

THE EMPLOYMENT PROTECTION FOR FOREIGN NATIONALS ACT OF ONTARIO, CANADA

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The federal government and provincial government of Ontario, Canada have recently introduced legislations providing more protection to temporary foreign workers, including caregivers.

In Ontario, a new law, entitled Employment Protection for Foreign Nationals Act was passed on December 9, 2009, and has the following salient features:

- Ban on fees charged to live-in caregivers by recruiters, either directly or indirectly, or by anyone on behalf of a recruiter;
- Prevention of employers from recovering, directly or through a third party, recruitment or placement costs from live-in caregivers;
- Imposition of fines of up to CAD 50,000 and a year in jail if anyone charges a placement fee or recruitment fee;
- Prohibition of the practice of taking a caregiver's personal documents such as a passport or work permit;
- Prohibition of reprisals against caregivers for exercising their rights under the legislation; and
- Provision of up to 3 1/2 years for live-in caregivers to make a complaint.

On the other hand, the federal government has also introduced amendments to the Immigration and Refugee Protection Act which are favorable to Filipino workers except for one provision which limits the employment of foreign workers to only four (4) years and will ban their re-entry for six years. The proposed amendment which came out in October 2009 took effect on December 10, 2009.

As regards the Live-In Caregiver Program, the Citizenship, Immigration and Multiculturalism Minister has proposed significant improvements to the LICP, as follows:

- Elimination of the requirement for live-in caregivers to undergo a second medical examination when applying to become permanent residents;
- Shorter time for live-in caregivers who work overtime to apply for permanent residence sooner. Their overtime work will be counted to complete the required 3,900 hours, thereby shortening the number of years required when applying for permanent residence;
- Requirement for employers to pay for travel costs to come to Canada, medical insurance until the live-in caregivers become eligible for provincial health coverage and workplace safety insurance and any recruiting fees owed to third parties; and,
- Inclusion in the employment contract of the above-cited employer-paid benefits and stipulation of job duties, hours of work, overtime and holidays, sick leave and terms of termination and resignation.

The proposed changes were published in the Canada Gazette on December 19, 2009 and took effect on January 19, 2010. A phase in period of about six months after Royal assent is expected before the law could be fully implemented.

For the information and guidance of all concerned.

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