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## flash International Executive Alert

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### Canada – Changes Planned for Country's Programs for Foreign Workers

by KPMG Law LLP, Tax & Immigration, Canada (KPMG Law is affiliated with KPMG LLP (Canada), a KPMG International member firm)

In this *Flash International Executive Alert* we highlight some recent developments concerning immigration and working in Canada that may affect individuals coming to work and/or study in Canada. Firstly, we discuss the changes planned for the Temporary Foreign Worker Program and the employers who rely on it. We follow this with a report on the changes to the Federal Skilled Worker Program.

### Reforms to the Temporary Foreign Worker Program

#### *Proposed Regulations Published*

On June 8, 2013, the Canadian government published its proposed regulatory changes to Canada's immigration system with respect to employers who rely on the Temporary Foreign Worker Program (TFWP), focusing considerably on employer compliance.<sup>1</sup> While these proposed regulations are currently subject to a public consultation and are not yet in force, it is expected that they could be implemented shortly – while they may be subject to amendment, it is not anticipated that there will be any substantial changes.

Below we summarize the main proposed changes:

- *Compliance Period:* Extend the TFWP compliance verification period from two years to a period of six years;
- *Specific Employer Undertakings:* Employers will be required to comply with any specific terms or undertaking provided in the Labour Market Opinion (LMO) issued;
- *Change the Assessment:* Change the assessment of the employer's compliance with previous offers of employment into an assessment of whether the employer provided each TFW employed with employment in the occupation set out in the foreign national's offer of employment and with wages and working conditions that were substantially the same as — but not less favorable than — those in the offer;
- *Expand Employer Representations:* Clarify that LMO and work permit applications are assessed on the basis of information provided on the officer's request by the employer making the offer and any other relevant information;
- *Power to Fix the Prevailing Wage:* Clarify that the prevailing wage rate is determined by Human Resources and Skills Development Canada (HRSDC) by reference to the published wage surveys or by other information obtained by the employer at the request of HRSDC; and
- *Power to Inspect:* Provide Citizenship & Immigration Canada (CIC) and HRSDC with the ability to determine and verify compliance with employer obligations.

Employers can expect a relatively short consultation period before these regulations come into effect. It is entirely possible that there may be some amendments based on the comments of stakeholders.

**KPMG Law LLP, Tax & Immigration, Canada Note**

Employers will need to carefully review their policies and processes in order to maintain compliance with these increasing obligations. KPMG Law LLP continues to monitor the proposed regulatory changes and will keep readers informed of implementation dates and of ways to support employers in meeting their enhanced obligations under the TFWP.

***Reforms to TFWP Were Announced in April***

On April 29, 2013, Canada's Minister of Human Resources and Skills Development, Diane Finley, and the Minister of Citizenship, Immigration and Multiculturalism, Jason Kenney, had announced reforms to the TFWP.<sup>2</sup>

***Background: Highlights of Changes Announced***

In that April announcement, the government had said it would introduce legislative, regulatory, and administrative changes that will:

- effective immediately, require employers to pay temporary foreign workers at the prevailing wage by removing the existing wage flexibility;
- effective immediately, temporarily suspend the Accelerated LMO process;
- increase the government's authority to suspend and revoke work permits LMOs if the program is being misused;
- add questions to employer LMO applications to help ensure that the TFWP is not used to facilitate the outsourcing of Canadian jobs;
- encourage employers that rely on temporary foreign workers to implement a firm plan to transition to a Canadian workforce over time through the LMO process;
- introduce fees for employers for the processing of LMOs and increase the fees for work permits so that Canadian taxpayers are no longer subsidizing the costs; and
- identify English and French as the only languages that can be used as job requirements.

***KPMG Law LLP, Tax & Immigration, Canada Note: What Employers Need to Know***

- According to the TFWP, any new employer obligations under the proposed changes will require that employers adopt, as a matter of internal policy and process, a demonstrated "Canadians first" policy which is transparent and communicated to all staff.
- According to the TFWP, the use of LMO exemptions, such as Intra-company transfers, will be subject to higher scrutiny. Employers must carefully and thoroughly prepare all applications for work permits, and fully comply with all requirements, so as to help reduce the possibilities of a loss of credibility and reputation.

As further developments come to light, KPMG Law LLP will endeavor to provide further updates.

This article is excerpted, with permission from “Comprehensive Changes to the Temporary Foreign Worker Program: The New Compliance Regulations” in KPMG Law’s *e-Alert*. For the complete story, click [here](#) ; also, from “Significant Reform to the Foreign Worker Program: Preliminary Analysis – Part 1” in KPMG Law’s *e-Alert* (April 30, 2013). For the complete story, click [here](#). *e-Alert* is a publication of KPMG Law LLP, a tax & immigration law firm in Canada affiliated with KPMG LLP (Canada), the KPMG International member firm in Canada.

## **Government Releases Details on Changes to New Federal Skilled Worker Program**

On April 18, 2013, the Canadian government provided details regarding changes to the new Federal Skilled Worker Program (“FSWP”) that had been announced in December 2012.<sup>3</sup> The update includes:

- a new eligible occupation list<sup>4</sup>;
- new minimum language proficiency requirements; and
- a list of designated organizations eligible to perform educational credential assessments.

Notwithstanding the changes, there remain three streams under which to qualify for the FSWP:

- possessing qualifying work experience in one of the 24 eligible occupations;
- possessing a qualifying offer of arranged employment; or
- credentials for eligibility pursuant to the PhD stream.

### ***Background***

The FSWP is a Permanent Resident stream available to qualifying candidates inside and outside of Canada. According to Citizenship and Immigration Canada, as the FSWP program was not adequately benefitting the Canadian economy, or allowing successful applicants to work in their field, it has since been redesigned with changes which came into force on May 4, 2013.

### ***Why Were the Changes Introduced?***

The modification of the FSWP program is based on research indicating that the most relevant factors in encouraging the successful integration of new immigrants into the labor market and economic establishment are language and age, this according to Citizenship and Immigration Canada. As such, the new selection criteria and point distribution seems now to emphasize young applicants, aged 18-35, with strong proficiency in either, or both, official languages (French and English). It also appears that the new requirement that all foreign education credentials be assessed by a designated third party prior to the filing of the application is similarly designed to facilitate the entry of newcomers into the Canadian labor market.

**KPMG LLP Tax & Immigration, Canada Note: What Employers Need to Know**

- FSWP applications have only been accepted as of May 4, 2013. The eligible occupation stream has an overall maximum capacity of 5,000 applicants, with each occupation being limited to 300 applications.
- As a result of the cap there is no clear timeline as to how long specific occupations will be available. As such, affected parties should take steps now to determine that language test results and educational credential assessments are prepared.
- Application forms and checklists were not to be made available prior to May 4, 2013.
- Applications that are incomplete and do not include all required supporting documentation will be returned and not locked-in.
- Individuals applying under the Arranged Employment stream will not face a cap.
- As language requirements under the FSWP are now more stringent, there may be value in looking towards Provincial Nominee Programs that allow applicants to avoid language testing in select situations.

This article is excerpted, with permission from “The New Federal Skilled Worker Program: Government Releases Eligible Occupation List and Other Key Details” in KPMG Law’s *e-Alert* (April 29, 2013), a publication of KPMG Law LLP, a tax & immigration law firm in Canada affiliated with KPMG LLP (Canada), the KPMG International member firm in Canada. For the complete story, click [here](#).

*Footnotes:*

1 For the proposed regulations published in the Canadian Gazette, see: <http://www.gazette.gc.ca/rp-pr/p1/2013/2013-06-08/html/reg1-eng.html> .

2 See the April 29, 2013 News release (“Harper Government announces reforms to the Temporary Foreign Worker Program - Ensuring Canadians have first chance at available jobs”) at: <http://news.gc.ca/web/article-eng.do?ctr.sj1D=&ctr.mnthndVI=1&mthd=advSrch&ctr.dpt1D=420&nid=736729&ctr.lc1D=&ctr.tp1D=1&ctr.yrStrtVI=2008&ctr.kw=&ctr.dyStrtVI=26&ctr.aud1D=&ctr.mnthStrtVI=2&ctr.page=1&ctr.yrndVI=2015&ctr.dyndVI=4> .

3 For related information, see:

- the April 18, 2013 “News Release — List of Priority Occupations and Organizations Designated to Conduct Educational Credential Assessments for Federal Skilled Worker Program Released” at: <http://www.cic.gc.ca/english/department/media/releases/2013/2013-04-18.asp> .
- the May 3, 2013 “News Release — Canada’s new and improved Federal Skilled Worker Program opening to applicants” at: <http://www.cic.gc.ca/english/department/media/releases/2013/2013-05-03.asp> .

4 The eligible occupation list has been updated to include the 24 occupations, including petroleum engineers, mining engineers, aerospace engineers, and computer programmers and interactive media developers, to name a few.

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The information contained in this newsletter was submitted by KPMG Law LLP in Canada, a tax & immigration law firm affiliated with KPMG LLP (Canada) the KPMG International member firm in Canada. The information contained herein is of a general nature and based on authorities that are subject to change. It is not, and does not purport to be, legal advice. Applicability of the information to specific situations should be determined through consultation with your tax adviser and/or legal counsel.

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