

Temporary Foreign Worker Program Manual

Policy Directive – Assessment of the Wage Factor when Processing Labour Market Impact Assessment Applications

Purpose:

The purpose of this directive is to provide guidance on the wage assessment factor when processing Labour Market Impact Assessment (LMIA) applications for:

- higher-skilled occupations (National Occupational Classification (NOC) skill type 0, and skill levels A and B); and
- lower-skilled occupations (NOC skill levels C and D).

Exclusions:

This directive does not include information on the wage assessment for LMIA applications for:

- Positions in Quebec;
- Live-in Caregiver Program (LCP);
- Seasonal Agricultural Worker Program (SAWP);
- Agricultural Stream.

Background:

The following information is intended to provide a consistent, transparent and standard process to follow when assessing the wage for temporary foreign workers (TFW) in accordance with the available labour market information. This information will also help ensure that the wage offered to TFWs reflects the standards by which Canadians and permanent residents working in the same occupation and work location are paid.

Authority:

The Temporary Foreign Worker Program (TFWP) operates under the authority of the *Immigration and Refugee Protection Act* (IRPA) and the *Immigration and Refugee Protection Regulations* (IRPR). The authority relevant to this directive is found in Section 203(3)d of the IRPR.

[203(3) An opinion provided by the Department of Human Resources and Skills Development with respect to the matters referred to in subsection (1)(b) shall be based on the following factors:

(d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards;

Guidelines:

Wage Assessment Considerations

Determining the median (prevailing) wage of the occupation:

- ESDC/Service Canada staff must refer to the median wage, as determined by the Labour Market Information (LMI) Service, for the occupation and geographic region where the job will be located in order to establish the prevailing wage rate. Median wage information can be found on the Job Bank website at: www.jobbank.gc.ca

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Determining the wage offered:

- ESDC/Service Canada staff must refer to the LMIA application and proof of advertising submitted by the employer to determine the wage offered. The wage offered is expected to be within the actual wage range provided to employees working the same job (same or similar title/job duties) at the same location unless the employer has submitted a justification to explain why wages offered are different.

Determining the range of wages offered to employees:

- ESDC/Service Canada staff must refer to the LMIA application to determine the range of wages an employer is paying to their employees working in the same position at the same worksite.

Determining the appropriate wage on the LMIA:

- ESDC/Service Canada staff must use the higher of the prevailing wage posted on Job Bank or the wage offered by the employer to complete the wage assessment. If the higher wage is at or above the provincial/territorial median wage, then the employer will be subject to the requirements of the High Wage stream (e.g. submitting a plan to transition to a Canadian workforce).
- When assessing the wage offered, ESDC/Service Canada staff should only include the guaranteed income to the TFW. The Program does not consider:
 - overtime hours;
 - tips;
 - benefits;
 - profit sharing;
 - bonuses;
 - commissions; and
 - other forms of compensation.

Note:

Employers who pay commissions, in addition to an hourly base wage, must include this amount in their advertising and use the same commission scheme for TFWs as for Canadian and permanent resident workers doing the same work in the same work location. When an employer is paying a commission, over and above the base wage offered, ESDC/Service Canada staff should add a "Note to File" in the Foreign Worker System.

When the prevailing wage is not available for the specific geographic region:

- In some instances, wage information may not be available on the Job Bank website for the specific geographic region. In these cases, ESDC/Service Canada staff should consult the information at the provincial/territorial level, and then at the national level.

When payroll information is provided:

- In the event that an employer voluntarily provides information demonstrating that employees in that position at that work location are being paid at a wage rate that is above the posted prevailing wage, the employer must offer the same wage to the TFWs working in the same occupation and work location.

Collective Bargaining Agreements:

- For unionized positions, employers must offer their TFWs the same wage rate as established under the collective bargaining agreement.
- If the wage offered to a TFW is below the posted prevailing wage, ESDC/Service Canada staff must request a copy of the collective bargaining agreement from the employer. If the wage meets the collective bargaining agreement pay scale for the occupation and work location, the wage offered should be accepted.

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Provincial/territorial minimum wage:

- The wage offered to a TFW cannot be below the provincial/territorial minimum wage. This requirement applies to all wage assessments.

Provincial/territorial government established wage schedules:

- In instances where provincial/territorial governments have established wage schedules (e.g. *Construction Industry Wages Act* in Manitoba), the LMIA application will be assessed using the greater of the:
 - posted prevailing wage for the occupation;
 - wage set by the provincial/territorial legislation; or
 - the wage offered by the employer

Industry-specific wages:

- To address the unique circumstances of certain occupations, industry-specific wage rates have been identified as the prevailing wage rate which should be offered to TFWs.

General:

- Employers must offer a minimum of 30 hours of work per week.
- Wage information is available on the ESDC website for the following specific programs:
 - LCP;
www.hrsdc.gc.ca/eng/jobs/foreign_workers/caregiver/index.shtml#tab3
 - SAWP; and
www.hrsdc.gc.ca/eng/jobs/foreign_workers/agriculture/seasonal/index.shtml#tab3
 - Agricultural Stream.
www.hrsdc.gc.ca/eng/jobs/foreign_workers/agriculture/general/index.shtml#tab3

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Wage offers equal to or above the higher of the posted prevailing wage and the wage offered can be accepted, with a justification (provided by the employer)

- Employers must offer TFWs:
 - at a minimum, the posted prevailing wage on Job Bank; or
 - a wage within the wage range of existing employees working in the same occupation and same work location ONLY if this rate is higher than the prevailing wage posted on Job Bank.
- In circumstances where the wage offered differs from the wage range (but is still above the Job Bank prevailing wage), a credible justification is required.

Wage offers below the posted prevailing wage will be denied

- Employers who advertised and offer TFWs a wage that is below the posted prevailing wage rate or the established wage rates will be issued a negative LMIA.