

AIKINS LAW

Immigration Law 2013: Time to unlearn what you have learned

R. Reis Pagtakhan

May 3, 2013
Aikins, MacAulay & Thorvaldson LLP

About the Author

Reis Pagtakhan is a Canadian corporate immigration lawyer who focuses on obtaining Canadian temporary entry and permanent residency for senior executives, managers, professionals and other company employees from all over the world.

A partner with Aikins Law, Reis has over 17 years of experience advising corporate clients and individuals in immigration matters. He has been invited to speak on immigration law to Canadian and international audiences by the Human Resource Management Association of Manitoba, the Canadian Manufacturers and Exporters, the Canadian Corporate Counsel Association, the Law Society of Manitoba, the Manitoba Bar Association and the Community Legal Education Association of Manitoba.

Reis is active in promoting changes to immigration laws for the benefit of employers and employees. He has presented position papers before the Minister of Citizenship and Immigration, co-authored the Manitoba Bar Association's response to the Worker Recruitment and Protection Act, and has appeared before the House of Commons Standing Committee on Citizenship and Immigration to speak to changes in immigration legislation. A prolific writer, he has written over 80 articles and papers on immigration law which have appeared in local and national publications and international websites including the Winnipeg Free Press, HRmatters, the World Services Group and other professional services, legal, construction, and ethnic publications

Reach Reis at (204) 957.4640 or rrp@aikins.com. Follow him on [Twitter](#) or connect with him on [LinkedIn](#).



Table of Contents

I.	Introduction	1
II.	Changes to the immigration processing – less people, more computers.....	1
a.	The closure of immigration offices in Canada and abroad	1
b.	Temporary Foreign Worker Units are now centralized in Toronto and Montreal	1
c.	The move to on-line processing.....	2
III.	Work Permits and Temporary Residency – What’s new for 2013?	2
a.	Changes to Labour Market Opinion Based Work Permits	2
b.	Changes to the rules for employees of multinational companies	5
c.	New bridging open work permits	5
d.	Expansion of the NEXUS program.....	6
e.	Elimination of certain Employment Insurance benefits for temporary foreign workers with expired Social Insurance Numbers	6
IV.	Permanent Residency – Changes, changes and more changes	6
a.	The new Federal Skilled Trades Class.....	7
b.	The revised Canadian Experience Class	7
c.	The revised Federal Skilled Worker Class	8
d.	The revised Provincial Nominee Program.....	8
V.	Civil Liabilities for Employers – Beware of Class Action Lawsuits.....	8
VI.	What does the future hold? Crystal ball gazing for 2013-2014.....	9
a.	How will the temporary foreign worker program be revised?.....	10
b.	How will the new 5-year bar for “misrepresentation” affect business travelers?	10
c.	What new laws will be introduced on the issue of employer compliance?	10
d.	Will unions be allowed standing to challenge Labour Market Opinions of employers?	11
e.	What will be the penalties for employing foreign workers in Canada without authorization?	11
f.	Will open work permits be made available for spouses of long haul truck drivers?.....	11
g.	Will working-age dependent children of skilled temporary foreign workers be allowed to work in Canada with open work permits?.....	12

I. Introduction

In the last 12 months, Canadian immigration law has been turned upside down. Recent court cases, new government policies, a new permanent residency program, and substantial revisions to other immigration programs make this area of law one of the fastest moving. For those of you who became experts in the field last year, you can throw out almost all of your notes. Immigration law in 2013 barely resembles immigration law from 2012.

Throughout this paper, you will see references to footnotes that take you to various hyperlinks. The hyperlinks are supplemental materials to this paper. All of the hyperlinks were active as of the date this paper was written.

II. Changes to the immigration processing – less people, more computers

Perhaps the most significant change to the practise of immigration law in 2013 is the move to on-line processing and the simultaneous reduction of in-person service. The trend is clear. Immigration in 2013 and beyond will require employers and individuals to make do with less advice from government.

a. The closure of immigration offices in Canada and abroad

In the first half of 2012, Canada closed immigration offices in the U.S., Germany, Japan, Bangladesh, Malaysia, Serbia and Iran. Canada also eliminated front counter service at immigration offices across Canada¹. In 2013, Canada closed immigration offices in Venezuela² and South Korea³ and has also made further changes to the immigration processing network in the U.S.⁴ This has reduced the number of offices that can provide in-person service.

b. Temporary Foreign Worker Units are now centralized in Toronto and Montreal

In June, Citizenship and Immigration Canada announced the closure of Temporary Foreign Worker Units in Vancouver, Calgary and Moncton and the consolidation of these units in Toronto and Montreal. Manitoba employers must now file Temporary Foreign Worker Unit requests at the Toronto office⁵.

Temporary Foreign Worker Units are offices set up by Citizenship and Immigration Canada from which employers can request advance opinions on whether certain individuals entering

¹ <http://www.winnipegfreepress.com/opinion/westview/foreigners-are-valued-customers-159534505.html>

² <http://www.cic.gc.ca/english/resources/manuals/bulletins/2013/ob497.asp>

³ <http://www.cic.gc.ca/english/resources/manuals/bulletins/2013/ob498.asp>

⁴ <http://www.cic.gc.ca/english/resources/manuals/bulletins/2013/ob496.asp>

⁵ <http://www.cic.gc.ca/english/resources/manuals/bulletins/2012/ob433.asp>

Canada are exempt from a Labour Market Opinion and/or Work Permit. These opinions can then be used by travelers to present at Canadian ports of entry to ease their entry to Canada.

c. The move to on-line processing

In December, Citizenship and Immigration Canada announced the global launch of their electronic applications for temporary residents (individuals needing work permits, study permits or temporary resident visas)⁶. Prior to this announcement, Service Canada rolled out its on-line Labour Market Opinion process⁷.

This year, Manitoba moved all of its provincial nominee program applications on-line⁸. Not only is Manitoba promoting on-line applications, Manitoba has stated that on-line applications will be processed faster than paper applications (which they continue to accept).

Clearly, the trend of governments is to move individuals to on-line processing and away from paper based processing.

III. Work Permits and Temporary Residency – What’s new for 2013?

There have been a number of changes in the last 12 months to work permit and temporary resident processing. Because of the vast number of changes, it is impossible to list them all. The following are some of the more pertinent changes employers should be aware of.

a. Changes to Labour Market Opinion Based Work Permits

In many cases, employers who wish to hire temporary foreign workers must first apply for and obtain a Labour Market Opinion. Labour Market Opinions are documents issued by Service Canada in which permission is granted by the government of Canada for an employer to hire a temporary foreign worker. In order to obtain a Labour Market Opinion, employers must complete an application and establish that there are no Canadians or Canadian permanent residents that are willing and able to fill the position. When completing these applications, employers are typically required to establish the recruitment efforts they undertook to look for employees in the domestic work force, the minimum education and work experience requirements for the job, and the wage that will be paid.

In that last 12 months, major changes have been put in place in the Labour Market Opinion process in addition to changes in advertising requirements. Some of the highlights are as follows:

1. The “prevailing wage” has been clarified for select circumstances⁹

⁶ <http://www.cic.gc.ca/english/resources/manuals/bulletins/2012/ob486.asp>

⁷ http://www.hrsdc.gc.ca/eng/jobs/foreign_workers/webservice/index.shtml

⁸ <http://www.immigratemanitoba.com/how-to-immigrate/apply/>

⁹ http://www.hrsdc.gc.ca/eng/jobs/foreign_workers/manual/wage-directive.shtml

Generally, employers are required to offer the prevailing wage to all temporary foreign workers who are hired. The “prevailing wage” is the median hourly wage (or higher) as posted on Service Canada’s Working in Canada website for the occupation in the specific area where the temporary foreign worker will be employed¹⁰. In 2012, Service Canada clarified some exceptions to the “prevailing wage” rule. They are as follows:

- a. For unionized positions, employers must offer temporary foreign workers the same wage rate, as established under the collective bargaining agreement¹¹.
- b. In certain circumstances, employers of highly skilled workers can offer wages 15% below the prevailing wage. However, these employers must demonstrate that they pay the same wage (15% below the prevailing wage) to their Canadian and permanent resident employees working in the same occupation and geographic area. For employers of lower skilled workers who meet this test, a wage up to 5% below the prevailing wage can be paid. Under no circumstances can a wage be paid below the minimum wage¹².
- c. In instances where provincial/territorial governments have established wage schedules (e.g. *Construction Industry Wages Act*), the wage must be the greater of:
 - i. Up to 15% below the median posted wage for the occupation; or
 - ii. The wages set by the province/territorial wage schedule¹³

2. New rules on how wages will be determined when paid in a foreign currency

When a temporary foreign worker is paid in a non-Canadian currency, Service Canada will convert the wage into Canadian dollars using the Bank of Canada’s online daily currency converter *on the day on which the Labour Market Opinion application is received*¹⁴. Service Canada will then convert the wage and determine whether it is consistent with the “prevailing wage rate” that employers must pay.

Although the foreign wage is converted at the time that the application is received, the employer is still responsible for paying at least the “prevailing wage” regardless of any fluctuations in the value of the foreign currency. If fluctuations results in wages dropping below the “prevailing wage”, employers could be found in violation of the law¹⁵.

Under the law, employers are required to provide temporary foreign workers with wages, working conditions and an occupation substantially the same as in the original offer of employment. Should an investigation occur, Service Canada is instructed to convert the

¹⁰ http://www.hrsdc.gc.ca/eng/jobs/foreign_workers/manual/bul-20121126-neutral.shtml

¹¹ http://www.hrsdc.gc.ca/eng/jobs/foreign_workers/manual/wage-directive.shtml

¹² http://www.hrsdc.gc.ca/eng/jobs/foreign_workers/manual/wage-directive.shtml

¹³ http://www.hrsdc.gc.ca/eng/jobs/foreign_workers/manual/wage-directive.shtml

¹⁴ http://www.aikins.com/publications/article/the_hazards_of_paying_temporary_foreign_workers_in_us_dollars

¹⁵ http://www.aikins.com/publications/article/the_hazards_of_paying_temporary_foreign_workers_in_us_dollars

wages on the employer's payroll records into Canadian dollars *as of the pay date marked in the payroll record*. Service Canada will then compare the wage set out in the Labour Market Opinion to determine whether a violation of the law has occurred¹⁶.

3. The Federal Court clarifies that applicants who do not meet all of the requirements of a Labour Market Opinion can be denied a work permit.¹⁷

In June, the Federal Court of Canada decided the case of [Grusas v. Canada \(Citizenship and Immigration\)](#)¹⁸. In *Grusas*, an employer obtained a positive Labour Market Opinion which only listed that the foreign worker have a trade diploma or certificate and prove certain language skills. The Labour Market Opinion did not list a requirement that the successful candidate have any years of work experience.

While the Labour Market Opinion approval did not list the number of years of work experience required for the job, the Labour Market Opinion application completed by the employer indicated that at least three years of experience was required. While the immigration officer concluded that the applicant met the educational and language requirements for the job, the immigration officer refused the work permit because the prospective foreign worker was unable to prove three years of work experience.

When the prospective foreign worker took this case to court, she argued that because the Labour Market Opinion approval did not refer to a need for three years of work experience, she did not have to establish this fact. In addition, she argued that her educational training could be considered in lieu of for the minimum years of work experience.

In finding that the immigration officer's refusal was valid, the judge specifically indicated that while the three year work experience requirement was not stipulated in the Labour Market Opinion approval, work experience could be considered because the Labour Market Opinion approval was based upon an application that stipulated the number of years of work experience.

On whether the immigration officer should have considered the applicant's training in lieu of work experience, the judge stated that there was nothing in the job description that was included in the Labour Market Opinion application that indicated that alternative qualifications could be used as a substitute for work experience. As a result, the immigration

¹⁶ http://www.aikins.com/publications/article/the_hazards_of_paying_temporary_foreign_workers_in_us_dollars

¹⁷ http://www.aikins.com/publications/article/does_your_labour_market_opinion_disqualify_your_chosen_candidate_f_or_a_job

¹⁸ <http://canlii.org/eliisa/highlight.do?text=grusas&language=en&searchTitle=Search+all+CanLII+Databases&path=/en/ca/fct/doc/2012/2012fc733/2012fc733.html>

officer was entitled to conclude that the lack of experience was determinative in refusing the application.

b. Changes to the rules for employees of multinational companies¹⁹

In June, Citizenship and Immigration Canada introduced a number of “updates” to their Foreign Worker manual dealing with intra-company transferees. Intra-company transferees are employees of multinational companies seeking to work in Canada for a related company. There are three types of intra-company transferees – executives, managers and specialized knowledge workers. While most of the basic requirements that companies and employees must meet have not been changed, the following are some of the more significant changes:

1. First, in order to qualify as an intra-company transferee, the transferring employee must be a current employee of the foreign transferring company. Previously, Citizenship and Immigration allowed former employees to be intra-company transferees as long as they were employed abroad for at least one year in the three years immediately before the transfer.
2. Second, officers are now instructed to analyze whether an intra-company transferee’s proposed Canadian position will be at a similar or higher level than his or her foreign position. If it is determined that the intra-company transferee will not be making a lateral move or is being promoted, the intra-company transfer will only be approved if he or she is able to establish that an exceptional situation exists. In conducting this analysis, officers will now review both the intra-company transferee’s foreign and prospective Canadian position against Canada’s National Occupational Classification.
3. Finally, for specialized knowledge intra-company transferees, specialized knowledge can now be analyzed in relation to the knowledge base in the intra-company transferee’s company. Previously, specialized knowledge intra-company transferees had to prove that their knowledge was beyond what is commonly found in the industry. This change should be of assistance to intra-company transferee and companies who do not have an in-depth knowledge of what is commonly found in the industry.

c. New bridging open work permits

In December, Citizenship and Immigration Canada introduced a “bridging open work permit” for certain permanent residency applicants²⁰. To be eligible, the following parameters must be met:

- The foreign national must be currently in Canada;
- The foreign national must have valid status on a work permit that is due to expire within 4 months;

¹⁹

http://www.aikins.com/publications/article/canadian_immigration_rule_changes_for_employees_of_multinationals

²⁰ <http://www.cic.gc.ca/english/resources/manuals/bulletins/2012/ob485.asp>

- The foreign national must have received a positive eligibility decision on their permanent residency application under a provincial nominee program, the Federal Skilled Worker Program, the Federal Skilled Trades Program, or the Canadian Experience Class.

Under the bridging open work permits, foreign nationals will be able to work for whomever they choose. The only restriction is for applicants for permanent residence under a provincial nominee program. Bridging open work permit for these individuals will restrict foreign nationals to working from whomever they choose in the province or territory of destination. For bridging open work permits under the Federal Skilled Worker Program, the Federal Skilled Trades Program, or the Canadian Experience Class, there are no restrictions to employment location

d. Expansion of the NEXUS program

In July, the Canada Border Services Agency announced the lifting of the three-year residency requirement for Canadian and U.S. citizens applying to NEXUS. The NEXUS program allows frequent travelers to apply for and obtain NEXUS cards that expedite travel between Canada and the U.S.²¹

By amending the residency requirement, the Canada Border Services Agency is extending NEXUS membership eligibility to citizens of Canada and the United States currently residing abroad, or who have recently returned to Canada or the United States.

e. Elimination of certain Employment Insurance benefits for temporary foreign workers with expired Social Insurance Numbers

In December, Service Canada announced that only individuals with valid Social Insurance Numbers would be eligible for Employment Insurance benefits for maternity leave, parental leave or compassionate care. As a result, a temporary foreign worker who would normally be eligible for these types of benefits would cease to be eligible once their legal entitlement to work in Canada ceases²².

Does your organization provide top up benefits for employees? If so, you may want to look at this issue if some individuals in your work force are temporary foreign workers.

IV. Permanent Residency – Changes, changes and more changes

By the end of 2012, the only permanent residency programs available for temporary foreign workers working in Manitoba were the Manitoba Provincial Nominee Program and the Canadian Experience Class. By the beginning of 2013, a new Federal Skilled Trades Class was introduced

²¹ <http://www.cbsa.gc.ca/media/release-communique/2012/2012-07-10-eng.html>

²² <http://rpagtakhan.wordpress.com/2012/12/14/does-your-company-offer-top-up-benefits-for-maternity-and-parental-leave-if-yes-you-should-note-that-temporary-foreign-workers-whose-work-permits-have-expired-will-no-longer-get-paid-by-ei/>

and the Canadian Experience Class was revised with significant improvements. As of May 1, 2013, yet another option – The Federal Skilled Worker Class – was brought back.

a. The new Federal Skilled Trades Class

The Federal Skilled Trades Class applies only to skilled tradespeople. This new class will allow tradespeople with an offer of employment or certificate of qualification from a provincial authority to apply to immigrate²³. Amongst the requirements, applicants will need to demonstrate some language and work experience as well as qualifications in an occupation on a set list of trades.²⁴

For the first year of this program, only 3,000 applications will be accepted. Of these, only 100 applications will be accepted per job sub-category²⁵.

Another important feature of this new category is that special process has been set aside to issue work permits for certain individuals who will qualify under this class.²⁶

b. The revised Canadian Experience Class

The Canadian Experience Class allows highly skilled workers the ability to apply for Canadian permanent residency after working in Canada for a select period of time. Beginning in January of this year, applicants need only work in Canada for 12 months before applying²⁷. This is down from the 24 month requirement that existed in 2012 and prior.

By reducing the qualifying work time, the Canadian Experience Class may now be a better option for certain employers and employees. In recent years, the Manitoba Provincial Nominee Program has been the immigration option of choice for Manitoba employers and employees. However, the revised Canadian Experience Class may change what the best option for temporary foreign workers and their employers in Canada.

Under the Manitoba Provincial Nominee Program, applicants need only wait 6 months before applying. Once application is made, Manitoba can issue an approval in three months or less. However, unlike the Canadian Experience Class however, Manitoba's approval does not result in permanent residency. Manitoba Provincial Nominee Program applications must still be filed with Citizenship and Immigration Canada for processing.

²³ <http://www.winnipegfreepress.com/opinion/westview/changes-to-rules-on-trades-overdue-184225771.html>

²⁴ <http://www.cic.gc.ca/english/immigrate/trades/apply-who.asp#noc>

²⁵ <http://www.cic.gc.ca/english/immigrate/trades/applications.asp>

²⁶ http://www.hrsdc.gc.ca/eng/jobs/foreign_workers/notices/fstp.shtml

²⁷ <http://www.cic.gc.ca/english/immigrate/cec/apply-who.asp>

If the waiting times between the two programs are only a few months, it may be better to for employers to use the Canadian Experience Class as opposed to the Manitoba Provincial Nominee Program²⁸ for the reasons seen in [this chart](#).

c. The revised Federal Skilled Worker Class

Under the Federal Skilled Worker Class, foreign nationals must score a minimum number of “points” to qualify. While the point system is set-up to allow for a variety of applicants to qualify, the revised program makes it easier for younger immigrants (those aged 18 to 35) with Canadian work experience and proficiency in one or both of the official languages to qualify. Older immigrants, immigrants without Canadian work experience, and immigrants with lower proficiency in English and French will have a much harder time to qualify. Like the Canadian Experience Class, this class will only be open to skilled tradespersons, professionals and manager/executives.

The Federal Skilled Worker Class will have an overall cap of 5,000 applicants with a sub-cap of 300 applicants per eligible occupation²⁹. There are 24 eligible occupations under which people can apply. There are also options for persons already working in Canada or who have PhDs.³⁰

d. The revised Provincial Nominee Program

Last month, Manitoba introduced their revisions to the Manitoba Provincial Nominee program. For employers, the main component of this program has not changed – employers who offer employment to qualified temporary foreign workers can apply under Manitoba’s Employer Direct Stream. Where changes have occurred are in immigration streams for individuals without jobs or job offers. For these individuals, the eligibility requirements have become stricter³¹.

V. Civil Liabilities for Employers – Beware of Class Action Lawsuits

In March, Denny’s Restaurants settled a class action lawsuit brought against them in 2011 by a group of temporary foreign workers who were employed as cooks and servers in their B.C. restaurants. The total settlement was approximately \$1.425 million³². While Denny’s did not concede liability when it entered into this settlement, businesses should be aware of the issues that come about from this case.

²⁸

http://www.aikins.com/index.php/publications/article/why_and_when_businesses_should_stop_using_the_manitoba_provincial_nominee_p

²⁹ <http://www.cic.gc.ca/english/departement/media/releases/2013/2013-04-18.asp>

³⁰ <http://www.cic.gc.ca/english/departement/media/backgrounders/2013/2013-04-18.asp>

³¹ <http://www.winnipegfreepress.com/opinion/westview/policy-change-affects-immigration-numbers-199303871.html>

³²

http://www.aikins.com/publications/article/employer_settles_a_temporary_foreign_worker_lawsuit_for_1_4_millio_n

In this case, *Dominguez v. Northland Properties Corporation*³³, the allegation was that Denny's failed to provide its workers with the hours of work promised, failed to pay overtime, and failed to reimburse them for certain expenses in securing employment at Denny's including recruitment fees and travel costs.

In the settlement agreement, Denny's agreed:

1. to pay the workers for any shortfall in the full-time hours the workers were entitled to work;
2. that the workers were entitled to be paid overtime (including vacation pay and interest);
3. that any of the workers who were not reimbursed for airfare costs to and from Canada would be reimbursed. The only exception would be for return airfare for individuals who secured permanent residency in Canada or obtained employment in Canada with another employer;
4. to establish a \$300,000 fund to repay any workers – to a maximum of \$10,000 each – for recruitment agency fees they may have paid directly or indirectly;
5. to make a \$40,000 charitable donation to a B.C. organization which assists temporary foreign workers; and
6. to make a further \$40,000 charitable donation to a children's charity agreed to by the parties.

During the course of the lawsuit, a few other issues arose. As many of the workers continued to work at Denny's while the lawsuit was in progress, certain communications between Denny's management employees and the workers became an issue. In one instance, it was alleged that management suggested to some workers that they should opt-out of the lawsuit or lose their employment. As a result, by the time the opt-out period expired, 19 of the 77 workers opted out of the case. These 19 opt-out notices were nullified by the court with the support of Denny's.

Under B.C. law, courts must approval class action settlements and must be convinced that any court ordered settlement is fair, reasonable and in the best interests of the class as a whole. In approving the settlement, the judge found the workers would achieve "basically full recovery" for any shortfall in hours or unpaid overtime and that the money set aside for reimbursement of recruitment agency fees was "potentially large enough to provide full or almost full recovery".

In addition, to approving the settlement, Denny's was ordered to pay the representative plaintiff, the worker who brought the lawsuit, a \$2,500 honorarium. As well, the lawyers for the workers were awarded legal fees of up to \$425,000 for past work and to finalize the claims.

VI. What does the future hold? Crystal ball gazing for 2013-2014

³³ *Dominguez v. Northland Properties Corporation*, 2013 BCSC 468 (CanLII), <http://canlii.ca/t/fwl6k>

With all of the changes made to the immigration system in the last 12 months, one would think that there are no further changes to make. That would be wrong.

Currently, there are laws going through parliament that would introduce even more changes to immigration laws. In addition, there are cases working their way through the courts that will have a direct impact on laws relating to temporary foreign workers. Finally, Citizenship and Immigration Canada is currently still working on immigration pilot projects that, if considered successful, often become permanent policy across the country.

The following are some questions that individuals should put their mind to in the upcoming year.

a. How will the temporary foreign worker program be revised?

In March, the federal government announced, as part of the budget, that they would be changing the temporary foreign worker program as it pertains to Labour Market Opinions. Amongst other things, the government announced that it would:

1. increase the length and reach of advertising companies would have to do in Canada;
2. prohibit employers from making the knowledge of a language other than English or French a job requirement; and
3. implement fees that employers must pay for these applications.³⁴

b. How will the new 5-year bar for “misrepresentation” affect business travelers?

Last summer, a new bill was introduced that was geared to removing immigrant criminals from Canada. Known as *The Faster Removal of Foreign Criminals Act*, the main portion of the law dealt with this aspect. However, another portion of the law proposed a 5-year bar from Canada for individuals who make “misrepresentations” under immigration law.³⁵

The central question is which misstatements will be treated as “misrepresentations”. For instance, will a traveller who is coming to work in Canada but claims to be going to a “meeting” be found guilty of “misrepresentation”³⁶? No one knows for sure. The bill, which is currently before the Canadian Senate, will likely become law before the Summer.

c. What new laws will be introduced on the issue of employer compliance?

Another overlooked portion of *The Faster Removal of Foreign Criminals Act* are two provisions that would allow the government to make regulations “to inspect, including the power to require documents to be provided for inspection, for the purpose of verifying compliance” and also for the government to set out “the consequences of a failure to comply”³⁷.

³⁴ <http://www.winnipegfreepress.com/opinion/westview/immigration-words-good-what-of-deeds-200693721.html>

³⁵ <http://www.winnipegfreepress.com/opinion/westview/removing-non-canadian-criminals-fair-policy-160647805.html>

³⁶ <http://www.aikins.com/index.php/publications/article/what-is-the-harm-of-a-white-lie-at-the-border>

³⁷ <http://rpagtakhan.wordpress.com/2012/11/21/cracking-down-on-foreign-criminals-and-employers/>

Given the broad scope of regulations that could follow from this law, companies should be on the look-out for what may come from this.

d. Will unions be allowed standing to challenge Labour Market Opinions of employers?

In November, the Construction and Specialized Workers Union and the International Union of Operating Engineers challenged the issuance of a Labour Market Opinion to HD Mining for their B.C. mining project. At the federal court, the unions were granted “standing” to bring this court action. This decision was appealed to the Federal Court of Appeal and the court allowed the unions to move forward with this case³⁸.

This case is still before the courts. When it is finally decided, it may answer whether third parties would have the ability to challenge Labour Market Opinion decisions of Service Canada³⁹. Companies should be aware of this as it could make Labour Market Opinion applications essentially public documents. Already, other unions have challenged Labour Market Opinions issued to private business in the court of public opinion⁴⁰.

e. What will be the penalties for employing foreign workers in Canada without authorization?

Last year, the owner of a local sushi restaurant in Manitoba was found guilty of employing foreign nationals who were not authorized to work in Canada. Upon conviction, the restaurant owner was given an 18 month conditional discharge, was required to complete 50 hours of community service, and was required to make two donations totalling \$12,000 to select immigration agencies in Winnipeg⁴¹.

After the sentence was handed down, the Crown appealed the case. The hearing is set for the Manitoba Court of Appeal on May 8, 2013.

This case may be the first of its kind to be decided by a court of appeal in Canada. As a result, the decision that will be made in this case will have a direct impact on the types of penalties employers can expect if they are found to be employing foreign nationals in Canada without proper authorization.

f. Will open work permits be made available for spouses of long haul truck drivers?

Under the current law, spouses and common-law partners of temporary foreign workers who are considered “high-skilled” are given the ability to apply for open work permits that allow them to

³⁸ HD Mining International Ltd. v. Construction and Specialized Worker Union, Local 2012 FCA 327 (CanLII) <http://canlii.ca/t/fv77x>

³⁹ <http://rpagtakhan.wordpress.com/2012/12/17/why-your-companys-lmo-application-may-become-a-public-document/>

⁴⁰ <http://www.winnipegfreepress.com/breakingnews/local-union-objects-to-foreign-labour-on-hospital-site-195212661.html>

⁴¹ *R. v. Choi*, 2012 MBPC 38 (CanLII) <http://canlii.ca/t/fr0vd>

work in Canada in virtually any occupation for the duration of the work permit of their spouse/partner.

Currently, an immigration pilot project is underway that allows spouses/partners of long haul truck drivers in Alberta (who are otherwise classified as low skilled) to work in Canada⁴². This pilot project is in place until July 31, 2013.

g. Will working-age dependent children of skilled temporary foreign workers be allowed to work in Canada with open work permits?

Another pilot project that is running until July 31, 2013 is one that allows for working-age dependent children (children age 18-22) of highly skilled temporary foreign workers, to be able to work in Canada under open work permits for the duration of their parent's work permit. This pilot project is currently running in Alberta⁴³, Ontario⁴⁴ and B.C.⁴⁵

Currently, the general rule is that working-age dependent children are not allowed to work in Canada unless they can qualify for work permits under their own accord. If this pilot project becomes permanent policy, this will open up the work force for these individuals.

⁴² <http://www.cic.gc.ca/english/resources/manuals/bulletins/2012/ob146A.asp>

⁴³ <http://www.cic.gc.ca/english/resources/manuals/bulletins/2012/ob122A.asp>

⁴⁴ <http://www.cic.gc.ca/english/resources/manuals/bulletins/2012/ob123A.asp>

⁴⁵ <http://www.cic.gc.ca/english/resources/manuals/bulletins/2013/ob337A.asp>