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# Feds proposing amendments to regulations governing Temporary Foreign Worker Program

**"This is overkill and duplication," says immigration lawyer Sergio Karas**



*Sergio Karas*

By [Aidan Macnab](#)

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To enhance protection of temporary foreign workers, the federal Department of Citizenship and Immigration is proposing [new amendments to the Immigration and Refugee Protection Regulations](#).

Beginning in the summer of 2017, the Temporary Foreign Worker Program (TFWP) consulted with stakeholders and experts, who suggested the program had several areas in need of improvement. The consultation heard that information on worker rights and protections should be given by the employers directly to the workers, that workers do not raise complaints about working conditions because they live in fear of being penalized and deported, that workers pay "enormous amounts" in recruitment fees even though such fees are prohibited and that workers lack access to health care.

The Department of Citizenship and Immigration is proposing employers pay for private health insurance to cover temporary workers, that the definition of "abuse" be expanded to include reprisals against workers and prohibiting the charging or recovering of recruitment fees. The department proposes giving the Minister of Employment and Social Development Canada (ESDC) the authority to obtain documents from third parties to verify an employer's compliance with the regulations. ESDC would also be entitled to shorten the time an employer has to respond to notices of preliminary findings and to create new Labour Market Impact Assessment requirements.

The Department predicts the changes would cost the federal government and employer \$37,677,828, over ten years. Employer costs would come from providing private health insurance, delivering the most up-to-date information about worker rights to employees and administration.

The federal government has been cracking down on the TFWP since the tenure of Stephen Harper, says immigration lawyer Sergio Karas. In 2014, public protest and pressure from NGOs over the abuse of temporary foreign workers led to reforms to the TFWP and International Mobility Program regulations, which were enacted in December 2015.

ESDC was given the authority to perform random inspections and promised to inspect 25 per cent of employers using the program, [said an article written by McInnes Cooper lawyers Sarah McInnes and Meghan Felt](#), back in 2015. The new regime also implemented monetary penalties for non-compliance of up to \$500,000 per violation and made employers subject to possible bans of one, two, five and ten years, depending on the violation.

Then came COVID. In April 2020, more regulations were enacted, including new compliance inspections. These regulations are still on the books, says Karas.

While many temporary foreign workers are vulnerable and past experience has demonstrated they are in need of protection, the problem with some of the government's actions is it does not differentiate between those using the program who are low-income workers and those who are making six-figure salaries, he says.

"Little by little, what we're seeing is that the federal government has been expanding the scope of inspections and the regulatory regime that governs the temporary foreign worker program. Don't get me wrong, I think that a lot of temporary foreign workers – particularly in the lower type of occupations – need protection. But... it's becoming very cumbersome for employers to be able to comply. It's a quite a significant cost that is imposed on the business."

"It's a waste of resources because that officer could be inspecting one of the groups at risk, rather than my client, an engineer who makes \$100,000."

Karas is also concerned with the scope of the regulation, which is beginning to cover areas primarily under provincial jurisdiction. Certain obligations being created for the TFWP are already covered under provincial Employment Standards legislation. It would make more sense to allow employees to complain to the province and have that complaint translate to a negative finding for the employer under the TFWP, he says.

"Why are we creating this enormous duplication?"

The proposed regulatory amendments will also require third-party disclosures – including banking information – if the ESDC deems it relevant to the inspection, says Karas.

"What prevents the government from engaging in a fishing expedition?" he says. "I'm not comfortable with the government poking their nose into somebody's bank account,

under the pretext that they are trying to check if it's relevant information that discloses some sort of violation that they are investigating. I don't think that's right."

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