

CAUT BriefingNote

Highlights of Recent Changes to the TFWP What to Look for During the Hiring Process & in the Professional Development of Academic Staff

TFWP: What's New?

For decades, Canada has relied on migrant workers to help develop the economy. Many come to Canada through the Federal government's Temporary Foreign Worker Program (TFWP), jointly administered by Employment and Social Development Canada (ESDC)/Service Canada and Citizenship and Immigration Canada (CIC). The original intent of this program was to fill very specific jobs on a short term basis — jobs that required specific workers and skills not available in Canada. In the last decade, however, the Federal government has made it much easier for more employers to use the program to fill longer-term vacancies. The program was expanded, increasing the number of occupations covered, shortening requirements to advertise job opportunities in Canada, and reducing timelines for approval. For a period, the Federal government even provided employers the possibility to pay high-skill temporary foreign workers 15% less than other workers already in Canada in comparable jobs.

As a result, the number of temporary foreign workers has exploded in Canada in recent years. A number of critics, including labour organizations, raised awareness about some of the flaws of the TFWP, including potential downward pressures on wages and working

conditions in Canada. Stories about qualified workers not being hired or being laid-off as a result of the TFWP in many different industries, such as in mining, construction, food and retail and even banking, became public and showed potential abuses of the TFWP and foreign workers by many employers.

The Federal government introduced minor changes to the TFWP in 2013 as an effort to control political damage. Advertising requirements were increased, doubling the length and reach of employers' advertising efforts to Canadian job seekers. All employers were required to advertise their vacancies in Canada for a minimum of four weeks, rather than the previous two weeks. Employers also had to continue to actively seek qualified Canadians to fill the advertised position(s) from the time their application is submitted to when it is approved. Employers also had to advertise vacancies through different channels, including the use of two additional methods of recruitment beyond Employment and Social Development Canada's (ESDC) national Job Bank. One of the two additional recruitment tools needs to be national in scope if an employer is hiring for a high-wage occupation. These changes were added to the existing requirement that employers need a Labour Market Opinion (LMO) from ESDC about the actual domestic labour supply for some occupations.

On June 20, 2014, MP Jason Kenney, former Minister of ESDC, and MP Chris Alexander, Minister of Citizenship and Immigration Canada (CIC) announced more changes to the TFWP. The program was reformed to include not only advertisement requirements, but the obligation by employers to provide more information in order to conduct a Labour Market Impact Assessment, formerly known as the LMO. The duration of a work permit under LMIA requirements was also reduced from two years to one. Importantly, the reform forced employers who wanted to hire temporary foreign workers in high-wage occupations to submit a transition plan with their Labour Market Impact Assessment application to ensure that they are taking steps to reduce their reliance on temporary foreign workers over time.

According to ESDC, these transition plans are in addition to the existing recruitment and advertising requirements discussed above. Transition plans oblige employers of high-wage temporary foreign workers to help Canadians obtain in-demand skills through activities like investing in skills training or taking on more apprentices. An employer can also provide proof that they are helping a high-skilled temporary foreign worker transition to becoming a permanent resident of Canada. Employers are also required to undertake additional recruitment activities, including reaching out to organizations serving groups traditionally under-represented in the workforce (e.g. new immigrants, Aboriginal people, youth, Canadians with disabilities) to fill available jobs. Employers also have to report on the success of their transition plan to ESDC should they ever reapply to hire high-wage temporary foreign workers. Finally, employers must report on the results of their transition plan if they are selected for an inspection.

Use of the TFWP by Colleges and Universities

College and university administrations have been able to use international recruitment to fill vacancies for decades. More recently, special hiring criteria have been developed by ESDC/Service Canada and CIC to allow institutions to recruit in targeted occupations in degree-granting post-secondary educational institutions. These occupations are: academic consultants and examiners; graduate assistants; self-funded researchers; post-

doctoral fellows; research award recipients; eminent individuals, for example leaders in various fields; guest lecturers; visiting professors; citizens of the United States and Mexico appointed as professors under the university, college and seminary levels of the North American Free Trade Agreement (NAFTA); and, citizens of Chile appointed as professors under the Canada Chile Free Trade Agreement (CCFTA).

The criteria to be met by college and university administrations to hire temporary foreign workers vary by occupation. For instance, academic consultants and examiners, graduate assistants and self-funded researchers do not need a work permit from CIC to work in Canada, and administrations are not required to get a LMIA prior to hiring these foreign workers. For occupations such as visiting professors and guest lecturers, a work permit must be obtained in order to work in Canada. Despite the fact that there is a growing proportion of Canadians with PhDs and a growing proportion of college and university teachers working as contract academic staff, college and university administrations are not required to obtain a Labour Market Impact Assessment from ESDC before hiring a temporary foreign worker in these selected occupations. This means there is no evaluation of the impact of the TFWP on the national academic workforce. College and university administrations do have to meet the recruitment and advertising requirements, just like any other employer.

One of the key elements introduced with the reform of June 2014 was the obligation for college and university administrations to submit a transition plan to ESDC. With this obligation, college and university administrations would not only have to show to ESDC that they had advertised vacancies in Canada, but that they are also taking measures to reduce their reliance on temporary foreign workers over time. Requiring college and university administrations to submit plans to develop the current workforce and invest in the professional development of their academic staff is good both for future candidates and the institutions.

Unfortunately, during November 2014, it became clear that college and university administrations were seeking changes to the newly introduced requirements in the

TFWP. Stories of universities being refused to hire temporary foreign workers were made public, and some of these stories even highlighted the tendency of college and university administrations to use the TFWP instead of the immigration process to hire tenure-track professors.†

On February 13, 2015, the Association of Universities and Colleges Canada (AUCC) and the Federal government agreed to suspend the TFWP obligation for college and university administrations to submit a transition plan to ESDC. More specifically, instead of reporting to ESDC, which has inspectors and can fine employers for not being in compliance with the program, college and university administrations can, but are not obligated to, report their transition plan to AUCC. In turn, AUCC only has to provide an annual report to be included in ESDC's annual report. This self-reporting scheme is weaker than what is required of other employers.

As a result, the current rules in place for Canadian college and university administrations are basically the same as what was in place prior to the June 2014 changes. College and university administrations have to advertise vacancies across Canada, and they have to consider Canadian and permanent residents first, but they no longer have to establish effective transition plans. Without strong reporting and enforcement rules, the program is open to potential abuses, such as the use of the TFWP to hire permanent staff.

TFWP and CAUT

CAUT is concerned by recent developments of the TFWP. For some specialized academic fields, there may be a lack of qualified candidates. However, this should be demonstrated. If such shortages exist, universities and colleges would not have any difficulty receiving a positive LMIA and work permits. So why do college and university administrations not have to make a case, provide evidence and put in place a plan to government, like every other employer, about the need to hire foreign workers?

Moreover, universities and colleges should be using the immigration system to recruit internationally, not a program design to fill temporary labour shortages. Why are college and university administrations allowed to use the TFWP to hire academic staff in long-term or permanent positions without proving their needs? This is particularly troublesome given the growing number of qualified Canadian candidates recently graduated or working as contract academic staff. Should not universities and colleges be required to provide additional opportunities and professional development for contract academic staff seeking permanent posts?

Clearly, the usage of TFWP to fill academic positions in Canada is growing. Data from ESDC and CIC show that the entry of foreign visiting university professors and assistants grew from 352 in 1995 to 525 in 1999, rising to 2,013 in 2004 and 3,567 in 2013. While the number of professors also grew rapidly during that period because of the increased demand in higher education, the growth rate of those hired under the TFWP outpaced the growth rate of permanent full time university professors in Canada during that period.

TFWP: What to Do Next?

The CAUT Policy Statement on Canadianization provides guidance for academic staff associations and members on how to deal with vacant positions and foreign workers. The policy outlines that:

- (1) *All job vacancies at Canadian universities and colleges must be made known to Canadians and permanent residents through advertisements in the CAUT Bulletin and University Affairs and/or their associated websites, as well as any other sources as appropriate.*
- (2) *Each university or college should have an appointments review committee, appointed jointly by the academic staff association and the administration, with a clear majority of faculty members on it. The committee is to advise the president on all appointments; evaluating whether each vacancy was adequately advertised in Canada, the qualifications listed were reasonable, the selection procedures were fair, and an active effort was made to recruit Canadians and permanent residents.*

† Source: www.universityaffairs.ca (<http://bit.ly/1FSGbhw>).

(3) Canadian and permanent resident applicants must be considered first. Positions are only to be offered to foreign candidates if there are no qualified Canadians or permanent resident applicants. Departments/ faculties seeking to make appointments of foreign candidates must satisfy the appointments review committee of the justification for such decisions before an offer can be made.†

More specifically, if your administration is considering using the TFWP to hire a foreign candidate, you should consider the following suggestions:

1. Push your administration to commit to the CAUT Policy Statement on Canadianization.
2. When filling a vacancy, Canadians and permanent residents must be considered first. If your administration is planning to use the TFWP, it must be proven that no qualified Canadian candidates were available. The use of the TFWP should be limited to academic occupations as outlined in the program, and for temporary positions only, with a predictable end date. If there is no predictable end date to the position, the administration should use the traditional immigration process to hire foreign candidates.
3. If your administration uses the TFWP to fill temporary vacancies that are justified, then postings should be advertised for a minimum of four weeks. The administration should also have to advertise vacancies through different channels, including the use of two additional methods of recruitment beyond the national Job Bank, of which one needs to be national in scope. The CAUT academic work website is one method of recruitment that should meet the requirements of the program. Encourage your administration to use it.
4. When using the TFWP, your administration should also continue to actively seek qualified workers in Canada to fill the advertised position(s) from the time their application is submitted to when it is approved. This means that even if the hiring process is almost completed and an international candidate is considered, if a qualified candidate currently in Canada becomes available, he or she should be considered.
5. Push your administration to request a LMIA when requesting a work permit under the TFWP. This will help ensure that Canadian citizens and permanent residents are considered first.
6. We encourage academic staff associations to monitor and report on the abuses of the program. The TFWP should not be used to hire international candidates for long-term positions, such as a Canada Research Chair, or in permanent positions, tenure-track or not. We encourage you to ask your administration, between now and the end of June 2015, how many TFWP applications they submitted and were granted in 2012, 2013 and 2014, in which fields of study, how long candidates have been hired, if those candidates are still in their positions, and whether the administration is helping them become Canadian citizens. Please share this information with CAUT.
7. Pressure your administration to prepare, share and submit a transition plan as outlined in the TFWP with you, and share it with CAUT.
8. If it is not yet the case, try to get a strong voice in both the hiring and professional development processes using tools at your disposal, from collective bargaining through your involvement in the governance structure of the institution.
9. For all other cases, encourage your administration to use the proper immigration stream, such as the Express Entry program introduced in January 2015, and, if possible, push your administration to assist members currently hired under the TFWP to seek permanent residency. CAUT is not against the use of international recruitment. However, no one should be forced to come to Canada as a temporary foreign worker when they may be eligible to become a permanent resident.

† See more at: www.caut.ca (<http://bit.ly/1CalUq8>).

Resources

- ESCD (www.esdc.gc.ca):
Hiring Foreign Academics, <http://bit.ly/1ApD7EU>
Improving Clarity, <http://bit.ly/1Cam2WH>
- CIC (www.cic.gc.ca):
Express Entry, <http://bit.ly/1wmYDNs>
Statistics, <http://bit.ly/1EeUWLx>
- CAUT:
Robert Johnson, policy analysis, at johnson@caut.ca
Sylvain Schetagne, Associate Executive Director
(Research and Political Action) at schetagne@caut.ca