randomly selected.
- The predictive model, established in April 2017 and the tip line and web reporting tool provide information to better align resources with areas of potential risk.



The Basics About the Compliance Regime

- The Department works with Employers to bring them into compliance.
 - In approximately 45% of the integrity cases completed last fiscal year employers willingly made corrections to become compliant following an initial assessment.
 - There are no sanctions applied to these employers.
- Employers found non-compliant prior to December 1, 2015,
 - Will be banned from using the TFWP and the International Mobility Program for two years,
 - Will have their names published on the list of employers who have been found non-compliant, on the Immigration, Refugees and Citizenship Canada's (IRCC) website.
- Employers found non-compliant post December 1, 2015, may be subject to:
 - Warnings;
 - Penalties of \$500 to \$ 100,000 per violation (up to a maximum of \$1M in a year);
 - Bans of 1, 2, 5 or 10 years (or permanent bans for egregious cases);
 - LMIA Revocations; and
 - Their name published on the IRCC website along with details of non-compliance.



Taking a Closer Look at Specific Agriculture Sector Concerns - onsite inspections

- Inspectors aim to mitigate any potential disruption to daily business activities and to accommodate employer requests while conducting their on-site inspection activities.
 - For example, an unannounced inspection of a restaurant would not be conducted during the lunch hour.
- In addition, inspectors are directed to be aware of and respect other business realities such as sector specific hazards (e.g. biohazards). (Annex B)
- Prior to an unannounced on-site inspection a thorough assessment of the particular risks and hazards of the inspection site will be undertaken.
 - Reviewing the sector profiles from the Canadian Centre for Occupational Health and Safety and/or the Canadian Food Inspection Agency (CFIA).
 - Inspectors also review the business specific information provided by employers on their LMIA applications.
 - Continue to work with AAFC and CFIA to ensure training and guidelines reflect industry standards.



What Inspectors Cannot Do During an On-Site Inspection (with or without advance notice)

Inspectors cannot:

- Arrive on-site and begin their inspection without first announcing themselves to the employer or their on-site representative;
- Enter a private dwelling of an employer without their consent or a warrant;
- Access an employer's computer themselves and conduct a search for relevant documents; and
- Ask for any document or record if it is not relevant to compliance with program requirements.



What Can Inspectors Do During an On-Site Inspection (with or without advance notice)

Since **December 31, 2013**, ESDC/Service Canada has had authorities through the *Immigration and Refugee Protection Regulations* to conduct an on-site inspection in order to verify compliance with TFW Program conditions as detailed in the positive LMIA and annexes. In order to collect relevant information to verify compliance inspectors can:

- a) ask the employer and any person employed by the employer any relevant questions;
- b) require that the employer provide documents and allow the officer to examine the worksite/accommodations provided to the TFWs;
- c) make copies of documents on-site, or require the employer to make copies of documents, or remove documents from the location in order to make copies;
- d) take photographs and make video or audio recordings;
- e) require the employer to use any computer or other electronic device in the premises or place to allow the officer to examine any relevant document contained in or available to it; and**
- f) be accompanied or assisted in the premises or place by any person required by the inspector.



Inspections and Labour Market Impact Assessments

- In most cases on-going inspections do not impact the processing of LMIA's.
- LMIA's will be held in pending status however when there is reason to believe that health and safety of a foreign worker is at risk (e.g. accommodations or abuse).
- These inspections are prioritized to ensure that the worker is protected and to prevent unnecessary LMIA processing delays.
- Once it is determined that the specific issue has been resolved, processing of the LMIA application will resume.
- The inspection does not need to be fully concluded prior to resumption of LMIA processing.

A Snap Shot in Time: (April 26, 2018)

- 5,100 pending LMIA's of which 864 were in primary agriculture
- Of those 189 were pending as a result of an inspection
- 71 of the 189 were in agriculture



2017-18 Integrity Regime in Numbers

TFWP Integrity Activities	National (All Streams)	Primary Agriculture (Percentage)
Number of Employers with a Positive LMIA	19,621	3875 (20%)
Cases Completed	2,888	402 (14%)
Employer Correction as a % of inspections completed	1317 (46%)	127 (32%)
Non-Compliant	32	1 (3%)
Tips Received	1,233	242 (20%)
Tips Referred for Inspection	322	119 (37%)
Tips Referred to Enforcement Agencies	205	84 (41%)



Key Issues Often Identified During an Inspection

Record Keeping

- All information, documents, and records with respect to the TFW Program must be kept for 6 years after the positive LMIA is issued.
- Inspections can be slowed down when incomplete records are provided, or when employers do not respond to requests for information .

TFW Compensation

- Wages/overtime/vacation do not match what is on the positive LMIA issued to the employer and/or provincial standards.
- Requesting explanations and clarification for these items extends the time it takes to complete an inspection.

Accommodations

- Do not meet the minimum criteria required.
- Do not match the information on the approved housing inspection report provided as part of the LMIA application.



Communicating Program Compliance Requirements

- The Department has taken a number of steps to ensure that employers are made aware of the compliance regime and their obligations. Information is provided:
 - On LMIA applications, as well as on the positive LMIA issued to employers;
 - On the Canada.ca website <https://www.canada.ca/en/employment-social-development/services/foreign-workers/employer-compliance.html>;
 - Through presentations to stakeholders including employer associations (e.g. FARM, FERME, Canadian Bar Association); and
 - Through email communications to employers and stakeholder groups.
- However, more can be done to ensure awareness, share best practices and practical steps to ensure an efficient process. Employers view will help shape future communications.



Annex A: Summary of Inspection Conditions

1. Have provided each foreign worker with employment in the same **occupation** as stated in the offer of employment.
 2. Have provided each foreign worker with **wages** that are substantially the same as those in the offer of employment.
 3. Have provided each foreign worker with **working conditions** that are substantially the same as those in the offer of employment.
 4. Have provided **accurate information** in the context of an LMIA application.
 5. Are **actively engaged** in the business for which the offer of employment was made, unless the offer was made for employment as a live-in caregiver.
 6. Are in **compliance with F/P/T laws** that regulate employment and recruitment in the province/territory in which the foreign worker is employed.
 7. Have **met any specific agreed-to commitments**, as set out on the positive LMIA, made at the time the LMIA was issued in relation to **job creation for Canadians and permanent residents**.
 8. Have met any specific agreed-to commitments, as set out on the positive LMIA, made at the time the LMIA was issued in **relation to job retention for Canadians and permanent residents**.
 9. Have met any specific agreed-to commitments, as set out on the positive LMIA, made at the time the LMIA was issued in **relation to hiring Canadians and permanent residents**.
 10. Have met any specific agreed-to commitments, as set out on the positive LMIA, made at the time the LMIA was issued in relation to **training Canadians and permanent residents**.
 11. Have met any specific agreed-to commitments, as set out on the positive LMIA, made at the time the LMIA was issued in relation to **development of skills and knowledge for the benefit of Canadians or permanent residents**.
 12. Have met any specific agreed-to commitments, as set out on the positive LMIA, made at the time the LMIA was issued in relation to **transfer of skills and knowledge for the benefit of Canadians or permanent residents**.
 13. Have made reasonable efforts to provide a **workplace that is free of abuse**
- AND generally:**
14. **Retain any document** that relates to compliance with these conditions for a period of six years, beginning on the first day of employment of the foreign national.
 15. **Report** at any specified time and place to answer questions and provide documents.
 16. **Provide** any documents required as part of an inspection.
 17. **Attend** any inspection that is on premises.
 18. **Give all reasonable assistance** to the person conducting the inspection and provide any document or information the person requires.
- Employers of live-in caregivers must also**
19. Ensure the foreign worker resides in a private household and provides child care, senior home support care or care of a disabled person in that household without supervision.
 20. Provide the foreign worker with adequate furnished and private accommodations in the household.
 21. Have sufficient financial resources to pay the foreign worker the wages offered.



Annex B - On-Site Inspections: Identifying/Mitigating Potential Hazards Including Biosecurity

- In February 2018, Service Canada updated the LMIA application to ask employers to identify any specific safety concerns or hazards associated with their business activity.
- Service Canada inspectors undertake a number of steps to identify and mitigate any potential hazards, including those associated with biosecurity (including food and safety regulations or biosecurity measures) for example:
 - Prior to going on-site, complete research on the employer and relevant sector, to identify any potential risks, including biohazard concerns (Such as reviewing sector profile information available from Canadian Centre for Occupational Health and Safety and the Canadian Food Inspection Agency);
 - Take necessary precautions to mitigate any risks identified in consultation with the employer and respect the protocols identified by the employer;
 - Respect biosecurity measures of farms; and
 - Ensure minimal disruption to the employer's business.
- To date there have been no reports of issues related to biohazards with respect to conducting on-site inspections.

