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SUMMARY AND HIGHLIGHTS FROM TELECONFERENCE

ADMINSITRATIVE MONETARY PENALTIES AND EMPLOYER COMPLIANCE UNDER THE IMP AND TFWP

- The Administrative Monetary Penalty (AMP) regime will **come into force December 1, 2015**, and will apply to any violations of employer conditions imposed under the International Mobility Program (IMP) or Temporary Foreign Worker Program (TFWP) on or following this date. A transitional provision provides for the continued application of the current two-year ban regulations to any failure to comply that occurred before December 1, 2015.

- As of December 31, 2013, CIC and ESDC officers can verify employer compliance with the conditions of the IMP or TFWP respectively by conducting either an:

    - Employer Compliance Review (ECR), or
    - Inspection.

  Employer Compliance Reviews (ECRs) are part of the LMIA assessment process, and may be triggered when employers re-apply for an LMIA. The review is document-based and restricted to a review of the wages, occupation and working conditions provided to foreign nationals under previous LMIAs, up to a 6 year look-back period.

  Inspections are far broader in scope. They can occur within 6 years from the first day of employment for which the work permit is issued, even if the foreign national is no longer employed by the employer. Inspections can

include a compliance review of all employer conditions imposed under the IMP or TFWP.

- During reviews and inspections, employers are afforded the opportunity to provide any justifications for non-compliance set out in the *IRPR*, and to potentially take steps to correct non-compliance.

- Employers who are found non-compliant with employer conditions under the IMP or TFWP following an inspection can face warnings, administrative monetary penalties (AMPs) ($500 to $100,000 per violation to maximum of $1 million), variable ban periods (1, 2, 5, or 10 years or permanent) and publication on a public Government of Canada blacklist website.

  Applicable administrative monetary penalties and/or ban periods will be determined using a points system that will take into account the following factors:

  - Type of violation;
  - Severity of violation;
  - Employer's history of violations (that occurred on or after December 1, 2015);
  - Any voluntary disclosure by the employer;
  - Nature of the employer (individual/small business or large business) (for financial penalties only).

- Points Calculation - Under the new regulations, employer violations are classified as Type A, B or C.

  The total number of points per violation will depend upon the type of violation (A, B, or C), the compliance history of the employer (considering violations that occurred on or after December 1, 2015), and the severity of the violation. If the employer made an acceptable voluntary disclosure in accordance with *IRPR*, you will subtract 4 points from the total (to a minimum of 0 points).

  Total Points = History + Severity – Voluntary Disclosure

  Applying Points to Determine AMP Amounts - For each violation, the AMP amount imposed will be determined by taking into account the total number of points, the type of violation (Type A, B or C) and the size of the employer (individual/small business or large business). "Small business" is defined as a business (including its affiliates) with fewer than 100 employees or less than $5 million in annual gross revenues. "Large business" means any business that is not a small business. AMPs will apply when the total points is 2 or more.

  Applying Points to Determine Ineligibility Periods (aka Ban) - The period of ineligibility imposed per violation will take into account the total number of

points and the type of violation (Type A, B or C). Ban periods will not apply when the total number of points is 5 or less. Ban periods are not cumulative. If bans are imposed for multiple periods, the longest ban period will apply.

(Please refer to the "charts" document.)

- If employers are found to have failed to comply with a condition upon inspection, and that failure was not justified, CIC or ESDC must issue a notice of preliminary finding to the employer. Once the notice of preliminary finding is received, employers will have 30 days to respond with written submissions. Deemed receipt will occur 10 days after the notice was sent.

  A notice of final determination must be issued to employers if they are found to have failed to comply with a condition, and the failure is not justified under the *IRPR*. A final determination will be subject to judicial review.

  If a final determination is made against an employer (apart from a warning), the employer's information must be added to a public Government of Canada blacklist.

We thank you for participating and will continue to hold teleconferences on relevant topics.

For Additional Information

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