

Hiring Temporary Foreign Workers

A quick-guide for farm operators in Nova Scotia - 2022

Seasonal Agricultural Worker Program

Highlights:

Through this program, employers can hire Temporary Foreign Workers (TFWs) from participating countries for a maximum period of 8 months, between January 1 and December 15 and must offer a minimum of 240 hours of work within a period of 6 weeks or less. **The work period for 2022 has been extended to 9 months to accommodate for any quarantine periods.** TFWs should be brought in during peak activity periods where the supply of Canadian workers is determined to be inadequate.

To qualify for the SAWP, employers must meet 3 criteria:

- TFWs must be citizens from Mexico or participating Caribbean countries (*Anguilla, Antigua and Barbuda, Barbados, Dominica, Grenada, Jamaica, Montserrat, St. Kitts-Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago.*)
- Production must be in specific commodity sectors
- The activity must be related to on-farm primary agriculture

SAWP operates according to bilateral agreements between Canada and the participating countries. The role of the foreign governments is to: recruit and select the TFWs, make sure workers have the necessary documents and appoint representatives to assist workers in Canada.

These governments also ensure that the workers selected to work temporarily in Canada meet all the program requirements.

Primary agriculture is defined as work duties that must:

-be performed within the boundaries of a farm, nursery or greenhouse

- involve at least one activity, such as: operation of agricultural machinery, boarding, care, breeding, sanitation or other handling of animals, other than fish, for the purpose of obtaining raw animal products for market

-collection, handling and assessment of those raw products, or the planting, care, harvesting or preparation of crops, trees, sod or other plants for market

-be consistent with one of these National Occupational Classification codes: 0821, 0822, 8252, 8255, 8431, 8432, and 8611

Step 1: Apply for an LMIA (Labour Market Impact Assessment) from ESDC (Employment and Social Development Canada)

All employers who want to hire a TFW under SAWP must submit the LMIA application and all required supporting documentation ESDC/Service Canada. There is no processing fee for occupations related to primary agriculture.

For workers arriving Jan-April, apply at least 6 months in advance. For workers arriving May-Sept, apply at least 4 months in advance.

LMIA applications for primary agriculture positions can have multiple worker arrival dates. However, applications will still need to be for the same position, wage and NOC code.

There are two ways to apply

- 1) Online via the LMIA online Portal
- 2) Application Form

To access LMIA Online, an employer or a third party (if applicable) **must have a valid Job Bank user account** for authentication purposes. Once your Job Bank account is created, you will be able to complete an application via the LMIA Online Portal.

To apply by Application Form, ensure that all required documents are submitted, otherwise there will be delays in processing the application.

You must:

- agree to all of the requirements of SAWP
- agree to provide the wages and working conditions required by Nova Scotia and the commodity

- undertake the required recruitment and advertisement efforts

Employers must complete, sign (where applicable) and submit the following documents:

- LMIA application form (EMP5389)
- proof of business legitimacy
- proof of advertisement
- copy of signed off-site housing contract, if applicable
- housing inspection report

Employers must send all required documentation to the Service Canada Centre responsible for processing applications in their area.

For Atlantic provinces, email:

ESDC.ATL.TFWP-PTET.ATL.EDSC@servicecanada.gc.ca

If an incomplete application is submitted, Service Canada will inform the employer that the application will not be processed. Incomplete applications and supporting documents submitted with the application will not be retained or returned to the employer. As a result, **employers are advised to submit copies, not original documents.**

Based on the application and the documents received, the Department will issue a positive or negative LMIA.

If you receive a positive LMIA it is valid for 6 months from the date of issue.

ESDC will consider whether:

- The job offer is genuine
- The wages and working conditions are comparable to those offered to Canadians working in the occupation
- The employer conducted reasonable efforts to hire or train Canadians for the job. (You may need to provide proof of your recruitment efforts)
- The foreign worker is filling a labour shortage
- The employment will directly create new job opportunities or help retain jobs for Canadians
- The foreign worker will transfer their knowledge and skills to Canadians
- Hiring the foreign worker will not affect a labour dispute or the employment of any Canadian involved in such a dispute

Step 2: Select and hire your Temporary Foreign Workers

The employer must provide a job offer which meets prevailing wage rates and labour standards and are required to conduct recruitment efforts to hire Canadians and permanent residents, before offering a job to TFWs. **The median hourly wage in Nova Scotia, as of 2020 is \$20.00.** If you are offering a wage below this rate, you must apply under the 'low-wage' SAWP stream. For wages offered at or above \$20.00, you must apply under the 'high-wage' SAWP stream.

Advertising the position

To meet the minimum advertising requirements, **employers based in Nova Scotia must advertise on the national Job Bank.** The advertisement must be posted:

- For a minimum of 14 calendar days starting from the first day the ad appears and is accessible to the public
- During the 3 month period prior to the LMIA application

Employers must also conduct recruitment activities consistent with the normal practice for the occupation for at least 14 days. To meet this requirement, Employers can choose one or more of the following methods to advertise:

- on recognized internet employment sites
- in local and regional newspapers, newsletters
- in local stores, places of worship, community centers
- in local and regional employment centers

The advertisement must include:

- Company operating name
- Business address
- Title of position
- Job duties (for each position if advertising more than one vacancy)
- Terms of employment
- Wage (must include any incremental raises, performance pay or bonuses.) *
- Benefits package being offered (if applicable)
- Location of work (local area, city or town)
- Contact information: telephone number, cell phone number, email address, fax number, or mailing address

* Employers are required to pay the greatest of the following: Minimum agricultural or provincial wage rate **or** the prevailing SAWP rate as determined by E.S.D.C. / Service Canada **or** the rate being paid by the employer to Canadian workers doing the same work.

Advertisement waiver:

Employers who are hiring a replacement worker under both the SWAP or the Agriculture stream are not required to re-advertise the vacant position when submitting an LMIA application for the replacement worker. This applies only if the replacement worker is in the same Job Bank economic region and the same occupation as the ones stipulated in the previous positive LMIA.



Step 3: Your Temporary Foreign Worker requires a work permit.

Once ESDC provides a positive LMIA and approves the job offer, the employer sends a copy of the LMIA and a letter of employment to the foreign worker so that he/she may apply for a work permit.

Immigration, Refugees and Citizenship Canada (IRCC) will assess the TFW's work permit application. If the assessment is positive, the TFW will receive a work permit to be able to work for a SAWP employer, under established working conditions. A work permit can be valid from January 1 to December 15, however, it cannot exceed a maximum duration of employment of 8 months.

Some countries may require that their citizens meet certain conditions if they want to work in Canada. Employers should:

- ask the TFW to verify if additional conditions apply
- contact the consulate of the foreign worker's country in Canada, or
- visit the consulate's website

Once the TFW arrives in Canada the employer must:

- ensure that the worker is authorized to work and check the duration of the work permit
- verify that the TFW's work permit indicates that it is for a job under the SAWP
- keep records of the number of regular and overtime hours the TFW has worked on a weekly/monthly basis

Note: Liaison officers from Mexico and the Caribbean countries are responsible to recruit agricultural foreign workers and to help them apply for the necessary work permit and visa, if applicable, from IRCC. Depending on current citizenship or place of residence, a temporary resident visa may be required in addition to a work permit. If this is the case, a visa officer will process the application for a temporary resident visa at the same time. A separate application is not needed.



Notes on select program requirements:

Transportation:

Employers must arrange and pay for the round-trip transportation of a TFW. Transportation includes travel to and from their place of work in Canada and their country of residence. *Employers can recover some of these costs through payroll deductions in all provinces except British Columbia.

Employers must keep records of all transportation costs paid for a minimum of 6 years. Records may include invoices, receipts, flight itineraries, tickets, etc. Employers can use these documents as evidence when they apply for an LMIA or for an inspection.

For day-to-day operations, employers must provide their workers with free roundtrip transportation between on-site or off-site accommodation and the workplace.

Housing:

Employers must provide TFWs with adequate, suitable housing as defined by Canada Mortgage and Housing Corporation. Housing may be located on the farm or off-site. Employers must ensure that the occupancy rate for each unit does not exceed the maximum allowable occupancy rate. Employers must also ensure that sufficient accommodation is available for all TFWs.

Employers must provide proof of inspection of the off-site or on-farm accommodation. The appropriate provincial, territorial or municipal authority must conduct the inspection. An authorized private inspector with appropriate certifications may also conduct the inspections.

Employment contract:

The Seasonal Agricultural Workers Program has a standard, non-modifiable contract. The contract does not need to be included in your application. Employers are however required to have a copy of the contract signed by both the employer and workers on file in case of an inspection.



Agricultural Stream

Highlights:

The Agricultural Stream allows employers to hire TFWs for a maximum period of 24 months when Canadians and permanent residents are not available. An employer can apply to Service Canada and IRCC to renew for another term while workers are still in Canada. The IRCC (Immigration Refugees and Citizenship Canada) has final authority on this program.

To qualify for this stream, employers must meet 2 criteria: Production must be in specific commodity sectors **and** the activity must be related to on-farm primary agriculture.

Notable differences

Countries of Origin:

Employers can seek TFW from **any country** through the AG Stream.

Employers are solely responsible for the recruitment and selection of temporary foreign workers.

Employment contracts:

Whereas the SAWP has a standard, non-modifiable contract, employers hiring under the AG Stream must prepare and sign an employment contract. This agreement is between the employer and the temporary foreign worker. It is approved by Service Canada.

Housing:

Employers supplying:

On-farm housing can deduct a maximum of \$30 per week (pro-rated for partial weeks) from the TFW's wage, unless applicable provincial/territorial labour standards specify a lower amount.

Off-site housing (for lower-skilled workers) can deduct a maximum of \$30 per week (pro-rated for partial weeks) from the TFW's wage, unless applicable provincial/territorial labour standards specify a lower amount.

Off-site housing (for higher-skilled workers) must ensure that the rent does not cost more than 30% of the TFW's gross monthly earnings.

Canada's national commodity list

apiary products

fruits, vegetables (including canning/processing of these products if grown on the farm)

mushrooms

flowers

nursery-grown trees including Christmas trees, greenhouses/nurseries

pedigreed canola seed

seed corn

grains

oil seeds

maple syrup

sod

tobacco

bovine

dairy

duck

horse

mink

poultry

sheep

swine