EMPLOYERS USING THE LMIA PROGRAM TO BE LISTED PUBLICALLY

This is **Part 5** of the seven part series, a **Guide to Major Changes to Canada's Temporary Foreign Worker Program**.

Beginning in the fall of 2014, Employment and Social Development Canada will post the names of companies that receive positive labour market impact assessments (LMIAs) and number of temporary foreign workers (TFWs) approved for work at those companies. This information will be updated on a quarterly basis.

The posting of this information should not be confused with the posting of employer names on employer ineligibility list (also known as the "blacklist") of employers who are no longer able to use the immigration program because of previous violations.

Before submitting an application for a LMIA, employers should carefully consider the impact of being publically listed as a foreign worker employer.

Leaving aside the possibility that the public could complain about specific companies that hire foreign workers, one of the possible side-effects is that an employer could open itself up to court actions brought about by third parties (unions, competitors, individuals) who may have issues with a company's hiring of TFWs.

In June 2013, I co-wrote this article about a court case in which the Construction and Specialized Workers' Union and the International Union of Operating Engineers was allowed to challenge the issuance of a labour market opinion (LMO) to a BC mining company.

While the unions who launched this court action eventually lost, what is significant in

The overhaul of Canada's Temporary Foreign Worker Program may impact employers' ability to hire TFWs.

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Last name *

this case was that the judge allowed the unions to bring this case despite the fact that the unions did not represent any workers at that mining company. This decision opened up the doors for interested third parties to bring court actions to strike out LMIAs that facilitate a company's ability to hire TFWs. If the unions in that case were successful, presumably, the foreign workers hired under that LMO would have to leave the country.

While the unions were successful in bringing a court action in that mining case, in another court case, United Steel Workers v. Canada (Citizenship and Immigration), 2013, FC 496 (CanLII), the judge refused to grant a union the ability to challenge the LMO. However, the judge did leave open the possibility that a union could challenge a LMO if a number of conditions were met.

Clearly the issue as to whether a union or other interested third party can bring an action against a company is still an open one. According to this media report from June 2014, there are further challenges to work permits by third parties that are in progress.

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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