

May 25, 2010

A Consultation Paper on the employment of temporary foreign workers

INTRODUCTION

The Nova Scotia government is concerned about providing adequate employment protection for vulnerable workers. Temporary foreign workers (TFWs), who come to Nova Scotia from outside of Canada to work temporarily, are often vulnerable, as they may be unfamiliar with Nova Scotian employment laws and standards, may face language barriers, and may be socially isolated and feel unable to complain about unfair treatment. Although these workers are protected by Labour Standards and Occupational Health and Safety laws in the same way as all other employees, the Province has become aware that TFWs may need additional protections.

The main purpose of the consultation is to be proactive in gathering information regarding the issues facing these temporary foreign workers and to determine how the Province can protect their employment rights and improve their working conditions.

We welcome any comments you may have. We especially want to hear from:

- temporary foreign workers employed in Nova Scotia;
- Nova Scotian business that are employing or have employed temporary foreign workers;
- recruiters working to recruit temporary foreign workers; and
- unions and other organizations interested in the issue.

Information about how to submit your comments is at the end of this paper.

OVERVIEW

In recent years, an increasing number of people from outside of Canada have come to work in Nova Scotia on a temporary basis. In 2009, Nova Scotian workplaces employed about 2600 TFWs in both skilled and unskilled occupations through the Temporary Foreign Worker Program (TFWP), which is administered by the federal government.¹ About an additional 800 TFWs worked on Nova Scotian farms through the Federal Seasonal Agricultural Workers Program. These numbers have been steadily increasing since about 2005. The number of TFWs is expected to continue to increase as predicted labour shortages arise in Nova Scotia. This growth reflects a worldwide trend towards economic globalization and increased labour mobility.

Employing foreign workers can be an essential part of a company's business strategy. Foreign workers can fill labour shortages and bring new skills and knowledge to help the Province's economy grow.

Employers from all types of businesses can recruit foreign workers with a wide range of skills to meet temporary labour shortages. Hiring a foreign worker temporarily can help employers meet short-term skill and labour needs when Canadians and permanent residents are not available.

Citizenship and Immigration Canada (CIC) works with Service Canada and the Canada Border Services Agency to manage the federal TFWP.

In order for employers to hire eligible temporary foreign workers, they must obtain a Labour Market Opinion (LMO) from Service Canada. To obtain an LMO, the employer must prove that:

- they cannot find suitable Canadians or permanent residents to fill the jobs;
- bringing the workers to Canada will not have a negative impact on the Canadian labour market; and
- they meet all other requirements and conditions of the TFWP

Once the foreign worker is recruited, he or she applies to Citizenship and Immigration Canada for a work permit which allows him or her entry to Canada. The work permit issued provides that the worker is working for a specific employer and for a specified period of time. (Note that this is a separate program from the Seasonal Agricultural Worker Program (SAWP) where workers from Mexico and the Caribbean countries are matched with Canadian farmers who need temporary support during planting and harvesting seasons, when qualified Canadians or permanent residents are not available. The SAWP program is not the primary focus of this consultation.)

¹ Please see Schedule A for a breakdown of the number of Labour Market Opinions allowing the hiring of Temporary Foreign Workers in Nova Scotia (not including SAWP workers) along with their respective skill types.

Unlike some other provinces, for example Alberta, where many of the TFWs come to work in relatively low skilled occupations, the majority of TFWs who come to Nova Scotia are here to fill medium to high skill level positions.

There has been criticism that the federal TFWP allows for conditions that can lead to the exploitation of vulnerable workers. For example, some TFWs may be paying large fees to recruiters and/or employers to obtain a job yet experience insecure working conditions. We have also heard of incidents where TFWs come to Nova Scotia based on a promised pay rate, only to find when they arrive that the pay is less than promised. In addition, there are situations where the employer's offer of work is not genuine, even though it was approved by the federal government. When a TFW has no job after coming to the province, he or she must depend on the recruiter for help in finding another job and this may result in him or her being taken advantage of.

Information about unfair treatment of TFWs in Nova Scotia is largely anecdotal. It may be that these workers do not complain because they are unaware of their rights or of the avenues available to make complaints. Some may have limited English or French language skills. It is also significant that TFWs are often alone in this country and so complaining about their employers in particular may not seem like a viable option.

Others have criticized the federal government's process for screening employers and say that there have been situations where employers are obtaining permission from the federal government to recruit TFWs where there are citizens or permanent residents who are available to do the work in question.

The federal government is taking action through practical and regulatory changes to improve its processes and to guard against dishonest employers, recruiters and recruitment practices. However, Nova Scotia also has an important role to play insofar as the Province does have jurisdiction over employment issues including the practice of recruiters'/employers' fees being paid by TFWs and whether the recruitment industry ought to be subject to regulation.

A number of Provinces have acted to provide additional protection to TFWs:

- Manitoba's *Worker Recruitment and Protection Act* requires recruiters of TFWs to be licensed by Employment Standards and prohibits fees to the worker.
- Ontario recently passed the *Employment Protection for Foreign Nationals Act*, which prohibits the charging of fees to live-in caregivers, one category of TFW. Other categories can be added to this protection by regulation.
- Other provinces, for example British Columbia and Alberta, have comparable provisions.

QUESTIONS

The remainder of this paper contains questions in relation to the following topics for discussion:

- A. Prohibition of fees charged to TFWs.
- B. Prohibition of employer recovery of recruitment costs.
- C. Changes to the terms and conditions of employment for TFWs once they arrive in Nova Scotia.
- D. A licensing regime for companies which recruit TFWs to work for employers in Nova Scotia.
- E. Educating TFWs about their rights.

A. PROHIBITION ON FEES CHARGED TO WORKERS

It is a basic principle of employment law that employees should not have to pay for a job. In Nova Scotia, the *Employment Agencies Act*, passed in the 1920s, prohibits any person or company from collecting any fee from a person seeking employment or for whom employment has been secured. However, the *Employment Agencies Act* provides for a maximum penalty of \$25.00, and has no practical enforcement mechanisms, so a review is needed.

We have reason to believe that TFWs are often charged fees by recruiters for placing them with employers in Nova Scotia. For example, a recruiter looking for a truck driver for a Canadian employer offers to place an individual with the employer. Instead of charging the employer a fee for the costs related to the search for a suitable candidate, the agency charges both the worker and the employer for the service.

What we want to know:

- 1) Should recruiters be allowed to charge TFW job seekers for arranging a job placement in Nova Scotia? In what circumstances?
- 2) Are there other services (e.g., résumé writing assistance, job interview preparation) that a TFW recruiter should be able to charge for? Should the government set limits on the fees charged for these kinds of services?
- 3) Are there specific ways that the government should enforce a prohibition of fees being charged to workers? For example, should enforcement be complaint driven or ought there to be ongoing monitoring and inspections of agencies and recruiters?
- 4) Would a fee prohibition have an impact on the supply of TFWs to Nova Scotia?
- 5) What would be the impact on the following groups if some or all fees to TFWs were restricted or prohibited?
 - a) TFWs;
 - b) Employers of TFWs; and
 - c) TFW recruiters.

B. PROHIBITION ON EMPLOYER RECOVERY OF TFW RECRUITMENT COSTS

Recruiters may also sometimes charge placement fees to TFWs indirectly, with the cooperation of an employer. For example, a recruiter and employer of a TFW could agree that an employer, rather than paying a placement fee up front, would collect it from a worker after the job begins.

Some may say that employers should be able to recover legitimate costs from TFWs who voluntarily leave their employment shortly after work commences.² For example, an employer may incur significant costs for bringing a highly skilled TFW to work on a project in Nova Scotia, but shortly after coming in to the province, the worker may accept a better position with a competitor.

A prohibition on employer recovery of costs may be appropriate in some circumstances, but not in others.

What we want to know:

- 1) Should an employer be prevented from recovering from a TFW, the expenses involved in recruiting him or her?
- 2) Are there situations where an employer ought to be permitted to recover costs that are required under the federal TFWP, such as airfare and accommodation? For example, what if an employee fails to report to work without reasonable cause?
- 3) What would be the impact on employers of not having an exemption as described in question 2?

² The Government of Canada requires employers to pay return travel expenses and to assist with finding accommodation for TFWs in low skilled jobs, recognizing that the wages being paid may not be sufficient to cover these costs.

C. CHANGES TO WAGES OR THE CONDITIONS OF EMPLOYMENT

A significant number of TFWs sign employment contracts with their employers, as part of the LMO and work permit application process. The LMO and the employment contract state the conditions of employment, including the wages that the TFW will receive. The wages offered to a TFW must be comparable to wages paid to Canadian citizens or permanent residents in the same occupation.

However, information received from Nova Scotian TFWs and from other provinces indicates that once a TFW commences employment, some employers have changed the terms and conditions of employment, reducing wages or denying benefits. Proposed changes to the federal regulations prohibit such changes, but wage recovery for employees is a provincial responsibility.

What we want to know:

- 1) Should employers be prevented from changing the terms and conditions of employment?
- 2) What would be the impact of such prohibition on employers and TFWs?
- 3) Are there any circumstances that require exemptions from such a prohibition?
- 4) What penalties or consequences should be incurred if an employer reduces promised wage rates?

D. A LICENSING FOR COMPANIES WHICH RECRUIT TFWs TO WORK FOR EMPLOYERS IN NOVA SCOTIA

There are currently no licensing requirements for persons who provide TFW recruitment-related services in Nova Scotia. Anyone can set up a business and offer recruitment services to employers and TFWs. The Manitoba *Worker Recruitment and Protection Act* requires that recruiters working in the province must be members of the Canadian Society of Immigration Consultants (CSIC), Chambre des Notaires de Quebec, or a Law Society in Canada, and must provide an irrevocable letter of credit (a bond).

By requiring persons who provide TFW recruitment-related services in Nova Scotia to be licensed, the government would acquire information about recruiters, which could help enforce the relevant legislation.

What we want to know:

- 1) Should persons who provide recruitment-related services in respect of TFWs be licensed by the Nova Scotia government?
 - a) If no, why not?
 - b) If yes, why and what should be the elements of a potential licensing regime?
- 2) Should recruiters of TFWs be required to be members of an association such as the Nova Scotia Barristers' Society or Canadian Society of Immigration Consultants before they could apply for a license?
- 3) Should recruiters be required to provide some kind of bond or letter of credit?
- 4) Should there be any exceptions to the requirement to hold a license for organizations providing TFW recruitment-related services?
- 5) What would be the impact of a licensing regime on the TFW recruitment industry?
- 6) What would be the impact of a licensing regime on businesses that rely on TFW recruitment agencies?
- 7) What would be the impact of a licensing regime on temporary foreign workers?
- 8) Are there any actions the government could take to address potential impacts?

E. EDUCATING WORKERS ABOUT THEIR RIGHTS

As mentioned, there are concerns that TFWs may not complain about being treated unfairly because they may not know what their rights are or who to complain to.

What we want to know:

- 1) What are your suggestions for how the government can ensure these workers receive the information they need regarding their rights in Nova Scotia?
- 2) Are there steps the government can take to help these workers to assert their rights once they are aware of them?

1) **How to Respond to this Consultation Paper**

If you are interested in responding to this paper with your comments, ideas and suggestions, please contact the Labour Standards Division of the Department of Labour and Workforce Development by :

- Faxing a letter to Labour Standards at **(902) 424-0648**
- Sending us an e-mail at Labour Standards at labrstd@gov.ns.ca
- Telephoning us at **1-888-315-0110**
- Writing to us at:

Nova Scotia Department of Labour and Workforce Development
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/lwd/>.

In order for us to fully consider your comments, please contact us by June 30, 2010.

Please note that our report 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 quoting from or referring to comments made.

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.

Your input will help us address issues related to temporary foreign worker recruitment and employment in a balanced, fair and responsible way. Thank you for taking the time to participate.

The Nova Scotia Department of Labour and Workforce Development and the Nova Scotia Office of Immigration acknowledge and thank the Ontario Ministry of Labour for its assistance in the preparation of this discussion paper.

SCHEDULE A

Number of **temporary foreign worker positions on labour market opinion confirmations** in Nova Scotia (excluding the Seasonal Agricultural Worker Program), by skill type.

Skill Type	Occupation	Examples of Occupations	2006	2007	2008	2009
0	Management Occupations	Financial managers, health care managers, school administrators, sales managers, restaurant managers	72	40	62	70
1	Business, Finance and Administration Occupations	Financial auditors & accountants, office supervisors, property administrators, event planners, bookkeepers, secretaries, clerks	42	64	89	68
2	Natural and Applied Sciences and Related Occupations	Chemists, physicists, biologists, engineers, architects, web designers	289	307	387	703
3	Health Occupations	Doctors, nurses, pharmacists, chiropractors, dentists, lab technologists, midwives	136	164	204	158
4	Occupations in Social Science, Education, Government Service and Religion	Judges, lawyers, professors, teachers, social workers, psychologists, policy researchers, child care workers	94	102	90	100
5	Occupations in Art, Culture, Recreation and Sport	Journalists, librarians, dancers, actors, photographers, graphic designers, athletes and coaches	219	196	262	216
6	Sales and Service Occupations	Retail supervisors, insurance brokers, chefs, cooks, real estate agents, cashiers and sales persons	212	299	429	449
7	Trades, Transport and Equipment Operators and Related	Contractors, electricians, plumbers, gas fitters, carpenters, mechanics, tailors, truck drivers,	410	295	320	560

	Occupations	construction				
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From: Human Resources and Skills Development Canada website:
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/stats/annual/table3a.shtml