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HIRING FOREIGN WORKERS: LICENSED VS. UNLICENSED RECRUITERS

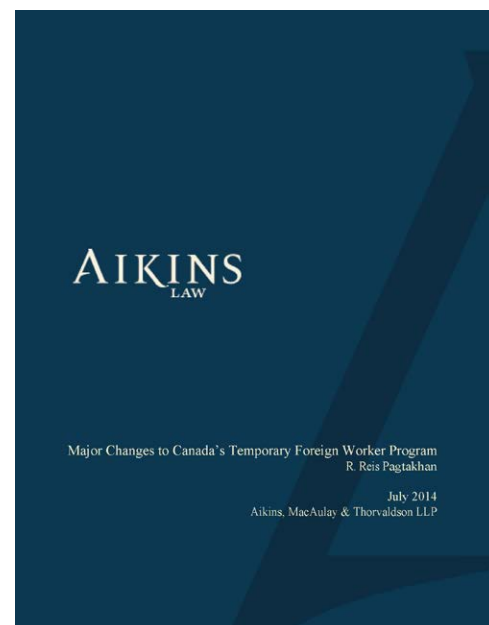
On October 1, 2014, new rules will come into effect for employers recruiting highly paid foreign workers for Manitoba positions. Currently, employers are required to hire a licensed foreign worker recruiter when recruiting foreign nationals for Manitoba jobs (except under special circumstances). Under the new rules, employers can apply for an exemption to using a licensed foreign worker recruiter when recruiting for a position that pays \$86,646.56 or more per year.

Last spring, Manitoba passed *The Protection of Temporary Help Workers Act* which amended *The Worker Recruitment and Protection Act* (“WRAPA”). The new act permits employers to apply to use an unlicensed foreign worker recruiter for foreign workers who will be employed in Manitoba at a salary or wage that is at least two times the *Manitoba Industrial Average Wage*. This figure is prescribed by Manitoba’s *Employment Standards Code* and is currently set at \$86,646.56.

When is a Licensed Foreign Worker Recruiter Not Required Under the Current Law?

Under *The Worker Recruitment and Protection Regulation*, employers must use licensed foreign worker recruiters when recruiting individuals who meet the definition of “foreign worker”. While most foreign nationals fall within the definition of “foreign worker”, there are significant exceptions, which include:

- > Foreign workers who are intra-company transfers
- > Free trade professionals
- > Foreign workers who do not need work permits or may have open work



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First name *

permits

The change in the law preserves these exemptions and employers can use unlicensed recruiters to find these candidates.

No changes have been made to the WRAPA regarding individuals who can recruit foreign workers without having to hold a license. In-house recruiters can engage in activities to find foreign workers on behalf their employer and they do not have to hold a license. As well, individuals attempting to find employment for foreign workers who are defined as family members under the WRAPA can do so without a license as long as they do not receive a fee directly or indirectly for the service.

Can the \$86,646.56 Figure Fluctuate?

Because Manitoba's industrial average wage can fluctuate, the \$86,646.56 figure is not set in stone. The Manitoba Industrial Average Wage is set each year by Statistics Canada. From June 1, 2014 to May 31, 2015, Manitoba's Industrial Average Wage is set at \$43,323.28. In the 12 months previous to that, Manitoba's Industrial Average Wage was \$43,134.00. When determining whether an employer can apply for an exemption, employers should consult the current figure.

Is There a Danger to Using Unlicensed Recruiters?

Just because a foreign worker recruiter is unlicensed it does not mean that they are unqualified. The WRAPA does not create a governance model for foreign worker recruiters. It simply licenses them under criteria under that Act.

Under the WRAPA, the only individuals who can be licensed as foreign worker recruiters are individuals who are licensed immigration consultants or lawyers. As a result, numerous domestic and international recruiting firms who are fully qualified to perform executive and other searches are not legally permitted to do if the search has an international component. These firms are permitted to do international searches in almost all other Canadian jurisdictions. Under the new rules, Manitoba businesses can now hire these recruiting companies to conduct their international searches.

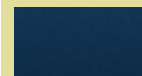
This being said, when retaining any external search firm, employers should do their due diligence and review the terms of any contract with an external recruiter carefully.

When Should a Request for an Exemption be Submitted?

Under the WRAPA, employers must first register with Employment Standards before recruiting a foreign worker. Because foreign worker recruitment is defined under the WRAPA as “finding one or more foreign workers for employment in Manitoba” or “finding employment in Manitoba for one or more foreign workers”, it is prudent to register and request an exemption *before* a candidate is identified. Failure to do so could be a violation of WRAPA.

Last name *

Email address *



This article is prepared for general information purposes only and is intended to provide information for readers of Aikins Law Immigration Newsletter. The contents should not be viewed as legal advice or opinion.

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