

Temporary Foreign Worker Program

Questions and Answers – Coming Into Force – September 26th, 2022

1. **Why is the Government amending the Immigration and Refugee Protection Regulations (IRPR)?**

- A. Employer compliance inspections and recent reports and consultations have shown a need for further improvements to better protect temporary foreign workers' (TFWs) while in Canada, and to strengthen the integrity of the employer compliance regime to ensure that employers comply with applicable program requirements and conditions. Language barriers, social and physical isolation resulting from the location of work, a lack of knowledge about their rights, and the fear of reprisal are among the factors heightening the vulnerability of TFWs.

The [new regulatory amendments](#) will help to improve protections for TFWs as well as workers' awareness of their rights and employers' awareness of their obligations. They will also improve the Government's ability to prevent bad actors from participating in the program and strengthen the Government's ability to effectively conduct inspections.

2. **When will the amended to the Immigration and Refugee Protection Regulations come into force?**

- A. The coming into force date is 00:00:01 a.m. Eastern daylight time on September 26, 2022.

All requests for Labour Market Impact Assessment (LIMA) received **after** the coming into force of the new amendments will be assessed based on the amended regulations.

All LIMA requests received **prior to** the coming into force of the amended regulations will be **assessed** based on the regulations in effect at the time of application.

However, regardless of when the LIMA is submitted or approved, after September 26, 2022, all employers will be expected to comply with the new rules and **inspected** under the new conditions for 209.3(1).

EXAMPLE 1: An LIMA is submitted prior to September 26, and is approved, but the worker arrives in November. The employer needs to meet all conditions, such as providing the TFW with the Know Your Rights pamphlet on or prior to the first day of work, since the "action" (providing the pamphlet) is occurring **after** the coming into force date.

EXAMPLE 2: An LMIA is submitted prior to September 26, and is approved, but the worker arrives in November. The employer is not obliged to provide the TFW with an employment agreement, since the “action” (making the LMIA commitment to provide an employment agreement) would have to have occurred during the LMIA process **before** Sept 26.

3. Where can I find the most recent information with respect to the foreign national’s rights in Canada, which I must provide to foreign workers prior or on their first day of work?

- A.** Information on workers' rights is presently being updated. The current version can be found on the Temporary Foreign Worker Program web page: <https://www.canada.ca/en/employment-social-development/services/foreign-workers/protected-rights.html> and will be updated soon.

This page also includes links to the Temporary Foreign Workers: Your Rights are Protected pamphlet in several languages.

4. What do you mean by “suspending” the processing of a request for a Labour Market Impact Assessment (LMIA)?

- A.** The amended regulations will allow Employment and Social Development Canada (ESDC) to suspend the processing of a request for a new LMIA if ESDC has a reason to suspect that an employer’s non-compliance with any of the following conditions would put a temporary foreign worker’s (TFW) health or safety at serious risk if they were issued a work permit:

- **(209.3(1)(a)(i)):** the employer must be actively engaged in the business in respect of which the offer of employment was made, unless the offer was made for employment as a live-in caregiver.
- **(209.3(1)(a)(iv)):** the employer must provide the foreign national with working conditions that are substantially the same as — but not less favourable than — those set out in that offer.
- **(209.3(1)(a)(v)):** the employer must make reasonable efforts to provide a workplace that is free of abuse.

(209.3(1)(a)(vii) to 209.3(1)(a)(xii)): the employer complies with COVID-19 related conditions.

The suspension of processing will remain in effect until the inspection is completed or until there is no longer a reason to suspect a serious risk to the health or safety of a worker. In this case, the suspension would be lifted and processing of the new LMIA would continue. However, the inspection process

will continue if there is still a reason to suspect non-compliance with program conditions.

5. What is an employment agreement?

- A.** As of September 26, 2022, employers in the Temporary Foreign Worker (TFW) Program will be required, in their Labour Market Impact Assessment (LMIA) submission, to commit to conclude an employment agreement with the TFW and to provide them with a signed copy on or before the first day of work.

Employers may use an existing document or develop their own template to meet this requirement as long as the document includes the following:

- states the same occupation, wages, and working conditions as what the employer provided to the Government of Canada in the LMIA application ;
- is drafted in the TFW's preferred chosen official language of Canada; and
- is signed and dated by both the employer and the TFW.

6. Why do I have to obtain and pay for Private Health insurance for the temporary foreign worker (TFW)?

- A.** In some provinces/territories (P/Ts) there is a waiting period before foreign nationals can access P/T health insurance system coverage. If a foreign national is injured during that period, it puts them in a potentially vulnerable position, faced with having to choose either to pay out-of-pocket for emergency medical care fees or to refuse necessary care due to concerns about costs.

Therefore, effective September 26th, 2022, all Temporary Foreign Worker (TFW) Program employers, except employers hiring TFWs under the Seasonal Agricultural Workers Program (SAWP), will have to obtain and pay for private health insurance during the period for which the TFW is not covered by P/T health insurance system. In some provinces, workers are covered by P/T health insurance immediately upon entry so this amendment will not apply in these provinces. Please consult your P/T health authority to verify the waiting period in your P/T.

7. Why are Seasonal Agricultural Workers Program (SAWP) employers exempt from the supplemental health insurance condition?

- A.** Employers under the SAWP program are currently exempt from this condition because the international agreements between Canada and the participating countries include provisions for health insurance. However, SAWP employers

must assist temporary foreign workers in obtaining provincial /territorial health insurance coverage in a timely manner.

8. What do you mean by the employer must make 'reasonable efforts' to provide access to health care services if a temporary foreign worker (TFW) becomes ill or injured at work?

A. When a TFW is injured or becomes sick at the workplace (i.e., during work hours) the employer must ensure that the TFW has access to the medical care they need. The reasonable efforts may consist of the following:

- Providing phone or web access to contact emergency services;
- Driving the TFW to a healthcare provider;
- Calling the appropriate healthcare provider (e.g., a doctor, or an ambulance, or 911);
- Arranging for someone else (e.g., another worker, taxi) to drive the worker to a healthcare provider;
- Allowing the healthcare provider access to the TFW at the workplace if required;
- Encouraging the TFW to obtain medicine or medical devices (such as crutches, bandages, splints, casts, etc.) when required.