

Making the *Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others), 2009* Work in Ontario

The following information is being provided by CARE, a coalition of caregiver recruitment agencies and associations united by the need to protect Caregivers' Rights and Education.

Overview

CARE strongly supports the intent of the recently passed *Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others), 2009*. We share the same goal as the Ontario government: the need to protect live-in caregivers; however, the Act, in the absence of appropriate regulations will fail to meet the government's objectives.

CARE wants to work with the Ontario government to ensure that the Act achieves its objectives through the development of regulations that are clear, offer protection to caregivers and the families they serve, and make the recruitment industry accountable.

The Issue

Provisions of the Act, specifically a complete ban on charging any fees to caregivers, will eliminate crucial support structures that now exist, and which have been proven to be working to protect caregivers. These include services that are provided by well-established and highly reputable Recruiting Agencies and also regulated professionals such as lawyers and Certified Canadian Immigration Consultants. Normally these costs are born by the caregiver, not the Employer.

As written, and without appropriate regulations, the Act will result in either fewer caregivers coming to Ontario, or more likely, less qualified caregivers will come with the aid of unscrupulous recruiters, ultimately putting Ontario children and seniors at risk. Specifically:

Immigration Services

- The Act bans the caregiver from paying for the services of a lawyer or a licensed immigration consultant, if that consultant was an employee of a recruiter, or was, in fact, a recruiter. This despite the fact that Authorized Representatives (AR's) are highly regulated, and may already have established a trust-based relationship with the caregiver. The rationale for this step seems to be that AR's cannot be trusted, and that they will bundle the recruiting fees in with the immigrations fees, even though all of the AR's must maintain Client Accounts and report how client funds are dispersed.
- Caregivers living abroad have limited personal knowledge and access to AR's or an understanding of who is a licensed or unlicensed agent. They can then fall prey to the unlicensed agents who charge outrageous fees, offer bad advice and no service.

Note: Immigration services provided by an Immigration Consultant are important both before and after a caregiver arrives in Canada. The services provided by an Immigration Consultant start with advice on their rights and responsibilities when they come to Canada, and a thorough explanation of all of their options. The services include the proper preparation of a work permit application, representation before the visa officer addressing any concerns raised, application for permanent residence and extensions/ changes to a work permit.

It is important that a caregiver receive professional guidance and counseling in all matters of immigration to avoid mistakes that could negatively affect the outcome of their application for permanent residence. There are many cases where caregivers have been encouraged to misrepresent their marital status, in order to be processed faster. After working twenty-four months in Canada, they are advised that since they misrepresented their status in their original application for a work permit, they are not permitted to ever bring their family to Canada.

Professional Development

- The new Act bans recruiters from charging live-in caregivers, directly or indirectly, a fee for any service, good or benefit provided to the foreign national. This includes professional development programs, thus denying them the ability to improve their skills and compete in the job market

Note: The majority of foreign nationals seeking employment in Canada under the foreign live-in caregiver program do not have sufficient professional skills that an employer would expect from a caregiver. Caregiver agencies offer a valuable service by providing foreign caregiver candidates training programs to learn these skills and immigrate to Canada to pursue a better life. Professional development programs, offered on a voluntary basis, teach caregivers how to write a resume, conduct a professional interview, provide first aid and CPR training, child behaviour and eldercare management - all life skills that are transferable beyond their 24 month work permit requirement.

Unintended Consequences to the Families

- By banning all fees to the caregiver, the entire financial cost now shifts to the potential employer. The employer is expected to assume responsibility for professional development training and immigration services in addition to having to pay a recruitment fee.
- The financial risk associated with hiring a caregiver would then increase substantially as there are no assurances that a foreign live-in caregiver will stay with one family to fulfill the obligation of two years of documented live-in caregiver work to be eligible to apply for permanent residence in Canada.
- This caregiver option then becomes one only available to the wealthy, and even then, financial risk may be too great to consider hiring a caregiver.
- To reduce the financial risk, families will be forced to consider childcare/eldercare on a cash basis, or hire illegal immigrants as caregivers.

Note: Live-in caregivers provide a valuable childcare option, especially in cases where the employer works shift work, lives outside a metropolitan area and where other traditional childcare options don't exist, e.g. day care.

Unintended Consequences to Caregiver Agencies

- The new Act will cause the reputable agencies that want to offer high quality, well-trained, well-documented candidates to potential employers to close their business. Moreover, it will result in less reputable agencies operating and representing less qualified candidates to care for the most vulnerable – young and old. Of greatest concern to CARE, the new Act will encourage an underground industry operating on a cash basis both in Canada and abroad to offer employment to caregivers seeking employment opportunities.

Note: Caregiver agencies want to protect their reputation and offer the best candidates to meet a potential employer's needs. Professional development programs and immigration consulting services ensure that the caregivers they represent are well trained and they meet the requirements of the live in caregiver program.

Our Ask

In order to ensure that live-in caregivers are protected under the Act, CARE requests the government to:

1. Delay the proclamation of Section 7 of the Act;
2. Establish a consultation process to develop regulations for prescribed exemptions, which could include the development of a prescribed list of fees for immigration consulting and professional development services (as is the case in BC, Alberta);
3. Engage stakeholders in regular discussions to update the list of exempt services and define the supporting documentation to validate proof of fees paid, proof that services were delivered and mechanisms available to monitor and implement the regulations.

We want to work with the Ontario government to protect live-in caregivers and make sure the new Act achieves its objectives.

CARE Members

Our membership includes Ontario based reputable caregiver agencies who may also be members of the Canadian Association of Professional Immigration Consultants and the Association of Caregiver and Nanny Agencies Canada.