

Protecting BC's Foreign Workers: Implementation of the *Temporary Foreign Worker Protection Act*

TEMPORARY FOREIGN WORKER PROTECTION UNIT
ESB PRESENTATION

"Migrant Workers Forum"
November 17, 2019

Government of British Columbia
Ministry of Labour



TODAY'S PRESENTATION

1. Overview of the new legislation

- Context of protecting workers in BC

2. Recruiter Licensing and Registry

- Timing
- Agents, Partner and Affiliates

3. Employer Registration and Registry

- Consultations
- Regulation



Temporary Foreign Worker Protection Act (TFWP Act)

TFWP Act received Royal Assent in November 2018 and create:

a. **Recruiter Licensing**

Regulations passed on July 8, 2019 - Recruiter required to be licensed effective **Oct 1, 2019**

b. **Employer Registration**

Stakeholder consultation ongoing – regulations to be drafted once consultation concluded. Regulations will set timeline for registration and online TFW Employer Registration will be launched.

c. **Investigations/Complaints**

ESB, to enforce TFWP Act via complaints (re-active) and audits (pro-active).



OVERVIEW – TFWP ACT

12 Parts in TFWP Act:

- Includes criteria for issuing licenses and registration certificate with or without condition, refusal, suspension or cancellation of licences or registrations – **Parts 2 and 3**
- Opportunity to be heard and re-consideration – **Part 4**
- Prohibited practices and obligations – **Part 5**
- Information sharing – **Part 6**
- Investigations, complaints and determinations – **Part 7**
- Enforcement, EST, Appeals and general provisions – **Parts 8 to 11**



WHO IS A RECRUITER?

Section 3 – a person must not provide **recruitment services** or act as or purport to be a **foreign worker recruiter** unless that person hold a licence.

Section 1 (definitions):

- *"foreign worker recruiter" means a person who, for a fee or compensation, received directly or indirectly, provides recruitment services;*
- *"recruitment services" means, services that assist a foreign national to secure employment in British Columbia or assist an employer to secure employment in British Columbia for a foreign national including*
 - (a) finding or attempting to find employment in British Columbia for a foreign national,*
 - (b) assisting or advising an employer in the hiring of a foreign national,*
 - (c) assisting or advising another person in taking the actions described in paragraph*
 - (a) or (b), and*
 - (d) referring a foreign national to another person who takes the actions described in paragraph (a) or (b);*



.....BUT DOES NOT INCLUDE

Anyone providing **only** the following services:

➤ **Exemption in Sec 3(2) of the Act:**

- (a) recruit or engage in activities to find foreign nationals for own business or for the person's own employer*
- (b) provide recruitment services to a member of the person's family*
- (c) act on behalf of college, institution or university as defined in College and Institute Act*
- (d) act on behalf of government of Canada, provincial government, governing body of first nation or local government or government outside of a jurisdiction of Canada*



RECRUITER LICENSE

- Foreign worker recruiters, whether or not BC, who recruit foreign nationals to work in BC or assist employers in BC the hiring of foreign nation must be licensed.
- Only individuals are licensed, not corporations.
- There is **no fee** to obtain a license but there is a requirement to submit **\$20,000 security bond**.
- TFWP Act requires us to assess each applicant as to the character, competency and financial history.
- Issued licences are published online on [TFW's website](#).
- Operating without a license - liable to **fine up to \$10,000**



RECRUITER LICENSING PROCESS

- Applicant submit his/her application **via TFW website**. Go to TFW website “[Apply for a recruiter’s licence](#)” and select “Apply for a License”
- **4 step process** – provide name, business names, contact, details of all **agents, affiliates and partners**, whether a lawyer, registered immigration consultant etc – submit application and send security bond
- TFWPU Licensing Officers will **review application** – will review the application for accuracy, completeness and verify submitted information
- TFWPU Licensing officers will also assess applicant’s **character, competency and financial history**. May follow-up with applicant with follow-up questions
- **Decision** – issue, issue with conditions or deny licence?
- If intent to deny or issue with conditions – must give **opportunity to be heard** before decision. If decision made not to issue or add conditions, then applicant given opportunity for **reconsideration**.



AGENTS, AFFILIATES AND PARTNERS

- Recruiters **must disclose** their partners, agents and affiliates inside and outside of BC.
- Powerful new tool for worker protection – to hold recruiters licensed in BC responsible for the activities of agents, partners or affiliates.
- Licensed recruiters are **responsible** for activities of agents, affiliates and partners including any misrepresentation of a job opportunity or wage in another country or province.
- **No-compliance** by agents, affiliates and partners could impact recruiter's license and security bond.



EMPLOYER REGISTRATION

- **Section 10 TFWP Act** – employers must not recruit foreign nationals, either directly or through the services of another person, unless the employer holds a certificate of registration.
- **Exemption** – Section 10(2) – “**prescribed class of employers**” – not prescribed in Act. No details available at this time pending passing of regulation.
- **When to register?** - To be determined pending passing of regulation
- **Cost to employer:** No fee for employers to register.
- **Director can issue (with or without conditions) or deny certification.** Rules of natural justice applies - Opportunity to be heard and Re-consideration.
- **If Certificate issued,** Director can investigate and/or amend, suspend or cancel certification. Director can also issue determination with penalty or penalties for non-compliance.
- Issued licensed will be **published** on TFWPU website.



PROHIBITED PRACTICES – PART 5

- **Must not directly or indirectly, charge** any person other than an employer a fee or expense **for recruitment services or employment**
- Take possession of or retain **foreign national's passport**
- **Cannot reduce a foreign worker's wages** in order to recover payments the employer made to the recruiter
- **Must have a signed contract** with foreign nationals and employers
- Produce or distribute **false or misleading information** related to recruitment services, immigration, immigration services, employment, housing for foreign workers or the laws of BC or Canada.
- **Misrepresent** employment opportunities, including positions, duties, length of employment, wages benefits and other terms of employment.
- **Threaten deportation** or other action for which there is no lawful cause.
- Take action or threaten to **take retaliatory action for filing a complaint** or participating in an investigation or proceeding.



Penalties

Offences – Section 80

A person is guilty of an offence if the person

- (a) contravenes a provision of this Act or the regulations,
- (b) makes a false or misleading statement to the director,
- (c) destroys documents required to be made or retained under this Act, or
- (d) hinders, obstructs or interferes with the director or a designate operating under the authority of this Act.

(2) A person who contravenes a provision of this Act is guilty of an offence and is liable on **summary conviction**,

- (a) in the case of an **individual**, to a fine of **not more than \$50 000** or **imprisonment for a term of not more than one year, or both, and**
- (b) in the case of a **corporation**, to a fine of **not more than \$100 000**.



For Further Information

For more information/details: TFW website:

<https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/hiring/hire-temporary-foreign-workers>

Or call: 1-833-236-3700

Or e-mail: BCTFW.ProtectionUnit@gov.bc.ca



Questions?

