

EXPLANATORY NOTES

BILL

No. 139

An Act to amend *The Foreign Worker Recruitment and Immigration Services Act*

Clause of Bill

1 *The Foreign Worker Recruitment and Immigration Services Amendment Act, 2018*

2 *The Foreign Worker Recruitment and Immigration Services Act*

3 Existing Provision

Interpretation

2 In this Act:

(a) “**adjudicator**” means an adjudicator appointed pursuant to section 49;

(b) “**application**” means an application for a licence or a certificate of registration and includes an application for renewal;

(c) “**business day**” means a day other than a Saturday, Sunday or holiday;

(d) “**certificate of registration**” means a valid certificate of registration issued pursuant to this Act;

(e) “**code**” means the Code of Conduct adopted in the regulations;

(f) “**director**” means the person appointed as the director by the minister pursuant to subsection 3(1);

(g) “**foreign national**” means a person who is not a Canadian citizen or permanent resident of Canada;

- (h) **“foreign worker”** means a foreign national working in or seeking employment in Saskatchewan;
- (i) **“foreign worker recruiter”** means a person who, for a fee or compensation, provides recruitment services;
- (j) **“immigration consultant”** means a person who, for a fee or compensation, provides immigration services;
- (k) **“immigration services”** means services that assist a foreign national in immigrating to Saskatchewan, including:
- (i) researching and advising on immigration opportunities, laws or processes;
 - (ii) preparing or assisting in the preparation, filing and presentation of applications and documents related to immigration;
 - (iii) representing a foreign national to or before immigration authorities; and
 - (iv) providing or procuring settlement services;
- (l) **“licence”** means a valid licence issued pursuant to this Act;
- (m) **“licensee”** means a person who holds a licence;
- (n) **“minister”** means the member of Executive Council to whom for the time being the administration of this Act is assigned;
- (o) **“ministry”** means the ministry over which the minister presides;
- (p) **“prescribed”** means prescribed in the regulations;
- (q) **“recruitment services”** means services that assist a foreign national or an employer to secure employment for a foreign national in Saskatchewan, including:
- (i) finding or attempting to find employment in Saskatchewan for a foreign national;
 - (ii) assisting or advising an employer in the hiring of a foreign national;

(iii) assisting or advising another person in doing the things mentioned in subclauses (i) and (ii);

(iv) referring a foreign national to another person who does the things mentioned in subclauses (i) and (ii); and

(v) providing or procuring settlement services;

(r) **“registered employer”** means an employer that holds a certificate of registration;

(s) **“settlement services”** means services provided by a foreign worker recruiter or an immigration consultant to assist a foreign national in adapting to Saskatchewan’s society or economy or in obtaining access to social, economic, government or community programs, networks and services.

2013, c.F-18.1, s.2.

Explanation

A definition of “registrar of appeals” has been added to clarify this role in the new appeal process.

4 Existing Provision

Issuance or refusal of registration

16(1) On receipt of an application pursuant to section 15, the director shall, if the director is satisfied that the applicant has complied with this Act and the regulations, register the applicant and issue a certificate of registration to the applicant.

(2) Subject to section 48, the director may refuse to issue a certificate of registration if the director is satisfied of any of the following:

(a) the applicant has not complied with this Act or the regulations;

(b) the applicant has provided incomplete, false, misleading or inaccurate information in support of the application;

(c) the applicant has failed to meet any qualification or satisfy any requirement of this Act or the regulations;

(d) the applicant has failed to comply with any undertakings provided in an application to the Government of Canada or the Government of Saskatchewan for approval to recruit foreign workers;

(e) the applicant has failed to comply with applicable labour legislation;

(f) having regard to the past conduct of the applicant, there are reasonable grounds to believe that the applicant will not act in accordance with the law, or with integrity, honesty or in the public interest, while carrying out the activities for which the certificate of registration is required;

(g) the applicant is carrying on activities that are in contravention of this Act or the regulations, or will be in contravention if the certificate of registration is issued.

2013, c.F-18.1, s.16.

Explanation

Clause (2)(e) is amended to update the reference to *The Saskatchewan Employment Act* and allow for the inclusion of other Acts in the associated regulations.

This will enable a more comprehensive investigation to ensure there is not a pattern of unlawful activity.

5 Existing Provision

Amendment, suspension or cancellation of certificate of registration

20(1) Subject to section 48, the director may amend, suspend or cancel a certificate of registration if:

(a) the registered employer consents;

(b) the registered employer has failed to comply with this Act, the regulations or an order made pursuant to this Act;

(c) the registered employer has provided incomplete, false, misleading or inaccurate information to the director or has failed to provide any information that the director may require;

(d) the registered employer has failed to meet any qualification or satisfy any requirement of this Act or the regulations;

(e) the registered employer has failed to comply with any undertakings provided in an application to the Government of Canada or the Government of Saskatchewan for approval to recruit foreign workers;

(f) the registered employer has failed to comply with applicable labour legislation;

(g) having regard to the conduct of the registered employer, there are reasonable grounds to believe that the registered employer is not acting or will not act in accordance with the law, or with integrity, honesty or in the public interest, while carrying out the activities for which the certificate of registration is required.

(2) If the director amends, suspends or cancels a certificate of registration pursuant to subsection (1), the director shall notify the registered employer as soon as possible that the certificate of registration has been amended, suspended or cancelled.

2013, c.F-18.1, s.20.

Explanation

Clause (1)(f) is amended to update the reference to *The Saskatchewan Employment Act* and allow the inclusion of other Acts in the regulations.

This will enable a more comprehensive investigation to ensure there is not a pattern of unlawful activity.

6 Existing Provision

Interpretation of Part

34 In this Part:

(a) **“Act”** includes the regulations, the code and any orders of the director issued pursuant to this Act;

(b) **“Director of Labour Standards”** means the Director of the Labour Standards Branch designated pursuant to *The Labour Standards Act*;

(c) **“property”** includes computer software.

2013, c.F-18.1, s.34.

Explanation

Section 34 is no longer necessary as the Act is no longer co-administered by the former Ministry of the Economy and the Ministry of Labour Relations and Workplace Safety.

7 Existing Provision

Director of Labour Standards

35 For the purposes of administering and enforcing this Act and *The Labour Standards Act*, the director and the Director of Labour Standards may:

- (a) share any information collected and obtained pursuant to this Act or *The Labour Standards Act*, including personal information as defined in *The Freedom of Information and Protection of Privacy Act*; and
- (b) conduct joint inspections, examinations, audits and investigations pursuant to Division 2 and *The Labour Standards Act*.

2013, c.F-18.1, s.35.

Explanation

Section 35 has been amended to remove references to the “Director of Labour Standards” and “*The Labour Standards Act*”.

In addition, the provision has been broadened to allow for exchange of information with other government institutions.

8 Existing Provision

None.

Explanation

Section 39.1 is added to enable the director to seek information from third parties to determine if there is a contravention of the Act.

9 Existing Provision

Enforcement of compensation order

47 The Director of Labour Standards may enforce a certificate filed pursuant to section 46 with respect to an order that compensation be paid to the following as if the amount of compensation ordered to be paid were unpaid wages owing pursuant to *The Labour Standards Act*, and that Act applies, with any necessary modification, for the purposes of enforcing that order:

- (a) a foreign national;
- (b) any individual who paid a fee or expense or suffered any loss or damage on behalf of a foreign national.

2013, c.F-18.1, s.47.

Explanation

Housekeeping amendment to update reference to director and legislation.

10 Existing Provision

Opportunity to be heard

48(1) Before the director takes any action pursuant to clause 7(1)(c), subsection 8(2), section 9 or 12, subsection 16(2), section 17 or 20 or subsection 46(2), (3), (4) or (5), the director shall provide the person affected with:

- (a) written notice of the director's intended action and the reasons for that intended action; and
- (b) an opportunity to make written representations to the director, within a period set by the director, as to why the intended action should not be taken.

(2) The director is not required to give an oral hearing to any person to whom a notice has been provided pursuant to subsection (1).

(3) After considering the representations mentioned in subsection (1), the director shall issue a written decision and shall serve a copy of the decision on the person.

(4) Notwithstanding subsection (1), if the director considers that it is necessary to protect the public interest, the director may immediately amend, suspend or cancel a licence or a certificate of registration without giving the licensee to whom the licence was issued or the registered employer to whom the certificate of registration

was issued an opportunity to be heard, but shall give the licensee or registered employer an opportunity to be heard within 20 business days after the date on which the director takes any of those actions.

(5) If the director amends, suspends or cancels a licence or certificate of registration pursuant to subsection (4), the director shall notify the licensee or registered employer as soon as possible that the licence or certificate of registration has been amended, suspended or cancelled.

2013, c.F-18.1, s.48.

Explanation

A new subsection (6) has been added to continue to allow the director to reconsider a matter and alter a decision if new information becomes available.

11 Existing Provision

Adjudicator

49(1) The minister shall appoint an adjudicator for the purpose of conducting a hearing pursuant to section 50.

(2) The minister shall provide an adjudicator with any clerical and other support that is needed for carrying out the duties of the adjudicator pursuant to this Act.

2013, c.F-18.1, s.49.

Hearings

50(1) The director may, if the director considers it necessary to ensure that all information and representations are fairly heard:

(a) conduct a hearing with respect to any matter set out in clause 7(1)(c), subsection 8(2), section 9 or 12, subsection 16(2), section 17 or 20 or subsection 46(2), (3), (4) or (5); or

(b) request an adjudicator to conduct a hearing with respect to any matter set out in clause 7(1)(c), subsection 8(2), section 9 or 12, subsection 16(2), section 17 or 20 or subsection 46(2), (3), (4) or (5).

(2) The director shall provide all persons affected with written notice of any hearing to be conducted pursuant to subsection (1).

(3) In a hearing conducted by the director or an adjudicator pursuant to this section:

(a) subject to any regulations made pursuant to section 55, the director or the adjudicator may determine the procedures by which the hearing is to be conducted;

(b) the director or the adjudicator is not bound by the rules of law concerning evidence and may accept any evidence that the director or the adjudicator considers appropriate; and

(c) the director or the adjudicator may adjourn the hearing from time to time and for any period that the director or the adjudicator considers necessary.

(4) A foreign national is not required to be a party in a hearing conducted pursuant to this section.

(5) Notwithstanding that a person who is directly affected by a hearing is neither present nor represented at the hearing, if written notice of the hearing has been given to the person, the director or the adjudicator may proceed with the hearing and make any decision as though that person were present.

2013, c.F-18.1, s.50.

Explanation

The new section 49 establishes a list of independent adjudicators to hear appeals, and sets out the terms and remuneration of adjudicators.

The new section 49.1 establishes the process for making an appeal, assignment of an adjudicator and the setting of hearing dates.

Sections 49.2 and 49.3 have been added to set out procedures for appeals and powers of the adjudicator.

Sections 49.4 and 49.5 have been added to establish the requirement that an adjudicator issue an order and provide written reasons within 60 days of the conclusion of the hearing. The registrar of appeals is responsible for ensuring that decisions are provided to the parties.

12 **Existing Provision**

Reconsideration

51 Notwithstanding any other provision of this Act, the director or an adjudicator may, if the director or the adjudicator receives new information or representations with respect to any decision the director or the adjudicator has made pursuant to section 48 or 50:

- (a) reconsider the matter; and
- (b) rescind, alter or amend any decision the director or the adjudicator has made.

2013, c.F-18.1, s.51.

Appeal to Court of Queen's Bench

52(1) A person who is directly affected by a decision of the director or an adjudicator may appeal the decision to a judge of the Court of Queen's Bench.

(2) A person who is directly affected by a decision of the director or an adjudicator and who intends to appeal that decision shall file the appeal within 20 business days after the date of service of the decision of the director or the adjudicator.

(3) A notice of appeal is to be served on:

- (a) the director; and
- (b) the other parties to the proceedings before the director or the adjudicator.

(4) The record of an appeal pursuant to this section is to consist of:

- (a) any records or exhibits filed before the director or the adjudicator;
- (b) any order issued by the director or the adjudicator;
- (c) any written representations made to the director or the adjudicator by the person named in the order;
- (d) any written decision of the director or the adjudicator respecting the matter that is the subject of the appeal;
- (e) the notice of appeal commencing the appeal; and
- (f) any other material that the judge of the Court of Queen's Bench may require.

(5) If an appeal is taken pursuant to this section, a judge of the Court of Queen's Bench may:

- (a) dismiss the appeal;
- (b) allow the appeal;
- (c) allow the appeal subject to terms;
- (d) vary the decision or order of the director or the adjudicator;
- (e) refer the matter back to the director or the adjudicator for further consideration and decision; or
- (f) make any other order that the judge considers appropriate.

2013, c.F-18.1, s.52.

Explanation

Housekeeping amendments to sections 51 and 52 to remove the reference to the director and update reference to new sections of the Act.

The new section 52.1 establishes that the director has standing at an appeal and has right to appeal an adjudicator's decision to the court.

The new section 52.2 authorizes the enforcement of an order or decision of the Court.

13 Existing Provision

Regulations

55(1) The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) prescribing educational institutions and classes of persons for the purposes of subsections 4(2) and 14(2);
- (c) prescribing application requirements, including respecting any application fees, for the purposes of sections 6 and 15;

(d) respecting the forfeiture of financial security pursuant to section 7, including prescribing the conditions under which and the manner in which a bond or other financial security may be forfeited;

(e) prescribing contract terms and conditions for the purposes of section 27;

(f) prescribing records for the purposes of section 31;

(g) prescribing persons or classes of persons for the purposes of section 32;

(h) governing procedures by which hearings are to be conducted for the purposes of section 50;

(i) prescribing means of service for the purposes of section 54;

(j) adopting a code to be known as the Code of Conduct;

(k) with respect to any matter governed by this Act:

(i) adopting, as amended from time to time or otherwise, all or any part of any relevant code or standard;

(ii) amending for the purposes of this Act or the regulations any code or standard adopted pursuant to subclause (i);

(iii) requiring compliance with a code or standard adopted pursuant to subclause (i);

(l) prescribing any other matter or thing that is required or authorized by this Act to be prescribed in the regulations;

(m) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

(2) The code may contain all or any of the following provisions:

(a) provisions respecting any matter, activity or thing that is governed by this Act or that may be prescribed;

(b) provisions determining any criteria, terms, conditions or requirements that must be met in order to carry out any activity governed by this Act;

(c) provisions adopting a standard, including a standard developed or established by the director, as amended from time to time or otherwise.

2013, c.F-18.1, s.55.

(a) Explanation

Clauses (g.1), (g.2) and (g.3) have been added to allow for regulations to be made respecting procedures for appeals.

(b) Explanation

Clause (h) has been repealed as the Director will no longer hear appeals.

14 Existing Provision

None.

Explanation

This amendment will come into force on Royal Assent.