

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 (ESDC) 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 (TFWs). 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 2022-23, employer-provided accommodations were assessed through six conditions:

209.3(1)(a)(iii)(A)¹	TFW 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 Seasonal Agricultural Worker Program for TFWs
209.3(1)(a)(iv)	Working Conditions
209.3(1)(a)(ix)	Accommodation with social distancing to quarantine TFW in accordance with an order or regulation under the Quarantine Act or Emergency Act
209.3(1)(a)(xi)	Accommodation with private bedroom and bathroom - during isolation - for TFWs infected or with signs/symptoms of COVID-19

As of March 31, 2023, ESDC completed a total of 2,139 inspections, including 1,345 inspections that were completed for employers that provide accommodations to TFWs. Of these 1,345 inspections, 1,292 or 96.1% 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 future fiscal year reporting.

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
2,139	1,345	63%	1,292	96%

Part 2

2) the number of inspections in the backlog

In preparation for fiscal year 2022-23's peak season, the Department developed a workload management strategy to target areas of higher risk, reduce backlogs and monitor the age of inspections as well as a healthy inventory. The measures implemented and supported by a national workload network allowed the Department to maintain a balance between the workload and the capacity in support of more timely inspections.

While pre-COVID backlog has been reduced by 98%, the proportion of aged inventory over 12 months reduced significantly from 41% in fiscal year 2021-22 to 29% in 2022-23.

Inspection Backlog						
Inventory Type	Fiscal Year					
	2020-21		2021-22		2022-23	
Total Active	3,528	100%	1,888	100%	2,586	100%
Inventory Age 12 Months and Under	2,285	65%	1,122	59%	1,835	71%
Inventory Age Over 12 Months	1,243	35%	766	41%	751	29%

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 (TFW) Program are found compliant with program rules and guidelines. If issues are identified during an inspection, the Department makes every effort to work with employers to bring them in compliance with program conditions and educate them about their responsibilities. Employers who do not comply with program conditions are held accountable.

There are three categories of violations under the Administrative and Monetary Penalties (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

TFW 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 2,139 completed inspections in 2022-23, 1,125 (52.6%) employers were found to be initially non-compliant, meaning issues were noted. Of the 1,125, 40.0% had Type C violations (highest level of severity), 57.2% had Type B violations and 2.8% had Type A violations (lowest level of severity).

Among the 1,125 employers found initially non-compliant, 89.6% (1,008) made corrections to then be found compliant with program conditions.

Inspections by Violation Type						
Decision Type		TOTAL	Violation type			
			Type A	Type B	Type C	
Total Completed Inspections		2,139				
Initial Non-Compliance	Total Initial Non-Compliance	1,125	32	643	450	
	As % of Total Completed Inspections	52.6%	1.5%	30.1%	21.0%	
	As % of Total Initial Non-Compliance	100.0%	2.8%	57.2%	40.0%	
	Into Compliance	Total Into Compliance	1,008	31	616	361
		As % of Total Completed Inspections	47.1%	1.4%	28.8%	16.9%
		As % of Total Initial Non-Compliant	89.6%	2.8%	54.8%	32.1%
		As % of Total into Compliance	100.0%	3.1%	61.1%	35.8%
	Non-Compliant	Total Non-Compliant	117	1	27	89
		As % of Total Completed Inspections	5.5%	0.1%	1.3%	4.2%
		As % of Total Initial Non-Compliant	10.6%	0.1%	2.4%	7.9%
		As % of Total Non-Compliant	100.0%	0.9%	23.1%	76.1%

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. Through the development of new TFW Program requirements and regulations, the Department is working with provinces and territories to continue protecting the health and safety of temporary foreign workers and ensuring that employers are providing safe and suitable housing conditions. All employers must provide proof of inspection of the off-site or on-farm accommodation before their Labour Market Impact Assessment (LMIA) is approved. The appropriate provincial, territorial or municipal authority must generally conduct the inspection.

Generally, provinces, territories and/or municipalities have exclusive jurisdiction over the development of accommodation-related rules and regulations, including employer-provided accommodations. The intent of the proposed new requirements and regulations is not to change existing provincial/territorial standards, but to seek greater assurances from provinces, territories, and employers that existing critical standards are being met. To that end, in March 2022, ESDC established a Federal/Provincial/Territorial (FPT) Working Group focused on implementation and enforcement of the proposed rules under the TFW Program.

Further to the FPT Working Group, ESDC also held a Ministerial Roundtable in July 2022, on Housing 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 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. Anticipated implementation is planned for as early as 2024/2025.

Moving forward, the Department will continue with the discussions and actions already underway to advance this important work. The continued goal of implementing enforceable program requirements that address the issue of unsuitable and unsafe accommodations will support enhancing the lives of TFWs.

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, 2022, and March 31, 2023, 47 escalations have occurred with referrals made to provincial and federal stakeholders. Of these 47 escalations, 9 (19%) 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 person conducting the inspection and provide that person with any required document or information	Type C
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

Item	Provision	Short-form Description	Classification
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
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 Emergencies Act or the Quarantine Act	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

Item	Provision	Short-form Description	Classification
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 national's rights in Canada that is made available by the Government of Canada for that purpose	Type B
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

Item	Provision	Short-form Description	Classification
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
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

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 (\$)
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
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

Item	Criterion	Points
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