



**Temporary Foreign Worker Program
and
International Mobility Program**

**Inspections: New Consequences for
Non-Compliance**

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Employment and
Social Development Canada

Emploi et
Développement social Canada

Canada

Temporary Foreign Worker Program (TFWP)

- TFWP facilitates employer access to labour when Canadians and permanent residents are not available
- Governed by the *Immigration and Refugee Protection Act (IRPA)* and *Regulations (IRPR)* and jointly administered by Employment and Social Development Canada (ESDC) and Citizenship and Immigration Canada (CIC)

Overhaul of TFWP, June 2014 included:

- Separating the TFWP into two distinct programs:
 - International Mobility Program (IMP) - CIC
 - TFWP - ESDC
- Introducing more proportionate consequences for employer non-compliance:
 - Warnings
 - Varied ban periods
 - Administrative Monetary Penalties (AMPs)



Overview: Inspections and Consequences

- New regulations set out:
 - Voluntary disclosure (pre-inspection)
 - Justifications for initial findings of non-compliance (retained)
 - Opportunity to Respond (after Preliminary Finding and before Final Finding)
 - Points Calculation for consequences
 - New consequences of unjustified non-compliance: Warning; 1, 2, 5, 10 year or permanent ban; AMPs of \$500 to \$100K per violation; Name & details published; potential revocation of LMIAs



Changes to Inspections - Overview

December 1, 2015

Unjustified Non-compliance

- Inspection Triggered
- Initially compliant: yes/no
- If No: Justified or unjustified?
- If unjustified non-compliance:
 - Employer notification
 - 2-year mandatory ban
 - Publish name and non-compliance details
 - Possible revocation of LMIA(s)

ESDC and CIC will work with stakeholders to build their understanding of the new system and monitor implementation to ensure fairness.

“Violation”

- Voluntary Disclosure may apply
- Inspection Triggered
- Initially compliant: yes/no
- If No: Justified or unjustified?
- If unjustified: “Notice of Preliminary Finding”
 - Potential consequences & points calculation
- Opportunity to Respond – 30 Days
 - Possible correction or cancellation
- “Notice of Final Determination”:
 - Warning (no publication)
 - AMPs: \$500 to \$100K/violation
 - Ban: 1, 2, 5, 10 years, or permanent
 - Publish name and violation details
 - Possible revocation of LMIA(s)



What can Voluntary Disclosure do for you?

Recognises employer's efforts to self-audit and correct non-compliance

- Disclosure may reduce final consequences:
 - When a follow-up inspection finds employer did commit violation(s)
 - Result of inspection may be that there is no non-compliance
 - If it is “acceptable” – considerations include:
 - Completeness
 - Voluntary
 - Severity
 - Timeliness
 - Frequency
 - Nature (complexity of condition)



How are consequences determined?

Corrective action is always encouraged. It can reduce consequences, even if:

- Voluntary Disclosure is not “acceptable”
- Employer has not made a Voluntary Disclosure
- It occurs after the Notice of Preliminary Finding has been issued

- Each violation counted separately with individual consequences (points calculation conducted for each violation)
- Where condition breached affects foreign nationals negatively, counted separately for each foreign national
- Tables (Annex A) used to calculate points based on:
 - Condition type violated
 - History
 - Severity
 - Voluntary disclosure
 - Size of business (for AMP only)



Preliminary Finding & Opportunity to Respond

Before Notice of Preliminary Finding issued

- If initial non-compliance is justified (listed in regulations), no violation

Notice of Preliminary Finding

- Provides specifics of violation(s) and consequences

Opportunity to Respond – 30 days*

- Written submission or request for extension period
- New Notice of Preliminary Finding may be issued or original cancelled

Final Notice

- Provides specifics of violation(s) and consequences, including how calculated, as well as (if an AMP) how to pay, etc.

* 30 day period begins 10 days after the *Notice of Final Determination* was sent. Calendar days exclude Sundays and holidays.



What happens after Notice of Final Determination?

I. Warning

- No name publication, but still “violation”, counted in “History” for future consequences

II. AMP

- 30 days* to pay in full, OR contact CRA to make payment arrangement
- Employer is in default of AMP payment if, within the first 30 days:
 - No or only partial payment, and no payment agreement made with CRA
 - Two consecutive payments missed on an agreed arrangement with CRA
- If in default, ineligible until AMP and interest are paid in full

III. Period of Ineligibility

- Cannot employ a foreign national for whom a work permit is required
- Period of ineligibility begins on the date of the final determination

IV. Posted on Web: Eligibility Status

- Publication of: Name, Address, Violation information, eligibility status and penalties
- Publication information will eventually be archived on the public list



Best Practices for Employers

▪ Before TFW's Work Permit is issued

- For TFWP: Review LMIA applications and supporting documentation carefully
- Keep copies of LMIA applications and supporting documentation
- Work only with authorized third-party representatives
- Inform ESDC immediately of any errors on the LMIA and annexes
- For IMP: Exercise similar care in providing accurate Offer of Employment information to CIC via the Employer Portal

▪ After TFW arrives

- Regularly self-audit and immediately correct non-compliance
- Disclose any LMIA inaccuracies or non-compliance you discover to ESDC
- Keep records of exchanges with Service Canada
- For 6 years, keep well organized records relating to compliance with TFWP conditions
- Contact ESDC when considering any changes to LMIA
- Actively cooperate with ESDC during inspections
- Regularly check the TFWP website for updates and changes



ANNEX: Violations, Penalties assessment

TABLE 1 – EMPLOYER CONDITIONS

Item	Column 1 Provision	Column 2 Short-form Description	Column 3 Classification
1.	209.2(1)(b)(i)	Be able to demonstrate that any information provided in respect of a work permit application was accurate during a period of six years, beginning on the first day of the foreign national's employment	Type A
2.	209.2(1)(b)(ii) and 209.3(1)(c)(ii)	Retain any document that relates to compliance with cited conditions during a period of six years, beginning on the first day of the foreign national's employment	Type A
3.	209.3(1)(a)(iii)(C)	For employers of a live-in caregiver: have sufficient financial resources to pay wages that were offered	Type A
4.	209.4(1)(a)	Report at any time and place specified, to answer questions and provide documents	Type A
5.	209.4(1)(b)	Provide required documents	Type A
6.	209.4(1)(c)	Attend any inspection, unless the employer was not notified, give all reasonable assistance to the person conducting the inspection and provide that person with any required document or information	Type A
7.	209.2(1)(a)(ii) and 209.3(1)(a)(ii)	Comply with the federal and provincial laws that regulate employment, and the recruiting of employees, in the province in which the foreign national works	Type B
8.	209.2(1)(a)(iii) and 209.3(1)(a)(iv)	Provide the foreign national with the same occupation and substantially the same, but not less favourable, wages and working conditions, as outlined in the foreign national's offer of employment	Type B
9.	209.3(1)(a)(iii)(A)	For employers of a live-in caregiver: ensure that foreign national resides in a private household in Canada and provides child care, senior home support care or care of a disabled person in that household without supervision	Type B
10.	209.3(1)(b)(i)	Ensure that the employment of the foreign national will result in direct job creation or retention for Canadian citizens or permanent residents, if that was a factor that led to issuance of the work permit	Type B
11.	209.3(1)(b)(ii)	Ensure that employment of the foreign national will result in transfer or development of skills and knowledge for the benefit of Canadians or PRs, if that was a factor that led to the issuance of the work permit	Type B
12.	209.3(1)(b)(iii)	Hire or train Canadian citizens or permanent residents, if that was a factor that led to the issuance of the work permit	Type B
13.	209.3(1)(b)(iv)	Make reasonable efforts to hire or train Canadian citizens or PRs, if that was a factor that led to the issuance of the work permit	Type B
14.	209.2(1)(a)(i) and 209.3(1)(a)(i)	Be actively engaged in the business in which the offer of employment was made, unless offer was made for employment as live-in caregiver	Type C
15.	209.3(1)(a)(iii)(B)	For employers of a live-in caregiver: provide the foreign national with adequate furnished private accommodation in the household	Type C
16.	209.2(1)(a)(iv) and 209.3(1)(a)(v)	Make reasonable efforts to provide a workplace that is free of abuse within the meaning of paragraph 72.1(7)(a)	Type C

ANNEX: Violations, Penalties assessment

TABLE 2 – ADMINISTRATIVE MONETARY PENALTY AMOUNTS

Item	Column 1	Column 2		Column 3		Column 4	
	Total Number of Points	Type A Violation		Type B Violation		Type C Violation	
		Individual or Small Business	Large Business	Individual or Small Business	Large Business	Individual or Small Business	Large Business
1.	0 and 1	none	none	none	none	none	none
2.	2	\$500	\$750	\$750	\$1,000	\$1,000	\$2,000
3.	3	\$750	\$1,000	\$1,250	\$2,000	\$5,000	\$10,000
4.	4	\$1,000	\$2,000	\$3,000	\$7,000	\$10,000	\$20,000
5.	5	\$4,000	\$6,000	\$7,000	\$12,000	\$15,000	\$30,000
6.	6	\$8,000	\$10,000	\$12,000	\$20,000	\$20,000	\$40,000
7.	7	\$12,000	\$20,000	\$20,000	\$30,000	\$35,000	\$50,000
8.	8	\$20,000	\$30,000	\$35,000	\$45,000	\$45,000	\$60,000
9.	9 and 10	\$30,000	\$45,000	\$50,000	\$60,000	\$60,000	\$70,000
10.	11 and 12	\$40,000	\$60,000	\$60,000	\$70,000	\$70,000	\$80,000
11.	13 and 14	\$50,000	\$70,000	\$70,000	\$80,000	\$80,000	\$90,000
12.	15 or more	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000



TABLE 3 - PERIOD OF INELIGIBILITY

	Column 1	Column 2	Column 3	Column 4
Item	Total Number of Points	Type A Violation	Type B Violation	Type C Violation
1.	0 to 5	none	none	none
2.	6	none	none	1 year
3.	7	none	1 year	2 years
4.	8	1 year	2 years	5 years
5.	9 and 10	2 years	5 years	10 years
6.	11 and 12	5 years	10 years	10 years
7.	13 and 14	10 years	10 years	10 years
8.	15 or more	permanent	permanent	permanent

TABLE 4 – COMPLIANCE HISTORY

	Column 1	Column 2
Item	Criterion	Points
1.	For Type A and B violations - a first violation	1
2.	For Type A violations - a second or subsequent violation	2
3.	For Type B violations - a second violation	2
4.	For Type C violations - a first violation	2
5.	For Type B violations - a third or subsequent violation	3
6.	For Type C violations - a second violation	3
7.	For Type C violations - a third or subsequent violation	4

TABLE 5 - SEVERITY

	Column 1	Column 2
Item	Criterion	Points
1.	The employer derived competitive or economic benefit from the violation	0 to 6
2.	The violation involved abuse of a foreign national (physical, psychological, sexual, financial)	0 to 10
3.	The violation negatively affected the Canadian labour market or the Canadian economy	0 to 6
4.	The employer did not make reasonable efforts to minimize/remediate effects of violation	0 to 3
5.	The employer has not made reasonable efforts to prevent recurrence of the violation	0 to 3