

Special Compliance Inspections for Employers of the Temporary Foreign Worker Program

Stefanie Di Francesco

March 24, 2020

The Government of Canada has made clear that employers of foreign workers have an important role to play in helping to prevent the introduction and spread of COVID-19.

On April 20, 2020, new regulations to the *Immigration and Refugee Protection Regulations* (IRPR) came into force, which place specific requirements on employers to ensure the safety and health of foreign workers during the COVID-19 pandemic. These requirements are further to the letter to employers issued jointly by the Minister of Health and the Minister of Employment, and further guidance published by the federal government.

On April 24, 2020, Employment and Social Development Canada (ESDC) and Service Canada also announced that, effective immediately and during the course of the COVID-19 pandemic, their investigators will be conducting special compliance inspections of employers who use the Temporary Foreign Worker Program (TFWP) to monitor compliance with the new IRPR requirements.

As detailed below, employers selected for an inspection will be given a short window of time to demonstrate compliance with the new IRPR requirements. Accordingly, prudent employers of foreign workers will preemptively compile the documentation needed to respond to such an inspection to help ensure the response deadline is met.

New IRPR Requirements

Employer responsibilities pursuant to the new IRPR requirements include:

1. Immediately informing Service Canada when the worker arrives at the designated work location by sending an email to: ESDC.ISB.QUARANTINE-QUARANTINE.DGSI.EDSC@servicecanada.gc.ca.
2. During the worker's initial 14-day quarantine or isolation period, ensuring that:
 - The employer does not do anything to prevent the worker's compliance with orders or regulations under the *Quarantine Act/Emergencies Act*,
 - Workers are paid wages, at least 30 hours per week, based on the hourly wage indicated on their

Cassels

Labour Market Impact Assessment (LMIA)/offer of employment, starting on the day they arrive.

3. At all times throughout the employment period, ensuring that the employer does not do anything to prevent the worker's compliance with a provincial/territorial law that regulates public health response to COVID-19.

4. During an inspection, cooperating with requests by investigators and providing relevant documentation for examination.

Note that there are additional requirements applicable to employers who provide accommodations to foreign workers. Further, in addition to these new requirements, it remains an employer's responsibility to ensure that it is complying with the conditions attached to its LMIA and the IRPR's regular requirements.

New Compliance Inspections

The new compliance inspections will be conducted remotely/virtually. Inspectors will look for specific conditions, listed above. An employer can be selected for inspection in accordance with the IRPR, including within the first fourteen (14) days of the temporary foreign worker's arrival.

If selected for an inspection, the investigator will contact the employer by phone and by email and the employer will have up to **48 hours** to provide the requested documentation by email or through an online portal. If there is no response, once the investigator makes contact, the employer will receive a Notice of Preliminary Finding, by email and registered mail, which the employer must respond to within five (5) days. If the employer's response is not received, ESDC/Service Canada will apply penalties.

Penalties for Non-Compliance

If an illness related to COVID-19 is detected, the investigator will immediately report this information to local public health officials who will take action as necessary.

If an employer is found non-compliant as a result of an inspection, specifically to the new IRPR requirements related to COVID-19, ESDC/Service Canada has the authority to apply the most severe consequences possible.

Penalties, depending on the severity of the violation, may include one or more of the following:

- Administrative monetary penalties ranging from \$1,000 to \$100,000 per violation, up to a maximum of \$1 million over one year;
- A ban of one, two, five or ten years, or permanent bans for the most serious violations;

Cassels

- The publication of the employer's business name and address on a public website with details of the violation(s) and/or consequence(s);
- The revocation of previously-issued LMIA's.

Further information about the new IRPR requirements and compliance inspections can be found [here](#).

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.