

OPERATIONAL DIRECTIVE

Ministerial Instruction

'Refusal to Process' applications for positions in economic regions where the annual unemployment rate is 6% or higher, in the accommodation and food services and retail trade sectors at the National Occupation Classification (NOC) D skill level.

Purpose:

The purpose of this directive is to provide operational guidance to Employment and Social Development Canada (ESDC)/Service Canada staff following Ministerial Instructions to refuse to process Labour Market Opinions (LMO) (hereafter referred to as Labour Market Impact Assessment (LMIA)) applications for positions in economic regions where the annual unemployment rate is 6% or higher, in the Accommodation & Food Services and Retail Trade Sectors (North American Industry Classification System (NAICS) sectors 72 and 44-45) at the National Occupation Classification (NOC) D skill level. The refusal to process will apply only to positions which fall under the NOCs listed in Annex A.

Background:

On June 20, 2014, under the authority provided by the *Immigration and Refugee Protection Act (IRPA)*, the Minister of Employment and Social Development announced new Ministerial Instructions to refuse to process applications for temporary foreign workers (TFW) that meet the above criteria.

This usage of the Ministerial Instructions to refuse to process LMIA applications uses the following public policy consideration as rationale:

There is information to indicate that the employment of the foreign national under the work permit in any portion, sector, region or occupational group of the labour market in Canada may or will have a significant negative effect on that labour market.

In the view of the Department, in economic regions that would be affected by the decision, it is likely that there is a supply of domestic labour that could be quickly hired and trained to fill available jobs. In addition, there is evidence that the entry of TFWs in these regions and occupations is having a negative impact on the labour market by displacing youth, and other underrepresented groups, from jobs which serve as entry points for these groups into the labour market.

Operational Guidance:

This operational guidance is not applicable in Quebec.

Definitions:

Economic regions unemployment rate: Updated annually and listed in Annex B.

Accommodation and food services sector: Classified in the NAICS '72'. This sector comprises establishments primarily engaged in providing short-term lodging and complementary services to travellers, vacationers and others, in facilities such as hotels, motor hotels, resorts, motels, casino hotels, bed and breakfast accommodation, housekeeping cottages and cabins, recreational vehicle parks and campgrounds, hunting and fishing camps, and various types of recreational and adventure camps. This sector also comprises establishments primarily engaged in preparing meals, snacks and beverages, to customer order, for immediate consumption on and off the premises.

Retail trade sector: Classified in the NAICS '44-45'. The retail trade sector comprises establishments primarily engaged in retailing merchandise, generally without transformation, and rendering services incidental to the sale of merchandise.

The retailing process is the final step in the distribution of merchandise; retailers are therefore organized to sell merchandise in small quantities to the general public. This sector comprises two main types of retailers, that is, store and non-store retailers. Their main characteristics are described below:

- Store Retailers

Store retailers operate fixed point-of-sale locations, located and designed to attract a high volume of walk-in customers. In general, retail stores have extensive displays of merchandise and use mass-media advertising to attract customers. They typically sell merchandise to the general public for personal or household consumption, but some also serve business and institutional clients. These include establishments such as office supplies stores, computer and software stores, gasoline stations, building material dealers, plumbing supplies stores, and electrical supplies stores.

In addition to selling merchandise, some types of store retailers are also engaged in the provision of after-sales services, such as repair and installation. For example, new automobile dealers, electronics and appliance stores and musical instrument and supplies stores often provide repair services, while floor covering stores and window treatment stores often provide installation services. As a general rule, establishments engaged in retailing merchandise and providing after sales services are classified in this sector.

Catalogue sales showrooms, gasoline service stations, and mobile home dealers are treated as store retailers.

- Non-Store Retailers

Non-store retailers, like store retailers, are organized to serve the general public, but their retailing methods differ. The establishments of this subsector reach customers and market merchandise with methods such as, the broadcasting of infomercials, the broadcasting and publishing of direct-response advertising, the publishing of traditional and electronic catalogues, door-to-door solicitation, in-home demonstration, temporary displaying of merchandise (stalls) and distribution by vending machines.

The methods of transaction and delivery of merchandise vary by type of non-store retailers. For example, non-store retailers that reach their customers using information technologies can receive payment at the time of purchase or at the time of delivery, and the delivery of the merchandise may be done by the retailer or by a third party, such as the post office or a courier. In contrast, non-store retailers that reach their customers by door-to-door solicitation, in-home demonstration, temporary displaying of merchandise (stalls) and vending machines typically receive payment and deliver the merchandise to the customer at the time of the purchase.

The non-store retailers' subsector also includes establishments engaged in the home delivery of products. This includes home heating oil dealers and newspaper delivery companies.

Note:

Currently, the Foreign Worker System (FWS) is designed to have a NAICS code assigned to the Employer profile which indicates the sector of the employer's primary business activities. In most cases the sector assigned to the employer will align with the sector of the job offer (e.g. 98654 AB LTD, only operates fast food outlets and applies to hire a front counter attendant, the sector of the employer and the position are both in NAICS 7222). However, this is not always the case as companies may be involved in various sectors (eg, Co. A operates a large commercial cleaning business and also operates a fast food franchise, and will be classified based on their 'primary' activities in commercial cleaning, NAICS 5617).

When an application is received, it is important to consider both the position being applied for and the sector the work will be in. For example, if the employer above applies to hire a cleaner, it is important to understand what

sector the cleaner was being hired for. If the cleaner is for the commercial cleaning side of the business, the NAICS code would align but if the employer were applying to hire the cleaner to work in the fast food franchise, it would not. For this reason, we will be developing a new field in the FWS at the Job details level to assign a NAICS to the sector where the work will occur. Until this functionality has been completed in the FWS, it may be necessary for an officer to consult with Business expertise and/or NHQ and make a note to file, particularly if impacted by this MI and if the sector of the job offer does not align with the NAICS code assigned to the employer of record.

Procedures:

Step 1 - Prior to collecting the processing fee

Prior to processing the fee, staff will need to verify the following:

- If the regional unemployment rate, as indicated in Annex B, is 6% or higher;
- If the NOC for the position is listed in Annex A;
- Whether the position is in the accommodation and food services or the retail trade sectors.

If the application indicates **all** of the following:

- **the regional unemployment rate is 6% or higher;**
- **the position is on the list of NOCs in Annex A; and**
- **the position is in either the accommodation and food services or the retail trade sectors;**

The application cannot be processed.

- Enter the employer information and the initial job details into the FWS. Do not proceed with the assessment and **do not collect the processing fee.**
- In the FWS 'Notes to file', **enter the following rationale** and **close the file:**

The application indicates that the hiring of the foreign worker(s) is in an economic region with an unemployment rate 6% or higher, the position is classified as NOC XXXX and it is in the < accommodation and food services or retail trade sectors>. Service Canada has ceased processing the application prior to processing the fee and both will be returned.

- Generate an FYI letter indicating that the file has been closed and the application will not be processed. Please include the following wording:

Effective June 20, 2014, in accordance with section 30(1.43) (c) of the Immigration and Refugee Protection Act, and on the basis of the Ministerial Instruction given by the Honourable Jason Kenney, Minister of Employment and Social Development, the Department of Employment and Social Development Canada (ESDC) announced a refusal to process applications for certain positions in economic regions where the annual unemployment rate is at or over 6% in the Accommodation & Food Services and Retail Trade Sectors at the National Occupation Classification (NOC) D skill level. Consequently, this letter is to inform you that we cannot process your application and we are returning your application and the processing fee.

For applications with payment by Credit Card:

- Redact the middle eight digits of the credit card number.
- Mail (regular post, double envelope) the FYI letter and the application, including the redacted payment form.

For applications with payment by certified cheque or Money order:

- **Do not alter the document.**

- Use **Registered Mail** to send the FYI letter, the application and the original certified cheque or Money order, back to the employer.

Note:

The return of a processing fee prior to the processing of an application is **not** a refund. No refunds are given to employers whose LMIA application is not processed due to the nature of the employment.

If the application indicates any of the following:

- is in a region with an unemployment rate less than 6%;
- is not for a position on the list of NOCs in Annex A; or
- is not in the accommodation and food services or retail trade sectors.

The fee can be processed and the application can be fully assessed. An application not impacted by the Ministerial Instruction should not have any bearing on an officer's normal assessment.

Step 2 - Assess the file

If during the assessment of an application, the officer discovers an error was made in the original determination of the regional location of work, the NOC or the sector, the error needs to be corrected. If the correction now indicates the refusal to process does, in fact, apply, the file will need to be closed and not assessed further.

For example, the employer indicates during the assessment of the file that the duties of the job are different than what was indicated on the application form which changes the NOC to a NOC on the list in Annex A, and the other two factors also meet the criteria for this Ministerial Instruction to apply.

Note:

If a file is **closed** due to meeting the refusal to process criteria after the fee has been collected, the fee, or any portion, will **not** be refunded. The fee is for processing the LMIA application and processing was undertaken. A refund will only be processed if an administrative error was made by ESDC or Service Canada.

Impacted NOCs

NOC Code	NOC4 Title
6641	Food Counter Attendants, Kitchen Helpers and Related Occupations
6661	Light Duty Cleaners
6611	Cashiers
6622	Grocery Clerks and Store Shelf Stockers
7611	Construction Trades Helpers and Labourers
8612	Landscaping and Grounds Maintenance Labourers
6672	Other Attendants in Accommodation and Travel
6663	Janitors, Caretakers and Building Superintendents
6662	Specialized Cleaners
6651	Security Guards and Related Occupations

Impacted Economic Regions 6% and higher unemployment rate**(Annual, 2013)**

P/T	Economic Region Name	%	P/T	Economic Region Name	%
NFLD	Avalon Peninsula	7.8	ON	London	7.8
	South Coast - Burin Peninsula	17.4		Windsor - Sarnia	8.4
	West Coast - Northern Peninsula - Labrador	15		Stratford - Bruce Peninsula	5.7
	Notre Dame - Central Bonavista Bay	16.5		Northeast	7.5
PEI	Prince Edward Island	11.5		Northwest	7.2
NS	Cape Breton	14.1	MB	Southeast	4.1
	North Shore	11		South Central	3.1
	Annapolis Valley	9.2		Southwest	3.6
	Southern	11.2		North Central	3.1
	Halifax	6.6		Winnipeg	6.1
NB	Campbellton - Miramichi	17.3		Interlake	4.5
	Moncton - Richibucto	8.7		Parklands	6.2
	Saint John - St. Stephen	9.6		North	6.2
	Fredericton - Oromocto	7.2	SK	Regina - Moose Mountain	3.4
	Edmundston - Woodstock	10.7		Swift Current - Moose Jaw	2.6
QC	Gaspésie - Îles-de-la-Madeleine	16.2		Saskatoon - Biggar	4
	Bas-Saint-Laurent	9.8		Yorkton - Melville	4.7
	Capitale-Nationale	5.1		Prince Albert	5.6
	Chaudière - Appalaches	5.4		Northern	5.6
	Estrie	6.3	AB	Lethbridge - Medicine Hat	4.2
	Centre-du-Québec	7.4		Camrose - Drumheller	3.7
	Montréal	9.7		Calgary	4.8
	Laval	6.5		Banff - Jasper - Rocky Mountain House	4
	Lanaudière	8.3		Red Deer	4.9
	Laurentides	7.3		Edmonton	4.8
	Outaouais	6.8		Athabasca - Grande Prairie - Peace River	3.9
	Abitibi - Témiscamingue	7.3	BC	Wood Buffalo - Cold Lake	4.1
	Mauricie	9.4		Vancouver Island and Coast	6.2
	Saguenay - Lac-Saint-Jean	9.2		Lower Mainland - Southwest	6.7
	Côte-Nord	7.9		Thompson - Okanagan	7.1
	Nord-du-Québec	7.9		Kootenay	5.2
ON	Ottawa	6.3		Cariboo	5.7
	Kingston - Pembroke	6.8		North Coast	6.6
	Muskoka - Kawarthas	7.6		Nechako	6.6
	Toronto	8.2	YT	Northeast	4.9
	Kitchener - Waterloo - Barrie	6.5	NWT	Yukon Territory	5.4
	Hamilton - Niagara Peninsula	7.1	NU	Northwest Territories	8.2
				Nunavut	13.5