



**Employment and
Social Development Canada**

Access to Information and Privacy
140 Promenade du Portage
Phase IV, Level 12, Mail stop 1203
Gatineau, Québec K1A 0J9

**Emploi et
Développement social Canada**

Accès à l'information et
Protection des renseignements personnels
140, promenade du Portage
Phase IV, niveau 12, arrêt postal 1203
Gatineau (Québec) K1A 0J9

Your file - Votre référence

August 7, 2014

Our file - Notre référence
A-2014-00222 / HJK

Mr. Jacobus Kriek
C/O Matrixvisa Inc.

Dear Mr. Kriek:

This is in response to your request submitted under the *Access to Information Act* (the *Act*), received at Employment and Social Development Canada on June 4, 2014, and which reads as follows:

"Please provide copies of instructions, formal directives or guidelines or 'direction' provided by Employment and Social Development Canada (ESDC)'s Foreign Worker Section (located in Gatineau) to the Service Canada Foreign Worker offices in Vancouver, Edmonton, Toronto and Saint John New Brunswick from October 2013 to 4 June 2014 about recruitment methods for LMO's including the 'direction received during the recent past concerning recruitment methods' as mentioned in the enclosed document that was obtained under Access to Information request file number A-2014-00070/CDA."

You will find attached the documents you have requested. You will note that some pages qualified for partial exemption pursuant to sections 16(2) and 23 of the *Act*. A copy of these provisions is enclosed.

You are entitled to complain to the Information Commissioner concerning the processing of your request within 60 days of the receipt of this notice. In the event you decide to avail yourself of this right, your notice of complaint should be addressed to:

... / 2

Canada

Office of the Information Commissioner
30 Victoria Street, 7th Floor
Gatineau, Quebec
K1A 1H3

This completes the processing of your request. Should you have any questions, do not hesitate to contact Jane Kaddie at 819-654-6982.

Yours sincerely,



 Jackie Holden
Director
Access to Information and Privacy

Encl.

Access to Information Act

16(2) SECURITY

16.(2) The head of a government institution may refuse to disclose any record requested under this Act that contains information that could reasonably be expected to facilitate the commission of an offence, including, without restricting the generality of the foregoing, any such information ...

23 SOLICITOR-CLIENT PRIVILEGE INFORMATION

23. The head of a government institution may refuse to disclose any record requested under this Act that contains information that is subject to solicitor-client privilege.

Lamarche, Gail [NC]

From: NC-TFWP_PTET-INBOX-GD
Sent: 2013-10-08 10:06 AM
To: Keras, Dawn [NC]; Dalzell, David [ATL]; Whiteway, Lillian [ATL]; Jones, Sara L [W-T]; Lo, Jenny [W-T]; Antonowitsch, Shelby D [W-T]; McManners, Joan [W-T]; Dimitri, Mona [QC]; Duwyn, Rob [ON]; Saxe, Jennifer [NC]; James, Donna MA [NC]; Poliquin, Michelle MJ [NC]
Subject: RE: Response for new advertising requirements and Recruitment Directive
Attachments: Directive-Recruitment and Advertisement-E-20130920.docx

Hi Everyone,

I've attached a copy of the Recruitment Directive.

Gail Lamarche
 Coordinator, Access to Information and Privacy
 Coordinatrice, Accès à l'information et protection des renseignements personnels
 Temporary Foreign Worker Directorate/Direction des travailleurs étrangers temporaires
 Tel: (819) 997-5787
 Email: gail.lamarche@hrsdc-rhdcc.gc.ca

From: Lamarche, Gail [NC]
Sent: 2013-10-08 8:14 AM
To: Keras, Dawn [NC]; Dalzell, David [ATL]; Whiteway, Lillian [ATL]; Jones, Sara L [W-T]; Lo, Jenny [W-T]; Antonowitsch, Shelby D [W-T]; McManners, Joan [W-T]; Dimitri, Mona [QC]; Duwyn, Rob [ON]; Saxe, Jennifer [NC]; James, Donna MA [NC]; Poliquin, Michelle MJ [NC]
Subject: Response for new advertising requirements and Recruitment Directive
Importance: High

Good morning,

NHQ - FAQ response for new advertising requirements

Recruitment Methods of Recruitment	
Question:	NHQ Response:
Request for clarification regarding whether specific websites are appropriate to meet the requirement for employers "to provide proof of two additional methods of recruitment that are consistent with the job advertising practice for the occupation". Specifically, NHQ has been asked whether Kijiji, Craigslist, social media	<p>NHQ will not be providing a list of "acceptable" websites.</p> <p>In addition to the mandatory Canada Job Bank posting, "employers are required to recruit and provide proof of <u>two</u> or more additional methods <i>that are consistent with the job recruitment practice for the occupation...</i></p> <p>At least one of the two additional recruitment methods used by the employer must be advertising, either in print media or on the internet...</p> <p>It is up to the employer to demonstrate to ESDC/Service Canada staff that the methods of recruitment used are appropriate and target an audience commensurate with the educational attainment, professional experience and/or the skill level for the requested position".</p>

<p>sites requiring membership (e.g., Facebook, LinkedIn), and provincial health sites, are appropriate advertising sites, and whether NHQ will be providing a list of acceptable sites.</p> <p>2013 HR-NHQ 022776 2013 HR-NHQ 022575 2013 HR-NHQ 023459/2013 HR-NHQ 024173</p>	
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National In Scope

Question:	NHQ Response:
<p>Request for clarification regarding recruitment efforts that can be considered "national in scope".</p> <p>2013 HR-NHQ 022776 2013 HR-NHQ 023459/2013 HR-NHQ 024173</p>	<p>In addition, to the mandatory Canada Job Bank posting, "employers are required to recruit and provide proof of <u>two</u> or more additional methods that are consistent with the job recruitment practice for the occupation..."</p> <p>For higher-skilled occupation, "one of these additional recruitment methods must be national in scope...To be considered national in scope recruitment should target and be accessible to the appropriate audience in all regions of Canada."</p>

Duration of Advertising

Question:	NHQ Response:
<p>Request for clarification regarding the duration of advertising:</p> <p>a) whether all three sources of recruitment (job bank and the two additional methods) must be active until the LMO is issued</p> <p>b) Whether recruitment must occur within 3 months prior to the LMO application (previous policy) or the four weeks prior to the application.</p> <p>2013 HR-NHQ 022575</p>	<p>a) "Employers must continuously seek qualified Canadians and permanent residents, using at least one advertising source, starting no later than four weeks prior to submitting the LMO application to ESDC/Service Canada until the date the labour market opinion is issued."</p> <p>It is at the employer's discretion to decide which method (Canada Job Bank or alternative advertising method) to use on a continuous basis. Officers may wish to indicate to employers that Job Bank is a free advertising method that would be suitable to meet this requirement.</p> <p>b) "The employer must advertise on the national Job Bank or its provincial/territorial equivalent in British Columbia, Saskatchewan, Northwest Territories, Quebec or Newfoundland and Labrador, for a minimum of four weeks <u>immediately prior</u> to submitting an LMO application to ESDC/Service Canada."</p> <p>"Employers are required to recruit and provide proof of <u>two</u> or more additional methods that are consistent with the job recruitment practice for the occupation for a minimum of four continuous weeks within the three months prior to submitting an LMO application."</p>

<p>2013 HR-NHQ 024172 2013 HR-NHQ 025208</p>	
<p>Job Vacancies</p>	
<p>Request for clarification regarding the whether the mandatory information must be present in the job advertisement, or whether the advertisement can link to a page that contains the required information.</p> <p>2013 HR-NHQ 023177</p>	<p>The employer must place all mandatory information directly in the advertisement – a link to the information is not acceptable.</p>
<p>Jobs</p>	
<p>Question:</p>	<p>NHQ Response:</p>
<p>Request for clarification regarding the requirement for employers seeking an LMO for a low skilled position to target their recruitment to underrepresented groups. Specifically,</p> <ul style="list-style-type: none"> a) whether this requirement is in addition to the National Job Bank and two additional recruitment methods and b) whether it must be continued throughout the duration of LMO processing until a decision is rendered. <p>2013 HR-NHQ 022575 2013 HR-NHQ 022470</p>	<p>“Employers are required to recruit and provide proof of <u>two</u> or more additional methods at the local and regional level that are consistent with the job advertising practice for the occupation.</p> <ul style="list-style-type: none"> a) For lower-skilled occupations, employers should demonstrate efforts made to target underrepresented groups in the labour force in at least one of the additional methods of recruitment (e.g. seeking workers from local provincial/territorial employment centres; service centres for Aboriginal, youth, new immigrants and people with disabilities; or offering full or part-time employment options to attract under-represented groups). b) Employers are not required to make continuous efforts to target under-represented groups until the LMO is issued. However, employers that do continuously target under-represented groups as part of their recruitment efforts should be encouraged.
<p>Request for clarification regarding whether there is an expectation that employers provide access</p>	<p>“Employers should demonstrate efforts made to target underrepresented groups in the labour force in at least one of the additional methods of recruitment (e.g. seeking workers from local provincial/territorial employment centres; service centres for Aboriginal, youth, new immigrants</p>

<p>to part-time shifts where part-time is generally not the norm for the industry to accommodate Canadians and permanent residents with barriers to employment?</p> <p>2013 HR-NHQ 019994</p>	<p>and people with disabilities; or offering full or part-time employment options to attract under-represented groups).</p> <p>There is no specific expectation that employers provide access to part-time shifts where part-time work is not generally the norm for the industry. However, offering options for part-time work as part of an initiative to attract individuals from under-represented groups would represent a significant effort to accommodate under-represented groups in the labour market, and an employer that does so could be considered as meeting the requirements of the new Advertising Policy during assessment of a Labour Market Opinion.</p>
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Variations to Minimum Advertising Requirements

<p>Question:</p> <p>Clarification regarding the definition of on-farm primary agriculture for the purpose of exemption from the new policy on advertising.</p> <p>2013 HR-NHQ 022470</p>	<p>NHQ Response:</p> <p>The new recruitment and advertisement requirements cover:</p> <ul style="list-style-type: none"> • higher-skilled occupations (National Occupational Classification (NOC) skill type O, and levels A and B); and • lower-skilled occupations (NOC skill levels C and D). <p>The new recruitment and advertisement requirements do not apply to the following, for more information on the requirements for these programs refer to the accompanying websites:</p> <ul style="list-style-type: none"> • the Live-in Caregiver Program (LCP); (www.hrsdc.gc.ca/eng/jobs/foreign_workers/caregiver/index.shtml#tab4) • the Seasonal Agricultural Worker Program (SAWP); (www.hrsdc.gc.ca/eng/jobs/foreign_workers/agriculture/seasonal/index.shtml#ab4) • the Agricultural Stream; and (www.hrsdc.gc.ca/eng/jobs/foreign_workers/agriculture/general/index.shtml#tab4) • on-farm primary agriculture. (www.hrsdc.gc.ca/eng/jobs/foreign_workers/variations.shtml#h2.14)
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Employer Compliance

<p>Question:</p> <p>Request for clarification regarding whether, reviewing employers advertising requirements will be added to the employer compliance review process?</p> <p>2013 HR-NHQ 022470</p>	<p>NHQ Response:</p> <p>ESDC/Service Canada staff must assess overall employer compliance with the new advertising requirements through normal monitoring and compliance activities.</p> <p>Employers must provide proof of their advertising efforts for the full duration (including the Job Bank or equivalent) with their LMO application (or retain copies if submitting online), and retain proof of advertising efforts for a period of six years from the date the LMO is issued.</p> <p>Employers should also be reminded that ESDC/Service Canada may conduct employer compliance reviews (ECR) during which employers will be asked to demonstrate their compliance with Program requirements, including recruitment efforts.</p>
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The link below will take you to the Directive for Recruitment and Advertisement. 


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Please note the French will follow shortly.

Thank-you!

Gail Lamarche
Coordinator, Access to Information and Privacy
Coordinatrice, Accès à l'information et protection des renseignements personnels
Temporary Foreign Worker Directorate/Direction des travailleurs étrangers temporaires
Tel: (819) 997-5787
Email: gail.lamarche@hrsdc-rhdcc.gc.ca

Temporary Foreign Worker Program Manual

Directive – Recruitment and Advertisement

Purpose:

The purpose of this directive is to provide guidance to Employment and Social Development Canada (ESDC)/Service Canada staff when assessing the effort an employer has made regarding the recruitment and advertisement factor following the regulatory changes implemented on July 31, 2013.

The new recruitment and advertisement requirements cover:

- higher-skilled occupations (National Occupational Classification (NOC) skill type 0, and skill levels A and B); and
- lower-skilled occupations (NOC skill levels C and D).

The new recruitment and advertisement requirements do not apply to the following, for more information on the requirements for these programs refer to the accompanying websites:

- the Live-in Caregiver Program (LCP);
www.hrsdc.gc.ca/eng/jobs/foreign_workers/caregiver/index.shtml#tab4
- the Seasonal Agricultural Worker Program (SAWP);
www.hrsdc.gc.ca/eng/jobs/foreign_workers/agriculture/seasonal/index.shtml#tab4
- the Agricultural Stream; and
www.hrsdc.gc.ca/eng/jobs/foreign_workers/agriculture/general/index.shtml#tab4
- on-farm primary agriculture.
www.hrsdc.gc.ca/eng/jobs/foreign_workers/variations.shtml#h2.14

The following is a list of the specific on-farm primary occupations, and applicable NOC codes, that are excluded from the new advertising requirements:

High-skilled Occupations	Lower-skilled Occupations
8251 - Farmers and Farm Managers 8252 - Agricultural and Related Service Contractors and Managers 8253 - Farm Supervisors and Specialized Livestock Workers 8254 - Nursery and Greenhouse Operators and Managers 8256 - Supervisors, Landscape and Horticulture	8431 - General Farm Workers 8432 - Nursery and Greenhouse Workers 8611 - Harvesting Labourers

In addition, recruitment and advertisement variations also apply to the following specific occupations and for particular provinces. More information is available on the Temporary Foreign Worker Program (TFWP) website at: www.hrsdc.gc.ca/eng/jobs/foreign_workers/variations.shtml

- Academics
- Camp counsellors
- Certificate of selection from Quebec / Facilitated labour market opinion process in Quebec
- Collective bargaining agreement that stipulates internal recruitment
- Digital media occupations
- Employer associations
- Entertainment sector
- Hiring by a foreign government
- International Graduates holding a work permit under Citizenship and Immigration Canada's Post-Graduation Work Permit Program
- Owners/Operators

Temporary Foreign Worker Program Manual

- Religion instructors
- Specialized Service Technicians/Specialized Service Providers
- Warranty Work

Background:

The Government of Canada announced in Budget 2013 that it will take action to reform the TFWP to ensure that Canadians are given the first chance at available jobs. The Government is focused on connecting Canadians with available jobs and ensuring that Canada's domestic labour force is prioritized for job opportunities.

As a result, changes to the TFWP were implemented on July 31, 2013 which will affect the assessment of the recruitment and advertisement factor of a labour market opinion (LMO) application. These changes include the requirement that employers:

- must make greater efforts to hire Canadian and permanent resident workers before hiring temporary foreign workers (TFW), by increasing the duration and the depth of the recruitment and advertisement process.
- can only identify English and French as a job requirement in advertisements by employers seeking to hire TFWs, unless they can demonstrate that another language is essential for the job. Exemptions will only be given in specialized cases.

Authority:

The TFWP operates under the authority of the *Immigration and Refugee Protection Act* (IRPA) and the *Immigration and Refugee Protection Regulations* (IRPR). Section 203(3) of the IRPR states that "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:

(e) whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents;

The authority relevant to work in the primary agriculture sector is found in section 315.2 of the IRPR:

(4) For the purposes of paragraph (2)(b), work in the primary agriculture sector means, subject to subsection (5), work that is performed within the boundaries of a farm, nursery or greenhouse and involves:

- (a) the operation of agricultural machinery;*
- (b) the boarding, care, breeding, sanitation or other handling of animals, other than fish, for the purpose of obtaining animal products for market, or activities relating to the collection, handling and assessment of those products; or*
- (c) the planting, care, harvesting or preparation of crops, trees, sod or other plants for market.*

(5) Work in the primary agriculture sector does not include work involving:

- (a) the activities of agronomists or agricultural economists;*
- (b) landscape architecture;*
- (c) the provision of feed lot services;*
- (d) the preparation of vegetable fibres for textile use;*
- (e) activities related to commercial hunting and trapping; or*
- (f) veterinary activities.*

Temporary Foreign Worker Program Manual

Guidelines:

Minimum Recruitment and Advertisement Requirement

Employers must demonstrate that they have made sincere efforts to hire Canadians and permanent residents first, before they will be allowed to hire TFWs. The minimum recruitment and advertisement requirement is the primary mechanism to ensure that Canadians and permanent residents are aware of the employment opportunities. The changes are intended to strengthen this requirement.

Under the new requirements employers must comply with all of the following conditions:

Higher-skilled Occupations	Lower-skilled Occupations
<p><u>National Job Bank or equivalent</u></p> <p>The employer must advertise on the national Job Bank or its provincial/territorial equivalent in British Columbia, Saskatchewan, Northwest Territories, Quebec or Newfoundland and Labrador, for a minimum of four weeks <u>immediately prior</u> to submitting an LMO application to ESDC/Service Canada.</p> <p>Note: Employers recruiting higher-skilled workers, for positions where the use of the Job Bank or its provincial/territorial counterparts is not considered an effective method of recruitment, must provide a written explanation of the alternative method used with their LMO application.</p>	<p><u>National Job Bank or equivalent</u></p> <p>The employer must advertise on the national Job Bank or its provincial/territorial equivalent in British Columbia, Saskatchewan, Northwest Territories, Quebec or Newfoundland and Labrador, for a minimum of four weeks <u>immediately prior</u> to submitting an LMO application to ESDC/Service Canada.</p>
<p><u>Use of two additional methods of recruitment</u></p> <p>Employers are required to provide proof of at least <u>two</u> additional methods of recruitment. These methods must be consistent with the recruitment practice for the occupation and be for a minimum duration of four continuous weeks within the three months prior to submitting an LMO application. This requirement is to ensure that employers recruit using forums where higher-skilled Canadians or permanent residents would typically look for a job in their field of expertise, experience, education and skills background.</p> <p>One of the additional recruitment methods to be used must be national in scope, since people in higher-skilled occupations are often more mobile and are more likely to relocate for work compared to those in lower-skilled occupations.</p> <p>To be considered national in scope, the recruitment should target and be accessible to the appropriate audience in all regions of Canada.</p>	<p><u>Use of two additional methods of recruitment</u></p> <p>Employers are required to provide proof of at least <u>two</u> additional methods of recruitment. These methods must be at the local and regional level, and be consistent with the recruitment practice for the occupation for a minimum duration of four continuous weeks within the three months prior to submitting an LMO application.</p> <p>In at least one of the additional methods of recruitment, employers should demonstrate efforts made to target underrepresented groups in the labour force (e.g. seeking workers from local provincial/territorial employment centres; or service centres for Aboriginal, youth, new immigrants and people with disabilities).</p> <p>Note: To accommodate members of underrepresented groups, who may not be able to work a full day, employers should try to be more flexible and offer full or part-time hours, if possible.</p>

Temporary Foreign Worker Program Manual

<p>At least one of the two additional recruitment methods used by the employer must be advertising, in print media or on the Internet.</p> <p>The following are some additional recruitment methods:</p> <ul style="list-style-type: none">• print media (e.g. national or provincial/territorial newspapers, national journals or magazines, specialized journals, professional associations' magazines, newsletters)• general employment websites (e.g. beyond.com, canadastop100.com, vault.com, workopolis.com, monster.ca)• specialized internet sites which are dedicated to specific occupation profiles (e.g. accounting, marketing, biotechnology, education, engineering)• participation at job fairs• partnering with training institutions or offering internships• use of professional recruitment agencies;• consultations with unions for available labour (if applicable)• advertising through professional associations• recruitment within the company (e.g. considering internal candidates for the position) <p>A Human Resources Plan may outline the training opportunities for existing employees; include a list of competencies for employees, support of workshops and/or programs for professional development and career management, or specific programs to target specific employees for advancement.</p> <p>If employers choose two online methods to meet the "additional methods of recruitment" requirement, they must not be substantially the same, nor should they target substantially the same audience. Different types of online recruitment could include use of:</p> <ul style="list-style-type: none">• commercial websites (e.g. Monster.ca or Workopolis), or• social media websites (e.g. Facebook, Twitter or LinkedIn), or• online classifieds (e.g. Kijiji or Craigslist), or• professional association websites or sector/occupation targeted websites (e.g. members only job board for Ontario Society of Professional Engineers) <p>It is up to the employer to demonstrate to ESDC/Service Canada staff that the additional methods of recruitment used are appropriate and</p>	<p>At least one of the two additional recruitment methods used by the employer must be advertising, in print media or on the Internet.</p> <p>The following are some additional recruitment methods:</p> <ul style="list-style-type: none">• print media (e.g. local newspapers, job boards, youth magazines)• general employment websites (e.g. jobboom.com, workopolis.com, monster.ca)• offer bursaries to attract students or youth• participation at job fairs• consultations with unions for available labour (if applicable)• recruitment within the company (e.g. considering internal candidates for the position) <p>A Human Resources Plan may outline the training opportunities for existing employees; include a list of competencies for employees, support of workshops and/or programs for professional development and career management, or specific programs to target specific employees for advancement.</p> <p>If employers choose two online methods to meet the "additional methods of recruitment" requirement, they must not be substantially the same, nor should they target substantially the same audience. Different types of online recruitment could include use of:</p> <ul style="list-style-type: none">• commercial websites (e.g. Monster.ca or Workopolis), or• social media websites (e.g. Facebook, Twitter or LinkedIn), or• online classifieds (e.g. Kijiji or Craigslist), or• other association websites or sector/occupation targeted websites <p>It is up to the employer to demonstrate to ESDC/Service Canada staff that the additional methods of recruitment used are appropriate and</p>
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Temporary Foreign Worker Program Manual

<p>target an audience commensurate with the educational attainment, professional experience and/or the skill level of the requested position, including methods that cannot be done for a minimum duration of four continuous weeks (e.g. job fair).</p>	<p>target an audience commensurate with the requested position, including methods that cannot be done for a minimum of four continuous weeks (e.g. job fair).</p>
<p><u>Job advertisements must include:</u></p> <ul style="list-style-type: none"> • Company operating name • Business address • Title of position/occupation • Job duties • Terms of employment (e.g. permanent position, full time, shift work, during the weekend) • Benefits package being offered (if applicable) • Location of work (local area, city or town) • Contact information: telephone number, cell phone number, email address, fax number, or mailing address • Skills requirements • Education • Work experience (employers may request specific work experience to find, select and/or interview potential candidates for a job vacancy; however, work experience will not be factor for assessing wage rates on the LMO application). • Salary/Wage Rate (a wage rate range can be used for the purposes of complying with advertisement requirements; however, employers submitting an LMO application must be aware that the assessment of wage rates will be completed using the prevailing wage methodology of the program). • Language of work (English/French are the only languages that can be identified as a job requirement in the advertisement). <p>The employer must place all mandatory information directly in the advertisement – a link to the information is not acceptable.</p> <p>Note: There may be circumstances where the employer or head-hunter may not wish to disclose some information (e.g. salary, company name) for high profile occupations (e.g. senior executive) for competitive reasons, or the potential influence on the stock market, etc. It is up to the employer to demonstrate to ESDC/Service Canada that the advertised position should be exempt from including any of the listed mandatory job advertisement information.</p>	<p><u>Job Advertisements must include:</u></p> <ul style="list-style-type: none"> • Company operating name • Business address • Title of position/occupation • Job duties • Terms of employment (e.g. permanent position, full time, shift work, during the weekend) • Benefits package being offered (if applicable) • Location of work (local area, city or town) • Contact information: telephone number, cell phone number, email address, fax number, or mailing address • Skills requirements (if applicable) • Education (if applicable) • Work experience (employers may request specific work experience to find, select and/or interview potential candidates for a job vacancy; however, work experience will not be factor for assessing wage rates on the LMO application). • Salary/Wage Rate (a wage rate range can be used for the purposes of complying with advertisement requirements; however, employers submitting an LMO application must be aware that the assessment of wage rates will be completed using the prevailing wage methodology of the program). • Language of work (English/French are the only languages that can be identified as a job requirement in the advertisement). <p>The employer must place all mandatory information directly in the advertisement – a link to the information is not acceptable.</p>

Temporary Foreign Worker Program Manual

<p><u>Duration of recruitment and advertisement efforts</u></p> <p>Employers must continuously seek qualified Canadians and permanent residents, using at least one advertising source, until the date the LMO is issued.</p>	<p><u>Duration of recruitment and advertisement efforts</u></p> <p>Employers must continuously seek qualified Canadians and permanent residents, using at least one advertising source, until the date the LMO is issued.</p>
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Language Restrictions

English and French are the only languages that can now be identified as a job requirement in advertisements by employers seeking to hire TFWs, except in the following cases:

- the position falls under the SAWP;
- the position falls under the Agricultural Stream;
- the position is related to on-farm primary agriculture (specifically NOC codes 8251, 8252, 8253, 8254 and 8256, 8431, 8432 and 8611); and
- the employer is able to demonstrate in writing that a non-official language is essential for the job (e.g. a translator hired to work in a language other than English or French, a tour company catering to foreign tourists).

Additional Recruitment and Advertisement Efforts

Employers may be required to conduct alternative or additional recruitment and advertisement efforts such as an increase in the duration (length of time) or broader advertisement (whether local, regional or national). These additional efforts would be required if ESDC/Service Canada determines that it would likely yield qualified Canadians and permanent residents who are available to work in the occupation and region.

Proof of Recruitment and Advertisement

Employers must demonstrate that they meet the recruitment and advertisement requirements by providing proof: of the method used, the advertisement was posted for the minimum four-week duration, and the results of their efforts to recruit Canadians and permanent residents (e.g. copy of advertisement and information to support where, when and for how long the position was advertised). Records of the employers' efforts should be kept for a minimum of six years, as stipulated in provincial/territorial and federal legislation, such as the *Income Tax Act*. ESDC/Service Canada may request these documents for future assessments.

Monitoring and Compliance

ESDC/Service Canada staff must assess overall employer compliance with the new advertising requirements through normal monitoring and compliance activities. Employers must provide proof of their advertising efforts for the full duration (including the Job Bank or equivalent) with their LMO application (or retain copies if submitting online), and retain proof of advertising efforts for a period of six years from the date the LMO is issued.

During the LMO application assessment process, employers should be reminded to continue to actively seek qualified Canadian and permanent resident workers to fill the advertised positions until a positive or negative LMO letter is issued. Employers should also be reminded that ESDC/Service Canada may

Temporary Foreign Worker Program Manual

conduct employer compliance reviews (ECR) during which employers will be asked to demonstrate their compliance with Program requirements.

If it appears that the employer has not fully upheld the terms and conditions of the original job offers to TFWs as they relate to the wage, working conditions and occupation, the employer will have the opportunity to provide a rationale and take corrective action.

Request:

W-T writes-in the following concern:

I. BACKGROUND

FWS Information



s.16(2)

ER Name: JBS Food Canada Inc.

Summary of case

Bulk LMO application Request as follows:

- 1) Production Workers (NOC 9617)- 50 positions
- 2) Industrial Butchers (NOC 9462)- 100 positions

- Proof of Recruitment:
- NJB
- Kijiji
- Newsprint
- Radio
- Company website
- Company Billboard
- postings at universities, colleges, Employment centres
- 23 Job fairs in 2013 in 4 across the country (Quebec, Ontario, Manitoba, Saskatchewan and Alberta).
- Employment Connections
- Plant Closures

Despite the fact that the employer has conducted an extensive advertising and has provided documentation and proof, none of recruitment with the exception of NJB meets the program requirement with regards to the contents.

Kijiji and Newspaper ad (online and print ad) do not state:

- the job duties
- job location
- terms of employment
- Skill requirements

In discussion with employer and enquiring why the contents of the ads were missing these information about the job postings. Employer said that they usually advertise with listings of all the various positions they have open on the same ad. For them to advertise each position they have open individually in their print media, it would be financially counterproductive and they felt it more important to use those funds responsibly to personally attend as many job fairs, employment events, immigration and intake centers, schools and universities across Canada. In this way they could reach and inform as many Canadians as possible about opportunities available within their organization. In addition, they are able to promote who they are as a company, what they do and why Canadians should begin their career with them.

II. QUESTION / ISSUE

The employer has conducted and uploaded a significant amount of documents (Jobfairs) targeting the underrepresented as a proof that they have exhausted all avenues and are actively recruiting locally in attempt to hire Canadians (copies are uploaded & attached to these virtual files). However, the proofs of secondary advertisements are missing the contents as listed above and do not meet recruitment requirements as per guidelines. Considering the challenges the employer is facing and the Industry as a whole, can the contents of the advertisement be waived in such a situation?

III. ESDC / NHO ADDITIONAL COMMENTS OR CONCERNS

Please provide any concerns with the LMO applications.

Response:

In this case, given the extensive recruitment efforts of the employer, NHQ suggest that some flexibility be used in assessing whether the employer has met the minimum recruitment requirements.

As noted, the employer has properly recruited on Job Bank, as well as at job fairs. In terms of advertising using a third source, it would be reasonable to consider the following of the online and newspaper ads:

- job duties: can be surmised from the job title
- job location: city or town is sufficient given that Brooks, Alberta is a rural town with a small population
- terms of employment: indicates "full time, permanent employment" on both ads
- Skill requirements: flexibility can be exercised that this not be included given a lower-skilled occupations

Request:

W-T has noticed that the website no longer specifies the 4 weeks of advertising must take place in the three months prior to the application's submission. (See copy below)

Can you advise if the removal of three-month stipulation was an oversight or if the assessment process related to the advertising time frame is being modified?

Advertisement

A job posting is an announcement of an employment opportunity in a public medium such as newspapers, job posting Internet site, bulletin boards, etc. It provides a broad exposure of the vacancy to Canadian citizens and permanent residents in Canada who would be potential candidates for the position.

To meet the minimum advertising requirements set by the Program, employers must advertise:

1. On the national Job Bank or its provincial/territorial counterpart in British Columbia, Saskatchewan, the Northwest Territories, Quebec or Newfoundland and Labrador
 - o The advertisement must be posted for a minimum of 4 weeks starting from the first day the ad appears and is accessible to the general public.
 - o The advertisement must remain posted to actively seek qualified Canadians and permanent residents until the date a labour market opinion is issued.
2. Using 2 or more additional methods of recruitment consistent with the normal practice for the occupation.
 - o employers can choose 1 or more recruitment methods among these:
 - print media (local newspapers, job boards, youth magazines etc.); and
 - general employment websites (jobboom.com, workopolis.com, monster.ca, etc.).
 - o The advertisement must be posted for a minimum of 4 weeks starting from the first day the ad appears and is accessible to the general public

Response:

Effective July 31, 2013, employers are required to make greater efforts to hire Canadians before they are eligible to apply for an LMO. The new recruitment requirements are intended to increase Canadians' awareness of available jobs.

- 1) For the National Job Bank requirement, the employer must advertise for a minimum of four continuous weeks prior to submitting an LMO application to ESDC/Service Canada.

Employers must continuously seek qualified Canadians and permanent residents, using at least one advertising source, until the date the LMO is issued

- 2) Employers are required to provide proof of at least two additional methods of recruitment for a minimum duration of four continuous weeks within the three months prior to submitting an LMO application, as was the case prior to the July 31, 2013 new requirements. Although the three-month stipulation is not on the website, NHQ would suggest that this would be a reasonable timeframe to consider the recruitment activity as genuine effort by the employer to recruit Canadians and permanent residents.

The text on the website will be updated in the near future.

Request:

"Our region received an LMO application from Oxford Said Business School Ltd. (o/a Said Business School University of Oxford). This business school has been contracted to provide 9 'business management trainers' to provide several week-long training courses to Nexen's managers over the course of 12 months. Oxford Said Business School did not advertise the position or make them available to Canadians or Permanent Residents, and has requested that recruitment be waived under the Variation for Specialized Service Technicians/Specialized Service Providers.

From current NHQ guidance, the parameters of the Variation for Specialized Service Technicians/ Specialized Service Providers is narrow in scope and limited:

- *Has the employer demonstrated that the positions are highly specialized, requires proprietary knowledge, or that the curriculum is not currently available in Canada?*
- *The parameters of the Variation for Specialized Service Technicians/ Specialized Service Providers is narrow in scope and limited.*
- *Is the position "specialized" or technical to warrant an exemption under this variation?*

Issue

The curriculum and explanation do not appear to indicate this position is overly "specialized"; we are unable to see how their course would be different from similar courses from other business schools in Canada. It does not appear that the specialized Service Technician applies. Consequently, as per instructions in our manual –

http://hrsdc.prv/eng/seb/dir/tfwp/program_operations/RequestingAdvertisingVariation.doc , SC may request a specific case variation. Would you please consider if a specific variation (separate from the specialized technicians) for this specific case could be approved, based on the employers information provided? "

Thank you.

Alan Chan
Citizen Services and Program Delivery - Business Expertise Service Canada - Western Canada and Territories Region
Phone: 604-974-6174 Fax: 604-666-0086 e-mail: alan.chan@servicecanada.gc.ca

Response:

TFWP NHQ agrees with the consideration of the assessing officer that the position is not overly specialized, and consequently, the specialized service provider variation should not apply.

Based on the information provided, there does not appear to be a strong rationale for a recruitment variation/exemption. NHQ would suggest that failure for the employer to

conduct the minimum recruitment and advertisement requirements would result in failure to meet the LMO factor to make reasonable efforts to hire or train Canadian citizens or Canadian permanent residents.

Request:

I am a Business Expertise Consultant, working under Sara Jones in W-T, but have been offered as a resource to NHQ while the new Regs are being rolled out.

Below is a brief summary of what we covered in the meeting and some potential actions/considerations to scenarios from a BE perspective in line with what we discussed and subsequent conversations with Sara. Could you please review and let me know if what I've captured is accurate from **your** perspective? (I know it appears long, but hopefully it's not as bad as it looks!)

Advertising Variations/Waiving of Recruitment

- In the past, the Regions were able to exercise discretion in waiving advertised beyond the established Advertising Variations
- In some instances, this discretion was used beyond its intended scope
- To ensure consistency on a national basis, consideration for waiving recruitment outside of the established variations must be vetted through NHQ on a case-by-case basis
- NHQ will review and analyze the vetted cases to inform and revise advertising variation policy accordingly

Business Address and Location of Work

The Directive provides a number of elements that "must" be included in the advertisement. NHQ advised this list was modelled from the mandatory fields in the Job Bank and can assist in verifying/validating the employer, which officers would also do from reviewing information provided on the application.

While the fields make sense for the Job Bank format, they are a little more difficult in "free text" ads. The "mandatory" elements are creating issues for officers, particularly the Business Address, Location of Work and Contact Information elements. Questions arising include:

- Does the Business Address mean the head office, main branch nearest location of work, etc.?
- Whether both Business Address and Location of Work need an address and to what extent - street address, town/city, postal code? For ads, do job seekers need to know the head office of Company A is in Toronto when the location of work is in Calgary?

It is proposed that an officer could assess whether the essential elements related to the addresses are met by assessing whether a job seeker could clearly determine who he would be working for and where the job would be located. For example, the following don't have full addresses, but it is evident for whom and where the job seeker would be working:

- Gourmet Treats Inc., Toronto o/a Cookies by George, West Edmonton Mall seeks Food Services Supervisor. Applications may be forwarded to CookiesByGeorge@telus.net or dropped off at mall location. (Rationale: West Edmonton Mall is a well-known location and wouldn't require an actual street address for a job seeker to know where it is)
- Food Counter Attendants - TDL Group, Toronto o/a Tim Hortons in Regina: 140 Albert St. N; 142 Broadway Avenue; 1825 Victoria St. E. Apply online at TimHortons.com or in person at the location. (For job location, employers like McDonalds will sometimes say North Edmonton or East Edmonton to cover multiple locations without listing them –

this may be considered too broad for the new intentions of recruitment and not acceptable?)

- Rocking H Ranch, Kerrobert, SK seeks general farm worker. Apply to Box 61, Kerrobert, SK S0L 1R0 or RockingHRanch@sasktel.net. (Rationale: An actual land location, such as 15-23-34 W3rd, probably wouldn't be value added for a job seeker)

While the directive does say "must include", BE is of understanding/perspective that flexibility based on the ability to clearly determine the employer and the location of work should be considered when assessing whether the employer has met advertising requirements.

Continuous Advertising

Officers are finding evidence when validating the Job Bank ad that employers are not continuing to advertise after the LMO application has been submitted. Current direction in the Region is:

Officers should assess by:

- Engage in additional fact-finding to determine if the employer is/is not continuing to advertise.
- If not continuing to advertise, officer may determine that the employer has not met minimum advertising requirements,
- Negative finding of this labour market factor should be considered in the balanced assessment of all labour market factors as a whole
- An officer may determine a negative opinion and refuse the file based on the employer's failure to meet minimum advertising requirements by not continuously advertising

BE is of the understanding that such a refusal should meet the criteria for procedural fairness as the information related to continuous advertising has been publicized and readily available to employers and is clearly a program requirement.

Assessing Advertising Targeting Underrepresented Groups

For Lower-skilled occupations, ERs must advertise on NJB and two additional sources. One of these two additional sources must target under-represented groups.

- W-T BE was of the understanding that targeting underrepresented groups entailed very specific efforts to connect with those groups such as advertising in local student centres, aboriginal centres, immigrant centres, and community-based organizations that work with underrepresented groups
- W-T BE is now of the understanding that NJB, and other highly accessible websites like Kijiji, are considered to target underrepresented groups, because these underrepresented groups could/would access them
- Officers should be more flexible in the assessment of other sources of advertising as per the following: Evidence of targeted recruitment not only includes advertising in local Student Centres, Aboriginal Centres, Employment Centres, etc., but other sources of advertising, such as newspapers, internet sites, etc., may also be considered evidence of targeted recruitment when deemed applicable and appropriate.

Link Associated with Advertising to Underrepresented Groups

Some employers are having difficulty interpreting information on the website and officers are having difficulty handling employer complaints based on the following:

Website Wording

- Website wording such as “employers should” or “employers can” give employers the impression the direction to make efforts to target underrepresented groups is optional

Web Page Links

- Directive advises NJB, two additional sources – one of which must be targeted to underrepresented groups
- TFWP’s Internet Site – Home Page and Lower-Skilled Page provides a link to “Hiring Workers from Underrepresented Groups”, which provides links for a number of programs/initiatives related to underrepresented groups
- On the web pages for some of these programs and initiatives, the NJB is listed as another program or service
- Employers then interpret that the NJB is an acceptable advertising source targeting underrepresented groups, which they are already using, and subsequently claim it as one of the two other sources
- Officers are asking if the website could be updated to provide further clarification in this regard

Wage Range (Lowest end of range must be equal to or higher than the prevailing wage rate)

Can you advise if this has been considered under procedural fairness/legal? Is TFWP able to dictate to employers what wage range has to be used when they are attempting to recruit Canadians/PRs? Is this currently in effect (I don’t think it is on the website) or will it only come into play after the next set of Regs are implemented with the transition plans?

It’s anticipated that this practise will create false expectations for Canadian/PRs and an issue for assessing lower-skilled applications as follows:

- Generally speaking, lower-skilled employers (e.g. Tim’s) want to pay their workers the provincial minimum wage
- In the past they would advertise in a range that included the minimum wage at the low end and prevailing wage rate in the middle to higher end to meet minimum advertising requirements, allowing them to legitimately offer Canadians/PRs the minimum wage
- Requiring the employer to place advertisements where the lowest wage offer is the prevailing wage rate will result in Cdns/PRs applying for a job advertised at \$11, but being told they will only get \$10
- From an assessment perspective, advertising a job at \$11, but then only offering \$10 to the applicants (Cdns/PRs) would not be considered genuine, resulting in a refusal
- Can we, at the present time, “force” employers to pay the median wage to Cdns/PRs?

Head Hunters

- Head Hunters are considered to be only one source of advertising. The Head Hunter/ER must provide two additional sources.

- If the Head Hunter is placing other advertising on behalf of the employer, the name of the ER's business, not the Head Hunter's business, must be included in the advertising, unless there is an acceptable rationale for omitting the name
-

Response:

Advertising Variations/Waiving of Recruitment

During the assessment of an LMO, consideration could be given to waive the recruitment requirements when the following criteria are present:

- a. A high salary (e.g. \$200,000/year);
- b. Very high skilled (e.g. NOC 00)
- c. Specialized nature of the position (e.g. international knowledge); and where
- d. Recruitment efforts will not likely result in finding the expertise being sought.

In other cases, or if uncertain, regions should contact NHQ on a case by case basis.

Business Address and Location of Work

After reviewing the requirements and original intent of the recruitment directive, NHQ will revise future versions of the directive to require employers to include the full address of the location of work (number, street name and city), but no longer the business address *and* location of work. Exceptions would need to be made for construction and other industries where the location of work may vary – in such cases a business address will be required. The website will be updated to reflect this change when the next updates for recruitment are made.

In the meantime, Service Canada officers should remain flexible in assessing this aspect of the recruitment and advertising requirements.

Continuous Advertising

Where there is evidence that an employer is not continuously advertising using at least one source, the employer should be considered as NOT having met the minimum recruitment requirements, and as a result the recruitment factor should be negative.

Assessing Advertising Targeting Underrepresented Groups

The requirement is that the employer makes a specific effort to target underrepresented groups, e.g. post a job bulletin at Aboriginal community centres, job fairs at university campuses to attract youth, etc.

Flexibility in the assessment of other sources of advertising could be considered when it pertains to a very small community that has no resource centre for underrepresented groups. In these cases, using accessible websites such as Kijiji, with a note that underrepresented groups are encouraged to apply, would be acceptable.

Link Associated with Advertising to Underrepresented Groups

We are currently working to update the web site.

Wage Range (Lowest end of range must be equal to or higher than the prevailing wage rate)

- *In the past they would advertise in a range that included the minimum wage at the low end and prevailing wage rate in the middle to higher end to meet minimum advertising requirements, allowing them to legitimately offer Canadians/PRs the minimum wage*

The flexibility is no longer in effect. Employers must advertise with the prevailing wage as the minimum wage in order to recruit TFWs.

- *Requiring the employer to place advertisements where the lowest wage offer is the prevailing wage rate will result in Cdns/PRs applying for a job advertised at \$11, but being told they will only get \$10*

Employers should be offering the prevailing wage to recruit Canadians/permanent residents first and only use the TFWP as a last resort. The employer should not be applying for an LMO if Canadians/permanent residents are available at the offered wage.

- *Can we, at the present time, "force" employers to pay the median wage to Cdns/PRs?*

The TFWP requires employers to pay TFWs at least the prevailing wage for the specific occupation. However, the Program does not have the authority to "force" employers to pay Canadians/permanent residents at a given wage rate.

Head Hunters

- *Head Hunters are considered to be only one source of advertising. The Head Hunter/ER must provide two additional sources.*

Not necessarily. The head hunter can be considered as one of the additional methods of recruitment. However, in instances where the head hunter has used more than one recruitment method, this may be considered as meeting the requirement to recruit using two additional sources. The employer must demonstrate that they meet the requirements by providing proof of their efforts.

- *If the Head Hunter is placing other advertising on behalf of the employer, the name of the ER's business, not the Head Hunter's business, must be included in the advertising, unless there is an acceptable rationale for omitting the name*

This is correct. The CRA business number (for Job Bank ads) must also be the ER's number.

Request:

Are advertisements that have been generated as a “spin off” of another ad acceptable? For example, when an employer places an ad on the NJB, websites like “Indeed.ca” and “WOWJOBS” automatically “grab” the information from the NJB site and insert it as an advertisement on their own website. i.e. the NJB ad automatically ends up in “indeed.ca” as a job advertisement.

In these cases, the employer did not directly place the information on the other website; can this type of ad be considered a genuine secondary source ad?

Thank you.

Response:

A “spin-off” advertisement from a different website would not constitute a genuine secondary source ad on the part of the employer.

If the employer chooses two online methods to meet the two “additional methods of recruitment” requirement, they must themselves be responsible for “posting” the ad. In addition, ads must not be substantially the same, nor should they target substantially the same audience. Different types of online recruitment could include use of:

- commercial websites (e.g. Monster.ca or Workopolis), or
- social media websites (e.g. Facebook, Twitter or LinkedIn), or
- online classifieds (e.g. Kijiji or Craigslist), or
- professional association websites or sector/occupation targeted websites (e.g. members only job board for Ontario Society of Professional Engineers)

WT

Request:

Hi,

The Directive states that *"The employer must place all mandatory information directly in the advertisement – a link to the information is not acceptable."*

- If an employer includes a link to their company website (in lieu of any mandatory advertising content, such as a Business address), is this acceptable?
- Is a link to a company website acceptable in lieu of mandatory information (due to NJB limitations); but not acceptable for other site/sources where full mandatory content in detail can be included (e.g. Kijiji or Workopolis, newspapers, etc.)? Or, is a link to a company website acceptable for any/all sites/sources of advertising?

Thank you.

Response

As stated in the recruitment directive and referenced in W-T's request, **the employer must place all mandatory information directly in the advertisement – a link to the information is not acceptable.** A link to the company website may be included in addition to the mandatory information, but not in lieu of it.

On websites where there is an "Apply Now" or "Apply Here" button, employers will have registered with the site prior to posting the job. In these cases, the "Apply Now" or "Apply Here" button can be used in lieu of **contact information only.** All other mandatory information must be included directly in the advertisement.

Request:

The public TFW website under higher-skilled occupation states the following:

A job posting is an announcement of an employment opportunity in a public medium such as newspapers, job posting website, bulletin boards, etc. It provides a broad exposure of the vacancy to Canadian citizens and permanent residents in Canada who would be potential candidates for the position.

To meet the minimum advertising requirements set by the Program, employers must advertise:

1. *On the national Job Bank or its provincial/territorial counterpart in British Columbia, Saskatchewan, the Northwest Territories, Quebec or Newfoundland and Labrador*
 - o *The advertisement must be posted for a minimum of 4 weeks starting from the first day the ad appears and is accessible to the general public.*
 - o ***The advertisement must remain posted to actively seek qualified Canadians and permanent residents until the date a labour market opinion is issued.***
2. *Using 2 or more additional methods of recruitment consistent with the normal practice for the occupation.*
 - o *as a minimum, employers must choose one method that is national in scope, since people in higher-skilled positions are often mobile and willing to re-locate for work; and*
 - o *employers can choose one or more recruitment methods among these:*
 - *print media (national or provincial/territorial newspapers, national journals, magazines with national coverage, specialized journals, professional associations magazines, newsletters, etc.);*
 - *general employment websites (canadastop100.com, vault.com, workopolis.com, monster.ca, etc.); and*
 - *specialized websites dedicated to specific occupation profiles (e.g. accounting, marketing, biotechnology, education, engineering, etc.)*
 - o *The advertisement must be posted for a minimum of 4 weeks starting from the first day the ad appears and is accessible to the general public*

Note:

Employers must continue to advertise the available position and actively seek qualified Canadians and permanent residents until the date they receive notification that a labour market opinion has been issued

Question:

One of the key changes to the advertising requirement is ongoing recruitment. We understand one of three advertisement sources must remain active until the date employers receive a positive LMO. However, we are unclear on the message that is currently available on our public TFW website (quoted above).

Based on the first underlined and bolded sentence, it appears that employers should keep their national job bank advertisement ongoing. However, the second underlined and bolded sentence: **“Employers must continue to advertise the available position and actively seek qualified Canadians and permanent residents until the date they receive notification that a labour market opinion has been issued”** under ‘Note’ in the bottom of the website suggests otherwise.

Which of the three advertisement sources are employers required to remain active to satisfy the ongoing recruitment requirement?

1. National Job Bank or
2. One of the three sources or

3. All three sources?

Thank you.

Response:

Employers must continuously seek qualified Canadians and permanent residents, using at least one advertising source, until the date the LMO is issued. Job Bank is recommended as there is no cost to employers; however employers may choose one of the other acceptable methods as the ongoing advertisement.

The text on the website will be updated in the near future.

Request:

W-T is seeking advice and guidance from NHQ in regard to a request for a Specialized Service Technician - Seaspac Vancouver Shipyards [REDACTED] and their request to be exempted from advertising. s.16(2)

The employer advises the following:

- Technical Advisory position; six-month duration; \$1,600/day
- NOC 0/A
- Provide specialized technical services including the provision of technical advice and the transfer of shipbuilding knowledge to Vancouver Shipyard's, build strategies, plan designs and production methods for efficient and timely execution of the National Shipbuilding Procurement Strategy (NSPS).
- NSPS was developed to revitalize the shipbuilding industry in Canada
- Specialized Service Providers with knowledge in engineering, design, and production will be required to transfer their broad-based and current experience to existing employees
- Korean shipbuilding industry has been leading in technology, efficiency, and production for many years and has an established track record in building quality ships in a timely manner.
- The Korean TFW will transfer knowledge of modern shipyard techniques and methods he has developed to Cdns/PRs

The recruitment variation for Specialized Service Technicians Providers relates to: When the work requires a specialist having proprietary knowledge and/or experience related to the work to be performed - duration of the work is limited and there is no opportunity for Canadians to be trained.

While the employer has indicated Temporary Foreign Worker (TFW) has a high degree of specialized knowledge and expertise within the ship building/design sector, it does not appear as though proprietary knowledge or skills are required to perform the job (as per job duties provided by the employer). Based on the job duties, it appears as though the TFW will be in an advisory role where shipbuilding knowledge/methods are transferred to another party; not necessarily performing technical work such as inspection or repair.

It would appear that this position does not fit the current recruitment variation as, based on the information provided, it is not a hands-on "technical" position. However, W-T would like to note that this is potentially a highly sensitive case. W-T BE is aware that Seaspac has hired Canadians in the past, but also needs to hire TFWs with specialized shipbuilding knowledge because the industry has been on the decline on the west coast for decades. The owner also states that they are aware through other recruitment activities that individuals with the required skills are not currently available in Canada.

In this case of a NOC 0/A higher-skilled worker:

1. Should the file be refused based on a failure to meet recruitment requirements?
2. Could past recruitment efforts previously conducted by the employer indicating no availability of required skills in Canada be considered to meet program requirements?

3. Could the scenario be the basis of developing a new advertising variation for higher-skilled NOCs in certain sectors like shipbuilding?

Your advice and guidance in this case is greatly appreciated.

Response:

1. During the assessment of this case consideration could be given to waive the recruitment requirements given:
 - a. the high salary;
 - b. the specialized nature of the position;
 - c. the short duration; and,
 - d. that recruitment efforts will not likely result in finding the expertise being sought.
2. Past recruitment efforts do not meet current recruitment requirements. However, it is recommended that details of previous recruitment efforts be obtained and noted on file. Employers may seek to have the recruitment and advertisement requirements waived on a case-by-case basis.
3. NHQ is currently reviewing the recruitment and advertisement variations.

Request:

-
1. When the new advertising requirements come into effect, will the 3-month time frame/window still be part of the advertising requirements?
 2. To meet new advertising requirements, will employers have to specify both the location of work (town/city) and business address (physical address such as street name and number)?
-

Response:

The new advertising requirements were announced July 31, 2013 and have been applied since August 28, 2013. Under these new requirements, the employer for both higher-skilled streams and lower-skilled streams must advertise on the National Job Bank (or provincial equivalent) for a minimum of four weeks immediately prior to the day on which the request for an LMO application is received by ESDC/Service Canada.

Employers are also required to provide proof of at least two additional methods of recruitment. These methods must be consistent with the recruitment practice for the occupation and be for a minimum duration for four continuous weeks within the three months prior to the day on which the request for an LMO application is received by ESDC/Service Canada.

Employers are to indicate both the location of work (town/city) and the registered business address of the company in their advertisement.

Request:

Service Canada - Western Territories writes regarding the following issue:

"I am dealing with a case where a film producer is needed in Vancouver (for 3-yrs) to complete a production. The annual wage is at least \$207K.

Does the below NHQ guidance on high-skilled recruitment requirements apply to the Film Industry?

s.16(2)

For the specific case in question [REDACTED] I recommend that ESDC/SC waive recruitment for this case given the talent-based skills and expertise that are required for such a senior position in the film/entertainment industry".

Response:

The Service Canada officer may want to consider waiving the recruitment and advertisement requirements based on the specialized nature (expertise) and high salary of the position.

It is recommended that the officer seek labour market information expertise on the film and entertainment sector to confirm that recruitment will not likely result in finding the expertise being sought.

Request:

W-T Business Expertise (BE) is seeking clarification in reference to the current recruitment policy related to higher-skilled occupations (NOC 0, A and B) where employers must advertise in three sources – NJB or equivalent and two additional sources – one being national in scope. Our understanding is that the only acceptable exceptions to this requirement is where the NJB or equivalent would not be considered as an effective method of recruitment for the position/sector or where advertising the wages or company name in the content of the ad could be an issue for various reasons.

BE would like to confirm that choosing to conduct recruitment through a “head-hunter” does not exclude an employer from the requirement of providing proof of advertising in the three sources as noted above; or that use of a head-hunter would not be considered as one of the three sources. In cases where a head-hunter is used, it is anticipated that the employer would receive a summary of the recruitment efforts conducted by the head-hunter on the employer’s behalf to provide to Service Canada in order to meet the advertising requirements of the program.

BE is seeking clarification in this regard as Program Delivery is requesting consideration for the following exclusion; however, BE is unable to find policy to support it:

An employer who is recruiting for a high level executive – i.e. a Sr. Vice President – used the services of a head hunter to conduct their recruitment efforts. In this case would Service Canada consider the use of a head hunter only as proof of sufficient recruitment efforts?

Should NHQ find that policy supports waiving the 3 sources of recruitment for specific cases of head-hunters conducting recruitment for high-level positions, would this requirement be waived in all cases or should they be considered on a case-by-case basis with NHQ consultation?

Response:

As noted, employers seeking high-skilled foreign workers are required to recruit using three sources, NJB or provincial equivalent and two additional methods. These methods must be consistent with the recruitment practice for the occupation. The use of head-hunters can be considered as one of the additional methods of recruitment. However, in instances where the head hunter has used more than one recruitment method, this may be considered as meeting the requirement to recruit using two additional sources. The employer must demonstrate that they meet the requirements by providing proof of their efforts.

At this time, the policy does not have an exclusion for any high-skilled positions. NHQ is reviewing the policy and will give consideration to providing a variation for NOC 00 level jobs. Until a new policy is published, it is recommended exceptions be considered on a case-by-case basis with NHQ consultation.

The assessing officer may consider an exception in the case of this senior vice-president (NOC 00), if using a head hunter exclusively is consistent with the industry practice.

2013 HR-NHQ 030298
2013 HR-NHQ 029672
Prepared by: Saya Cramb
Temporary Foreign Worker Directorate
Skills and Employment Branch
28 October 2013