

## CAP - Business Take-Over



■ This page is presented by the Business Expertise Team in WT, for *internal reference* by officers delivering the Temporary Foreign Worker program in the Vancouver and Edmonton delivery sites. It is part of the TFW in WT Reference Pages.



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## Background

The cap was introduced on June 20, 2014 to ensure that employers are not using the TFWP as a staffing model and becoming reliant on a program that is intended to meet short-term needs.

To prevent undue hardship, an adjustment period has been provided to allow returning employers with a workforce that includes TFWs to transition to the end-goal of 10% over a three-year period. Employers who had never applied to the program before (new CRA BN and ERID in FWS) are automatically set at the 10% cap.

The Cap policy did not consider the restructuring or purchase of existing businesses where TFWs were part of the existing workforce and were expected to be retained as part of the continuing workforce; however, the overarching principle of not creating undue hardship for employers where TFWs comprise part of an existing work force may be applied in these cases.

## Guidance

Generally speaking, a new ERID in [REDACTED] should be established with a Cap of 10%; however, NHQ supports allowing some flexibility for employers with a new (i.e. after June 20, 2014) CRA BN/ERID/Office ID but who have purchased or restructured an existing business (or other similar situation) to be treated as “returning employers” for the purpose of the cap calculation, based on the following:

- The employer should be able to genuinely substantiate the details of the purchase/restructuring to the officer’s satisfaction (eg. documentation to support the change of ownership/transfer of legal liabilities, etc.)
- The employer must have access to the staffing records (hours of work/week for pre-April 30, 2015; full-time/part-time position for April 30, 2015 onward) for the location on June 20, 2014 in order to complete Schedule E and should be advised to retain these records in regard to employer compliance
  - **Note:** Where payroll/staffing records are not available for the period between May 10, 2014 to June 20, 2014 to the employer taking over the business, the cap can be established based on the period right after the business take-over.
- Officers may request payroll records/timesheets to validate an employer’s Schedule E where warranted
- Notes to file and the LMIA Annex should be documented to reflect the special circumstances of the Cap calculation and should capture related details such as the nature of the circumstances (business purchase, restructure) and the name of the previous business entity the Cap calculation was based on

## CAP Q&A



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## General

### Rounding off

**When considering the impact cap percentage, should an officer 'round' to the nearest decimal point? Example, established cap is 10% and the impact cap is percentage is 10.1 to 10.5. Do we round down to 10 and accept it, or do we just determine it exceeds the 10% cap.**

- When calculating the Cap or the Impact on Cap comparison calculations, the percentage should be recorded up to two decimal points, rounding accordingly.

Example:

- 10.234 would round to 10.23
- 10.235 would round to 10.24

### Returning Employers who do not currently employ LW TFWs

**New!** On Page 1 of Schedule E, it indicates that, "employers who do not *currently* employ TFWs in low-wage positions, are subject to a cap of 10%". How should we determine the cap where an employers employed TFWs on June 20, 2014 but do not currently employ any TFWs?

Returning employer who have more than 10% TFWs in low wage positions as of **June 20, 2014** will have two years to transition to the lesser of:

- The employer's established cap based on the percentage of TFWs in low wage positions at the specific worksite on June 20, 2014, or
- the maximum established cap effective as per the following:
  - June 20, 2014, cap is 30%
  - July 1, 2015, cap will be 20%
  - July 1, 2016, cap will be 10%.

Note: NHQ has been informed about the discrepancy between the wording used on Schedule E and the policy document.

## Definition of Employers in Seasonal Industries

**New!** What is the definition of "seasonal" employers?

Sseasonal is defined as:

1. when both the industry and the occupation experience significant fluctuations in labour demand between "peak" and "off-peak" periods,
2. usually occurring on or around the same dates every year.

## Locations

### Multiple locations on one application

**What should be done with LMIA applications where the employer has identified more than one location on the application – i.e. Employer A has applied for 15 workers for 3 different locations on 1 LMIA form? How will the cap be noted to ensure a cap rate is captured for each location on the LMIA form?**

- The employer must complete a separate application for each location of work in order for a cap to be established for each location; and each location will also have an individual cap comparison calculation to determine the effect of hiring requested TFWs based on the employer's current staffing complement at the time of the submission of the application.

### Multiple locations under one ER office ID

**In situations where the cap is established for multiple locations under one ER/Office ID, how should this be addressed?**

- Service Officers should create separate office ID's for each location of work, with a separate cap established note for each location.

### Location with Different CRA Business Number

**Do we count staff working at the employer's other business entities that have a different CRA business number?**

- No, we count staff (all locations) that are employed under the employer's CRA BN (CRA BN for the ER requesting the TFW). This can include those working at the employer's other businesses (ex. operating under different names) so long as they operate under the same CRA BN (first 9 digits). Employers should **not** count staff working at other businesses that operate under a different CRA BN - even if they are owned by the same employer.

## Who to include in calculations

### Multiple Applications (Pending and Previously Confirmed)

**How does previously confirmed but unfilled LMIA's (i.e. hired but who have not started work) affect the determination of business size and cap calculation?**

- Previously confirmed but unfilled LMIA's (that are not expired) are to be included as employees for determining the business size; where applicable, officers should also include these positions under [E] of the effect calculation. Pending applications should not be included in these numbers as LMIA's will be assessed chronologically.

**After April 30th, 2015, how is the Effect on the Cap calculated if an employer has multiple pending low-wage LMIA applications?**

- Applications (and the effect calculations) are to be assessed chronologically; to determine the effect on the cap, any previously confirmed but unfilled low-wage TFW positions should be counted in box [6E]. Low-wage LMIA applications that are still 'pending' should not be considered in the calculation, as their effect on the cap will be assessed when that file is assessed.
- The officer assessing the subsequent LMIA will then need to determine whether the previously confirmed position changes the cap calculation. In general:
  1. Confirmations of unnamed LMIA positions should be added to [6E] of the effect calculation on the subsequent SF.
  2. Confirmations for new TFW's (i.e. Not an existing employee at the business) should be added to [6E] of the effect calculation on the subsequent SF.
  3. Confirmations for TFW's that are current employees at the business do not need to be added to [6E] of the effect calculation on the subsequent SF, if they are already accounted for in [4C] of the effect calculation.

### Owners and family members

**Should owners count themselves when determining their business size?**

- When determining if a business has 10 or more employees company-wide, the count should include:
  - all employees on payroll under that CRA business number (first 9 digits)
  - the vacant position(s) being requested on the LMIA
  - any previously confirmed positions under an LMIA where the worker has not yet arrived, but is still anticipated to fill the position
- **Note:** Paid position entails monetary compensation for work performed, on payroll and/or receiving a salaried income.
- If an owner holds a paid position in the business, they should include themselves in the count.
- Family members who hold a paid position should also be included.
- Volunteers and unpaid internships should not be included.

### Subcontractors

**For the purpose of cap calculation, are subcontractors considered as employees?**

- Only employees under the Employer of Record's payroll are considered as employees for the purpose of cap calculation.
- Example: Construction Company A contracts out the cleaning of their worksite to Cleaning Company B. Company B's employees are not to be included in the calculation of Company A's cap; these employees would be counted in Company B's cap calculation should they apply.

## PNP Nominees

### When establishing the cap for the worksite, how should PNP nominees be counted in the cap calculation?

- If the PNP candidate has already received their nomination during the 4-week period used to establish the cap, they will be counted similarly to that of a Permanent Resident. They will be counted in the overall staffing complement, but not in the number of TFWs.
- The employer will also need to include a copy of the nomination certificate (or letter of support) with the LMIA application.
- For AB files, see AINP (Alberta Immigration Nominee Program)- TFW in WT

### Foreign nationals under any Express Entry Programs (e.g. FSWP, FSTP)

**Updated**

### How should foreign nationals that are under any Express Entry Programs (eg. Federal Skilled Worker Program, Federal Skilled Trades Program) be considered?

- Foreign Nationals under any Express Entry Programs are exempt from the cap; they should be considered similarly to that of a Permanent Resident. They will be counted in the overall staffing complement, but not in the number of low-wage TFWs.

## Dates

### Gaps in Calculation period - Date of Signing, Receipt, Assessment

#### When calculating "Determining the Effect on the Cap", does the 4 consecutive weeks prior to LMIA submission have to be the 4 weeks prior to the application date or can there be a gap?

- **Updated** Ideally there should be as small a gap as practically possible for the purposes of this calculation. According to the CAP Directive the employer should provide data from the 4-week period "immediately prior" to the date the application was signed. W-T is interpreting "immediately prior" as allowing up to a 2 week gap between when the application is signed and the four consecutive weeks used by the employer for determining the effect of the CAP. In addition, two weeks may also be allowed between when the application is signed and when the application is received.

#### The Impact Calculation period refers to a previous 4 consecutive week period prior to the application being submitted. Does 'submission date' refer to the LMIA receipt date at Service Canada, or does it refer to LMIA signing date?

- The impact calculation data is based on a 4-consecutive-week period of time prior to the date the employer signs the application.
- While it is recognized that there may be delays or gaps between the signing date and the date SC receives the application (ex. Third Party delays, mail delays etc.), it would be unreasonable to require an employer to update the calculation and provide new payroll data to capture changes for each LMIA where there is a delay.

#### Note:

- Where an officer is aware of significant staffing changes (ex. layoffs), it is reasonable for an officer to request updated calculations and/or payroll data to capture the changes between the application signing date and application receipt date in order to generate the most accurate 'snapshot' of the worksite were SC to confirm the requested position(s).
- Where there are significant gaps between the signing date and application receipt date (ex. more than 6 weeks), it is reasonable for an officer to request updated calculations and/or payroll data to capture the changes in order to generate the most accurate 'snapshot' of the worksite if SC were to confirm the requested position(s).

## 4 weeks vs 28 days

**For Low-Wage LMIA's received after April 30th, 2015 where cap calculation is involved, if the dates selected for the Schedule E calculation are not exactly 4 weeks (28 days), should the LMIA be considered incomplete and returned to the employer?**

- With the updated cap directive, because the calculations are based on the number of employees (and not hours), generally it should not make a difference to the numbers/calculation if the employer is off by a day or two when selecting the 4-week period. We should not necessarily consider the LMIA as incomplete if the 4-week period is off by one day or two. That said, during cap assessment, the employer should validate the time frame or provide a rationale when the time frame is not an exact 28-day period. For example, if an employer runs a Monday to Friday business and is closed during weekends, and the employer provides staffing information from Monday (June 1) to Friday (June 26) – this would be a reasonable rationale for not having June 1 to June 28. As the difference in dates does not impact the calculation, the LMIA would not need to be returned to the employer.
- If the staffing numbers need to be adjusted on the form due to the discrepancy in dates, then an updated Schedule E with the correct dates should be submitted.

## Window for Establishing the Cap

**In order to establish the worksite cap on Schedule E, does Service Canada accept dates outside the May 10th, 2014 to June 20th, 2014 window?**

- Generally speaking, for non-seasonal industries, employers must establish the cap, selecting four weeks within May 10, 2014 to June 20, 2014, and therefore we would not accept Schedule E if the dates used to establish the cap included dates outside that period.
- (Note: An alternate 4 consecutive week period, prior to June 20, 2014 may be agreed to if the employer has experienced an unusual event affecting work hours during the period (e.g. a shutdown of operations). The alternate period would be the last four weeks of continuous operations prior to June 20, 2014.)
- For employers in seasonal industries, the employer can select 4 consecutive weeks that best represents their peak season between June 21, 2013 and June 20, 2014 to establish the worksite cap. Updated

## Changes and Corrections

### Cap previously established based on hours

**Does the employer need to complete a post Apr 30th Schedule E if cap was previously established based on hours (and not FTEs)?**

- Yes, the employer must complete post Apr 30th Schedule E based on FTEs. However, the cap would be established based on the **higher** of the two calculations (hours vs FTEs), up to the current maximum allowable.

### Employer Staff Complement Changes

**If the staffing complement listed on Schedule E changes between the date of signature and the date of assessment, how does the officer proceed with assessing the cap?**

- The effect calculation will be assessed based on the four-week period used prior to the date of signature, and NOT the date of assessment.

### Alternate Work Location

**Currently ER's have the ability to have TFW's work at other locations (outside the Primary location of work) to fill in briefly when another EE is sick or on vacation – will this still be allowed? If so,**


**will this have potential impacts on calculating the CAP for other locations for the same legal entity?**

- The practise of naming secondary locations has not been discontinued, but officers are to continue to ensure and advise employers that secondary locations are for the purpose of very short-term relief circumstances where another employee has called in sick or on other leave – it is not meant to facilitate a TFW having “regular” shifts at multiple locations. This practise should also apply to all staff, not just TFWs.
- This practise should not have a major impact on Cap calculations as employers’ Cap and Impact calculations should include hours of employees on vacation or sick leave, who would otherwise be working during the specified 4-week period, if those hours are not being covered by another employee.

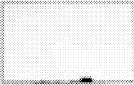
**Receiving Corrections to a Cap Calculation**

**If the ER provides an incorrect CAP calculation do we request another form or can we just take the information verbally over the phone and document the changes in FWS?**

- If a calculation error was made, an officer could make that correction and add a note. However, if the owner forgot to include himself/herself in the number of total FTEs, the employer should be requested to provide a new form. If the incorrect information is something that ISB could inspect, the corrected information should be provided on a new form by the employer.
- At the point of cap assessment, there is currently no limit on the number of revised Schedule E's an employer can submit. However, once the cap is established, it remains in effect.



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## W-T TFWP REGIONAL ADVICE & GUIDANCE

**SUBJECT: Cap Assessment**

**Date: November 17, 2014**

### **BACKGROUND:**

The Temporary Foreign Worker Program (TFWP) was created as a last and limited resort to allow employers to bring foreign workers to Canada on a temporary basis to fill jobs for which qualified Canadians are not available. However, since there was no specific limit on the number of temporary foreign workers (TFWs) that a company could hire, over time increasing requests for low-wage positions indicated that many employers were building their business model on access to the program. To end this growing practice, a Cap to limit the proportion of low-wage TFWs that a business can employ was introduced on June 20, 2014.

The Cap on low-wage TFW positions will significantly restrict access to the TFWP while ensuring that Canadians are always considered first for available jobs, reducing employer reliance on the program and increasing wages offered to Canadians.

Cap assessment is related to the “Ministerial Instruction – Refusal to Process applications above the current cap of Temporary Foreign Workers per work location in low wage positions” and must be completed prior to the collection of the fee. As such, this assessment step is completed in the triage stage.

Since the introduction of the Cap, guidance regarding the handling of previously confirmed positions where the TFW has not yet arrived has changed several times. A new question has been added to the most recent versions of the LMIA application forms to ensure outstanding positions and pending low-wage application positions are taken into consideration for the comparison of the established cap to the effect of the request to hire low-wage TFWs. The most recent guidance related to this is included below.

### **GUIDANCE:**

#### **PURPOSE – ESTABLISHING THE CAP FOR A WORK LOCATION:**

- Establishing a Cap for the work location ensures that large employers with multiple locations cannot be over their limit for low-wage temporary foreign workers at any one of their locations.
- LMIA requests that, if confirmed, would result in exceeding the cap established for the specific work location will NOT be processed and the application fee will not be collected.



### **When does the CAP apply?**

Employers with a company-wide business size of 10 or more employees (i.e. at the CRA BN / legal entity level) are subject to the Cap.

- Business size includes all company-wide paid positions, plus all TFW positions from previous LMIA confirmations still anticipated to arrive, plus the TFW positions being requested on the pending LMIA application
- Business owners should include their position in the business size calculation only if they receive a wage or salary income from the company (ie: are issued a T4 slip from the company). Business owners who are not on the company's payroll, volunteers, and unpaid interns should not be included in the business size calculation.

A Cap percentage is determined for each individual worksite location and is based on paid positions and total hours worked at that worksite.

Employers new to the TFWP (no previous LMO/LMIA confirmations) or returning employers who did not have any TFWs on staff on June 20, 2014 are capped at 10% for each work location. (i.e. a cap of more than 10% can only be established for employers who actually had TFWs on staff on June 20, 2014 and the ratio at that time was above 10%).

Employers that have a low-wage TFW workforce on June 20, 2014 (as a result of previous LMO confirmations) will initially be limited to 30% or frozen at their current level, **whichever is lower.** The cap for these employers will be further reduced to 20% beginning July 1, 2015; and to 10% on July 1, 2016.

### **Are there Exemptions?**

The Cap will not apply to:

- Employers with a company-wide business size of FEWER than 10 employees. Employers are exempt from the cap until such time as they reach 10 or more employees – see above
- Employers hiring TFWs for positions related to on-farm primary agriculture such as: farm managers/supervisors and specialized livestock workers, general farm workers, nursery and greenhouse workers, and harvesting labourers
- Positions that are truly temporary (e.g. emergency and warranty positions)
  - Where the requested position is related to emergency or warranty repairs, the business-size calculation, Cap calculation and the LMIA effect-on-hiring calculation do not need to be completed as part of the assessment
  - Employers are not provided with an option to request an exemption from the Cap under truly temporary on the application form, but officers may apply the exemptions where determined to be applicable. Officers should consult with TL/BE prior to allowing the exemption

- Officers may consider positions similar to emergency/warranty work for the truly temporary exemption, but should consult with BE/TL prior to granting the exemption

### **How is the Cap for a work location established?**

- Determining the percentage of low-wage TFWs in the work location on June 20, 2014 is the basis for establish the Cap for that work location
- Unless exempt (see above), employers with a low-wage TFW workforce at July 20, 2014 who apply to the TFWP requesting low-wage TFWs prior to July 1, 2016 will be required to complete Schedule E to calculate the percentage
- Schedule E is to be completed **only ONCE for a specific work location**. The calculation result on Schedule E will establish the cap on low-wage TFW positions for **that work location** until the cap is subsequently **lowered** (to 20% on July 1, 2015 or 10% on July 1, 2016).
  - If the Schedule E result is greater than 30% (prior to July 1, 2015) the cap will be set at 30% until it is **lowered** to 20% and subsequently to 10%.
  - If the schedule E result is less than 30% (prior to July 1, 2015), the cap will be set at this lesser amount until it is **lowered** to 20% or 10%. (For example, if the schedule E result is 15%, the cap will be set at 15% until it is lowered to 10%).
  - If the schedule E result is less than 10% (prior to July 1, 2016) the cap will be set at 10%.
- To complete Schedule E, employers must select a four-consecutive week period falling between May 10, 2014 and June 20, 2014 and use the hours worked during this time to arrive at the percentage of low-wage TFWs employed at the work location at June 20, 2014.
  - There are special considerations for **seasonal** employers or employers where the designated time frame above does not capture a realistic picture of their normal operations (eg: shutdowns). In these cases, the employer may select an alternate four-week period that provides the most accurate ratio for their business. The alternate period used should be the four-week period prior to **and** nearest to June 20, 2014 that more accurately reflects normal operations.
  - Note: To be considered under the seasonal employer option, the industry and the occupation must be seasonal by definition (ski/snow board instructors, tour guides, fish plant workers, etc.). This consideration is **not intended to be used for seasonal fluctuations in ongoing businesses** even if these businesses are in resort areas.
- **SCHEDULE E CALCULATION:** The average weekly hours (including overtime) of all low-wage TFWs employed at the work location (during time periods specified above) **divided by** the average weekly hours (including overtime) of all staff employed at the work location (including Canadians,

permanent residents, current TFWs and all other workers on open work permits, student visas, etc.) (during the time periods specified above) = **cap calculation result** (which is used to establish the cap for the work location).

- The resulting percentage should be calculated to two decimal points and is **recorded** in an **ER note** as the **Established Cap** percentage for the specific location.

Calculation Example:

Total Hours for low-wage TFWs =  $420/4 = 105$

Total Weekly Hours for all employees =  $1280/4 = 320$

Cap =  $105/320 = .328125 = .33$

The Cap for this employer would revert to the maximum rate of 30%.

- The Established Cap will be used as the benchmark for determining whether an LMIA request for low-wage TFWs can be processed, or if the TFWP will refuse to process the application according to the ministerial instruction.
- The established cap will remain in effect until it is **lowered** to 20% or 10% as per above.
- If an employer advises they made an error on their initial Schedule E calculation or wants to revise their initial Schedule E calculation, an officer may request payroll information or a payroll summary to validate the employer's request to change the Cap percentage for the work location.
- Payroll information should include only the **first** name of each employee, the hours worked over the four-week period, the hourly wage rate, and the **first three digits** of their Social Insurance Number. (NOTE: Further guidance is currently being developed by NHQ in regard to requesting/assessing payroll.)
- If the submitted documents have not been redacted by the employer or contain more information than the TFWP is allowed to collect, the documentation should be returned to the employer with instructions on how to redact the information accordingly

#### **What is the purpose of determining the effect of hiring TFWs?**

- The purpose of determining the effect of hiring all TFWs is to ensure that when all TFWs requested by the employer on confirmed and pending LMIAs arrive at the work location, the employer's work force will not exceed the Cap calculation for that location.

#### **How is the effect of hiring TFWs determined?**

- Once the Cap is established, triaging officers must then determine if the effect of hiring the TFWs requested on the current application would cause the employer to exceed the established Cap.
- Officers are required to make this comparison as LMIA requests that, if confirmed, would result in exceeding the Cap for the specific work location cannot be processed and an application fee cannot be collected.
- The employer is required to complete the "Calculating the Effect of hiring the TFWs requested on this LMIA on the Cap" section of the application. This separate calculation assists in determining the

effect hiring the requested low-wage TFWs would have on the Cap established for the work location.

- To complete the LMIA calculation, employers must select the four-consecutive week period falling immediately prior to the application being submitted.
- Note: Seasonal Employers are not required to complete this section; however, they must submit a signed letter indicating the following: *I certify that I am aware of the cap on low wage temporary foreign workers. The established cap for this work location is \_\_\_\_ based on our peak period last year. The employment of the foreign worker(s) on this application will not exceed the established cap on the percentage of workers that are low-wage TFWs during our peak season in the upcoming year.*
- Employers should not include any current TFWs whose work permits are expiring within 90 days of the LMIA being submitted and who will not be renewed.
- **LMIA EFFECT CALCULATION:** The average weekly hours (including overtime) of all low-wage TFWs currently employed at the work location plus all low-wage TFW positions from previous LMIA confirmations still anticipated to arrive, plus all low-wage TFW positions being requested on the pending LMIA application **divided by** the average weekly hours (including overtime) of all staff currently employed at the work location (including Canadians, permanent residents, current TFWs and all other workers on open work permits, student visas, etc.) plus all low-wage TFW positions from previous LMIA confirmations still anticipated to arrive, plus all low-wage TFW positions being requested on the pending LMIA application = **effect on the established cap**
  - If the LMIA Effect calculation result is less than or equal to the cap established for the work location, the application may continue to be triaged
  - If the LMIA application calculation result is greater than the Cap established for the work location, the application will not be processed and the processing fee will not be collected as per the ministerial instruction.

*Note: TFWs/Canadians/PRs to be included in these calculations are only those employed under the CRA Business Number of the pending application.*

**What if the employer is using an old LMIA application without question 6[F] – the question that addresses TFWs that have not yet arrived?**

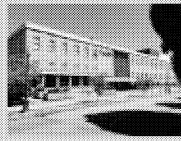
- If an employer has used an old LMIA application form, they should be asked if they have included the hours of all low-wage positions expected to be filled by TFWs as per above. If not, an updated calculation will need to be completed by the employer and officers should request a new form to be completed.

**RESOURCES:**



04 Ops Dir- MI-  
Refuse to process CA

# CAP- TFW in WT



This page is presented by the Business Expertise Team in WT, for *internal reference* by officers delivering the Temporary Foreign Worker program in the Vancouver and Edmonton delivery sites. It is part of the TFW in WT Reference Pages.



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## Background

On June 20, 2014 former ESDC Minister Jason Kenney announced an overhaul of the Temporary Foreign Worker Program that including several changes that affect the initial pre-screening and assessment process of LMIAs, including the implementation of a CAP on the number of low wage (formerly low skill) foreign workers a business can employ. This guidance provides information on how to determine if an application is subject to the CAP, how to apply the CAP policy to determine an employer's established CAP, as well as how to calculate the effect of hiring foreign workers on the employer's established CAP.

For detailed information on the CAP directives see:

### Current CAP Directive

- May 2, 2016 Directive on CAP  **Updated** Please note: BE is working with NHQ to clarify a few points in this Directive. If you have any questions, please raise them on the Whiteboard. Once clarification is received, relevant Wiki pages will be updated.

## Exemptions

**The CAP on low-wage TFWs does not apply to:**

- Seasonal Agricultural Worker Program (SAWP) and other primary agriculture occupations;
- Applications supporting permanent residence under any Express Entry programs (e.g. Federal Skilled Worker Program, Federal Skilled Trades Program);
- Caregiver program:
  - applications from private household employers (North American Industry Classification System (NAICS) \*8141) for caregiving positions, i.e. National Occupation Code (NOC) 3152, 3233, 3413, 6471, and 6474
  - applications from health care institutions (NAICS 62xx) for caregiving positions, i.e. NOC 3152, 3233, 3413, and 6471); and
- Employers with a total business size (based on CRA business number) across all worksites of less than 10 employees.
- Positions that are highly mobile or truly temporary and no more than 120 calendar days. This duration can be extended if an employer can demonstrate that their peak season, project or event operates beyond 120 days:
  - highly mobile: workforce that regularly crosses inter-jurisdictional boundaries (e.g. provincial, territorial and/or international) as part of the business's ongoing operations;
  - truly temporary: short-term period or singular event and will not be filled after the worker leaves the country
- **New!** Employers in seasonal industries hiring TFWs in low-wage seasonal positions that are no more than 180 calendar days in length (seasonal is defined as when both the industry and the occupation experience significant fluctuations in labour demand between "peak" and "off-peak" periods, usually occurring on or around the same dates every year). This exemption can only be used
  - one time
  - per work location
  - for applications received on or after February 19, 2016, and no later than December 31, 2016.
- **New!** For Program Officers, when applying this one-time exemption to an application and if the application will result in a positive assessment, access the [REDACTED] and create the following [REDACTED]

- **New!** Please note this exemption is only used once, on one application/SF. If the ER submits multiple applications (for different seasonal positions or at different times), then the assessing officer will ask the ER which application they would like the Exemption to apply to. Once the exemption is applied to one application, [REDACTED] must be created and all other pending or subsequent applications will be subject to CAP calculations and ER must provide Schedule E and fill out 1. Establishing the CAP and 2B. Determining the Effect on the CAP: Variation for Employers in Seasonal Industries.

### Foreign Nationals Not Counted in CAP

The following types of foreign nationals in low-wage positions are not counted towards an employer's cap:

- LMIA-exempt foreign nationals working in low wage positions under Canada under Citizenship and Immigration Canada's International Mobility Program (IMP)
- TFWs working in low wage positions which are exempt from the cap, e.g. primary agriculture
- Foreign nationals who have received a nomination certificate from a Provincial Nominee Program (PNP) or, in rare circumstances, e.g. Alberta Immigrant Nominee Program (AINP), a letter of support or, in Québec, a Certificat de sélection du Québec (CSQ).

These non-cap foreign workers should be included in determining the overall business size (ie. number of

employees under CRA BN) and the work location's total staffing complement but **should NOT be considered as low-wage TFWs for the purpose of calculating the cap**. When calculating the cap, non-cap foreign workers should be considered, like permanent residents.

## Changes to Calculating CAP Effective April 30, 2015

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On April 30, 2015 changes were introduced to the CAP policy in order to simplify calculation of both the established CAP for a business location and the impact of hiring additional foreign workers on the established CAP.

Prior to April 30, 2015 a business' CAP was calculated based on employees' *hours worked* over a 4 week period between the dates of May 10, 2014 to June 20, 2014. Post April 30, 2015 the CAP is calculated based on the *number of full-time equivalents (FTEs)* an employer has during this same 4 week period.

A new version of Schedule E was created to capture this information. This new version of Schedule E is required with all incoming LMIA's (regardless of whether the employer has previously submitted the old Schedule E or had their CAP established). If the Schedule E is not included with the LMIA, the application is considered incomplete. See [Triage: Incomplete Applications- TFW in WT](#) for guidance on handling incomplete applications.

After submitting the revised Schedule E, the employer's CAP will be established at the **higher** of either the two CAP totals (old Schedule E based on hours or current Schedule E based on FTEs), so long as this total is no greater than the maximum allowable CAP:

- Limited to 20% or frozen at their current level, whichever is lower beginning July 1, 2015; and
- Reduced to 10% on July 1, 2016
- The 10% cap is the maximum percentage of low-wage TFWs that an employer will be allowed to have at a work site, as of July 2016
- All new employers to the TFWP are capped at 10%

## Established CAP versus Effect of Hiring TFW

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When determining if an employer requesting to hire low wage positions is affected by the CAP directive, officers must review both the Schedule E and LMIA.

Officers must verify whether the established cap has been calculated based on FTEs (post April 30, 2015) or hours (pre-April 30, 2015). See [Changes to Calculating CAP Effective April 30, 2015](#) for additional details if cap has been established based on hours.

The information provided on Schedule E allows officers to determine the established CAP for the specific work location for which the employer is requesting a low wage foreign worker(s). Once an established CAP has been determined this information is captured in [CAP note](#).

After the established CAP for the location has been determined, officers must then review the portion of Schedule E that details the effect of hiring the requested foreign worker(s) on the established CAP. This allows the officer to determine if the requested foreign workers fall under the employer's maximum allowed CAP, or if the application must be refused to process. See [Triage: Refusal to Process- TFW in WT](#) for more details.



Officer should use the calculator below when determining the CAP figures.

The Table below provides a quick reference for identifying which question on the application is associated with which field of the calculator:

Establishing the CAP	Note: Dates used will be older
Total fulltime employees	[A]
Total part-time employees	[B]
Total low-wage TFW's	[C]
Calculation	[D]

Effect on CAP	Note: Dates used will be immediately prior to application
Total fulltime employees	[A]
Total part-time employees	[B]
Total TFW's (excluding TFW's on specific application)	[C]
TFW Renewals	[D]
New TFW's	[E]
Calculation	[F]

## Verifying CAP Details

### Information to be Verified

Often employers and third parties will make errors when providing CAP details. To ensure accuracy of the information provided,

1. The following details on Schedule E must be confirmed under **Establishing the CAP**:

- location of work
- four week period that was used; this can be plus or minus 2 days
- total number of full-time employees at the workplace; i.e. *everyone* who works at least 30 hours at that location (question A)
- total number of part-time employees; i.e. *everyone* who works *under* 30 hours a week (question B)
- total number of TFWs who work in low-wage positions at this work location based on an approved LMIA (question C)

2. Using the figures provided by the ER, enter the numbers into the Cap Calculator to determine established CAP.

3. The following details on Schedule E must be confirmed under **Determining the Effect of CAP**

- four week period that was used; this can be plus or minus 2 days
- total number of full-time employees at the workplace; i.e. *everyone* who works at least 30 hours at that location (question A)
- total number of part-time employees; i.e. *everyone* who works *under* 30 hours a week (question B)
- total number of TFWs in low-wage positions *excluding all TFWs applied for in this application* (question C)
- total number of TFW requested in this application that are renewals; i.e. already employed at this location (question D)
- total number of TFW requested in this application that are new; i.e. are *not already employed* at this location (questions E)

4. Using the figures provided by the ER, enter the numbers into the Cap Calculator to determine the effect on the CAP

### Process for Contacting ER

When assessing the CAP details provided on Schedule E, it is necessary for Officers to confirm the accuracy of the figures provided by contacting employers by phone.

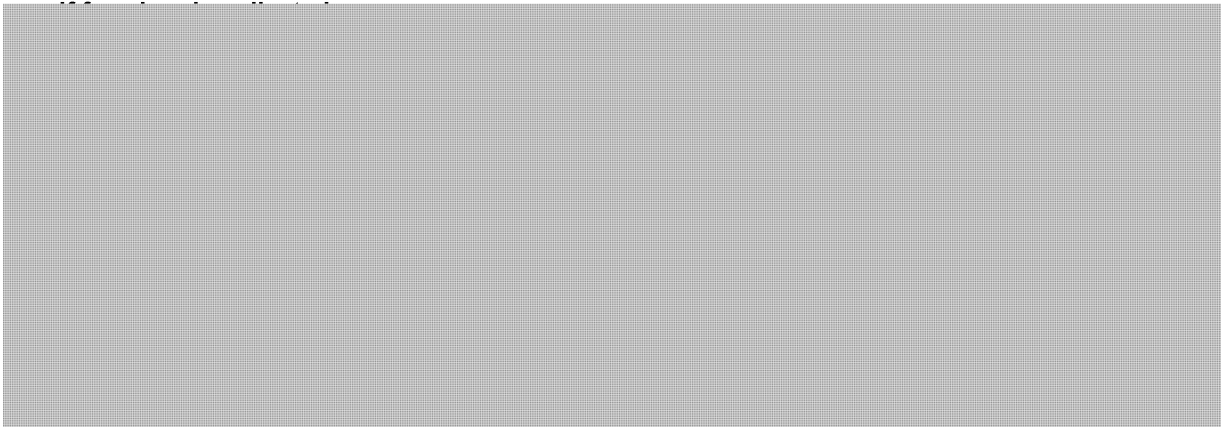
**Note: Where the CAP based on FTEs is previously established, verified, and documented under the ER Office ID for the location, officers would not need to review the CAP information again. However, officers would still need to verify whether the effect calculation provided on Schedule E is accurate.**

Officers should use **all** available methods of contact provided on the application to reach the employer, starting with a phone call. If unable to reach the employer by phone, use the following [script](#) to email

the employer, giving the employer 48hours to respond, if no response received a second call will be made giving 48hrs to respond, if needed an additional call will be made giving the employer another 24 hours.

If unable to reach the employer, officers should also contact the third party (if applicable) to advise the employer to contact the officer so that the business details can be verified. Verification should be complete with the employer, as third parties may not sign revised Schedule E forms on behalf of the employer if the details provided on the call do not match the Schedule E submitted.

If after all attempts to contact employer have been made and the 48/48/24 timeframe has passed and unable to connect with the employer:



## CAP Variation for Seasonal Positions

In order to account for the fact that seasonal employers hiring for seasonal positions could potentially have significantly different staffing levels between "peak" and "off-peak" seasons, which would impact the employer's Established CAP and Effect of CAP, a variation to the above CAP calculation dates has been approved for seasonal employers hiring for seasonal positions.

**Definition:** For the purpose of the TFWP program, seasonal positions are defined as positions where both the industry and the requested occupation experience significant fluctuations in labour demand between "peak" and "off-peak" periods. These periods usually occur on or around the same dates every year.

- For example: A ski resort that is operational all year, but has a peak winter season and submits an application for a ski instructors for a 4 month period would be deemed a seasonal employer. However, if the same ski resort submit an application for a cashier for 1 year to work in their cafeteria open year round would not be considered seasonal.

**Seasonal employers hiring for seasonal positions should select the 4 consecutive weeks between June 21, 2103 and June 20, 2014 that best represents their peak season to establish their CAP.**

1. The following details on Schedule E must be confirmed for **Establishing the CAP** Confirm the following information on Schedule E

- location of work
- four week **peak period** that was used; this can be plus or minus 2 days
- total number of full-time employees at the workplace during this **peak period**; i.e. *everyone* who works at least 30 hours at that location (question A)
- total number of part-time employees at the workplace during this **peak period**; i.e. *everyone* who works *under* 30 hours a week (question B)

- total number of TFWs who work in low-wage positions at this work location based on an approved LMIA (question C)

2. The following details on Schedule E must be confirmed under Determining the **Effect of CAP**

- four week period that was used; this can be plus or minus 2 days, but must be 4 consecutive weeks during last year's peak period **between June 21, 2014 and June 20, 2015** **Updated**
  - This should generally correspond with the time period used to establish the cap.
- total number of full-time employees at the workplace during the peak period; i.e. *everyone* who works at least 30 hours at that location (question A)
- total number of part-time employees at the workplace during the peak period; i.e. *everyone* who works *under* 30 hours a week (question B)
- total number of TFWs in low-wage positions *excluding all TFWS applied for in this application currently* working at the workplace (question C)
- total number of TFW requested in this application that are renewals; i.e. already employed at this location (question D)
- total number of TFW requested in this application that are new; i.e. *are not already employed* at this location (questions E)

## Operational Procedures for Service Officers

**Updated** Note: As per May 2, 2016 Directive on CAP , Service Officers will verify the CAP details to determine if Refusal to Process applies before processing the payment and registering a file.

1. If it is triaged to the low-wage LMIA stream, Service Officers will review whether or not the ER is over the CAP based on the information submitted in writing on Schedule E using the Cap Calculator. If the ER is over the CAP, Service Officers will apply Refusal to Process as per Refusal to Process - TFW in WT.
2. For all other situations where CAP applies, Service Officers will need to conduct in-depth CAP assessment by contacting the ER.



- If there are multiple pending applications, Officers should assess the CAP for the **oldest** application. All subsequent applications will be assessed for CAP after the oldest pending file is completed, as the outcome of this file will potentially impact the subsequent applications' CAP numbers.
- The Service Officer must note whether the cap assessment was completed on each file, specifically documenting the cap calculation details OR that the cap calculation was not completed due to multiple pending files.

3. If the employer has submitted multiple applications, and the oldest application is pending and assigned, Service Officers can continue to register the current file, but should not conduct the in-depth CAP assessment. Program Officers will conduct it during assessment.

### RTP Flowchart for Service Officers

For detailed information, please also refer to Refusal to Process Flowchart for SOs - TFW in WT

### Schedule E & Webservice

#### Notice for Web Applications

##### LMIA application summaries and CAP calculation details:

Due to current Web Service limitations, employers may not be able to view the details they entered online for CAP calculations, as the "view submitted internet application" does not currently record this information.

For cases where the employer indicates they are unable to confirm the CAP information that was submitted electronically via a web application, a paper-based Schedule E should be requested so that CAP calculations can then be discussed with the employer (as per step 5.2, next). However, if the ER is able to verify CAP details originally submitted online, an additional paper-based Schedule E is not required.

If requested, and upon receipt of the Schedule E:

## Operational Guidance for Program Officers

1. Program Officers are responsible for reviewing the notes of each low wage LMIA assigned to them to determine if the CAP assessment has been completed by a Service Officer.

2. **Updated** If the note indicates that CAP assessment was not completed, or if there is no note to document that the Effect on the CAP has been calculated, the Program Officer must conduct in-depth CAP assessment and document accordingly.

3. **This applies to applications received on or after April 6, 2016** If it is determined that the ER is **over** the CAP, Program officers must offer the opportunity for the ER to reduce the number of positions requested so that they can be **under** the CAP. **Note: there is no refund for the reduced number.**

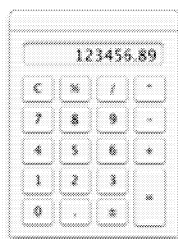
- **New!** If reducing the number is possible to avoid exceeding the CAP, officers should reduce the number and proceed with assessment. Officers should also request refund for the reduced number
- If the ER is **over** the CAP and reducing the number if not possible (e.g. only one position is requested) or the ER does not agree with reducing the number, then Program Officers will apply Refusal to Process and then request refund following Refunds- TFW in WT

**Note:** Program Officers are expected to review the employer's activity to identify unassigned pending applications that must be bundled with the file he/she is assessing.

### RTP Flowchart for Program Officers

For detailed information, please also refer to Refusal to Process Flowchart for POs - TFW in WT

### CAP Calculator



Use the Cap Calculator

### Note Templates

### Further Action/Next Steps

Once determining if the requested number of positions falls under the business location's CAP limit, Service Officers will determine if the application can be Registered or Refused to Process.


See:


- Refusal to Process - TFW in WT
- Registration of Applications - TFW in WT

## Also See


- NHQ Operational Directive: Refusal to Process Applications above the Current Cap for Low Wage Positions  **Updated**
- AINP (Alberta Immigration Nominee Program)- TFW in WT
- CAP - Business Take-Over

For additional guidance on pre-April 30, 2015 CAP calculation see:

- CAP Assessment Supplemental Guidance 
- CAP Questions and Answers (Archived) These Q&As only apply to applications where cap has been assessed based on hours, not FTEs.



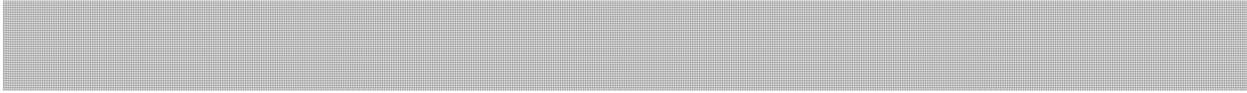
Click the Whiteboard to report broken links or ask a question about this page:



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May 2, 2016 Directive on Cap(Updated) – link is not working



CAP Assessment Supplemental Guidance – NHQ #14