

Summary of LCP Changes Effective April 1, 2010

Nearly four months after Minister Jason Kenney's announcement in December 2009 regarding the changes to the Live-in Caregiver Program (LCP), Citizenship and Immigration Canada (CIC) finally released the implementing guidelines for these changes which took effect on April 1, 2010. A summary of these guidelines follow.

Administrative Changes

The following changes affect the processing of LCP work permit applications where the related applications for a labour market opinion (LMO) are received by Service Canada on or after April 1, 2010. These changes mainly pertain to the additional requirements in the signed employment contracts between the live-in caregivers and their employers. Under these changes, the prospective employers must agree to pay for the following benefits in favor of their prospective caregivers:

- transportation to Canada from the live-in caregiver's country of permanent residence or their country of habitual residence to the location of work in Canada
- medical insurance coverage provided from the date of the live-in caregiver's arrival until he or she is eligible for provincial health insurance
- workplace safety insurance coverage for the duration of employment and
- all recruitment fees, including any amounts payable to a third-party recruiter or agents hired by the employer that would otherwise have been charged to the live-in caregiver.

In addition to the old requirement of specifying the job duties, hours of work, wages, accommodation arrangements (including room and board), holiday and sick leave entitlements, LCP contracts are now required to include provisions on termination and resignation terms. The CIC and Service Canada websites provide a new sample contract for this purpose which outlines the above requirements in great detail.

Regulatory Changes

The regulatory changes on the other hand, mainly pertain to two aspects of the LCP permanent residence application: the medical examination and employment requirements.

A. Removal of the Second Medical Examination

The new regulations provide that those who will or have applied for their initial LCP work permits (from a visa office outside of Canada) will, as a rule, not anymore be required to undergo a second medical examination. Instead, the medical examination conducted when caregivers apply for their initial LCP work permits will become more extensive in that it will include not only an examination of health condition that could pose a risk to Canadian society but also that which could potentially trigger an excessive demand on health and social services in Canada.

However, it must also be noted that: "Officers retain the discretion to request a medical examination at the application for permanent residence stage.... Instructions regarding the basis for requesting medical examinations at the application for permanent residence stage over the

longer term will follow. These instructions will be designed to ensure that, over the long term, such requests will be rare and the exception to the rule.” (*Operational Bulletin 192*, 1 April 2010)

In the event that a live-in caregiver is required to undergo a second medical examination as part of the LCP permanent residence application, and it appears that the medical examination results could lead to a refusal of the application, “officers are encouraged to take a generous view” of requests for exemption from inadmissibility or written requests for consideration on humanitarian and compassionate grounds.

B. Extension of LCP Employment Period to Four Years and 3,900 Hours

The second regulatory change is two-fold: a) live-in caregivers now have four years (instead of three) within which to complete the two years of full time caregiving employment within a Canadian household; and that b) the two-year full time caregiving requirement can now be met by proving either 24 months of full-time live-in caregiving work or 3,900 hours of live-in caregiving work within a minimum period of 22 months (but which may include only a maximum of 390 hours of overtime work).

If the caregiver chooses to satisfy the employment requirement by proving 3,900 hours of live-in caregiving work, the following documentary requirements must be submitted with their LCP permanent residence applications: a) timesheets signed by current and previous employers clearly indicating the date and number of hours worked for all overtime hours claimed; and b) the new *Live-in Caregiver Employer Declaration of Hours Worked* (IMM 5634) form completed and signed by current and previous employers.

Implementation and Continued Advocacy

While these changes will surely benefit many LCP participants, it remains to be seen if these will indeed result in reducing if not eradicating the problems arising from this program. As is well known, strict enforcement of well-meaning legal reforms is often an entirely different story. .

Since the LCP work permits are still employer-specific, the caregivers’ immigration status still conditional and precarious, and their dependents remain subject to criminal and medical checks at the PR application stage, I can already foresee the many issues which may still arise despite these changes. Although a request for humanitarian and compassionate consideration is one possible remedy to address issues that were not anticipated by these changes, the final decision on such requests is still discretionary hence still quite unpredictable.

Therefore, even as we are very grateful for these recent changes, more work needs to be done in terms of achieving comprehensive, meaningful and lasting reforms for the long disadvantaged caregivers.

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