

Republic of the Philippines
DEPARTMENT OF LABOR AND EMPLOYMENT
Intramuros, Manila

MEMORANDUM

FOR : **ADMINISTRATOR JENNIFER J. MANALILI**

SUBJECT : Draft Implementing Guidelines for the MOUs with British
Columbia and Alberta, Canada

DATE : 23 April 2009

May we refer the attached draft of the implementing guidelines for the MOUs with British Columbia and Alberta for review and comments.

Based on the inputs of OWWA, ILAS, Canada Desk representatives and POEA officials led by Deputy Administrator Viveca Catalig on the initial draft of the said guidelines proposed by the BC and Alberta government team, the present draft was finalized together with the proposed employer registration process flow.

Given the request of the BC and Alberta government team to have the guidelines approved before the BC election in May, early receipt of response from POEA is highly appreciated.

For appropriate action.


LUZVIMINDA G. PADILLA
Undersecretary

**IMPLEMENTATION GUIDELINES
DRAFT**

**For
The Memorandum of Understanding
Regarding Cooperation in Human Resource Deployment and Development**

**Between
The Department of Labour and Employment of the Republic of the Philippines (DOLE)
And
The Ministry of Employment and Immigration of Alberta (E&I)
Signed October 1, 2008**

And

**Between
The Department of Labour and Employment of the Republic of the Philippines (DOLE)
And
The Ministry of Advanced Education and Labour Market Development of British
Columbia (ALMD)
Signed January 29, 2008**

I. Introduction

For the purposes of these Implementation Guidelines, the "Province" means the participating province, as represented by E&I in Alberta or ALMD in British Columbia, where activities will occur.

The intent of the MOU signed by DOLE and the Province is to recognize opportunities for collaboration to facilitate the welfare and streamlined movement of workers between the Philippines and the Province, under a process that is effective and clearly communicated to both employers and workers. This includes promoting sound, ethical and equitable employment practices.

The intent of the Implementation Guidelines is to confirm the necessary governance and management elements to facilitate cooperation and the successful exchange of information between DOLE and the Province.

The specific objectives of this Implementation Plan are to establish:

- a) A governance structure for directing and monitoring the implementation of the MOU and identification of roles and responsibilities for each jurisdiction;
- b) A process for establishing and monitoring mutually agreed upon annual priorities for cooperation; and
- c) Clear and mutually agreed upon process by which the Implementation Guidelines will be amended.

II Governance

In order to effectively implement the MOU, an appropriate governance structure is required. As identified in the MOU, the governance structure includes a Working Committee composed of three representatives from each jurisdiction, one of whom will be identified as the Senior Official for each jurisdiction.

Working Committee

The Working Committee will be co-chaired by a representative from DOLE, and the province and may include involvement from other ministries as referenced on the MOU. These representatives will be appointed by the Senior Official in each jurisdiction. The Working Committee will meet quarterly starting in May 2009 either in person or by teleconference. The key responsibilities of the Working Committee are to:

- Identify cooperation priorities and develop an annual work plan with priorities and strategic directions to the Senior Officials.
- Develop a process for the exchange of information as set out in the MOU;
- Recommend strategic direction to respective jurisdictions;
- Manage significant issues arising from the implementation of the MOU;
- Establish a process for monitoring implementation of MOU;
- Manage confidentiality commitments, including FOIP regulations as it relates to information that is exchanged related to employment agencies, TFW and employer names.
- Establish subcommittees as required; and
- Evaluate and communicate the MOU implementation.

A Working Committee will be established for each Province. A Coordinator for each jurisdiction will be identified to be the primary contact. The Working Committee will be the central point in which POEA will inform the provinces of any changes to their recruitment process so that the Provinces can communicate these changes to employers.

1) Senior Officials

The signatories of the agreement will identify a Senior Official to represent their respective Party. Senior officials will meet each year alternately in the Philippines and in the Province.

The objectives of the Senior Official meetings are to:

- Review progress in the implementation of the MOU in the previous year.
- Set priorities for the year; and
- If deemed necessary, host policy discussions with key senior managers from both participants.

2) Coordinators

Each organization will identify a coordinator to track and monitor the implementation of the MOU. The coordinators will be appointed by the Working Committee. Each project

will have a single point of contact through a coordinator. The key responsibilities of the coordinators are to:

- Be the primary point of contact for each organization for all requests for information.
- Support, and provide advice to the Working Committee and Senior Officials as required.
- Provide advice within their organization on what may or may not be exchanged under the MOU
- Draft annual work plans with key priorities that will be presented for discussion at the Steering Committee, and ultimately presented for approval by the Senior Officials.
- Create a working group within their respective organizations to help draft and monitor the implementation of the annual work plan as deemed appropriate.
- Report back to the Working Committee as appropriate.

III. Cooperation Priorities

DOLE and the Province will confirm in writing their shared priorities for collaboration and cooperation.

Cooperation Priorities may include, but are not limited to:

- Ensure occupational standards are met through training and credential recognition activities;
- Promote sound and equitable recruitment and employment practices;
- Share information to support initiatives subject to privacy laws of the Participants;
- Explore the possibility of partnerships of educational institutions for comparison of training standards;
- Establish other areas for collaboration, such as human resource development programs; and
- Provide, in coordination with employers, programs and other support mechanisms to promote the well being and protection of workers.

IV. Dispute Resolution Process

In the case of a dispute or disagreement under this agreement, DOLE and Alberta officials will attempt to resolve the matter orally or in writing.

In the event that respective officials from DOLE and Alberta are unable to resolve the dispute expeditiously, it will be referred to the Working Committee for resolution.

Procedures for addressing disputed issues will be determined by the Working Committee. Such procedures will be flexible, equal opportunities for representation by each Party, establish clear time limits and ensure clarity for the implementation of final decisions.

V. Effective Date, Amendment and Termination

The Implementation Guidelines will come into effect on the date it is signed by the Participants and will remain in effect the same duration as the MOU for each Province. The Implementation Guidelines and its Annexes may be amended with mutual written consent of the Participants. Any such amendments will come into effect on the date determined by the Participants.

APPENDIX A

RECRUITMENT PROCESS

This document serves as a guide to the processes and procedures for employers recruiting Temporary Foreign Workers from the Philippines for work in British Columbia or Alberta.

I. Definitions

Agency Hire – A worker who is able to secure overseas employment through the facilities of a licensed Philippine Recruitment Agency

CIC – Citizenship and Immigration Canada, the federal government department which includes visa offices at Canadian embassies, processes and approves work permits and visa applications for foreign workers to determine eligibility to work in Canada

Clarification of Authority – Document outlining services to be provided by the Philippines Recruitment Agency to the Employer, signed by the Employer

CRA - Canadian Revenue Agency - administers tax, benefits, and related programs, and to ensure compliance on behalf of governments across Canada, thereby contributing to the ongoing economic and social well-being of Canadians

DOLE- Department of Labour and Employment of the Government of the Republic of the Philippines

Employers – Employers who are hiring Filipino workers for work in BC or Alberta

Employment Contract – Contract, generated by the Employer or Third Party Representative, between Employer and Filipino worker for employment in the Province. This contract must include the terms as provided in a contract guideline to be developed by the Province with agreement from POEA.

Job Order – Manpower request or job order indicating name, address and contact number of the employer/s and the number, position and salary of the workers to be hired

LMO – Labour Market Opinion provided by Service Canada, upon which a determination by an officer of CIC as to whether a job offer is genuine and whether the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada is based.

Name Hire – A worker who is able to secure overseas employment without assistance of a licensed Philippine Recruitment Agency

OWWA – Overseas Workers Welfare Administration, is an attached agency of the Department of Labor and Employment which is mandated to protect the interest and promote the welfare of the Overseas Filipino workers (OFWs) and their families. It is governed by a Board of Trustees which is a tripartite body composed of private sector representatives from management, labor, sea-based and land-based OFWs and the women sector. OWWA is a membership welfare institution that provides insurance coverage for life/accident, disability/dismemberment, and burial benefits for its members and other services such as education and training, social services and family welfare assistance that includes reintegration, workers' assistance and on-site services, livelihood loans and facilitation of repatriation of the worker. The Omnibus Implementing Rules and Regulations of Republic Act 8042 specifically Sections 52 to 54 states that the repatriation of the worker is the primary responsibility of the principal or the agency which recruited or deployed him/her abroad. The regulation includes the repatriation of stretcher cases and human remains. In emergency case and crises situations, the OWWA may advance the expenses when the employer or the recruitment agencies fail to immediately respond to the need for repatriation. The services and programs of OWWA is in addition to the benefits provided by the employer as may be stipulated in the employment contract or based on host country laws, See OWWA website for more information:

<http://www.owwa.gov.ph/page/programs/>

Philippine Recruitment Agency - Philippine -based agency licensed by the POEA/DOLE to engage in the recruitment and deployment of Filipino workers overseas.

POEA – The Philippine Overseas Employment Administration (POEA) , an attached agency of the Department of labor and Employment, is the government agency that manages the migration of Filipino workers overseas and is responsible for optimizing the benefits of the country's overseas employment program. It's legal mandate is to promote and develop the overseas employment program, protect the rights of migrant workers, regulate private sector participation in recruitment and overseas placement, maintain registry of skills and secure best terms of employment for Overseas Filipino Workers (OFWs). It's policy thrust is towards managing access to overseas employment and protecting the Overseas Filipino Worker (OFW) at home and abroad in partnership with a responsible private sector and other concerned government agencies.

POLO – The Philippine Overseas Labour Office. (POLO) is also officially known as the Philippine Consulate General Labour Office in Canada that serves as the operating arm in the implementation of Philippine labor policies and programs for the protection and

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promotion of the welfare and interests of Filipinos working abroad which includes, but not limited, to verification of labor and employment documents and assistance in labor and employment related cases

Principal – Either the Employer or a Third Party Representative for an employer which will be the principal contact in the recruitment and employment process

Province – Participating provincial government where activities will occur

Provincial Employment Standards Act – Laws requiring minimum standards of employment for employers and employees in the workplace. For BC, the Employment Standards Act administered through the Employment Standards Branch. For Alberta, the Employment Standards Code administered through the Alberta Employment Standards.

Provincial Nominee Program Certificate – Certificate issued upon approval of application to the federal-provincial Provincial Nominee Program (PNP) to expedite the processing of an application for permanent residence for foreign nationals.

Service Canada – The service delivery arm of Human Resources and Skills Development Canada (HRSDC) which processes applications from employers for Labour Market Opinions (LMO) that assess the likely impact that hiring the requested foreign worker may have on the Canadian labour market

Service Fee – Amount charged by a Philippine Recruitment Agency from its foreign principal as payment for actual services rendered in relation to the recruitment and placement of workers

Temporary Foreign Worker Program (TFW Program) – Functions that allow the Government of Canada to authorize foreign nationals to work temporarily in Canada

Third Party Representative – a licensed Canadian agency contracted by an Employer to act on its behalf in the recruitment and employment process

Workers Compensation Act – Laws that provide a worker with compensation benefits, including money paid for lost wages, health care and other costs related to his or her workplace-related injury or illness, where an employer is registered for coverage with the Workers' Compensation Board. In exchange the worker loses the right to sue his or her employer for those injuries or illnesses

Working Committee- Individuals designated by DOLE and the Province will serve as principal contacts for the purposes of ongoing communications, problem-solving and participating in scheduled bilateral or multilateral meetings necessary for the effective implementation of these Implementation Guidelines

II. Qualification of Employers

Employers will be screened and qualified through a two-step process:

1. The LMO application process by Service Canada (see www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/temp_workers.shtml for a guide to the LMO application process) that will ensure that:
 - ☞ The employer is registered within the Canadian Revenue Agency (CRA);
 - ☞ Employer provides Canada Revenue Agency (CRA) business number, contact name, address, and number of workers currently employed;
 - ☞ Information pertaining to any authorized third party representative is provided, including name and contact information;
 - ☞ Proof of recruitment efforts to confirm there are job openings available in the proposed occupation is provided;
 - ☞ All information pertaining to the jobs for which the employer is requesting LMOs is provided (e.g. wages, duration of employment, job locations, duties, requirements);
 - ☞ The wages, benefits and training plans are comparable to Canadians working in the same occupation;
 - ☞ The working conditions for the occupation meet the current provincial labour market standards;
 - ☞ The job offer is genuine;
 - ☞ There are no current labour disputes against the employer; and
 - ☞ Information on any lay-offs occurring in the past 12 months and an explanation for layoffs is provided.

For a guide to hiring Temporary Foreign Workers in Canada, see the CIC publication *How to Hire a Temporary Foreign Worker, A Guidebook for Employers* at www.cic.gc.ca/english/resources/publications/tfw-guide.asp.

2. a) Employer verification by POLO involves the following steps:

:

- a.1 Employer submits a copy of pre-approved LMO, Expedited LMO, LMO

Exemption or PNP acceptance letter/confirmation to POLO in Vancouver,

a.2 POLO reviews LMO and contacts employer to confirm the information stated on the LMO;

a.3 POLO may, on a case to case basis, visit the work location to verify and ensure the work offer as stated in the LMO;

a.4 POLO endorses confirmation of the existence of the employer to POEA/DOLE (unless unable to verify the work authenticity); and

a.5 .POLO requires no fees for the above cited services

b) POLO need not verify employers who are government-owned or controlled operations.

c) POLO will require employers who have gone through verification process to submit a new LMO or PNP certificate of nomination/acceptance each time they have additional manpower request/job order..

Employers who receive an LMO or PNP letter of acceptance as well as approval through POLO verification will be deemed qualified Employers.

III. Qualification of Recruitment Agencies

In the Philippines

Only those who are duly licensed by the POEA/DOLE in accordance with the licensing system established under the POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers may engage in the recruitment and placement of workers overseas Under this licensing system, Philippine -based agencies who wish to engage in recruitment and placement activities are duly screened and qualified before they are licensed to engage in the recruitment and placement of Filipino workers overseas. They must maintain certain standards of financial and marketing capability aside from maintaining sufficient funds to ensure viability of their operations and they should at all times maintain all the qualifications and none of the disqualifications for issuance of a license. The POEA/DOLE will provide a list of licensed Philippine Recruitment Agencies which will be made available to Employers and Third Party Representatives.

Compliance with and maintenance of the standards and requirements for maintaining a licensed by a Philippine Recruitment Agency is duly monitored through an Inspection System of the POEA whereby the records, books of accounts, facilities and equipment of an agency are inspected to determine compliance with the rules and regulations regarding recruitment activities

including collection of fees. The license of a Philippine Recruitment Agency may be suspended or cancelled for recruitment violations or failure to maintain the standards and qualifications for licensing, such as, but not limited to the following:

Collection of fees where no fees are allowed to be collected
Premature or excessive collection of fees
Misrepresentation or submitting/furnishing false documents, notice or Information
Contract Substitution
Deploying to an unregistered employer or principal
Failure to comply with its obligations and responsibilities to its Employer/principal without valid reason
Failure to maintain the required capitalization or escrow deposit
Derogatory records such as illegal recruitment, swindling and other crimes involving moral turpitude

For more information on the licensing and inspection system, the enforcement and adjudication system /process and the respective roles and responsibilities of a Philippine Recruitment Agency to its Employer/Principal and vice versa refer to the POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers at <http://www.poea.gov.ph/rules/poes%20Rules.pdf> and other related links:

- 📁 The licensing process for Philippine Recruitment Agencies;
((http://www.poea.gov.ph/agency/licensing_LB.htm)
- 📄 The enforcement provisions for an Agency to maintain its license;
(http://www.poea.gov.ph/agency/licensing_LB.htm)
- 📄 The Employer/Third Party Representative complaint resolution mechanism wherein an Agency does not fulfill its obligation to the Employer or does not follow the DOLE and POEA standards and requirements;(<http://www.poea.gov.ph/rules/POEA%20Rules.pdf> Part VI, page 20 ; Part VIII, Rule II, page 36)
- 📄 The roles and responsibilities of the Philippine Recruitment Agency to the POEA, the Employee, the Third Party Representative, as well as the Employer.(<http://www.poea.gov.ph/rules/POEA%20Rules.pdf>. Section 1 (f) Rule 11, Part 11, POEA Rules and Regulations, page 5; Rules I and III, Part VIII, POEA Rules and Regulations page 36 & 37)
- 📄 The enforcement provisions to ensure there will be no cost to workers for recruitment . (<http://www.gov.ph/mc/memo0298.jpg> ; Section 3, Rule V, Part II, POEA Rules and Regulations, page 10)

In Canada

BC:

The *Employment Standards Act* requires that a person must not operate an employment agency unless the person is licensed under the Act. If a person is operating an employment agency for the sole purpose of hiring employees exclusively for one employer, a license is not required. Before issuing a license, the Province must be satisfied that the agency will operate in the best interests of employers and persons seeking employment. The Province may refuse to issue a license to an applicant who has had a previous license cancelled.

The Province may cancel or suspend a license if the employment agency:

- ☞ makes a false or misleading statement in an application for a license;
- ☞ contravenes the Act or the regulation;
- ☞ fails to operate the employment agency in the best interests of employers and persons seeking employment; or
- ☞ fails to inform an employer with whom the agency has placed a domestic that the employer must register the domestic with the Employment Standards Branch.

More information on employment agency licenses required in BC, including a list of licensed recruitment agencies can be found at

<http://www.labour.gov.bc.ca/esb/employment/>

Alberta:

Recruitment agencies are required to be licensed by Service Alberta regardless of where they are located if they help employers in Alberta find employees, help employees find work in Alberta or evaluate or test people for employers seeking employees.

Under the *Fair Trading Act* (FTA), businesses are required to have an Employment Agency Business License if they are:

1. Working on behalf of employees, employers or both
2. Finding jobs for Canadians or non-Canadians
3. Finding workers for Canadian or non-Canadian employers
4. Finding workers of any nationality for Alberta employers or for jobs in Alberta

The FTA allows employment agencies to charge some types of fees but prohibits others:

- No employment agency may charge a fee for helping a person find a job (however, an employment agency can charge an employer for its services)
- No employment agency may demand or hold a bond or deposit from a person that will not be returned if they do not complete the work term or employment contract (it is against the law for any fee to be collected from a person even if it may be refunded later)
- An employment agency cannot tell an employer that the employer can recover the costs of their services from the employee (this is a violation of

the FTA)

- An employment agency may charge a person a fee for services such as resume preparation (Note: The agency cannot make a person buy these services as a condition to help the person find work. An employment agency that charges a fee for such services must post a list of the fees charged in a conspicuous location in the business premises.

The Alberta Fair Trading Act and regulations surrounding employment agencies in Alberta can be found at <http://www.servicealberta.ca/1049.cfm>

IV. Employer Registration

Agency Hire

Employers will be registered with POEA/DOLE through a licensed Philippine Recruitment Agency through the following steps:

1. Principal (Employer or Third Party Representative) hires a Philippine Recruitment Agency.
2. Principal provides the POLO a copy of LMO pre-approval or PNP acceptance letter as appropriate, together with a letter of intent for verification.
3. Principal provides the Philippine Recruitment Agency with the following documents:
 - a) Job Order indicating number, position and salary of the workers to be hired;
 - b) A copy of the pre-approved LMO, Expedited LMO, or LMO Exemption, PNP acceptance letter/confirmation of nomination or alternative document that establishes that employers are allowed to hire workers under the PNP
 - c) A copy of the Employment Contract between the Employer and the worker;
 - d) A Clarification of Authority outlining services to be provided by the Philippine Recruitment Agency, signed by the Principal; and
 - e) If a Third Party Representative signs the Clarification of Authority in place of the Employer, a copy of the request from the Employer, addressed to the Third Party Representative, indicating position and salary of the worker.
3. Philippine Recruitment Agency sends documents to POEA/DOLE for Employer Registration.

4. POEA confirms receipt of approval of Employer verification by POLO and reviews documents submitted. POEA/DOLE will consider the contents of the Employment Contract when registering Employers to ensure the protection of workers according to standards in the Philippines. Employers will be required to include the following items in the Employment Contract for all NOC codes:

- ☞ Medical insurance;

- ☞ Return transportation for worker from place of origin; and

- ☞ Repatriation insurance for both workplace and non-workplace injury or death.

For employers hiring workers belonging to NOC codes O, A. & B , the following offsetting benefits may be applied in lieu of the above cited provisions.

- ☞ Salary much higher than prevailing wage for occupation;

- ☞ Paid vacation and sick leave of relatively long period that is over and above what is prescribed by law

- ☞ Bonuses that are over and above the legislated bonuses

5. POEA/DOLE registers Employer and releases the Registration Certificate to the Philippine Recruitment Agency.

6. POEA/DOLE sends POLO a list of registered employers.

7. Employer Registration will be valid for four (4) years, unless sooner revoked or cancelled by the POEA on any of the following grounds;

- a) Expiration of the principal's business license;

- b) Upon written mutual agreement by the parties to pre-terminate the Employer Registration; and

- c) Cancellation of the license of the Philippine Recruitment Agency.

V. Open/Multiple Registration – For Agency Hire

A Principal may be registered with more than one Philippine Recruitment Agency provided that:

1. Employer has a job order of at least 50 workers or that the employer must have hired at least 50 workers within a period of one year immediately preceding the registration; and
2. Terms of employment are the same for all future Job Orders in the

Open/Multiple Registration system.

However, Third Party Representatives (TPRs) may be registered to a maximum of two Philippine Recruitment Agencies only under the above terms.

VI. Validity of Job Orders

Any Job Order shall be valid for the same period as the LMO, Expedited LMO, or LMO Exemption where applicable. (What about hiring through the PNP, how do you determine the validity?)

VII. Worker Selection

The Philippine Recruitment Agency will provide the Principal with the names and information on relevant skill, experience and qualifications of workers who wish to be recruited by Employers in the Province and meet the criteria specified by the Employer.

The Principal will screen the worker through a means determined satisfactory by the Employer and the Philippine Recruitment Agency.

Any worker selected by the Principal will be required to complete the following requirements in order to qualify for work permits or visas:

1. Pass the medical health examination required by the Government of Canada's department of Citizenship and Immigration Canada for admissibility to Canada as a temporary or permanent resident as applicable;
2. Submission of certification of no criminal record;
3. Confirmation of no outstanding custody or divorce dispute that might render them ineligible to become a temporary or permanent resident of Canada;
4. Have satisfactory English language competency, to be determined by the Province;
5. Have the skills and knowledge required by the Employer; and
6. Complete pre-departure orientation seminar, content to be approved by the Province, and receive Pre-Departure Orientation Seminar (PDOS) certificate upon completion.

VIII. Documentation of Agency Hires

1. The Philippine Recruitment Agency shall submit directly or through the e-submit system the following documents to POEA/DOLE:

- a) Completed Request for Processing form
- b) Worker's information sheet
- c) Employment Contract;
- d) LMO, Expedited LMO, or LMO Exemption, PNP nomination certificate or acceptance letter as appropriate;
- e) Pre-Departure Orientation Seminar certificate, showing worker completion of orientation seminar provided by the accredited PDOS providers

. IX. Name Hire Registration and Processing

Employers will be registered with POEA/DOLE under the Name Hire system through the following steps:

1. Employer submits copy of LMO/PNP certificate or its equivalent document and letter indicating his/her intention to hire worker/s to POLO for verification. No fees shall be charged for the POLO verification services.
2. Worker submits to POEA/DOLE the following documents for evaluation:
 - a) A copy of the pre-approved LMO or Expedited LMO, LMO Exemption or Provincial Nominee Program (PNP) Certificate of nomination
 - b) A copy of the Employment Contract between the Employer and the worker which contains the minimum standards prescribed in item 4 of Sec IV of the guidelines
 - c) Visa, and
 - d) Pre-departure Orientation Seminar certificate of attendance.
3. POEA/DOLE receives POLO confirmation of LMO/PNP certificate of nomination and issues exit clearance

X. Costs of Recruitment

A. The Employer shall pay all recruitment costs related to hiring a worker. Recruitment costs are defined as follows:

1. Agency Hire

- a) Philippine Recruitment Agency service fees;
- b) POEA processing fees of PhP200.00 (Approximately CDN\$55);
- c) Worker membership with the Overseas Workers Welfare Administration (OWWA), US\$25.00;
- d) Visa processing fee to CIC, CDN\$150; for workers in lower skilled (NOC C and D) occupations only; and
- e) Employment Contract requirements for medical insurance, return airfare, and repatriation insurance (See Section IV for details).

Philippine Recruitment Agencies are prohibited from charging fees for recruitment or placement to the worker, in keeping with the prohibition on the collection of such fees by Provincial law.

2. Name Hire

- a) POEA/DOLE processing fee of US\$100 (Approximately CDN\$3,800)
- b) Worker membership with the Overseas Workers Welfare Administration (OWWA), US\$25.00;
- c) Visa processing fee to CIC, CDN\$150; for workers in lower skilled (NOC C & D) occupations only; and
- d) Employment Contract requirements for medical insurance, return airfare, and repatriation insurance (See Section IV for details).

B. Workers' Documentation Cost

Documentation costs to be borne by the worker shall include, but not limited to the expenses for the following:

- 1 Passport
- 2 NBI/Police/Barangay clearance
- 3 Authentication of credentials
- 4 Birth certificate
- 5 Philhealth insurance coverage
- 6 Trade test, if necessary

7 Medical examination

Repeal of Previous Guidelines

All previous issuances inconsistent with these Implementation Guidelines, only in so far as they apply to the recruitment and deployment of workers to the Province, are hereby repealed.

APPENDIX B

WORKER PROTECTION

In the Philippines

The policy on overseas labor migration, has as its major thrust, the primacy of migrants' welfare and protection. This is in line with the State's fundamental principle of providing employment and full protection to labor, local and overseas, organized and unorganized.

The government agency that manages the migration of Filipino workers overseas and responsible for optimizing the benefits of the country's overseas employment program is the Philippine Overseas Employment Administration. The POEA's policy thrust is towards managing access to overseas employment and protecting the Overseas Filipino Worker (OFW) at home and abroad in partnership with a responsible private sector and other concerned government agencies.

Recruitment and employment of Filipinos Overseas is governed mainly by the Labor Code of the Philippines and Republic Act 8042 or the Migrant Workers and Overseas Filipinos Act of 1995 and its Omnibus Rules and Regulations and the POEA Rules and Regulations Governing the Recruitment and Employment of Land-based and Sea-based Workers.

The Labor Code which took effect in 1974 defined in concrete terms the State's goal of promoting full employment, protecting every citizen willing to work, locally or overseas and rationalizing private sector participation in the recruitment and placement of workers to serve the objectives of national development. It provided a clear set of rules and administrative machinery to regulate overseas employment of Filipinos and set up a systematic recruitment network to manage employment of Filipinos abroad through licensed agencies or through the government placement facility.

Republic Act 8042 was enacted in 1995 which marked a major shift in policy from job promotion to primacy of migrants' welfare and protection. It institutes the present policies on overseas employment and establishes a higher standard of protection and promotion of the welfare of migrant workers, their families and of overseas Filipinos in distress and provided for the following:

1. Guarantee of migrant workers rights
2. Stricter rules on illegal recruitment activities
3. Selective deployment
4. Repatriation of workers
5. Reintegration Program

RA 8042 was recently amended by Republic Act 9422 .which strengthened the regulatory powers of the POEA. It likewise mandated the POEA to inform migrant workers not only of their rights as workers but also their rights as human beings, to instruct and guide them on how to assert their rights and to provide available mechanisms through which they could seek redress of violation of such rights.

The POEA has issued rules and regulations governing the recruitment and employment of Filipino workers abroad, to implement the provisions of the Labor Code and Republic Act 8042. Through the years, these rules and regulations have undergone review and several revisions to keep abreast with the changing times. These rules govern the entire recruitment process including recruitment procedures and requirements, licensing of private employment agencies, accreditation or registration of foreign employers or principals adjudication and rules on the welfare and protection of Migrant Workers.

Some Major Policies on the Recruitment and Employment of Filipino Workers

1. On Recruitment –only the government through the POEA and its licensed recruitment agencies can recruit and place workers for overseas employment.

2. Ban on Direct Hiring – no foreign employer may hire a Filipino worker for overseas employment except through the POEA or its licensed agencies, or those that may be allowed by the Department of Labor and Employment

3. On Collection of Placement Fee – a landbased agency is allowed to collect placement fee from a hired worker equivalent to one month salary of the worker, except where collection of fees is prohibited in the country where the worker is to be deployed. Seabased agencies are prohibited from collecting any fee from their hired seafarers. Agencies deploying to Canada are not allowed to collect placement fees from their hired workers

4. On Referral for Trade Testing/Medical Examination – an applicant shall be referred for trade testing (if required) or for medical examination only after the agency and/or the employer has interviewed and pre-qualified the worker for an existing overseas job covered by an approved job order

For more information on the above cited legislation and rules, refer to the following:

<http://www.poea.gov.ph/rules/POEA%20Rules.pdf>

<http://www.poea.gov.ph/rules/ra8042.html>

http://www.poea.gov.ph/rules/RA_9422.pdf

<http://www.poea.gov.ph/rules/labcode.html>

In Canada

Employment Standards

All workers are eligible for protection through Provincial employment standards regulation and a Provincial Employment Standards Act. The Provincial Employment Standards Act sets out the minimum standards that apply in most workplaces in the Province, and is administered by the Province. For BC, this Act applies to all non-union employees who fall under Provincial jurisdiction, including temporary foreign workers. Union employees will have a collective agreement that must meet certain minimum standards set out under the Act. For Alberta, this Act applies to both union and non-union employees.

The purposes of the Provincial Employment Standard Act are as follows:

- to ensure that employees receive at least basic standards of compensation and conditions of employment;
- to promote the fair treatment of employees and employers;
- to encourage open communication between employers and employees; and
- to provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act.

Employment standards enforced through the Act include, but are not limited to:

- paying wages;
- meal breaks;
- overtime;
- uniforms and special clothing;
- deductions from wages required by law;
- vacation pay;
- termination of employment;
- parental and maternity leave; and
- resolving disputes.

Dispute Resolution

The Provincial Employment Standards Act provides standards for complaints and dispute resolution. The Province encourages employees and employers to solve problems without immediate government intervention. If an employee is unable to resolve a dispute with an employer, an employee may make a complaint to the Province. Although some matters are resolved through investigation, most are resolved through a process of education, mediation and/or adjudication.

In BC, if a matter is referred to investigation, the investigating officer will gather information and evidence from both parties. The officer will put each party's position and evidence to the other party for a response. The officer will try to resolve the complaint informally, but if that is not possible, the officer will make a decision and issue a written decision called a Determination. If the Determination finds that money is owing to the complainant or that the employer has otherwise contravened the Provincial Employment Standards Act, it will order the employer to pay the amount owing, cease contravening the Act and pay one or more mandatory penalties. If an employer does not pay the amount ordered, the Determination can be filed in Supreme Court and enforced as a judgment of the court. This may include turning the matter over to a Court Bailiff for collection.

In Alberta, complaints under the Employment Standards Code are assigned to an officer for investigation. The officer will work with the employer and employee to collect any relevant information. If earnings are owed and the employer does not voluntarily resolve the matter by paying the earnings or otherwise settling the complaint, the officer will make a formal

order to pay, which can be filed with the Court of Queen's Bench. This order can be appealed by either the employer or employee. Alberta Employment Standards also utilizes collection agencies and other enforcement tools to assist in the recovery of unpaid earnings.

If an officer finds that the employee is not entitled to earnings, the officer will issue a formal decision to that effect. This decision can be appealed by the employee.

Employment Standards Publications:

For more information on employment standards dispute resolution see:

For BC:

http://www.labour.gov.bc.ca/esb/facshts/complaint_resolution.htm

For Alberta:

<http://employment.alberta.ca/cps/rde/xchg/hre/hs.xsl/1702.html>

A copy of the Provincial Employment Standards Act can be found at:

For BC:

http://www.bclaws.ca/Recon/document/freeside/--%20E%20--/Employment%20Standards%20Act%20%20RSBC%201996%20%20c.%20113/0096113_01.xml

For Alberta:

<http://www.qp.gov.ab.ca/documents/acts/E09.cfm>

Workers can access information on Provincial employment standards, in Filipino, at:

For BC:

<http://www.labour.gov.bc.ca/esb/facshts/translations/filipino/>

For Alberta:

http://employment.alberta.ca/documents/WIA/WIA-IM_tfw_ee_guide_tagalog.pdf

Workers will be provided information on Provincial employment standards and workplace safety requirements prior to arrival in the Province, including contact information for inquiries and complaints.

Worker Compensation

Most Employers hiring workers must register for insurance coverage under the Workers Compensation Act. This insurance covers all workers for eligible workplace injury or work-related death during the term of employment, including foreign workers. In Alberta, temporary foreign workers are covered by Workers Compensation provided that the employer is based on Canada, the employer ordinarily carries on business in Alberta and the employer is covered under the Alberta *Workers Compensation Act*. There are several "exempted industries" legislated in the Regulations. If the temporary foreign worker is

employed in an industry that is exempted, he or she would not be entitled to workers compensation benefits. In cases where the employer has coverage, this insurance covers all workers for eligible workplace injury or work-related death during the term of employment, including foreign workers.

<https://ds.wcb.ab.ca/wcb.ratemanual.webserver/exemptindustries.aspx>

Where an Employer is registered for insurance coverage under the Workers Compensation Act, and in the event of work-related death during the term of employment, regulations in BC and Alberta ensure that where compensation is payable as the result of the death of a worker or as the result of injury resulting in death, an amount for funeral and related expenses is paid in addition to any other compensation payable. The maximum amount payable for funeral and related expenses is set out below.

BC - Funeral and Related Expenses \$8107.48

Transportation of Body \$1,280.92

AB- Funeral and Related Expenses \$8150.

Transportation of Body \$1,000.00

A copy of the Workers Compensation Act can be seen at:

For BC:

http://www.bclaws.ca/Recon/document/freeside/--%20W%20--/Workers%20Compensation%20Act%20%20RSBC%201996%20%20c.%20492/00_Act/96492_00.htm

For Alberta:

<http://www.qp.gov.ab.ca/Documents/acts/W15.CFM3>

Termination of Employment

Under the Provincial Employment Standards Act, employers may terminate employment according to the following standards:

BC:

An Employer has the legal right to terminate an employee. The Employment Standards Act requires that an Employer who wishes to terminate an employee gives an appropriate amount of written working notice, compensation in lieu of such notice, or a combination of the two. What is appropriate is determined according to an employee's length of service.

An Employer does not have to give written notice or compensation for length of service if an employee is dismissed for just cause. The onus is on the Employer to prove that termination for just cause exists.

The following are some examples of what may constitute just cause:

- Theft;
- Fraud and dishonesty;

- Assault or harassment of coworkers;
- Breach of duty;
- Serious wilful misconduct;
- Conflict of interest, especially if it involves provable loss to the Employer;
- Serious undermining of corporate culture;
- Chronic absenteeism or tardiness; and
- Unsatisfactory performance.

More information on termination of employment in BC can be found at:
<http://www.labour.gov.bc.ca/esb/facshts/termination.htm>

Alberta:

As a general principle, employees have a right to terminate their employment with an employer and employers have the right to terminate the employment of employees. These rights, however, come with responsibilities. The main responsibility in most cases is to provide notice of intention to terminate. The length of such notice is normally dependent on the duration of the employment with the employer. The length of notice for various durations of employment can be found at:

<http://employment.alberta.ca/cps/rde/xchg/hre/hs.xsl/1474.html>

An employer may choose to give pay for the required notice period instead of providing notice. A combination of written notice and pay in lieu of notice (termination pay) is also acceptable.

The employer must pay all wages, overtime, general holiday pay and vacation pay due the employee within three days following termination of employment.

The *Employment Standards Code* prohibits an employer from dismissing an employee because the employee's wages are garnisheed or when that employee is on maternity or parental leave

Another avenue available to employees, if insufficient notice is provided, is to sue the employer. Employment Standards has no involvement in this process, and those contemplating such action are advised to obtain legal advice.

There are a number of circumstances where an employer is not required to give notice of termination. Probably the most important of these circumstances is termination for "just cause." Examples of just cause include:

Examples of just cause include:

- willful misconduct,
- disobedience, or
- deliberate neglect of duty,

where these actions are not condoned by the employer.

CIC Requirements

- CIC requires Employers to provide medical insurance for NOC C and D until such time as the employee becomes eligible for provincial medical insurance. In both BC and Alberta this period of time is 3 months provided that the worker submits the necessary application documentation and that application is received and processed by the Province.
- CIC requires Employers to bear cost of return airfare from country of origin to Canada for workers in lower skilled (NOC C and D) occupations as standard practice.

See www.hrsdc.gc.ca/eng/workplaceskills/noc/index.shtml for more information on NOC codes.

Further Protection Measures

Canada is furthering the protection of workers through a Letter of Understanding to share information between the Province and HRSDC. This sharing of information will assist the Province to ensure the safe employment of foreign nationals working in Canada.

In addition, further protection of workers will be implemented through anticipated regulation changes to the Temporary Foreign Worker Program, which may include measures to further assess the genuineness of the employer and the job offer, applying increased monitoring of employers and third party representatives, applying administrative sanctions for non-compliance, and increasing information shared between federal and provincial jurisdictions to enforce and support labour, health and safety.

Employer Registration Flowchart

