



BCSIS Provincial Virtual Summit

February 24 & 25, 2021

BC's Temporary Foreign Worker Protection Act:
What We've Done and Where We're Headed

Indigenous Land Acknowledgement

As a provincial umbrella association, AMSSA would like to acknowledge that BC is home to 198 First Nations. We would also like to express and recognize the privilege that we have as settlers on this land.

We wish to acknowledge that AMSSA's operations is on the unceded traditional territories of the xwməθkwəy'əm (Musqueam), Skwxwú7mesh (Squamish), and Səl'ílwətaʔ/Selilwitulh (Tsleil-Waututh) Nations.

Funder Acknowledgement

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Presenter Information



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Temporary Foreign Worker Protection Act

BCSIS Provincial
Summit

Today's Presentation

1. **Context of Protecting Workers in BC**
2. **Legislation – Overview and Key Features**
3. **Questions**

Implementation Context

- **Pandemic and importance of TFW Program**
- **Worker protection as a key area of focus**
- **Employer, Worker and NGO stakeholders**
- **Employment Standards Branch – business modernization**
- **Foreign consulates**

Relevant Legislation

- The *Temporary Foreign Worker Protection Act* (the TFWPA) sets out requirements for the recruitment, hiring & employment of foreign nationals.
- The *Employment Standards Act* (the ESA) sets minimum standards for payment, compensation and working conditions for most workplaces.
- The Employment Standards Branch administers the TFWPA & the ESA
- The *Immigration and Refugee Protection Act* (IRPA) is the primary federal legislation regulating immigration to Canada.
- The *Workers Compensation Act* (WCA) includes such matters as the rights & responsibilities of employers & workers with respect to occupational health & safety; assisting injured or disabled workers; and assessing employers and collecting employer premiums.

TFWPA: Key “Coming into Force Dates”

- <https://www.bclaws.gov.bc.ca/>
- TFWPA assented to November 8, 2018
- Definition of EA amended to exclude recruitment of foreign nationals-July 8, 2019
- Recruiters of foreign nationals must be licensed-October 1, 2019
- Prohibited practices (s. 20) & no fees/expenses for recruitment/employment (s. 21)-September 17, 2020
- Employers must have a certificate of registration to hire foreign workers-December 15, 2020
- Can file a compliant-October 1, 2019
- No mistreatment because of a complaint-October 1, 2019

Foreign Worker Recruiter

- The *Temporary Foreign Worker Protection Act* defines a **foreign worker recruiter** as:

“a person who, for a fee or compensation, received directly or indirectly, provides recruitment services”

- It also defines **recruitment services** as:

“services that assist a foreign national to secure employment in British Columbia or assist an employer to secure employment in British Columbia for a foreign national including

- (a) finding or attempting to find employment in British Columbia for a foreign national,
- (b) assisting or advising an employer in the hiring of a foreign national,
- (c) assisting or advising another person in taking the actions described in paragraph (a) or (b), and
- (d) referring a foreign national to another person who takes the actions described in paragraph (a) or (b);”

Employer Registration

- The B.C. government keeps a **public registry** of employers registered to hire foreign workers
- A list of all employers who have been issued a certificate of registration is published on the TFWPU website
 - Provides each employer's name, registration date, and date in which their registration expires
- To date, approved approximately 3100 certificates of registration

Prohibited Practices

- Must not **directly or indirectly, charge** any person other than an employer a fee or expense for **recruitment services or employment**
- **Take possession of or retain** foreign national's passport
- Cannot **reduce a foreign worker's wages** in order to recover payments the employer made to the recruiter
- Produce or distribute **false or misleading information** related to recruitment services, immigration, immigration services, employment, housing for foreign workers or the laws of BC or Canada.
- **Misrepresent employment** opportunities, including positions, duties, length of employment, wages benefits and other terms of employment.
- **Threaten deportation** or other action for which there is no lawful cause.
- Take action or threaten to take **retaliatory action for filing a complaint** or participating in an investigation or proceeding

Practical Take-Aways

Be aware of time limits

- 6 months to file a complaint under the ESA
 - S. 74-written complaint filed with the Branch within 6 months of the last day of employment or if alleges a contravention of s. 8, 10, 11-within 6 months of the alleged contravention
 - S. 76-Director initiated investigations, at anytime to ensure compliance
 - S. 80-1 year wage recovery from earlier of date of the complaint or date of termination of employment –and- in any other case, 1 year from the time the Director first told the Employer of the investigation (Notice)
- 2 years to file a complaint under the TFWPA
 - s.33-written complaint filed with the Branch within 2 years of alleged contravention
 - No equivalent of the ESA's s. 80 in the TFWPA
 - S. 32-Director initiated investigation, at anytime for any reason

Overlap between ESA & TFWPA

- Misrepresentation

- Section 8 ESA –

- employer must not induce, influence or persuade a person to be an employee, work or be available for work by misrepresenting the availability of a position, type of work, wages or conditions of employment

- Section 20 TFWPA-

- recruiters and employers cannot produce/distribute false or misleading information re: recruitment services, immigration, immigration services, employment, housing (of foreign workers) or the laws of BC/Canada
 - recruiters and employers cannot misrepresent employment opportunities, including re: position, duties, length of employment, wages, benefits or other terms of employment

Overlap between ESA & TFWPA

- No charging for a job
 - Section 10 ESA
 - Person must not charge a fee for providing employment or information about employment to any person seeking work
 - Section 21 TFWPA
 - person must not, directly or indirectly, charge any person other than an employer a fee or expense for recruitment services
 - recruiter or employer must not, directly or indirectly, charge a fee or expense to a foreign worker for employment.
- No deducting recruitment expenses from wages
 - Section 21 ESA
 - except as permitted or required by law, an employer must not, directly or indirectly, withhold, deduct or require payment of all or part of an employee's wages for any purpose
 - an employer must not require an employee to pay any of the employer's business costs
 - Section 21 TFWPA
 - as above, plus
 - an employer must not reduce the wages of a foreign worker, or vary, reduce or eliminate any other benefit or term or condition of a foreign worker's employment, in order to recover the expense of recruiting the foreign worker.

Questions?

- We're here to help!
- General inquiries
 - **Website:** <https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards>
 - **Toll Free Info-line:** 1-800-663-3316
 - **Service BC and Translation Services:** 1-833-236-3700
 - Visit an Employment Standards Branch office (Langley, Richmond, Nanaimo, Victoria, Kelowna , Prince George)
- **Email:** ESB.Compliance@gov.bc.ca

Thank You

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