

Human Resources Legislative Update

New Temporary Foreign Worker Regulations Impose Monetary Penalties and Bans on Employers for Non-Compliance

Date: August 20, 2015

Effective December 1, 2015, new [Regulations Amending the Immigration and Refugee Protection Regulations](#) (“Amending Regulation”) made under the *Immigration and Refugee Protection Act* (“Act”) will impose certain penalties on employers who are not in compliance with requirements of the Temporary Foreign Worker Program (“TFWP”).

There have been recent changes to the TFWP, including the imposition of [a new compliance and enforcement verification and enforcement regime](#). As well, amendments to the Act made by the [Economic Action Plan 2014 Act, No. 1](#) provide for regulation-making power relating to the establishment of a system of administrative monetary penalties (“AMP”) where employers contravene certain conditions applicable to the hiring of foreign workers.

Among other things, the Amending Regulation creates Division 6 “Administrative Monetary Penalties and Other Consequences for Failure to Comply with Conditions Imposed on Employers” which:

- creates a Schedule describing types of employer violations and a corresponding classification of each violation (Type A, B or C), each of which will attract a different AMP;
- establishes periods of ineligibility for employing foreign nationals, which will vary in length depending on the type of violation;
- allows for reduced consequences where an employer makes an acceptable voluntary disclosure;
- imposes separate AMPs for each violation by an employer;
- creates a cap on AMPs of \$100,000 per violation and a cumulative cap of \$1,000,000;
- permits an employer to make submissions on any preliminary findings of a violation; and
- allows the government to publish information about employers who have committed violations on a government of Canada website.

The quantum of an AMP will be determined by the Minister of Employment and Social Development or a Citizenship and Immigration Canada officer. In accordance with a point system prescribed in the Amending Regulation, it will be based on the size of the employer, its compliance history on or after December 1, 2015 and the severity of the violation.