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Mr. Cobus (Jacobus) Kriek  
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MAY 20 2016

Dear Mr. Kriek:

On behalf of the Honourable MaryAnn Mihychuk, Minister of Employment, Workforce Development and Labour, I am responding to the two emails you sent on April 14, 2016. You requested information concerning the Temporary Foreign Worker Program (TFWP). The format of your questions has been retained within this response in order to provide greater clarity.

**Below are the responses to the questions posed in your email dated December 24, 2014, which was addressed to Mr. Alexis Conrad, former Director General of the Temporary Foreign Worker Program:**

*A) Provide us with copies of any policies that indicate employers in Canada must be active for 12 months in order to receive a positive LMIA in the FSWP.*

Under the Description tab on the TFWP webpage at [www.esdc.gc.ca/eng/jobs/foreign\\_workers/higher\\_skilled/permanent/index.shtml](http://www.esdc.gc.ca/eng/jobs/foreign_workers/higher_skilled/permanent/index.shtml), it indicates that, in order to be eligible to make a job offer to a foreign worker under the Federal Skilled Worker Program (FSWP), the Federal Skilled Trades Program, or the Canadian Experience Class, employers must have been in business for a minimum of one year.

The 12-month rule is part of the assessment of genuineness of an employer's job offer under subsection 200 (5) of the *Immigration and Refugee Protection Regulations* (IRPR), and applies to all Labour Market Impact Assessments (LMIA) submitted with the intent to support a worker's application for permanent residency. It is therefore not specific to LMIA applications intended for use within the FSWP.

*B) Provide us with copies of any policies on which the officer based the decision that foreign contracts are not allowed to support cash flow to finance a current liability (salary is current liability).*

An officer requires that each applicant demonstrate, as part of the assessment of genuineness, their ability to fulfill or support the position for which they are requesting an LMIA. In the case of your client, the applicant indicated that a company in business for less than a year would hire

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a foreign worker who would be supported by five external companies making contributions of \$2,500/month to this new business. These contributions would be made in the form of "membership fees". The explanation of the relationship between these businesses was inadequately explained. Therefore the application was considered not to have demonstrated the applicant's "ability to fulfill", which in this case includes the ability to pay the necessary wages.

C) *Explain if any discretion is allowed to deviate from the "12 month rule".*

The policy requirement is for a minimum of 12 months. However, officers review each LMIA application on a case-by-case basis and may exercise discretion where appropriate.

**Below are the responses to questions 7 and 15 posed in your letter dated January 2, 2013, which was addressed to the former Minister of Employment and Skills Development, the Honourable Diane Finley:**

Issue 4: Employer Compliance Requirements for the TFWP

7) *If HRSDC/SC has the legal authority to verify whether CPP and Income Tax is being deducted from the payroll of temporary foreign workers, what is the legal authority?*

Paragraph 203 (1)(e) of the IRPR provides ESDC with authority to verify that employers have provided previously employed foreign workers with the wages, working conditions and occupation as set out in the corresponding job offer. ESDC may review any information on payroll to confirm whether the employer provided substantially the same wages and benefits to the foreign worker as set out in the offer of employment. Employers may be asked to explain any non-standard deductions.

Issue 7: Definitions of laws that regulate Employment

15) *In terms of compliance to provincial and federal laws regulating employment, it is stated in an online brochure by HRSDC (Temporary Foreign Worker Program: Employer Compliance, ISBN 978-1-100-53050-5) that compliance includes provincial health and safety legislation. Does compliance include provincial privacy legislation within the workplace? Therefore can infractions of a provincial privacy law also be viewed as a contravention of laws that regulate employment?*

The TFWP only takes into consideration provincial/territorial employment standards and occupational health and safety standards as part of the administration and enforcement of the Program. We do not look at respective provincial/territorial privacy laws as factors of program compliance. While in Canada, temporary foreign workers have the same rights and protections as Canadians and permanent residents under applicable federal, provincial and territorial employment standards and collective agreements. Provinces and territories have primary responsibility for establishing and enforcing health and labour standards such as safe working

conditions at job sites for all workers, including foreign workers, and are responsible for responding to relevant work complaints. The TFWP continues to work alongside our provincial/territorial colleagues in establishing information-sharing agreements to ensure the protection of the personal information of all employers who access the program.

Should employers have any concerns regarding provincial or territorial laws that regulate privacy, they are encouraged to contact provinces and territories directly.

I hope that this information is helpful in addressing your concerns and explaining the rationale for the processes and the Regulations that are in place to ensure that Canadians are always first in line for available jobs.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Janet Goulding". The signature is written in a cursive style with a large initial "J".

Janet Goulding  
Director General  
Temporary Foreign Worker Directorate  
Skills and Employment Branch