Immigration Symposium II: Administrative Monetary Penalties
Canadian Employee Relocation Council

Thursday February 11, 2016
100 La Caille Place SW, Calgary

Speakers

- Stephen Cryne (CERC)
- Dean Jorgensen (Employer Liaison Network)
- Heather Moriarty (IRCC)
- Roxanne Israel (Egan LLP)
- Herman Van Reekum (Newland Chase)
- Participants from local industry including Suncorp, Atlas transport, etc.

Questions from Stakeholders

1. **What opportunities will employers have to take corrective action? What discretion do officers have?**

Employers are encouraged to take corrective action as soon as they discover a potential non-compliance to the conditions imposed by the regulations (R209.2 and R209.4). Corrective actions can be taken even after an inspection has been initiated to reduce potential point accumulation towards an applied consequence (administrative monetary penalty or ban). Information about corrective action may be provided to IRCC after receiving a notice of inspection, or during the opportunity to respond period after the Notice of Preliminary Finding has been issued. Employers may receive reduced points in the calculation of their penalties for unjustified non-compliance if mitigating action has taken place (e.g., employers made efforts to compensate temporary workers who were incorrectly remunerated).

2. **How do officers calculate an Administrative Monetary Penalty?**

Officers calculate the consequences of non-compliance by assessing the details of the non-compliance against the violated employer conditions and then reviewing the points tables to count the points where relevant against the employer's compliance history and the severity of the violation. With those points totalled, an officer would then total the points to align with the recommended Administrative Monetary Penalties amount by business size and violation type and the recommended period of ineligibility, if applicable, given the number of points assessed.

If employers have made an accepted voluntary disclosure ahead of the inspection for their non-compliance, they may see their total points reduced. The acceptability of the voluntary disclosure depends on the timeliness, completeness of the disclosure, the nature and severity of the condition violated, and whether the employer was subject to another compliance action or investigation. Please refer to SCHEDULE 2 - Violations for information on classification of employer conditions by type (Table 1), administrative monetary penalty amounts (Table 2), period of ineligibility (Table 3); compliance history (Table 4), Severity of violation (Table 5)

3. **How many inspections will there be? How many can an employer expect?**

Inspections are conducted for three reasons:

- there is reason to suspect an employer's non-compliance;
- an employer has been found non-compliant in the past; or
- an employer has been selected randomly.

Employers who use the Temporary Foreign Worker Program and the International Mobility Program may receive inspections on both programs to assess different program conditions. However, the same compliance regime (inspections and penalties) apply to both programs.

4. **What would happen to the foreign national in the event of a work permit revocation?**

If an employer is banned from employing foreign nationals through the TFWP or IMP, the foreign national's work permit may be revoked. Foreign nationals would be given notice before the (90 days) revocation to ensure that they have time to apply for another work permit or leave the country.

5. **How are violations involving multiple foreign nationals calculated? If an employer has 100 TFWs and needs to change their location would they be found in non-compliance with 100 violations?**

Program guidance states that multiple violations should be issued when the employer's non-compliance *negatively* affects multiple foreign nationals. If 100 foreign nationals were sent to work at another work location, the violations would only be issued for foreign nationals that were negatively affected by the employer's violation. In this scenario, there could be no negative consequences for foreign nationals, and hence no violations, unless the change in work location greatly inconvenienced the temporary workers. However, there could be a 100 violations if there were negative consequences for each foreign national whose work location was changed.

6. **Will employers be found in non-compliance for paying a foreign national in a non-Canadian currency?**

The offer of employment requires input of hourly wages in Canadian dollars. Temporary workers can be paid in Canadian currency, or in another legal currency, so long the temporary worker is paid the Canadian equivalent wage stated in the Offer of Employment throughout the period of employment.

The foreign currency must be noted in the Offer of Employment information. When entering information about the Offer of Employment into the Employer Portal, the employer should use the 'Alternative compensation scheme' fields in the 'Wage and benefits' section to detail how the employer will be paid, e.g. a foreign employer paying the worker in foreign currency.

7. **What is the current inspections rate? If a majority of employers are found in compliance, will inspections be reduced?**

Immigration, Refugees and Citizenship Canada has initiated over three hundred inspections this past fiscal year. Service Canada is intended to conduct a majority of the employer inspections for the International Mobility Program as they already do for the Temporary Foreign Worker Program. As the

inspections regime rolls out, the future rate of inspections may be evaluated to determine the volume of future inspections.

8. **How can employers update the Departments (IRCC, ESDC) with changes to the work permit information? Should voluntary disclosure be used?**

In general, for the International Mobility Program (IMP), Immigration, Refugees and Citizenship Canada (IRCC) does not allow for proactive notification of changes to the job offer or work permit information. If an employer is concerned that they have not complied with a Program condition, they may use the Voluntary Disclosure process. Information on changes can be found in the program delivery instruction: Employer compliance inspections. Excerpts have been copied below for your reference.

> *Occupation, wages and working conditions: Acceptable changes*
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> Employers are not required to inform IRCC of changes in working conditions. However, they will have to provide evidence of an acceptable justification [R203(1.1)] at the time of inspection should there be differences between the working conditions offered and those found during inspections.
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> For example, a reduction in hours could be justified by a work-sharing agreement, a documented illness or a documented request by the worker for a reduction in hours. In such cases, the employer should submit documentation to substantiate their claims regarding the change (e.g., a copy of the work-sharing agreement) during the inspection.
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> It should be noted that there are two sets of conditions imposed under the Immigration and Refugee Protection Regulations (IRPR) –conditions imposed on employers and conditions imposed on temporary workers.
>
> For all employer-specific work permits the employer must include a location in their LMIA application or their offer of employment; in order to meet the conditions imposed on the employer in regards to working conditions, the foreign worker should only work in that location. However, if the employer was approved for that the foreign worker to work at multiple locations of the same business and in that case the worker may do so, but only for that employer.
>
> However, conditions are also imposed on the temporary workers in their work permit. If their work permit was issued based on an LMIA or an offer of employment that had a location of work specific and the work permit indicates an employment location even though there is no specific condition restricting them from working in a different location, the foreign worker cannot work in a different location. If there is no location noted and no condition imposed regarding location noted on the work permit, then the worker may change locations but only for that employer.
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> For TFWP requirements, please review the information provided by Employment and Social Development Canada (ESDC) on their public website: Temporary Foreign Worker Program compliance.

9. **Inconsistency of decision making: Is there a plan for ensuring IRCC, ESDC and CBSA consistency?**

For International Mobility Program, decisions on unjustified non-compliance will be made by officers designated to make final determinations of non-compliance under IMP. Those officers are organizationally distinct from the inspectors in order to strengthen the impartiality of the final determination stage and to ensure that a second set of expert eyes reviewed the case before taking the final decision on non-compliance.

Immigration Refugees and Citizenship Canada is in regular contact with the Canada Border Services Agency and is made aware of challenges that arise at the border. The role of Canada Border Services officers for immigration purposes is to assess admissibility at port of entry, not to administer the employer compliance regime. With the publication of guidance to IRCC officers on the many facets of the employer compliance regime (such as inspections, administrative monetary penalties and other consequences), there are clear guidelines for officers to consult. However, IRCC officer discretion remains in decision-making. Employment Social Development Canada and Immigration Refugees and Citizenship Canada are working together and stay in regular contact to ensure consistent policy development and program implementation.

10. **Employers are concerned about the posting Employer Names on the Public List**

The regulations state that an employer found in violation of program conditions, where they have received an Administrative Monetary Penalty or a ban for any length of time, will have their name, address, and details of the violation(s) posted online. The list will help prospective foreign workers understand they should not apply for jobs with employers who are ineligible to use the programs.

At present, the intent is to list the employer names indefinitely, with an archive function for older violations.

11. **Employers would be interested in a Preparing for Inspections tool with identified best practices posted on the IRCC Employer Webpage. Employers are struggling to find information on the IRCC website, and some queries loop back to the original TFWP page. Review required after web page update to ensure effective navigation.**

A good place to start would be Immigration, Refugees and Citizenship Canada's webpage with information on hiring a foreign worker in the International Mobility Program. http://www.cic.gc.ca/english/hire/worker.asp. As a best practice, employers should ensure there is strong records management and some organizational continuity in the role responsible for foreign workers in their organization, e.g. if a manager who completed and submitted an Offer of Employment leaves the organization, the next manager needs a record of that offer on file to be prepared in case of inspection. Employers are responsible for maintaining records through the entire "look back" period for inspections (six years from the date the work permit was issued) even if the foreign national has completed their work with the employer.

General tips:

If you employ a temporary worker, you must:

- have medical insurance and workers' compensation benefits set up for the temporary worker when they arrive in Canada, as required by your province or territory,
- make sure that the temporary worker has a valid work permit (the Social Insurance Number [SIN] that a temporary worker is given is not proof of a valid work permit),
- meet the conditions and time limits set out in the work permit,
- be active in the business that submitted the offer of employment for as long as the temporary worker is employed,
- meet all federal, provincial and territorial employment and recruiting laws,
- give the temporary worker a job in the same occupation that was listed in the offer of employment,
- give the temporary worker pay and working conditions that meet or are better than those listed in the offer of employment,
- do your best to make sure the workplace is free of physical, sexual, psychological and financial abuse,
- keep any documents about the hiring and employment of the temporary worker for six years after the work permit is issued, and
- show up for any inspection and hand over all requested documents or information.

12. Do international recruiters require PT licenses in all jurisdictions? Can third party representatives (immigration consultants or lawyers) use the compliance system's Employer Portal on behalf of the employer?

Provincial or Territorial licenses for international recruiters are required by some jurisdictions. However, the compliance system, including the employer portal, allows for foreign nationals to use immigration representatives, as long as they are licensed to represent immigrants or to give advice. To allow a representative to act on behalf of an employer, an employer must still set up and access their account in the Employer Portal; create a secondary user account; and then assign this secondary account to the authorized representative: http://www.cic.gc.ca/english/helpcentre/answer.asp?qnum=1035&top=17.

To designate a representative to use the employer portal, the employer must:

- access their account in the Employer Portal;
- create a secondary user account; and
- assign this secondary account to the authorized representative.

If there are further questions from a representative authorized under s91(1) of the Immigration and Refugee Protection Act, they may contact IRCC at immigrationrepresentatives@cic.gc.ca to receive official responses from officers in operations at IRCC NHQ. Comprehensive official responses will be issues within 20 business days.

Immigration consultants must be a member of the Immigration Consultants of Canada Regulatory Council (ICCRC). Lawyers or notaries must be a member of a Canadian provincial or territorial law society, or the *Chambre des notaires du Québec*. If they are not members in good standing, you should not use their services. Most law societies let you check online to see if a person is a member in good standing, or they can be contacted by phone to confirm status.