

Assessing Language Restrictions

Purpose:

The purpose of this directive is to provide operational guidance on how to assess employers' language requirements introduced under the *Immigration and Refugee Protection Regulations* (IRPR) for the Temporary Foreign Worker Program (TFWP).

NOTE:

This language restriction does not apply to Primary Agriculture, including the Seasonal Agricultural Worker Program (SAWP), the Agriculture Stream and on-farm primary agriculture occupations such as farm managers/supervisors and specialized livestock workers (specifically NOC codes 8251, 8252, 8253, 8254, 8256, 8431, 8432 and 8611).

Background:

On April 29, 2013, the Government announced legislative, regulatory and administrative changes as part of the ongoing review of the TFWP including identifying English and French as the only languages that can be used as a job requirement for offers of employment to foreign workers.

The authority relevant to this directive is found in Section 203(1.01) of the IRPR. Section 203(1.01) is as follows:

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:

Exemptions:

1. *the employer or group of employers can demonstrate that the ability to communicate in a language other than French or English is a bona fide requirement for performing the duties associated with the employment;*
2. *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*
3. *the offer of employment relates to other work to be performed in the primary agriculture sector.*

Operational Guidelines:

Distinct Assessment Factor:

This new language restriction imposes a new condition on the employer under a separate subsection: 203(1.01) and is a new step in the LMO assessment process. Therefore, the language restriction assessment is conducted on its own, as a distinct assessment. Both the LMO application and recruitment efforts for the job must reflect the new language restriction. The result of the assessment of language is by itself, either a positive (if positive, the LMO assessment can continue) or negative.

1) Check Exemptions:

Staff will check for the following exemptions:

- (1) positions under the Seasonal Agricultural Worker Program (SAWP), or
- (2) positions under the primary agriculture.
- (3) the employer or group of employers can demonstrate that the ability to communicate in a language other than French or English is a bona fide requirement for performing the duties associated with the employment.

If the request does not fall within the three exceptions mentioned above, the employers' requirement for a language other than English or French will be deemed unlikely to have a positive or neutral effect on the Canadian labour market, unless the employer provides justification and staff are not required to assess any other labour market factors; therefore a **negative LMO** must be issued.

2) Determine Result of the Language Assessment:

If the language assessment is negative (the employer has requested a language other than English or French without an explanation) the LMO must be **negative**. If the language assessment is positive (the language requirement of the job is English or French) the labour market assessment can continue.

Note: Where an employer requires a language other than English or French as an asset, staff must NOT consider this language choice as a **requirement**. It must not have any additional weight on the assessment.

3) Demonstrate the need for another language:

Employers whose LMO application and job posting state that the job requires a language other than English or French must provide a rationale that demonstrates that the language requirement is necessary to perform the duties of the job, and will not exclude Canadians and/or permanent residents from the job. Staff will assess the employer's explanation in relation to the occupation in question, with reference to information provided by the employer.

4) Assess the employer's rationale for language requirements:

Employers must provide information about the specific language required with a detailed explanation as to why this is an **essential requirement** of the job. Staff will assess the employer's rationale for requiring a language other than English or French and make a determination. If the employer's explanation is missing, staff must then follow up with the employer to obtain this information. Based on the assessment of the employer's rationale, employers who identify a language other than French or English and fail to demonstrate the need for an exemption, must be issued a negative opinion.

Employer(s) should be able to demonstrate that the language requirement is part of the regular activities of the job (*Bona Fide Occupational Requirement*) and is essential to doing the job.

A *Bona Fide Occupational Requirement* is defined by the Government of Canada as:

"A condition of employment that is imposed in the belief that it is necessary for the safe, efficient, and reliable performance of the job and which is objectively, reasonably necessary for such performance".

Examples:

- *A translation company hiring a translator to work in a language other than French/English.*
- *A tour company catering only to foreign tourists who needs a foreign speaking tour guide.*

If the employer's language requirement (other than French/English) is not in line with the regular activities of the job, staff must issue a negative opinion on the basis that the employer does not meet this factor.

Staff will not need to assess any other factors to issue a negative labour market opinion.

Outcome:

Employers who are able to sufficiently demonstrate that a language other than French/English is essential for the job will be deemed to have satisfied HRSDC/Service Canada's language requirement, and the assessment of genuineness and labour market factors can continue. Once a positive determination is made, staff can then proceed to assess genuineness and the other labour market factors.

Language requirement section of the LMO Application:

The LMO application form has been modified to reflect the new language restrictions.

Advertisement and Recruitment:

As employers are required to advertise employment positions prior to applying for a labour market opinion to hire temporary foreign workers, the employer's advertisement and recruitment efforts must meet the new language restriction.

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