

Temporary Foreign Worker Program Manual

Section 3.5.6.1.3 - Clarification on Labour Market Opinions for Owner/Operators of a Business

Purpose:

To provide guidance in addressing situations where a Temporary Foreign Worker (TFW) is an owner/operator of a business and is applying for a Labour Market Opinion (LMO) through Human Resources and Skills Development Canada (HR SDC)/Service Canada.

Authority:

The Temporary Foreign Worker Program (TFWP) operates under the authority of the *Immigration and Refugee Protection Act* (IRPA) and the *Immigration and Refugee Protection Regulations* (IRPR).

The IRPR prescribes the factors that HRSDC/Service Canada is to consider in forming an opinion on the labour market impact of hiring a foreign national. Section 203 of the IRPR outlines the authorities of HRSDC/Service Canada:

203. (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 shall determine, on the basis of an opinion provided by the Department of Human Resources and Skills Development, if:

(a) the job offer is genuine under subsection 200(5);

[200 (5) A determination of whether an offer of employment is genuine shall be based on the following factors:

(a) whether the offer is made by an employer, other than an employer of a live-in caregiver, that is actively engaged in the business in respect of which the offer is made;

(b) whether the offer is consistent with the reasonable employment needs of the employer;

(c) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and

(d) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work.]

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

[203(3) An opinion provided by the Department of Human Resources and Skills Development with respect to the matters referred to in subsection (1)(b) shall be based on the following factors:

Temporary Foreign Worker Program Manual

- (a) whether the employment of the foreign national 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 is likely to result in the creation 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 has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents; and*
 - (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.]*
- (c) the issuance of a work permit would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals;
- (d) in the case of a foreign national who seeks to enter Canada as a live-in caregiver,
- (i) the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision,
 - (ii) the employer will provide adequate furnished and private accommodations in the household, and
 - (iii) the employer has sufficient financial resources to pay the foreign national the wages that are offered to the foreign national; and
- (e) during the period beginning two years before the day on which the request for an opinion under subsection (2) is received by the Department of Human Resources and Skills Development and ending on the day that the application for the work permit is received by the Department,
- (i) the employer making the offer provided each foreign national employed by the employer with wages, working conditions and employment in an occupation that were substantially the same as the wages, working conditions and occupation set out in the employer's offer of employment, or
 - (ii) in the case where the employer did not provide wages, working conditions or employment in an occupation that were substantially the same as those offered, the failure to do so was justified in accordance with subsection (1.1).

Sections 200 and 205 of the IRPR outline factors for Citizenship and Immigration Canada (CIC) to consider, when determining whether to issue a work permit without an LMO:

200. (1) Subject to subsections (2) and (3), an officer shall issue a work permit to a foreign national if, following an examination, it is established that

- (a) the foreign national applied for it in accordance with Division 2;

Temporary Foreign Worker Program Manual

(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

(c) the foreign national

(i) is described in section 206, 207 or 208,

(ii) intends to perform work described in section 204 or 205, or

(iii) has been offered employment and an officer has determined under section 203 that the offer is genuine and that the employment is likely to result in a neutral or positive effect on the labour market in Canada; and

(d) [Repealed, SOR/2004-167, s. 56]

(e) the requirements of section 30 are met.

205. A work permit may be issued under section 200 to a foreign national who intends to perform work that

(a) would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents.

Background:

For the purpose of the TFWP, owner/operators are defined as foreign nationals who hold a share in a business located in Canada, and are classified under a National Occupational Classification (NOC) 0, A or B occupation. Please note that a business owner/operator is not required to be hands-on with the day-to-day operations of the company.

All owner/operators must apply to HRSDC/Service Canada for an LMO, except for those who are determined to be exempt by CIC.

LMO exemptions are determined by CIC under the authority of Section 205(a) of the IRPR. CIC **may** issue a work permit without an LMO, if it is determined that the foreign national would create or maintain significant social, cultural or economic benefits or job opportunities for Canadian citizens or permanent residents. Examples of "significant benefits" include general economic stimulus (such as job creation, development in a regional or remote setting, or expansion of export markets for Canadian products and services), and advancement of Canadian industry (such as technological development, product or service innovation or differentiation, or opportunities for improving the skills of Canadian citizens or permanent residents).

This exemption usually applies if the owner/operator owns at least 50 percent of a business. If there are multiple owners, only one owner would be eligible to apply for a work permit under this LMO exemption, unless exceptional circumstances can be demonstrated. Any further work permit applicants require an LMO, including owner/operators who own less than 50 percent of the business.

Please note that simply by owning shares in a business, does not mean that the owner/operators will meet the LMO exemption requirements. If CIC determines the applicant does not qualify for an exemption, the owner/operator will be required to apply for an LMO at HRSDC/Service Canada before applying for a work permit at CIC.

Temporary Foreign Worker Program Manual

Guidelines:

HRSDC/Service Canada is required to assess all LMO applications. Although an employer-employee relationship is generally required in order to provide an LMO, there are certain situations, such as the owner/operators, where the principal owner would also serve as the worker.

Multiple Owners:

In cases where there are multiple owners, the principal owner must be designated as the "employer".

1) Principal Owner (Employer)

The principal owner is the person who has the largest share in the business or, in the case of multiple owners of equal shares, it is the person designated as "the employer" for the purpose of applying for an LMO.

The principal owner **may** be eligible for an LMO exemption. To check if they qualify for an LMO exemption, the principal owner must contact a TFW Unit at CIC. If CIC determines the applicant does not qualify for an exemption, the owner/operator will be required to apply for an LMO at HRSDC/Service Canada before applying for a work permit at CIC. Please note that self-employed physicians do not qualify for an LMO exemption.

a) LMO standard application:

When applying for an LMO for themselves, principal owners should submit the standard application for an LMO to HRSDC/Service Canada.

b) Neutral LMO:

HRSDC/Service Canada will assess the LMO application for a neutral effect on the Canadian labour market.

c) Assessment emphasis:

For the purposes of this assessment, more emphasis should be placed on labour market factors such as job retention and job creation.

d) Other factors:

Certain labour market factors will not be assessed for the principal owner, such as the wages, working conditions or recruitment efforts. See the [variations to minimum advertising requirements](#), exempting owner/operators from submitting proof of recruitment efforts.

2) Principle Owner (Employer) applies for co-owners as "workers"

In cases where there are multiple owners of a business, the principal owner (e.g. the largest shareholder or the equal shareholder who has been designated as the "employer") must act as the "employer" and apply for LMOs to HRSDC/Service Canada for the other co-owners as "workers".

a) LMO standard application:

When applying for LMOs to HRSDC/Service Canada for the co-owners, the principal owner should submit the standard application.

Temporary Foreign Worker Program Manual

b) Neutral LMO:

HRSDC/Service Canada will assess the LMO application for a neutral effect on the Canadian labour market.

c) Assessment emphasis:

For the purposes of this assessment, more emphasis should be placed on labour market factors such as job retention and job creation.

d) Wages and working conditions should be assessed for the co-owners but recruitment efforts should be waived for LMO applications. See variations to minimum advertising requirements exempting owner/operators from submitting proof of recruitment efforts.

3) Owner/Operator hiring temporary foreign workers who are **not** co-owners

Owner/operators looking to hire foreign nationals as employees for their business in Canada must apply for an LMO for each employee. They must submit the standard application for an LMO to HRSDC/Service Canada and meet all of the usual LMO requirements.

Considerations:

- 1) In the case of equal shareholders, where one person is designated as the “employer”, another shareholder can assume this role in subsequent LMO applications.
- 2) Businesses can be completely foreign-owned as long as the work takes place in Canada.
- 3) Owner/operators are restricted to NOC 0, A and B occupations.
- 4) In the case of self-employed physicians with no employer, they should be assessed as the “principal owner”.