

Recommendation 4 from the Standing Committee on Public Accounts (PACP)

Recommendation 4: That, by April 30, 2023, 2024, 2025 and 2026, Employment and Social Development Canada should provide the House of Commons Standing Committee on Public Accounts with annual reports presenting statistics for the previous fiscal year on:

- 1) the percentage of accommodations that were inspected;**
- 2) the number of inspections in the backlog;**
- 3) the percentage of inspections where problems were found, if possible according to the seriousness of the problems; and**
- 4) any other indicator the department may possess on the living conditions of temporary foreign workers.**

Based on the four parts stated above in recommendation 4 from the Standing Committee on Public Accounts (PACP), the Department is responding with the following:

Part 1

1) the percentage of accommodations that were inspected

The Department understands the importance of the health and safety of temporary foreign workers. While this is a complex multi-jurisdictional issue, the Department is working with the provinces, territories, and key stakeholders to develop program changes that address the most immediate health and safety concerns in employer-provided accommodations. The Department assesses employer-provided accommodations through conditions, as established through Immigration and Refugee Protection Regulations (IRPR).

In fiscal year 2023-24, employer-provided accommodations were assessed through six conditions:

209.3(1)(a)(iii)(A)¹	Temporary foreign worker resides in a private household and provides care to children, seniors, or a person with a disability
209.3(1)(a)(iii)(B)¹	Adequately furnished and private accommodation in the household
209.3(1)(a)(iv)	Adequate Accommodation under SAWP for temporary foreign workers
209.3(1)(a)(iv)	Working Conditions
209.3(1)(a)(ix)	Accommodation with social distancing to quarantine temporary foreign worker in accordance with an order or regulation under the QA or EA
209.3(1)(a)(xi)	Accommodation with private bedroom and bathroom - during isolation - for temporary foreign workers infected or with signs/symptoms of COVID-19

As of March 31, 2024, ESDC completed a total of 2,122 inspections, including 1,612 inspections that were completed for employers that provide accommodations to temporary foreign workers. Of these 1,612 inspections, 1,499 or 93% assessed employer compliance with the accommodations-related conditions (see table above).

¹ Note: The lookback period for conditions 209.3(1)(a)(iii)(A) and 209.3(1)(a)(iii)(B) has expired. These conditions will therefore not be assessed in new inspections.

Percentage of Employers with Accommodations Inspected				
Total Completed Inspections	Employers with Accommodations	Employers with Accommodations as % of Total Completed Inspections	Employers where Accommodations were Assessed (Through at least one of the above mentioned conditions)	Employers where Accommodations were Assessed as % of Employers with Accommodations
2,122	1,612	76%	1,499	93%

Part 2

2) the number of inspections in the backlog

The pre-COVID backlog of inspections has been reduced by over 99.5%.

While the overall active inventory level has been managed to maintain a balance between workload and capacity, the inventory of inspections over 12 months increased in 2023-24; however, it remains below 2020-21 levels. Of note, the average time to complete an inspection in 2023-24 was about 11 months. The Program’s workload management strategy is being reviewed regularly to effectively manage inventory of inspections.

Inspection Backlog								
Inventory Type	Fiscal Year							
	2020-21		2021-22		2022-23		2023-24	
Total Active	3,528	100%	1,888	100%	2,643	100%	2,289	100%
Inventory Age Under 12 months	2,285	65%	1,122	59%	1,876	71%	1,152	50%
Inventory Age Over 12 months	1,243	35%	766	41%	767	29%	1,137	50%

Part 3

3) the percentage of inspections where problems were found, if possible, according to the seriousness of the problems

Most employers using the Temporary Foreign Worker Program (TFW Program) are found compliant with program rules and guidelines. If issues are identified during an inspection, the Department provides employers with an opportunity to provide justification and possible compensation to be found compliant with program conditions. If an employer fails to meet Program conditions, or does not cooperate during an inspection, they could face administrative monetary penalties (AMP) of up to \$1 million and a potential ban from the program.

There are three categories of violations under the AMP and bans of the TFW Program. They are categorized based on the seriousness of the violation (see Annexes). Generally, Type C violations are those that would put the life and/or safety of a temporary foreign worker at risk, such as violations related to COVID-19 and quarantine, or when temporary foreign workers are victims of some types of abuse.

Of the 2,122 inspections completed in 2023-24, 65.6% (1,391 of 2,122) found employers initially non-compliant, meaning issues were noted. For inspections where the employer was found initially non-compliant, 25.9% had Type C violations (highest level of severity), followed by Type B violations at 70.8% and Type A violations at 3.3% (lowest level of severity).

Among the employers found initially non-compliant, 90.5% (1,259 of 1,391) provided justification or compensation to be found compliant with program conditions.

Inspections by Violation Type						
Decision Type			TOTAL	Highest Violation type		
				Type A	Type B	Type C
Total Completed Inspections			2,122			
Initial Non-Compliance	Total Initial Non-Compliance		1,391	46	985	360
	As % of Total Completed Inspections		65.6%	2.2%	46.4%	17.0%
	As % of Total Initial Non-Compliance		100.0%	3.3%	70.8%	25.9%
	Compliance with justification	Total Compliance with justification	1,259	39	940	280
		As % of Total Completed Inspections	59.3%	1.8%	44.3%	13.2%
		As % of Total Initial Non-Compliance	90.5%	2.8%	67.6%	20.1%
		As % of Total Compliance with justification	100.0%	3.1%	74.7%	22.2%
	Non-Compliant	Total Non-Compliant	132	7	45	80
		As % of Total Completed Inspections	6.2%	0.3%	2.1%	3.8%
		As % of Total Initial Non-Compliance	9.5%	0.5%	3.2%	5.8%
		As % of Total Non-Compliant	100.0%	5.3%	34.1%	60.6%

Part 4

4) any other indicator the department may possess on the living conditions of temporary foreign workers.

The Department understands the importance of ensuring that workers are provided with safe accommodations. We are working with the provinces and territories to better protect the health and safety of temporary foreign workers and ensure employers are providing safe and suitable housing conditions through the development of new TFW Program requirements concerning employer-provided accommodations. Therefore, all employers in the agricultural sector must provide proof of inspection of the off-site or on-farm accommodation before their Labour Market Impact Assessment (LMIA) is approved. In general, the appropriate provincial, territorial or municipal authority must conduct the inspection.

Recognizing that provinces, territories and/or municipalities generally have exclusive jurisdiction over the development of accommodation-related rules and regulations, including employer-provided accommodations, Employment and Social Development Canada (ESDC) established a Federal/Provincial/Territorial (FPT) Working Group in March 2022 to work through the implementation and enforcement of challenges related to proposed new requirements for employer-provided accommodations under the TFW Program. As part of this process, ESDC is working with P/T officials to develop a more consistent and reliable process for annual employer-provided accommodations inspections.

The intent of these requirements is not to change existing provincial/territorial standards but to seek greater assurances from provinces, territories, and employers that existing standards in these critical health and safety areas are being met.

Further to the FPT Working Group, ESDC also held a Ministerial Roundtable in July 2022, on Housing Standards for Temporary Foreign Workers. This was an opportunity to hear participants' own experiences "on the ground" and seek direct feedback on proposed program changes, as well as inform the next steps. Participants of the Roundtable included officials from provincial/territorial and municipal governments, migrant worker advocates and academics, employer associations, and foreign governmental officials from source nations. The discussion again highlighted the complexity of this multi-jurisdictional issue, the range of opinions, and the need for collaboration.

Based on feedback received from this Roundtable, ESDC has expanded the focus of its proposed new requirements to include additional health and safety areas that also require immediate attention, as advocated by employers, migrant worker support organizations, and provincial/territorial officials. The 12 essential health and safety requirements have been developed to focus on addressing the most pressing, and non-negotiable, health and safety concerns related to employer-provided accommodations for temporary foreign workers. Elements included are the availability of potable water and clean air, overcrowding, and the proximity of living quarters to hazardous material, to name a few.

Going forward, ESDC will continue to advance on work in this area via the FPT Working Group on Accommodations, proposing a phased approach to ensure impacted employers and P/Ts have sufficient time to prepare and adapt. The phase approach is to be implemented starting in 2025 and be fully implemented as early as 2027. Through the consultations on the new foreign labour program for agriculture and fish processing, which began in March 2024, ESDC will also

gather information from its wider stakeholder community. ESDC's objective is to fully implement this new stream as early as 2027.

The goal continues to be gradual implementation of enforceable program requirements that ensure employer-provided housing is inspected, is meeting the P/T standards, and that Service Canada can be assured that employers are providing safe and suitable accommodations to temporary foreign workers.

To help further protect the health and safety of temporary foreign workers, on March 28, 2022, ESDC implemented an external referral protocol to notify the appropriate authorities within 48 hours in situations where the health and safety of the temporary foreign worker is at an immediate risk. Between April 1, 2023, and March 31, 2024, 36 escalations have occurred with referrals made to provincial and federal stakeholders. Of these 36 escalations, 8 (22%) were related to potentially unsuitable accommodations.

ANNEXES

Table 1: Employer Conditions

Item	Provision	Short-form Description	Classification
1	209.2(1)(b)(i)	Be able to demonstrate that any information provided in respect of a work permit application was accurate during a period of six years, beginning on the first day of the foreign national's employment	Type A
2	209.2(1)(b)(ii) and 209.3(1)(c)(ii)	Retain any document that relates to compliance with cited conditions during a period of six years, beginning on the first day of the foreign national's employment	Type A
3	209.3(1)(a)(iii)(C)	For employers of a live-in caregiver: have sufficient financial resources to pay wages that were offered	Type A
4	209.3(1)(c)(i)	Be able to demonstrate that any information provided for the assessment was accurate during a period of six years, beginning on the first day of the foreign national's employment	Type A
5	209.4(1)(a)	Report at any time and place specified to answer questions and provide documents	Type C
6	209.4(1)(b)	Provide required documents	Type C
7	209.4(1)(c)	Attend any inspection, unless the employer was not notified, give all reasonable assistance to the	Type C

Item	Provision	Short-form Description	Classification
		person conducting the inspection and provide that person with any required document or information	
8	209.2(1)(a)(ii) and 209.3(1)(a)(ii)	Comply with the federal or provincial laws that regulate the employment or recruitment of employees, including foreign nationals, in the province in which the foreign national works	Type B
9	209.2(1)(a)(iii) and 209.3(1)(a)(iv)	Provide the foreign national with employment in the same occupation and substantially the same, but not less favourable, wages and working conditions as outlined in the foreign national's offer of employment	Type B
10	209.3(1)(a)(iii)(A)	For employers of a live-in caregiver: ensure that foreign national resides in a private household in Canada and provides childcare, senior home support care or care of a disabled person in that household without supervision	Type B
11	209.3(1)(b)(i)	Ensure that the employment of the foreign national will result in direct job creation or retention for Canadian citizens or permanent residents, if that was a factor that led to the issuance of the work permit	Type B
12	209.3(1)(b)(ii)	Ensure that the employment of the foreign national will result in the development or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents, if that was a factor that led to the issuance of the work permit	Type B
13	209.3(1)(b)(iii)	Hire or train Canadian citizens or permanent residents, if that was a factor that led to the issuance of the work permit	Type B
14	209.3(1)(b)(iv)	Make reasonable efforts to hire or train Canadian citizens or permanent residents, if that was a factor that led to the issuance of the work permit	Type B
15	209.2(1)(a)(i) and 209.3(1)(a)(i)	Be actively engaged in the business in which the offer of employment was made, unless the offer was made for employment as a live-in caregiver	Type C

Item	Provision	Short-form Description	Classification
16	209.3(1)(a)(iii)(B)	For employers of a live-in caregiver: provide the foreign national with adequate furnished private accommodation in the household	Type C
17	209.2(1)(a)(iv) and 209.3(1)(a)(v)	Make reasonable efforts to provide a workplace that is free of abuse	Type C
18	209.2(1)(a)(v) and 209.3(1)(a)(vii)	Not do anything that prevents the foreign national from complying with an order or regulation made under the <u>Emergencies Act</u> or the <u>Quarantine Act</u>	Type C
19	209.2(1)(a)(vi) and 209.3(1)(a)(viii)	Not do anything that prevents the foreign national from complying with a provincial law that governs public health in response to COVID-19	Type C
20	209.2(1)(a)(vii) and 209.3(1)(a)(xii)	Provide, during the period the foreign national must isolate or quarantine themselves on entry into Canada, wages to the foreign national that are substantially the same as those set out in the offer of employment	Type C
21	209.3(1)(a)(ix)	Provide the foreign national with accommodations that are separate from those provided to persons who are not in quarantine and that permit the foreign worker to remain at least two metres away from any other person	Type C
22	209.3(1)(a)(x)	Provide the foreign national with cleaning products for the purposes of cleaning and disinfecting the accommodations regularly	Type C
23	209.3(1)(a)(xi)	Provide a foreign national who develops any signs or symptoms of COVID-19, with accommodations that have a bedroom and a bathroom that are solely for the use of the foreign national while they isolate themselves	Type C
24	209.3(1)(a)(vi)	Provide adequate accommodations to a foreign national employed to perform work under an international agreement between Canada and one or more countries concerning seasonal agricultural workers	Type B
25	209.2(1)(a.1) and 209.3(1)(a.1)	Provide the foreign national, with a copy in their chosen official language of Canada, of the most recent information with respect to the foreign	Type B

Item	Provision	Short-form Description	Classification
		national's rights in Canada that is made available by the Government of Canada for that purpose	
26	209.2(1)(a)(ii.1) and 209.3(1)(a)(ii.1)	Make available to the foreign national the information referred to in paragraph 209.2(1)(a.1) or paragraph 209.3(1)(a.1), as the case may be, in both official languages of Canada	Type B
27	209.2(1)(a)(ix) and 209.3(1)(a)(xv)	Not directly or indirectly charge or recover from the foreign national the fees indicated	Type C
28	209.2(1)(a)(x) and 209.3(1)(a)(xvi)	Ensure that any person who recruited the foreign national for the employer does not, directly or indirectly, charge or recover from the foreign national the fees indicated	Type C
29	209.3(1)(a)(xiii)	Except in the case of an employer who employs a foreign national to perform work under an international agreement between Canada and one or more countries concerning seasonal agricultural workers and the agreement includes health insurance, must obtain and pay for private health insurance from a Canadian insurance provider that covers emergency medical care for any period during which the foreign national is not covered by the applicable provincial health insurance system	Type C
30	209.2(1)(a)(viii) and 209.3(1)(a)(xiv)	Make reasonable efforts to provide to the foreign national access to health care services when the foreign national is injured or becomes ill at the workplace	Type C

Table 2: Administrative Monetary Penalty Amounts

Item	Total Number of Points	Type A Violation		Type B Violation		Type C Violation	
		Individual or Small Business (\$)	Large Business (\$)	Individual or Small Business (\$)	Large Business (\$)	Individual or Small Business (\$)	Large Business (\$)
1	0 or 1	none	none	none	none	none	none
2	2	500	750	750	1,000	1,000	2,000

Item	Total Number of Points	Type A Violation		Type B Violation		Type C Violation	
		Individual or Small Business (\$)	Large Business (\$)	Individual or Small Business (\$)	Large Business (\$)	Individual or Small Business (\$)	Large Business (\$)
3	3	750	1,000	1,250	2,000	5,000	10,000
4	4	1,000	2,000	3,000	7,000	10,000	20,000
5	5	4,000	6,000	7,000	12,000	15,000	30,000
6	6	8,000	10,000	12,000	20,000	20,000	40,000
7	7	12,000	20,000	20,000	30,000	35,000	50,000
8	8	20,000	30,000	35,000	45,000	45,000	60,000
9	9 or 10	30,000	45,000	50,000	60,000	60,000	70,000
10	11 or 12	40,000	60,000	60,000	70,000	70,000	80,000
11	13 or 14	50,000	70,000	70,000	80,000	80,000	90,000
12	15 or more	100,000	100,000	100,000	100,000	100,000	100,000

Table 3: Period of Ineligibility

Item	Total Number of Points	Type A Violation	Type B Violation	Type C Violation
1	0 to 5	none	none	none
2	6	none	none	1 year
3	7	none	1 year	2 years
4	8	1 year	2 years	5 years
5	9 or 10	2 years	5 years	10 years
6	11 or 12	5 years	10 years	10 years
7	13 or 14	10 years	10 years	10 years

Item	Total Number of Points	Type A Violation	Type B Violation	Type C Violation
8	15 or more	permanent	permanent	permanent

Table 4: Compliance History

Item	Criterion	Points
1	For Type A and Type B violations — first violation	1
2	For Type A violations — second or subsequent violation	2
3	For Type B violations — second violation	2
4	For Type C violations — first violation	2
5	For Type B violations — third or subsequent violation	3
6	For Type C violations — second violation	3
7	For Type C violations — third or subsequent violation	4

Table 5: Severity of the Violation

Item	Criterion	Points
1	The employer derived competitive or economic benefit from the violation	0 to 6
2	The violation involved abuse of a foreign national (physical, psychological, sexual or financial)	0 to 10
3	The violation negatively affected the Canadian labour market or the Canadian economy	0 to 6
4	The employer did not make reasonable efforts to minimize or remediate the effects of the violation	0 to 3
5	The employer did not make reasonable efforts to prevent recurrence of the violation	0 to 3
6	The violation put the foreign national’s health or safety at risk in relation to a <i>communicable disease</i> as defined in section 2 of the Quarantine Act	0 to 10
7	The violation put the public’s health or safety at risk in relation to a <i>communicable disease</i> as defined in section 2 of the Quarantine Act	0 to 10

