



Labour and Advanced Education

DISCUSSION PAPER ON REGULATIONS FOR RECRUITERS AND EMPLOYERS OF FOREIGN WORKERS

January 16, 2012

INTRODUCTION

In June 2010, the government conducted a broad consultation on the employment of foreign workers (FWs) in Nova Scotia. Following the consultation, on May 19, 2011, the Government passed the *Worker Recruitment and Protection Act*, which amends the *Labour Standards Code*. Included among the amendments to the Code is a prohibition against charging workers (both FWs and non FWs) recruitment fees and a prohibition against recovering recruitment costs from workers. These prohibitions are now in force.

Amendments specific to FWs include a registration system for individuals and companies who wish to employ FWs and a licensing regime for individuals and companies who wish to provide FW related recruitment services in Nova Scotia. These amendments are not yet in force. We plan to have these proclaimed in force once the regulations that are the subject of this discussion paper are finalized.

The amendments also include provisions prohibiting employers from eliminating or reducing a FW's wages, benefits and other terms or conditions of employment and prohibiting the taking and retention of a FW's property (e.g., passport and work permit). These are now in force.

FWs are increasingly an important part of the Nova Scotia economy. As Nova Scotia strives to increase immigration, they are also a source of potential immigrants. Some of the workers are vulnerable because they are not familiar with Canadian and Nova Scotian employment rules, may face language barriers, may be socially isolated and dependent on their employer, etc. Also, FWs are particularly vulnerable to being charged illegal recruitment fees. These amendments will help to ensure that this group of vulnerable workers will be treated fairly when they work in Nova Scotia.

The government is preparing to introduce regulations on the changes to the Code. Below is information about the proposed regulations. You are invited to review the information and provide feedback. Information about how to submit your comments is at the end of this document.

EXCLUDING CATEGORIES OF WORKERS FROM THE FW PROTECTIONS

The FW provisions apply to foreign workers, who are defined under the *Labour Standards Code* as individuals who are not Canadian citizens or permanent residents within the meaning of the federal *Immigration and Refugee Protection Act* (IRPA). Nova Scotia is proposing to exclude from the Code's definition of foreign worker certain categories of workers who are less vulnerable because they do not require a work permit to work in Canada or they do not require a Labour Market Opinion (LMO) to work in Canada.

Most LMO exempt workers are in higher skilled managerial, professional or technical occupations. They are less vulnerable because they tend to have the skill set necessary to find out about and access their workplace rights without outside help. LMO exempt workers who are not in higher skilled occupations are often on "open" work permits which allow them to move freely in the labour market, making them less vulnerable.

The categories of workers to be excluded from the definition of foreign worker in the *Labour Standards Code* are defined under the following sections of the federal *Immigration and Refugee Protection Regulations* (IRPR).

Workers who do not require a work permit

- Section 186 (no permit required) - workers who are permitted to work in Canada without a work permit include, for example, diplomats and their dependents, athletes and coaches, students working on campus, news reporters and crews, public speakers, clergy, expert witnesses or investigators and performing artists

Workers who do not require a Labour Market Opinion (LMO)

- Section 204(a) and (b) (international agreement) - workers who are working in Canada under international agreements such as the North American Free Trade Agreement (NAFTA), the Artists Residencies Programme between Canada/US/Mexico and the General Agreement on Trade in Services (GATS)
- Section 205 (Canadian interests) - workers engaged in employment that creates or maintains significant social, cultural or economic benefits or opportunities. This includes, for example, entrepreneurs, intra-company transfers, emergency repair personnel, participants of exchange programs (international youth exchanges, academic exchanges) and workers engaged in charitable or religious work
- Section 206 (no other means of support) - people in Canada seeking refugee or protected person status who have no other means of financial support
- Section 207 (applicants in Canada) - people who are eligible to apply for permanent residency status from within Canada. For example, people who have been granted refugee status, certain skilled workers, provincial nominees and spouses or common law partners of skilled workers or provincial nominees

- Section 208 (humanitarian reasons) - destitute students and temporary resident permit holders who need to work to support themselves financially

EXCEPTIONS TO THE PROHIBITION AGAINST REDUCING A FW'S WAGES AND BENEFITS

The proposed regulations allow an employer to eliminate or reduce a FW's wages, benefits and other terms or conditions of employment if the elimination or reduction is the result of:

- a change in federal or provincial law
- a change to a collective agreement
- measures taken by an employer to address a dramatic and unforeseeable or unavoidable change in economic conditions that directly affects the employer's business, provided the measures are not directed disproportionately at the FW
- an unintentional misinterpretation by the employer of its obligations to the FW if the employer has made sufficient efforts to address any resulting disadvantage to the FW
- an unintentional accounting or administrative error made by the employer if the employer has made sufficient efforts to address any resulting disadvantage to the FW
- other circumstances similar to the above

The exceptions set out above allow the employer to reduce wages or change the terms and conditions of employment, in certain circumstances: where the reduction is lawful; where it is due to circumstances beyond the control of the employer and FW is not more significantly affected than other employees; or where it is unintentional. In certain situations, both the employee and the employer may benefit from the flexibility these exceptions offer. The Federal IRPR recognizes similar circumstances when evaluating the past conduct of an employer of FWs.

DEFINING FAMILY MEMBER FOR THE PURPOSES OF EXEMPTION FROM LICENSING REQUIREMENTS

People who try to find employment for a FW who is a family member are not required to be licensed under the *Labour Standards Code*, provided they do not receive a fee directly or indirectly for the assistance they provide. The proposed regulations give "family member" the same broad definition as the one used for the compassionate care leave provisions of the *Labour Standards Code*, which includes individuals whom the FW considers to be like family.

WHO CAN BE A LICENSED RECRUITER

Under the proposed regulations, in order to qualify for a licence to recruit FWs in Nova Scotia, applicants must be a member in good standing of:

- the Nova Scotia Barrister's Society, a bar of another province or the Chambre des notaires du Québec; or
- the Immigration Consultants of Canada Regulatory Council

This reflects recent changes to federal legislation (IRPA) to regulate paid third party immigration representatives. Under IRPA, paid representatives must be members in good standing of one of the above noted groups to provide immigration services (e.g., offer advice, assist with the labour market opinion (LMO) process, contact Citizenship and Immigration Canada on behalf of a client, etc).

RECRUITMENT LICENCE APPLICATION

Under the proposed regulations, individuals applying for a licence to engage in FW recruitment may be required to provide such information as:

- the applicant's name, the business name under which the applicant intends to carry on business and contact information for the applicant and the business;
- the nature and scope of the proposed recruitment business, including financial details, and the legal status of the business;
- the applicant's membership in a provincial bar, the Chambre des notaires du Québec or the Immigration Consultants of Canada Regulatory Council
- the legal status between the recruitment business and other companies

Applicants may also be required to provide information by way of statutory declaration, concerning the past conduct of the applicant and their commitment to comply with the requirements of the Code and the regulations, and to maintain a high standard of conduct when acting as a foreign worker recruiter.

Applicants must provide their consent authorizing the collection, from third parties, of information relevant to determining whether the applicant meets the licensing requirements.

Applicants must consent to the use of information that identifies the business, in a public registry. The public registry may publish the individual's name and the expiry date of the license and, if applicable, the business name the individual is operating under, the individual's employer's name and the business name the employer is operating under.

Applicants must also provide a criminal record check if asked to do so.

If the applicant is an employee of a company, the requirements to provide information by way of statutory declaration, consent to the collection and publication of information and provide a criminal record check would also apply to the sole proprietor or partners or officers and directors of the company.

RECRUITMENT LICENCE FEE

The *Labour Standards Code* allows the government to recover the cost of administering the licensing program by charging a licence application and renewal fee. A licence is valid for three years from the date it is issued or renewed. The proposed regulations set a licence application fee of \$100.00 and a renewal fee in the same amount.

RECRUITMENT LICENCE SECURITY

Businesses and individuals required to obtain a licence in order to provide FW recruitment related services in Nova Scotia will need to post a security before a licence is issued. A portion or the full amount of the security may be forfeited if the recruiter is found to have charged workers recruitment fees, or recovered recruitment costs from workers, in violation of the *Labour Standards Code*. However, the recruiter will have the opportunity to appeal any such decision to the Labour Board before the security is forfeited. The proposed regulations set the amount of the security at \$5000.00 and allow it to be provided in the form of an irrevocable letter of credit, cash, or a bond.

MAINTENANCE OF LICENSEES' RECORDS

The proposed regulations contain provisions on the types of records licensees and former licensees must keep in relation to the recruitment of foreign workers and require that the records be kept for at least three years.

REGISTRATION APPLICATION

The amendments to the *Labour Standards Code* to protect FWs prohibit an employer from recruiting or employing foreign workers unless the employer is registered with the Director of Labour Standards. Under the proposed regulations, when applying to be registered, an employer may be required to provide such information as:

- The employer's name, contact information and business activities and the name, job title and contact information of the employer's authorized representative

- The name and contact information of any third party recruiters the employer is using to recruit FWs
- The number of workers the employer intends to recruit and the country from which the workers will be recruited
- The nature of, start date and duration of the employment for which FWs are to be recruited

DURATION OF REGISTRATION

Under the proposed regulation, an employer's registration is valid for 12 months or a shorter period as determined by the Director of Labour Standards.

MAINTENANCE OF EMPLOYER RECORDS

The proposed regulations contain provisions on the types of records employers must keep regarding the recruitment and hiring of foreign workers, requiring employers to provide the Director of Labour Standards with such records as requested and requiring the records to be kept for at least three years. This is the same period as employers are required to keep other employment records for the purposes of the *Labour Standards Code*.

OPPORTUNITY TO BE HEARD

The proposed regulations contain provisions setting out a fair process for applicants, registered employers and licensed recruiters to be heard when the Director proposes to refuse to issue, renew or cancel an employer's registration or a recruiter's licence, or to apply conditions to a recruiter's licence.

APPEALING AN ORDER OF THE DIRECTOR

The proposed regulations also provide clarification on a previous amendment to the *Labour Standards Code* which requires employers and recruiters who wish to appeal a Director's order to provide security in the form of a bond or make payment to the Labour Board before they can proceed with their appeal. (Where payment is provided instead of a bond, the payment must be the amount of the Director's order or \$2,000, whichever is less). The proposed regulations clarify that the security or payment must be provided at the same time the appeal documents are required to be filed with the Board.

HOW TO RESPOND TO THIS CONSULTATION PAPER

If you are interested in responding to this paper, please provide your comments to the Labour Standards Division of the Department of Labour and Advanced Education by:

- Faxing a letter to Labour Standards at **(902) 424-0648**
- Sending an e-mail to Labour Standards at labrstd@gov.ns.ca
- Telephoning Labour Standards at **1-888-315-0110**
- Writing to Labour Standards at
Nova Scotia Department of Labour and Advanced Education
Labour Standards Division
5151 Terminal Road, 7th Floor
PO Box 697
Halifax, NS B3J 2T8

The report is also available on our website at <http://www.gov.ns.ca/lae>.

In order for us to fully consider your comments, please contact us by February 3, 2012.

Please note that our report on the consultation may list the names of individuals and groups who make comments or submissions. Unless comments are marked confidential, we will assume respondents agree to the Department referring to comments made and making them or a compilation publically available.

Respondents should be aware that the Nova Scotia *Freedom of Information and Protection of Privacy Act* may require us to release information contained in submissions. Therefore, you should not include the names of other parties (such as the names of employers or of other employees) or any other information from which other parties could be identified, unless their permission has first been obtained. Further, if you, as an individual, want to make a submission or provide comments and you do not want your name and personal information to be made public, you should not include your name or other information, such as an address, by which you could be identified in the main body of the submission.