

(b) REASONABLE EMPLOYMENT NEED R200(5) – COMPANION TO DIRECTIVE ON GENUINENESS ASSESSMENT

New information is highlighted

Effective Date: 2018-01-15

Modified Date: 2021-02-25

1. Application

This companion directive applies to all streams.

2. Exemptions

There are no exemptions.

3. Guidelines

This directive provides instructions on how to determine whether the job offer is consistent with the reasonable employment needs of the employer.

Reasonable employment needs are those needs which could be justified as being related and relevant to the type of business that is being operated. Where a link may not be clear, employers should be given an opportunity to provide a rationale explaining how the offer of employment is consistent with the employment needs of their business.

To meet this requirement, employers must demonstrate that:

Table 1 – Reasonable Employment Need – Requirements by Stream

<p>Low/High Wage, GTS, Primary Agriculture and Permanent Resident</p>	<p>Private Household Low/High Wage</p>
<ul style="list-style-type: none"> • the LMIA job offer is relevant to the type of business being operated; • the LMIA job offer makes business sense; • there is a logical connection between the job offer details: <ul style="list-style-type: none"> ○ the hours of work ○ the timing of the LMIA application vs. the start date of the foreign worker ○ if applicable, not requiring the ability to communicate in a specific language is consistent with the NOC job requirements and the job duties do not require routine interactions (regular and predictable) with other individuals in a specific language. ○ PR only, the recruitment and hiring decisions as they pertain to the foreign worker (see <u>Other Considerations</u>) 	<ul style="list-style-type: none"> • the LMIA job offer is relevant to the type of service required; • the LMIA job offer makes sense; • there is a logical connection between the job offer details: <ul style="list-style-type: none"> ○ hours of work ○ the timing of the LMIA application ○ if applicable, not requiring the ability to communicate in a specific language is consistent with the NOC job requirements and the job duties do not require routine interactions (regular and predictable) with other individuals in a specific language. • Caregiver Only, the care recipients are: <ul style="list-style-type: none"> - younger than 18 years of age; or - 65 years or older; or - Persons with a disability, chronic or terminal illness

4. Procedures

4.1 Preparation of Genuineness assessment

Using Table 1 and the information gathered during the preparations for the Genuineness assessment (Directive on Genuineness Assessment steps 3.1 to 3.7) identify any issues related to Genuineness (b) Reasonable Employment Need. Proceed to step 4.2 to begin the assessment.

4.2. Job offer details

Determine if the job offer details are consistent with the principal business activity. For example, does the type of position requested in the application make sense for the type of goods and/or services offered by the business?

4.3. Legitimate job offer

Does the job offer make business sense? For example:

- why is this position required?
- will the request fill an immediate business/operational requirement?

- how has the business been operating without these positions so far?
- does the number of positions requested support current business operations? The number of positions can be reduced if warranted.

4.4. Application submission

Is there a logical connection between the job offer and the hours of work and timing of the submission of the application?

- the hours of work: full-time, minimum 30 hours/week. If less than 30 hours/week:
 - Are the hours offered normal for this occupation/industry?
 - Are the hours limited to protect the health and safety of workers?
 - Will the workers be able to support themselves financially?
 - Did the employer identify the requirement for periodic work in the advertisement to Canadians/permanent residents?
- the timing of the LMIA application (e.g. in line with the season, typical employment patterns, etc.)

4.5. No specific language requirement

The offer of employment requires no English or French language proficiency in reading, writing, speaking and listening. (Note: If the job offer requires an ability to communicate in a language other than English or French see Directive on Language Requirements)

4.5.1. Determine if the no language job offer is genuine.

There may be rare cases where a position with no specific language requirement can fulfill a basic employment need. In such cases, positions that generally do not require routine interactions with other individuals can be considered genuine. Review the application, job description, NOC job requirements and the following bullets to determine if there are routine interactions with other individuals that would require English or French communication.

- Do the job duties require interaction with colleagues, individuals not employed by the employer i.e. clients, service delivery personnel etc.?
- Do the job duties involve supervising other employees?
- Do the job duties involve training other employees?

4.5.2. Do the job duties require routine interactions with other individuals?

- 4.5.2.1. If no, then the no language requirement is genuine. Proceed to step 5 to continue the assessment.

4.5.2.2. If yes:

- and a determination that the no language job offer is not genuine has been made, then proceed to step 4.5.3.
- if however the genuineness of the no language job offer is -not clear, then proceed to step 4.5.2.3.

4.5.2.3. Determine the language requirement in relation to the overall job duties in this position by considering the following:

- How often will interactions occur?
- Are interactions routine (i.e. regular and predictable)?
- Can the job duties be fulfilled without the ability to communicate in French and/or English?
- If the employer amends their requirements to state that the position requires the ability to communicate, however the communication will be in a language other than English or French see Directive on Language Requirements.

4.5.2.4. The job offer does not generally require interactions with other individuals then the no language job offer is genuine. Proceed to step 5 to continue the assessment.

4.5.2.5. If the job offer requires routine interactions with other individuals then the no language job offer is not genuine. Proceed to step 4.5.3.

4.5.3. Non-genuine no language job offer

If not genuine, then request that the employer agree to modify their language requirement to English and/or French.

If	Then
the employer refuses to modify the selection, the employer has failed Genuineness factor (b) – Reasonable Employment Need.	proceed to step <u>5</u> to complete the genuineness assessment
If the employer modifies the language requirement of the job offer	<ul style="list-style-type: none"> • proceed to the Application Summary in the LMIA System to update the language requirement; and • if required, re-assess IRPR 203(1.01) Language of Work with consideration for the new language requirements.

	<ul style="list-style-type: none"> • If required, re-assess LMF (e-Hiring or Training Canadians/Permanent Residents) Recruitment and Advertising with consideration for the new language requirements. •the no language assessment is complete proceed to step 4.6
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4.6. Job offer requirement for Private Households

Verify that the job offer is consistent with the individual’s needs for service and documentation has been provided to substantiate the need for service. For caregiver applications ensure that the care recipient is:

- younger than 18 years of age; or
- 65 years or older; or
- Persons with a disability, chronic or terminal illness

4.7. If applicable, determine if there are any remaining outstanding issues or discrepancies identified in step 4.6.

4.7.1. If there are no issues proceed to step 5.

4.7.2. If there are issues then contact the employer to obtain the necessary information. If requesting documents, provide the employer with a reasonable timeframe to collect and submit the documents

- 5. Determine if the employer has demonstrated a reasonable employment need for the position being offered i.e. the need is justified as being related and relevant to the type of business being operated. Proceed to the desk-aid to document the assessment of Genuineness Reasonable Need.
- 6. Proceed to the desk-aid to document the assessment of Genuineness – Reasonable Need.

health (c) REASONABLY ABLE TO FULFILL THE TERMS OF THE JOB OFFER R200(5) – COMPANION TO DIRECTIVE ON GENUINENESS ASSESSMENT

New information is highlighted

Effective Date: 2018-01-15

Modified Date: 2021-07-13

1. Application

This companion directive applies to all streams.

2. Exemptions

There are no exemptions.

3. Guidelines

This directive provides instructions on how to determine whether the employer is reasonably able to fulfill the terms of the job offer.

Reasonable ability to fulfill means that the employer can demonstrate that all the terms of the job offer and/or those required by the TFW Program are likely to be met for the entirety of the period of employment offered, including having available resources to support the employment of the TFW.

Table 1 – Reasonably Able to Fulfill the Terms of the Job Offer by Stream

To meet this requirement, employers must demonstrate that, at a minimum they can provide:

All Streams
<ul style="list-style-type: none">wages (for duration of employment);a work environment that is reasonable and appropriate for an employee;stated hours of work, as outlined in the offer of employment;the worker with needed resources (e.g. equipment, transportation, accommodation, etc.) to do the job stated in the offer of employmentemployment benefits (Private health care (as applicable), worker's insurance, vacation pay, etc.), and;if applicable, a work environment for an employee where no language has been identified, the employer will need to demonstrate that the necessary health and safety accommodations or a reasonable alternative are in place. The following is a non-exhaustive list of accommodations to support workers with no language requirements:

- Having translated safety manual
- Providing safety training in the TFW's identified language
- Using international safety signs that use symbols
- Having translators on-site
- Employing other workers or supervisors who can speak the TFW's identified language

4. Procedures

4.1 Preparation Genuineness Assessment

Using [Table 1](#) and the information gathered during the preparations for the Genuineness assessment ([Directive on Genuineness Assessment](#) steps 3.1 to 3.6) identify any issues related to Genuineness (c) Reasonable Ability to Fulfill. Proceed to step [4.1.1](#) to begin the assessment.

4.1.1 The employer has demonstrated ability to fulfill if the following conditions have been met:

- During the past two years, a positive LMIA has been issued **and** if the most recent decision was negative, the reason for the negative decision is not related to Genuineness (c). **Note:** Private household employers **must** provide documentation to demonstrate their ability to fulfil the terms of the job offer, regardless of their history with the Program.
- No inconsistencies/issues related to Genuineness (c) were found during the LMIA application and supporting document review and LMIA System information review.
- No issues identified with respect to no specific language requirement and supporting documents reviewed and accepted.
- No Genuineness (c) unresolved issues were identified during the review of the LMIA System i-scores and notes
- No Genuineness (c) issues were identified during the external search.

4.1.2 If all conditions met, the assessment of this genuineness factor is complete, proceed to the desk-aid to document the LMIA System.

4.1.3 If any one of these conditions has not been met, then proceed to step [5.1.1](#)

Note 1: Officers have discretion to conduct a document-based assessment if they have reason to suspect that an employer does not have the ability to fulfill the terms of the job offer even if the employer has met step [4.1.1](#) requirements.

Note 2: It is anticipated that other positive LMIA's issued within the past six-months and where the foreign national has not yet arrived, will rarely be the sole trigger for a document-based ability to fulfill assessment. The officer should consider:

- what is the likelihood of a new document-based assessment revealing information that will change the outcome of step 4.1.2?
- does it make sense to conduct a document-based assessment?

Example: An officer assessing an LMIA application from a corporation, health authority or university may determine, based on size, stability or some other characteristic such as historical pattern of TFW Program usage, that recently issued LMIA's do not increase the risk of the employer failing to fulfill the terms of the job offer. The officer may determine that the previous assessment remains satisfactory.

Pending LMIA's from other regions should not be considered.

5. Preparations for a document-based assessment

5.1.1 Review the supporting documents provided with the LMIA application to determine if you are able to complete the assessment using the documents on hand. If no specific language selected then refer to LMIA application Job Offer Section and review any attached documentation provided. Proceed to step 6.1.1 if the documents on hand:

- are found in Annex A or are an acceptable alternative; and
- address any Genuineness (c) issues found during preparations for the Genuineness assessment (Directive on Genuineness Assessment steps 3.1 to 3.6)

5.1.2 Proceed to step 6.1.1 if clarification or additional documents are required to complete the assessment.

5.1.3 Contact the employer to request an explanation or additional supporting documents. Provide the employer with a reasonable timeframe to collect and submit the documents.

6. Conduct a document-based assessment

6.1.1 When the officer has the relevant supporting document(s) and, if required, an explanation from the employer, use Table 1 and Annex A, a non-exhaustive list of examples of supporting documentation, to determine if the employer is reasonably able to fulfil the terms of the job offer.

- 6.1.2 If the employer has addressed any issues identified **and** demonstrated that they are reasonably able to fulfill the terms of the job offer then the assessment of this genuineness factor is complete. Proceed to the desk-aid to document the LMIA System.
- 6.1.3 If the employer has not addressed the issues or demonstrated a reasonable ability to fulfill requirements then, contact the employer for clarification or, at the officer's discretion, request additional supporting documents as per Annex A.
- 6.1.4 If clarification and/or new documentation is received return to step 6.1.1 to repeat the assessment in context of the new information.
- 6.1.5 If the employer's clarification and/or new documentation did not address the issues or demonstrate a reasonable ability to fulfill the terms of the job offer, then issue a negative assessment of this labour market factor. Proceed to the desk aid to document the LMIA System.

Directive on Language of Work

New information is highlighted

Effective date: 2017-10-16

Modified date: 2019-08-27

1. Application

This directive applies to the High and Low wage streams, the Permanent Resident stream and the Global Talent stream.

2. Guidelines

With limited exceptions, English and French are the only languages that can be required for positions requested under the High and Low-wage streams, the permanent resident stream and the Global Talent stream of the TFW Program. A language other than English or French will only be considered where the employer can clearly demonstrate that the language is a legitimate requirement for performing the duties of the job.

The language of work assessment is a distinct IRPR factor and if it is determined to be negative it will result in a negative decision on the LMIA application.

IRPR subsection 203(1.01) For the purposes of paragraph IRPR 203(1)(b), the employment of a foreign national is unlikely to have a positive or neutral effect on the labour market in Canada if the offer of employment requires the ability to communicate in a language other than English or French, unless

(a) the employer or group of employers demonstrates that the ability to communicate in the other language is a bona fide requirement for performing the duties associated with the employment;

Section 5 Job Offer Details of the LMIA application requires that the employer specify the oral and written language requirements of the job offer. Options include:

- English and/or French
- A language other than English or French
- Does not require the ability to communicate in any specific language (i.e. no or limited language proficiency)

See Genuineness Factor B – Reasonable Employment Need to assess job offers with no or limited language proficiency requirements. i.e. The job offer does not require the ability, or limited ability, to listen, speak or write in French or English or any other language.

3. Exemptions

- Primary agriculture positions;

4. Assessing Language Requirements

4.1 Selecting English and/or French on the application form

The employer has selected English and/or French (and no other languages) on the application form. The language requirement is legitimate. Proceed to the Desk-aid to document the language assessment in the LMIA System. The language assessment is complete.

4.2 The employer has specified a language other than English and/or French on the application form.

4.2.1 Acceptable or non-acceptable rationale for selecting a language other than English and/or French.

Review the job description on the application, the NOC requirements and the written rationale provided by the employer in order to assess whether the requested language is a legitimate job requirement. Refer to [Annex A](#) for a non-exhaustive list of acceptable and unacceptable rationales and consider the following:

- Is the language necessary for the proper or efficient performance of the job? If so, in what sense?
- Is the language requested in the interest of effectiveness, safety, or productivity?
- Is it objectively reasonable to request the language (i.e. does it have a sensible connection to the ability of the employee to do the job)?

4.3 Job offer

Determine whether the job offer requirement for a language other than English or French is legitimate.

4.3.1.1 If legitimate, proceed to the Desk-aid to document the language assessment in the LMIA System. The language assessment is complete.

4.3.1.2 Acceptable and/or unacceptable rationales relating to a legitimate job offer.

If the rationale provided is not comprehensive, contact the employer for additional information. The employer must be able to clearly explain why someone cannot perform the duties of the position in English and/or French. If applicable, provide the employer with the opportunity to change the language requirements.

The following is a list of questions may help in making the determination:

- Which duties related to the NOC / position require this language and why?
- What proportion of time will be spent performing these duties?
- How many people do you employ or have you employed in this position in the last 5 years? How many of them have spoken this language?
- How many other employees speak the language and in what capacity?
- What are possible negative consequences (economic, health and safety or productivity) you can foresee if you are unable to hire someone who speaks the language?

4.4 Determine whether the job offer requirement for a language other than English or French is legitimate.

With consideration for any new information provided by the employer, determine whether the job offer requirement for a language other than French or English is legitimate.

4.4.1 Job offer requirement - if legitimate,

- 4.4.1.1** proceed to the Application Summary in the LMIA System to update the language requirement; and
- 4.4.1.2** proceed to the Desk-aid to document the language assessment in the LMIA System; and
- 4.4.1.3** re-assess Labour Market Factor (e) Recruitment and Advertising with consideration for the new job offer language requirements.
- 4.4.1.4** the language assessment is complete.

NOTE: Due to ongoing system limitations, in cases where LMIA's are issued with language requirements other than English or French the additional language(s) required are not displayed in the job information section of the LMIA decision letter. In these cases, please use the annex footnote section of the confirmation letter to indicate language requirements other than English or French as well as the addition of an IRCC note until such time that the LMIA system is enhanced to include this functionality.

4.4.2 Job offer requirement - not legitimate,

If not legitimate, proceed to the Desk-aid to document the language assessment in the LMIA System. The language assessment is complete.

5. Annex A

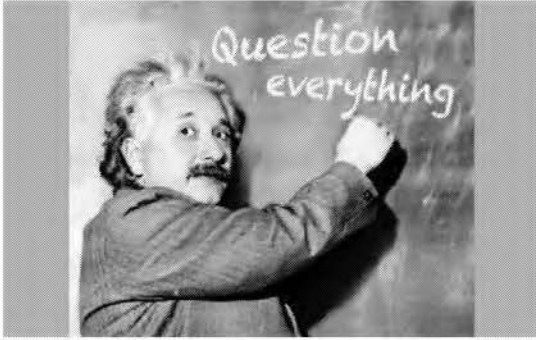
Examples of acceptable rationales

1. The language requirement is an integral component of the job description
 - Translator
 - Language instructor
 - Interpreter
2. The language requirement is necessary in order for a transferral of skills or knowledge or to promote employment for Canadians/permanent residents and the position is limited in duration:
 - Position duration must reflect the transferral of skills and knowledge (3-6 months)
 - The foreign national will be communicating in the language in order to train Canadians or permanent residents
 - The foreign national will be doing technical work which requires the language in order to interpret manuals or liaise with the home office of the equipment manufacturer
3. The language requirement is required as a matter of safety or security:
 - In rare circumstances, a health professional who is serving a population who speaks a third language within Canada (example a doctor or nurse who speaks Inuktitut in a remote Northern location)
 - Caregiver for an elderly or disabled person who speaks only the language
4. The language requirement is necessary in order to provide services to international clients or business components:
 - CEO for a company which specializes in a foreign product or clientele

Examples of unacceptable rationales

1. The language requested is due to the employer or supervisor's mother tongue being a language other than English or French.
2. The language requested is the primary language spoken in the workplace.

3. The language is requested due to efforts to expand business to a new (not yet existing) clientele group.



National TFWP Q&As

Service
Canada

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1. Wages

2. Business Structure/Ownership

2.1 Transfer of Ownership – Mergers and Acquisitions

Effective date 2016-04-01

Q1: Company A has been purchased by Company B:

- Company A is no longer active.
- Company name change with new CRA number.
- Ongoing LMIA – work permit has been issued – there are no changes to wages, occupation or working conditions
- Company B is new to TFWP – no genuineness assessment ever done
- Business activities stay the same, different legal and business name and CRA number.

Does the new employer need to submit a new LMIA including the fees?

A1: In cases where employer's responsibilities are transferred to a different employer through a merger or acquisition, both the original and successor employer must provide details on when the responsibilities of the employer were transferred, and the successor must agree (and acknowledge in writing) to all conditions set out in the original LMIA. Generally, a new LMIA would not be required.

A new LMIA would be required if the acquisition resulted in changes to the job duties or description. In addition, if the officer has serious concerns regarding the genuineness of the new employer, they may require the new employer to submit a new LMIA application and pay the required fees.

Q2: What if a transfer of ownership is confirmed during triage?

A2: It is generally during the triage stage that, based on who signed the LMIA application, an officer establishes who the owner is and who is therefore also responsible for providing payment (which is to be accepted at triage as well). However, if a transfer of ownership is confirmed before an employer goes through triage, officers can:

- accept the current LMIA as-is and request a written confirmation of the ownership transfer details; or
- accept a new LMIA application from the new owner

2.2 Definition - Owner Operator

Effective date 2016-08-29

Modified date: 2018-05-06

New information is highlighted

Q1: Is there a minimum percentage of shares that a TFW must own to be considered an owner-operator?

A1: Ownership of shares does not guarantee that a foreign national qualifies as an owner-operator. The term owner-operator generally refers to business owners and does not refer to individuals who receive shares as part of a compensation package. To qualify as an owner-operator, the foreign national must be able to:

- demonstrate a level of controlling interest* in the business (e.g. be a sole proprietor or a majority shareholder),
- demonstrate that such temporary entry will result in the creation or retention of employment opportunities for Canadians and permanent residents and/or skills transfer to Canadians and permanent residents and,
- must not be able to be dismissed.

***Controlling interest is defined as:**

- being the sole proprietor, or
- being a majority shareholder (hold a minimum of 50.1% of the shares), or
- providing an official document to confirm that one shareholder has controlling interest

2.3 Signing Authority - Owner Operator

Q2: Who should be signing the application? A lot of the applications under the owner-operator category are signed by an individual who has no direct influence in managing the business operations.

A2: The foreign national must sign the application as the owner-operator.

3. General Low-wage and High-wage

3.1 Pending Application Changing Wage Stream

Effective December 13, 2016

Q1: When an employer agrees to pay a new prevailing Job Bank median wage, which in turn causes the LMIA to move from the low-wage stream to the high wage-stream, are they required to submit a transition plan and to re-advertise in order to meet the high-wage advertising criteria (i.e. one ad that is national in scope instead of targeting underrepresented groups)?

A1: Yes, the employer must submit a transition plan if applicable for the position on the LMIA. However, there is no requirement to re-advertise if the wage has increased by less than 10%. If the wage has gone up more than 10% the officer should consult the [Wage Assessment Directive](#) in order to determine whether the timeframes necessitate re-advertising. If it is required, the employer must re-advertise for four weeks using the high wage stream advertising requirements.

Field Code Changed

Q2: If yes, should the application be held while the employer submits a transition plan and or re-advertises or should it be deemed incomplete?

A2: The officer should hold the LMIA for a reasonable timeframe in order to allow the employer to create and submit a transition plan. The officer should hold the LMIA for four weeks to allow for re-advertising if it is required, in accordance with the [Wage Assessment Directive](#).

Field Code Changed

Q3: How does the LMIA change streams in FWS?

A3: Unfortunately, at this time FWS will not allow a wage change which moves the LMIA from low-wage to high-wage stream. The LMIA must be closed and recreated with the new wage in FWS.

4. Transition Plan – High Wage Positions

5. Primary Agriculture

5.1 Agricultural Stream – Transportation

Effective April 19, 2016

Q1: Does the employer have an obligation to pay the TFWs daily travel costs if, by their own choice, the TFWs refuse to commute in the employer provided van? (Example: pay a mileage fee)

A1: The employer's obligation to provide transportation, at no cost to the TFW, ceases when the TFW chooses alternate transportation. The employer has the right to make transportation arrangements in the manner that is most economical and suitable to the situation. By refusing the transportation arrangements the TFW assumes full cost of the alternate transportation. The employer is not required to pay mileage costs to the TFW.

Q2: What if the TFW needs to commute/use their own vehicle to transport themselves to and from work due to an unusual/unforeseen circumstance?

A2: The employer and worker are not prevented from entering into an arrangement to cover all or part of the FW's mileage cost if they so choose. Such arrangements would be separate from the Agriculture Stream employment agreement/contract. TFWP strongly recommends that the employer and TFW make the arrangements in writing and that the document, signed by both parties, be kept in case of a future inspection. It is also the employer's responsibility to ensure that any such voluntary payments for mileage are made in accordance with applicable provincial/territorial legislation.

Note: An employer who chooses to reimburse a TFW for mileage in a case where the TFW declines the standard transportation arrangement should ensure that this reimbursement was included in the original advertisements for the job. Mileage reimbursements are likely part of the overall compensation related to the job. An employer who reimburses a TFW for mileage without having included that in advertisements recruiting Canadians and PRs for the job may be in violation of the advertising/recruitment requirements.

5.2 National Commodity List

The precisions on crop/livestock included or not included under the NCL are now available under the Annex B of the Primary Agriculture Directive.

6. Caregiver

7. Fees and Refunds

8. Program Integrity

9. Language Requirements

9.1 No Specific Language Required on LMIA

Q1: When an LMIA states that 'the offer of employment does not require the ability to communicate in any specific language' but the officer determines that it is unreasonable to accept that no language is required in order to safely and effectively perform the job on the LMIA what actions should they take?

A1: Section 200(5) of the Immigration and Refugee Protection Regulations (IRPR) provides the authority to assess the genuineness of an employer's job offer and outlines the factors that are used in making this determination. Whether the offer is consistent with the reasonable employment needs of the employer is one of the assessment

factors when determining whether an offer of employment is genuine (section 200(5)(b)). Reasonable employment needs are those needs which could easily be seen as taking place within the context of the goods and services that the employer's business provides and should make "basic business sense."

Under Section 200(5)(b), there may be a limited number of instances where "no language requirement" could pass the reasonable employment needs test. For example, some jobs require low levels of skill and minimal language proficiency or communication (e.g. listening, speaking, reading, and writing). Conversely, some jobs may not pass the reasonable employment needs test if they clearly require knowledge of English or French.

When the assessing officer, in discussions with the employer, determines that the selection of 'no language required' is unreasonable for the position requested on the LMIA, the employer should choose a language (French or English or another language if the employer can clearly demonstrate that the use of the non-official language is a bona fide occupational requirement for performing the duties associated with the job as per IRPR, Section 203(1)(1.01)(a)).

If the employer disagrees with the decision that a language is required and refuses to agree to the change on the LMIA the file can be refused under Genuineness – reasonable employment needs.

10. Recruitment and Advertising**11. Triage****12. Third Parties****12.1 IRPA Section 91 – Issuing a Negative Decision**

Effective September 1, 2016

Q1: Can Section 91(1) be used as grounds to issue a negative LMIA?

A1: Section 91 of IRPA is not an LMIA assessment factor, and is therefore not an authority that can be used to issue a negative LMIA.

13. Working Conditions**13.1 Workplace Safety Insurance**

Updated: November 4, 2016

Modified date: September 28, 2018

Q1: Is an employer required to register for workplace safety insurance if available but not mandated by the province/territory?

A1: Employers hiring temporary foreign workers under the TFW Program must always ensure that the workers are covered under their provincial plan where required by law. In provinces where the provincial legislation allows employers the flexibility to opt for a private insurance plan of their choosing, the employer must ensure:

- that any private plan chosen provides the same level of compensation to that offered by a province (e.g. must provide the same or better coverage than that offered by the province)

- that all employees on a work site are covered by the same provider.

TFWs have the same rights as Canadians and permanent residents and are covered under the same labour legislation and regulations. Working conditions for TFWs are regulated under federal and provincial/territorial legislation that contain rules and regulations related to maximum number of hours that can be worked, overtime pay, sick and vacation leave, and health and safety standards.

As such, "appropriate" provincial/territorial workplace safety insurance should be taken as coverage consistent with the legal responsibilities of employers towards Canadian citizens and permanent residents in their employ. In any case where applicable federal or provincial/territorial employment and labour laws and regulations exempt or otherwise do not require employers in a given industry/occupation to provide employed Canadian citizens or permanent residents with workplace safety insurance, it is "appropriate" for the employer to not provide coverage to TFWs.

The TFW Program requires employers applying under all Wage-based Streams, including the Stream for High Wage Positions, to obtain workplace safety insurance for temporary foreign workers when such insurance coverage is required under provincial and territorial labour or employment laws and regulations. As mentioned previously, such insurance coverage should be consistent with the legal responsibilities of employers towards employed Canadians and permanent residents.

Policy: Language of Work

Policy Statement

To ensure that Canadians and permanent residents are not excluded from employment opportunities, languages other than English and French should not be required as a condition of employment unless there is a bona fide occupational requirement.

Scope

This policy applies to the Stream for High-wage Positions, the Stream for Low-wage Positions and the Global Talent Stream of the Temporary Foreign Worker Program, and Labour Market Impact Assessments (LMIA) in support of permanent resident applications.

Exemptions

Under paragraph 203(1)(b) and subsections 203(1.01)(b) and (c) of the *Immigration and Refugee Protection Regulations* (IRPR), positions in primary agriculture, including those in the Seasonal Agricultural Worker Program (SAWP) are exempt from this policy.

Authority (Acts, regulations and other legislation)

Immigration and Refugee Protection Regulations (IRPR), paragraph 203(1)(b) and subsection 203(1.01)

(1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(c)(i) to (ii.1), an officer must determine, on the basis of an assessment provided by the Department of Employment and Social Development, of any information provided on the officer's request by the employer making the offer and of any other relevant information, if

...(b) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada...

(1.01) For the purposes of paragraph (1)(b), the employment of a foreign national is unlikely to have a positive or neutral effect on the labour market in Canada if the offer of employment requires the ability to communicate in a language other than English or French, unless

- (a) the employer or group of employers demonstrates that the ability to communicate in the other language is a bona fide requirement for performing the duties associated with the employment;
- (b) the offer of employment relates to work to be performed under an international agreement between Canada and one or more countries concerning seasonal agricultural workers; or
- (c) the offer of employment relates to other work to be performed in the primary agriculture sector, within the meaning of subsection 315.2(4).

Temporary Foreign Worker Program

Policy

English and French are the only languages that can be generally identified as a job requirement, both in advertisements by employers intending to hire temporary foreign workers and in LMIA applications, unless the employer can clearly demonstrate that the use of a non-official language is a bona fide occupational requirement for performing the duties associated with the job. This measure helps to ensure that employers are not able to exclude Canadians or permanent residents from employment opportunities.

A bona fide occupational requirement is one that is necessary for the proper or efficient performance of a job. For a language requirement to qualify as a bona fide occupational requirement, it must be made honestly, in good faith, and in the sincere belief that it is made in the interests of effectiveness, safety, and productivity. It must also be objectively reasonable - in other words, it must have a sensible connection to the ability of an employee to do the job.

An example of a bona fide occupational requirement includes when an employer can clearly demonstrate that proficiency in a certain language is required to provide services to international clientele. In contrast, a bona fide occupational requirement would not include situations where an employer's mother tongue is a language other than English or French, and the requirement to be able to communicate in another language is unrelated to the duties of the job.