

Fostering Trust and Compliance

A roundtable discussion on International Farm Worker Programs



May 3rd, 2018
Summary Report



Fostering Trust & Compliance: Executive Summary

The Canadian Federation of Agriculture convened a day-long discussion focused on fostering trust and compliance in Canada's international farm worker programs. This outcome-based roundtable discussion brought together a broad range of industry, departmental and elected officials to address fairness and efficiency within the Temporary Foreign Worker Program (TFWP). In light of recent challenges that have arisen with TFWP service delivery, two focal points were identified:

1. Efficiency & transparency in TFWP processing; and
2. Fairness & effectiveness in the TFWP Integrity Regime.

Following in-depth discussions on both topics, a wide range of proposed solutions were suggested to address the specific concerns raised on both fronts. This report provides a summary of the discussions, including lists of the specific interventions and initiatives that would help mitigate ongoing employer concerns and, ultimately, foster enhanced trust and compliance within the TFWP.

The discussion noted measures that would contribute to a fair and effective integrity regime centred around three key themes:

1. Developing more proactive consultation on forthcoming policy initiatives;
2. Establishing a common understanding of compliance issues and activities; and
3. Increasing employer engagement and education.

Similarly, on the efficiency and transparency of TFWP processing, two general areas for improvement were noted:

1. Improving service delivery through more efficient processing and increased transparency;
2. Reducing undue administrative reporting burden; and
3. Better employer awareness of process requirements to reduce delays.

While a number of potential outcomes were proposed to address concerns in these areas, **three key recommendations** came to the fore in the discussion.

First, the need for an ongoing service delivery working group, comprised of industry representatives and departmental officials from ESDC, IRCC, and AAFC that meets on a regular basis. Through regular meetings, this working group would provide a critical venue to promote transparency through proactive consultation, co-creation of communication materials, and triaging of critical employer concerns. This working group needs to be actively engaged, on an ongoing basis, in discussing key issues and potential solutions that affect employers with respect to Service Delivery, including LMIA processing and inspections, such as the Service Standard Review process that was announced during the meeting. Representatives of the Agriculture and Agri-food Labour Task Force (LTF) were suggested as ideal working group members to ensure broad representation and effective communication with the entire industry.

Second, the value of employer education as a means of promoting compliance, trust in the program, and sharing of best practices. Through such education, program requirements would be better understood, reducing administrative burden for employers and government, while promoting the protection of worker and employer rights.

Third, the importance of implementing a client-centric approach to service delivery that ensures accountability to clearly defined service standards, consistency in program implementation, and benchmarking to drive continuous improvement.

Further details are included below, but CFA is committed to working in partnership with government and industry stakeholders to work towards enhancing trust and compliance throughout the agricultural streams of the Temporary Foreign Worker Program.

Introduction

On May 3rd, 2018, the Canadian Federation of Agriculture (CFA) hosted a series of discussions sessions – co-chaired by Ron Bonnett, CFA President, and Rodger Cuzner, Parliamentary Secretary to the Minister of Employment, Workforce Development and Labour. These discussions brought over 40 agriculture and agri-food industry representatives together with officials from Employment and Social Development Canada (ESDC), Service Canada, Agriculture & Agri-food Canada (AAFC), and Immigration, Refugees and Citizenship Canada (IRCC) to discuss steps to improve the fairness, efficiency and transparency of service delivery in the Temporary Foreign Worker Program (TFWP) and the associated integrity regime.

At the outset of the day's proceedings, Parliamentary Secretary Rodger Cuzner noted ESDC's commitment to meaningfully improve service delivery within the TFWP. This commitment was highlighted through three new initiatives to improve Labour Market Impact Assessment (LMIA) processing and the TFWP integrity regime:

1. Streamlining replacement and worker transfer processes - Employers seeking replacement workers or worker transfers will no longer be required to undertake additional advertising for already approved LMIA's.
2. Launch of a service standard review - As announced as part of the April 2017 Path Forward Plan for the TFW Program, ESDC is undertaking a service standard review to identify ways to increase the speed and efficiency of the LMIA process and to consider whether to establish service standards. This review will run concurrently with the TFWP's primary agriculture review.
3. A commitment to work with industry to explore opportunities to improve communications regarding the TFWP - ESDC will undertake a series of measures to improve transparency, such as posting TFWP policies that previously were not available on the website, and other measures determined in consultation with industry.

Following these announcements, a panel of representatives from AAFC, ESDC, the Canadian Agricultural Human Resource Council (CAHRC) and academia provided a series of presentations outlining the importance of the agriculture and agri-food sector to the Canadian economy, ongoing initiatives underway to improve the TFWP, the labour challenges facing Canadian producers, and the benefits that result from the TFWP, domestically and abroad.

The highlight of the day's proceedings was a Ministerial roundtable discussion which focused on ensuring effectiveness and fairness within TFWP processes. CFA was pleased to have the following elected officials engage in this important discussion:

- The Honourable Patty Hajdu, Minister of Employment, Workforce Development and Labour;
- The Honourable Lawrence MacAulay, Minister of Agriculture & Agri-food; and
- Serge Cormier, Parliamentary Secretary to the Minister of Immigration, Refugees and Citizenship

Subsequent panels throughout the day featured ESDC and Service Canada officials, who provided overviews of the processing and integrity regimes, initiatives underway to improve service delivery, and an introduction to the recently announced Migrant Worker Support Network. Throughout these discussions, industry participants highlighted a number of TFWP service delivery concerns, while proposing measures they believed would help mitigate these challenges.

The issues raised and proposed outcomes are the focus of this summary document. This outcome-based approach was highlighted at the end of the day by both the co-chairs, who underscored the importance of government and industry working in partnership to improve trust in the TFWP. The TFWP continues to provide critical labour relief for Canadian farms and food processors where there is a demonstrated lack of available and interested Canadians to fill those positions.

The discussion also showcased that the TFWP provides broader benefits to the Canadian economy, improves international farm workers' quality of life, contributes to the economies of partner countries, and, most importantly, protects the rights and safety of all those involved in the program. Both co-chairs noted the need to build on the outcomes identified throughout the day's discussions and committed to working towards this shared objective.

Acknowledgements

The CFA wishes to acknowledge Parliamentary Secretary Rodger Cuzner and his staff for the significant time and energy committed to this important discussion. Furthermore, we wish to express our gratitude to Ministers Patty Hajdu, Lawrence MacAulay, and Parliamentary Secretary Serge Cormier for engaging in this topic of critical importance to Canada's agriculture and agri-food industry.

CFA also wishes to extend our thanks to officials in ESDC, AAFC, and other guest speakers for the extensive work undertaken in support of this discussion, through the development of informative presentations and their engagement in lively discussion. Without all of these contributions, the issues and outcomes identified throughout these discussions would not have been possible.

A Fair & Effective Integrity Regime

The discussion on the TFWP Integrity Regime began with ESDC providing an overview of the development and implementation of the current integrity and compliance regime, including an overview of agriculture-specific inspection and compliance statistics. This was followed by a presentation on the development of a Migrant Worker Support Network, which was announced in Budget 2018. Following the presentations, employers and industry representatives spoke to three broad areas that warranted further attention, in order to build trust amongst all stakeholders:

1. Developing more proactive consultation on forthcoming policy initiatives;
2. Establishing a common understanding of compliance issues and enforcement activities; and
3. Increasing employer engagement and education.

A brief overview of the concerns raised, and proposed solutions are outlined below for both issues.

Proactive Consultation:

The ongoing introduction of program changes were highlighted as a source of frustration for employers, with many noting that changes were implemented without sufficient notice or time to adapt accordingly. Similarly, communication of these program changes was identified as insufficient or unclear, in a number of instances. This led many employers to feel that they had been treated unfairly through the program due to subsequent farm audits, associate delays, and in some instance, the perception that LMIA processing was unnecessarily paused.

Proposed Industry Solutions:

1. A service delivery working group with employer representatives that meets on a regular basis to identify and triage issues, share ideas and best practices to address them, consult on forthcoming program changes, and co-create appropriate communications materials. This outcome was identified repeatedly by industry participants as a measure that would be beneficial in addressing all the issues raised throughout the discussion. Representatives of the LTF were suggested as ideal working group members to ensure broad representation and effective communication with industry.

Common Understanding of Compliance Issues:

Industry participants identified the overview of the integrity regime as a very constructive presentation, noting that it helped illuminate the rationale behind a number of the most common sources of frustration and mistrust with the integrity regime. The complexity of program requirements was repeatedly noted as a challenge for both employers and workers in the program. Despite assurances that LMIA processing was only paused where worker safety was a concern, a number of industry representatives noted in various fora that relatively minor administrative compliance issues appeared to be triggering risk-based audits. Industry noted examples where these audits took months to conclude and, in many instances, appeared to unduly pause LMIA processing, causing critical economic impacts to their farm businesses. Industry participants identified that integrity officers could be antagonistic, with employers fearful of seeking recourse due to perceptions that it would result in further compliance actions that could affect their farms. The protocols and processes in place to address these concerns were not well understood by industry associations or employers, resulting in the perception that employers had little real recourse to address potential injustices.

Proposed Industry Solutions:

1. Continue processing of LMIAs, only pausing the process immediately prior to worker arrivals. This could reduce further delays once an audit is concluded, ensuring services are being provided as expediently as possible.
2. Industry and government work in partnership to communicate the protocols in place for employers to voice concerns with integrity officers, ensuring services are being provided appropriately.
3. Increase education to employers and workers regarding the TFW Program, ensuring that where third parties are involved, any educational materials are in accordance with relevant program and regulatory requirements. Employers noted that in-person education, in particular, warranted further consideration due to its past efficacy.
4. Have the proposed service delivery working group focus on the identification of specific biosecurity protocols for various sectors and ensure that this information is shared with Service Canada so that officers have the most recent and relevant information when conducting on-site inspections.

Employer Engagement and Education:

Employers noted frustration with the Migrant Worker Support Network, suggesting that government is potentially engaging advocacy groups that were interested in undermining the TFWP rather than improving it. While ESDC officials noted that the goal of the network was to give workers a more equal voice to employers in the program, industry stakeholders suggested that their shared interest in worker protection was not recognized or reflected in plans for worker education, noting that the rights of employers were also not well understood and required further attention. Given that the Migrant Worker Support Network is moving ahead and that employer associations in British Columbia have been involved in initial discussions, a number of industry stakeholders from outside the pilot region strongly advocated for further industry and employer engagement on a national basis, noting that employers are deeply committed to worker protections and that there was a need for employer outreach across Canada. Isolated farmers and small business owners, in particular, were identified as a population that also required significant outreach as to their responsibilities and rights as employers within the program.

Proposed Industry Solutions:

1. Continue to engage industry associations and employers in the Migrant Worker Support Network.
2. Ensure that all outreach supported through the Migrant Worker Support Network is monitored and assessed to ensure it accurately communicates workers' rights and program requirements.
3. Support employer education on responsibilities, and rights for all parties through the Migrant Worker Support Network. The Canadian Agricultural Human Resource Council was identified as a potential third party to provide educational support, as a trusted stakeholder with employers.
4. Develop targeted educational tools and guidance materials, in partnership with industry, to educate employers as to their rights and responsibilities within the program.

Efficiency & Transparency in TFWP Processing

The discussion on TFWP processing started with an overview of LMIA and work permit processing, provided by Service Canada, including insights into common points of refusal and ongoing efforts to enhance communications. Following this presentation, two areas were identified where further measures could enhance trust in the TFWP amongst employers:

1. Improving service delivery through more efficient processing and increased transparency, and
2. Reducing undue administrative reporting burden.

Through these presentations and announcements made earlier in the day, a number of measures already undertaken by the Government of Canada were identified:

- Employers seeking replacement workers or worker transfers will no longer be required to undertake additional advertising for already approved LMIA's;
- Development of an on-line portal to streamline and promote transparency within the application process;
- A service delivery review to identify ways to increase the speed and efficiency of the LMIA process and to consider whether to establish service standards; and
- A quality assurance program to improve consistency of LMIA decisions, launched in December 2017.

Industry stakeholders responded favourably to these measures, as potentially significant contributions to improved efficiency and transparency.

A brief overview of the concerns raised following these presentations, and proposed solutions are outlined below for both of these categories.

Processing Timelines:

A number of industry stakeholders highlighted frustrations with unprecedented processing delays that arose in 2017 and have increased in 2018, which are now affecting work permit timelines so workers are not arriving in time for this season's spring work. ESDC clarified the source of these delays, noting that they were due in large measure to reasons beyond the control of federal departments, such as the recent earthquake in Mexico, amongst other factors. This is particularly affecting employers in British Columbia and, increasingly, the prairie provinces, causing a number of employers significant uncertainty regarding their ability to attain the labour they needed for the beginning of their production season. Timelines are now upwards of four months for the end-to-end processing of all documents, making it difficult for employers to determine their specific labour needs that far in advance and impossible to meet advertising and other TFWP requirements. As employers continuously look to recruit and retain Canadian employees, their specific labour needs are difficult to determine with specificity long before their production season begins.

This frustration was exacerbated by a lack of clarity or transparency regarding expected processing timelines, leaving employers unsure as to when they needed to submit their applications to ensure approved workers would be available. This was particularly true for those hiring year-round employees through the agriculture and low-skilled program streams, and those attempting to expand the scale of production within their operations. The need to identify qualifying housing months in advance was also highlighted as a concern, as inspection timelines posed challenges when housing was still under construction or yet to be rented, particularly when workers will not arrive for months to come.

Proposed Industry solutions:

1. Develop client-centric service standards for LMIA and work permit processing that were monitored, reported publicly, and benchmarked over time.
2. Establish an expedited processing stream for those employers with good standing in the program and a demonstrated, long-standing labour need, including an expedited process for LMIA worker renewals for year-round occupations in Agricultural Stream and meat processing .
3. Employers apply for LMIAs to account for potential labour needs, including unnamed workers that could go unfilled if the forecasted labour need did not materialize.
4. Incorporate a tracking mechanism into the upcoming online application portal, enabling employers to see their application statuses. Employers expressed a desire to see this portal track applications through both the LMIA and work permit approval process. In the interim, clear communication channels are needed to determine application status.

Administrative Reporting Burden:

ESDC officials highlighted that the most common reasons for LMIA refusal related to insufficient demonstration that employers had adequately undertaken efforts to recruit Canadians, while noting that housing inspection deficiencies were another recurring issue on this front. Meanwhile, industry participants noted challenges in meeting requirements to demonstrate financial capacity, housing inspections, and advertising criteria that are perceived to exceed what is prescribed and available on the TFWP website.

Proposed industry solutions:

1. Implement automatic pre-screening of applications for completion in the upcoming online application portal.
2. Streamline LMIA requirements for individual employers where employers seeking TFWs operate in the same regions, face vacancies in the same positions, and face the same labour market conditions.
3. Creation of an advertising template for employers, to demonstrate exactly what is required.
4. Targeted educational outreach directly with employers to clarify program requirements and share best practices, developed in a manner that is understandable and clear to farm employers. The Canadian Agricultural Human Resource Council was identified as a potential third party to provide educational support, as a trusted stakeholder with employers.
5. Work with provincial regulators to ensure reporting requirements are effectively implemented and are not in conflict with provincial regulatory requirements.



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