



NEW POLICY REFORMS AFFECTING OFWS IN CANADA

The Employment Protection for Foreign Nationals Act of 2009 (EPFNA) was passed into law by the provincial legislation on 09 December 2009 in Ontario, Canada and took effect on 22 March 2010. The highlights of the new law are as follows:

- Ban on fees charged to live-in caregivers by recruiters, either directly or indirectly, or by anyone on behalf of a recruiter;
- Preventing employers from recovering, directly or through a third party, recruitment or placement costs from live-in caregivers;
- Imposing fines of up to 50,000 Canadian Dollars and a year in jail if anyone charges a placement or recruitment fee;
- Prohibiting the practice of taking a caregiver's personal documents such as passport or work permit;
- Prohibiting reprisals against caregivers for exercising their rights under the legislation; and,
- Allowing live-in caregivers up to 3 ½ years to make a complaint.

Meanwhile, the federal government has proposed amendments to the Immigration and Refugee Protection Act (Temporary Foreign Workers). Among the significant changes proposed were: a) the authority of Citizenship and Immigration Canada (CIC) to impose a two-year ban on employer from participating in the TFW Program, and the public naming of any employer who has been deemed to have violated certain provisions of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27; and b) limit the migrant workers' stay in the country to a cumulative four year period and ban their re-hiring for the next four years. However, this limit does not affect their eligibility for permanent residency. They can still apply, at any time, while they are legally in Canada or after they leave, if they qualify. Temporary workers can make use of the Canadian Experience Class (CEC) provisions or the Provincial Nominee Program provided the applicants meet the requirements.

The Citizenship, Immigration and Multiculturalism Minister, on the other hand, has recently announced vital improvements to the Live-in Caregiver Program to provide better protection on the rights of live-in caregivers. The latest changes include the following, among others:

- Elimination of the requirement for live-in caregivers to undergo a second medical examination when applying for permanent residency;
- Allowing live-in caregivers who work overtime to apply for permanent residency early. Under the new measure, two options for calculating their work experience have been introduced to be eligible to apply for permanent residence:
 - a. The live-in caregiver must render a total of 3,900 hours over a minimum of 22 months employment, with a maximum of 390 overtime hours; or
 - b. They have 24 months of authorized full-time employment.
- Expanding the time frame to complete the employment requirement to be eligible for permanent residence from 3 years to 4 years; and
- Requirement for employers of live-in caregivers to pay for: travel costs for live-in caregivers coming to Canada; medical insurance until live-in caregivers become eligible for provincial health coverage; and, workplace safety insurance and any recruiting fees owed to third parties.

The employer paid-benefits, including the job/duties, hours of work, overtime and holidays, sick leave, and terms of termination and resignation should be explicitly stated in the employment contract of the live-in caregiver.

*SOURCE: PCGs & POLOs (Toronto, Vancouver)
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