



*Labour and
Industrial Relations*

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Economic Growth, Tourism and Culture

Croissance économique, Tourisme et Culture



*Relations professionnelles
et industrielles*

C.P. 2000, Charlottetown
Île-du-Prince-Édouard
Canada C1A 7N8

July 16, 2020

Law Society of Prince Edward Island
49 Water Street
Charlottetown, PE C1A 1A3

Dear Sir / Madam:

RE: Temporary Foreign Worker Protection Legislation Consultations

The Department of Economic Growth, Tourism and Culture is undertaking stakeholder consultations on the development of Temporary Foreign Worker Protection Legislation. The Temporary Foreign Worker (TFW) Program allows Canadian employers to hire foreign workers to fill temporary jobs when qualified Canadians are not available. There has been an increase in number of TWFs on the Island over the past number of years. Although the Government of Canada administers the TFW Program, matters such as working conditions generally fall to the provinces. As there have been reports of TFWs being subject to abuse and mistreatment, there have been calls over the past several years to create additional protections for TFWs.

Several jurisdictions, including Manitoba, Nova Scotia, Saskatchewan, Ontario, New Brunswick and British Columbia, have created legislation which provides additional protections to TFWs. Prince Edward Island is seeking feedback from employer representatives, interest groups, and internal stakeholders on the development of legislation related to providing additional protections to TFWs. The Province will use the feedback received to create a draft of the new legislation. Once the legislation is drafted, the intention is to post it on the Province's webpage for broader public consultation.

If you would like to contribute in this stage of the consultations, we ask that your feedback be received by our office by August 21, 2020. If you have any questions, please do not hesitate to contact the Labour and Industrial Relations Division at 902-368-5550 or e-mail Patricia McPhail at phmcphail@gov.pe.ca.

Regards,

Patricia McPhail

Director, Labour and Industrial Relations

Enclosure

Consultation Paper with respect to introducing new Temporary Foreign Worker Protection Legislation

July 2020

Department of Economic Growth, Tourism and Culture – Labour and Industrial Relations Division

Introduction

The Government of Prince Edward Island is seeking feedback from employers, interest groups and internal stakeholders on the development of legislation related to providing additional protections for Temporary Foreign Workers. This includes the possibility of creating a licencing system for recruiters of Temporary Foreign Workers, as well as a possible registry for employers of Temporary Foreign Workers.

Background

The Temporary Foreign Worker (TFW) Program allows Canadian employers to hire foreign workers to fill temporary jobs when qualified Canadians are not available. There has been an increase in number of TFWs on the Island over the past number of years. Although the Government of Canada runs the TFW Program, matters such as working conditions generally fall to the provinces. As there have been reports of TFWs being subject to abuse and mistreatment, there have been calls over the past several years to create additional protections for TFWs.

Several jurisdictions, including Manitoba, Nova Scotia, Saskatchewan, Ontario, and British Columbia, have created specialized legislation which provides additional protections to TFWs. In addition, New Brunswick has included additional protections for TFWs within their *Employment Standards Act*. Prince Edward Island is seeking feedback from employer representatives, interest groups, and internal stakeholders on the development of legislation related to providing additional protections to TFWs. The Province will use the feedback received to create a draft of the new legislation. Once the legislation is drafted, it will be posted on the Province's webpage for broader public consultation.

We welcome your comments and suggestions concerning any issue relating to Temporary Foreign Worker Protections that are not raised in this document that might fit within the context of the proposed legislation. Comments on matters falling outside the scope of what is contemplated with the proposed Temporary Foreign Worker Protection legislation and that fall within the scope of other Provincial legislation may be passed on to other government agencies as appropriate.

The following topics are ones that have been covered by legislation in other jurisdictions. Although your feedback does not have to be structured in any particular way, please feel free to use these headings and associated questions as a guide for developing your feedback.

Recruitment

Other provinces have created a licensing system for recruiters of TFWs. Licences would only be available to individuals, as opposed to agencies or businesses, and cannot be transferred. If an employer, or any other person, is using the services of a recruiter then they must use the services of a recruiter that holds a valid licence under the legislation. Employers recruiting TFWs for their own business would not be required to obtain a licence.

The legislation would set out the application process, conditions that may result in the refusal to grant a licence, and the power to amend, suspend or cancel a licence if certain terms and conditions are not met (for example: non-compliance with the legislation or a licensee providing false or misleading information).

In other provinces, certain information about licencees is available online for the public to view. In addition, some provinces require letters of credit or deposits of cash or securities before a licence is issued. In other provinces recruiters are prohibited from charging a fee to TFWs for services related to connecting the worker with an employment opportunity. Any fees related to recruitment services are to be charged to the employer.

Possible questions to consider:

Should the Province create a licensing system for recruiters of TFWs?

If a licensing system for recruiters is created, should any information be publicly available and, if so, what information?

Should a deposit or other form of security be required for recruiters of TFWs? If so, should it be permissible to use the deposit against administrative penalties?

Employer registry

Other provinces have created a registry system for employers who hire TFWs. Employers are required to register with the Province prior to hiring a TFW. This registry enables government staff to know where the TFWs are working and allows for inspections of these workplaces to ensure compliance with this new proposed legislation, as well as other applicable legislation such as the *Employment Standards Act*. In other provinces, certain information about employers is available online for the public to view.

Possible questions to consider:

Should there be a requirement for employers who hire TFWs to register with the Province?

If employers are required to register, should any information be publicly available and, if so, what information?

How often should employers register (for each new hire, for every LMIA approved)?

Should employers be required to register prior to seeking an LMIA?

Record Keeping

In other provinces the legislation provides for rules regarding record keeping by both recruiters and employers in relation to TFWs. These records generally include copies of contracts; names, addresses and work locations of the TFWs; and, in the case of recruiters, fees and expenses the recruiter received in relation to the TFW.

Possible questions to consider:

How long should employers and recruiters be required to maintain records?

Other prohibitions

In most other jurisdictions there are prohibitions against employers recovering costs related to the recruitment of a TFW either directly or indirectly from the TFW. Employers and recruiters are also prohibited from taking and retaining the property of TFWs (including, for example, passports). Most other provinces also provide some form of prohibition against employers taking reprisal actions against a TFW for making a complaint under the legislation.

Possible question to consider:

Are there any particular behaviors or actions that should be prohibited in this proposed legislation that are not otherwise covered in other legislation that exists in the Province?

Proactive duties

In some provinces there is a proactive duty for employers to provide information to TFWs about their rights and protections under provincial legislation. For example, employers may be obligated to provide a TFW a copy of an Employment Standards Information Sheet in their native language (there are currently information sheets available in nine different languages both at the Employment Standards Branch Office and online).

Possible question to consider:

Should employers be mandated to provide information to TFWs on their rights and protections related to the workplace?

Should there be rules related to employers to provide written copies of employment contracts to TFWs?

Administrative penalties

In British Columbia, the Director of Employment Standards has, amongst other powers of determination, the ability to require a person who has violated the legislation to pay monetary penalties in accordance with the regulations. Under the regulation the fine currently ranges from \$500 to \$10,000 depending on whether it was a first offence and the length of time between the offences. British Columbia also has summary conviction provisions where an individual or corporation could face significant fines (up to \$50,000 for an individual and \$100,000 for a corporation). Other provinces have only summary conviction provisions. For example, Manitoba has fines of up to \$25,000 for an individual convicted of a summary offence and \$50,000 for a corporation.

Possible question to consider:

Should the legislation include the ability to issue administrative penalties?

Publication of names of violators

In some of the jurisdictions the names of recruiters and employers who have violated the legislation are published on the government website.

Possible question to consider:

Should names of violators of the legislation be published on the Province's website?

Other matters

Legislation in other provinces also contains provisions related to the investigation or complaints and enforcement of the legislation. There are also provisions related to rights of appeal for decisions related to the refusal, cancellation or suspension of a licence or registration. These matters are more administrative in nature. Please feel free to provide us with any feedback on administrative aspects of the proposed legislation.

Any personal information that may be collected through this consultation process is collected for the purposes of creating new draft legislation and in accordance with s.31(3) of the *Freedom of Information and Protection of Privacy Act*. If you have any questions about this collection please contact Patricia McPhail, Director of Labour and Industrial Relations, 161 St. Peters Road, PO Box 2000, Charlottetown, PE C1A 7N8, or by phone at 902-569-0545.