

## Temporary Foreign Worker Program

### Policy: Labour Dispute

#### Policy Statement

The employment of a foreign national through the Temporary Foreign Worker Program (TFWP) should not adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute.

#### Scope

This policy applies to all streams under the TFWP.

#### Exemptions

There are no exemptions to this policy.

#### Authority (Acts, regulations and other legislation)

The TFWP operates under the authority of the *Immigration and Refugee Protection Act* (IRPA) and *Immigration and Refugee Protection Regulations* (IRPR). Specifically, section 203(3)(f) of the IRPR states –

An assessment provided by the Department of Employment and Social Development with respect to the matters referred to in paragraph (1)(b) shall, unless the employment of the foreign national is unlikely to have a positive or neutral effect on the labour market in Canada as a result of the application of subsection (1.01), be based on the following factors:

- (a) whether the employment of the foreign national will or is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;
- (b) whether the employment of the foreign national will or is likely to result in the development or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;
- (c) whether the employment of the foreign national is likely to fill a labour shortage;
- (d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards;
- (e) whether the employer will hire or train Canadian citizens or permanent residents or has made, or has agreed to make, reasonable efforts to do so;
- (f) **whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute; and**
- (g) whether the employer has fulfilled or has made reasonable efforts to fulfill any commitments made, in the context of any assessment that was previously provided under subsection (2), with respect to the matters referred to in paragraphs (a), (b) and (e).

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Employers should not use the TFWP to circumvent a legal work stoppage or to influence the outcome of a labour dispute.

If the entry of a foreign national for employment could reasonably be expected to adversely affect the course, or the outcome, of a labour dispute, this labour market factor could receive a negative assessment which may result in a negative Labour Market Impact Assessment (LMIA).

For the purposes of this policy, a labour dispute occurs when the parties to a collective agreement have reached an impasse in their efforts to enter into, renew or revise a collective agreement and require the intervention of a third party (e.g., government labour officials) to resolve the differences.

In view of this definition, a labour dispute would not include all grievances between a union and employer.

Labour disputes, which often arise during collective agreement/contract negotiations between an employer and a union, may include: work stoppage, strikes, refusal to work, picketing, refusal to serve customers, a slowdown of work, demonstrations, withdrawal of services, strategic shutdown of premises, and lockouts. They also arise in situations that are in reaction to working conditions dictated by legislation such as refusal to perform duties when employees feel that their security might be jeopardized, or different views on issues related to Labour Standards such as, overtime, wages, and holidays.