

## ESDC INSPECTION RAMP UP

Following a critical report released last year by Auditor General, Michael Ferguson I anticipate that the Federal government will continue to ramp up its Temporary Foreign Worker Program (TFWP) inspection regime. Ferguson's report singled out the TFWP for oversight problems, scolded Employment and Social Development Canada (ESDC) for its limited use of its powers and for failing to ensure that temporary workers were hired "only as a last resort."

Since late 2015, amendments to the *Immigration and Refugee Protection Act* Regulations have allowed ESDC to impose administrative monetary penalties on employers found non-compliant with the TFWP on a sliding scale of fines. Depending on the severity of an offence, penalties can range from as little as \$500 per violation up to \$100,000 with an overall cap set at \$1 million. Employers can also find themselves banned from using the foreign worker programs for up to 10 years per violation and permanent exclusion is an option for the most serious offenders. Violations, and the employers who committed them, are also published on a government website.

According to ESDC, its inspection level is up to 2,800 per year out of the 22,000 employers who receive a Labour Market Impact Assessment (LMIA), with on-site and unannounced inspections also up. My understanding is that ESDC's goal is inspection of 1 in 4 LMIA's. To date many of us who work regularly with clients within the inspection regime have sensed a misplaced focus on small oversights. This may be changing as ESDC takes steps to implement a system that uses a predictive model to identify high-risk employers in sectors that have a higher risk of non-compliance. ESDC has also introduced a tip line which allows temporary foreign workers and others to anonymously report concerns.

Like many of my colleagues my office has noticed an upsurge in inspections and compliance reviews. At the same time it is clear that the inspection regime is still evolving and has yet to employ a more targeted approach that addresses the real risks of non-compliance and places less focus on minor infractions. The bottom line however is that all employers should expect more ESDC oversight. Employers need to take compliance very seriously because ESDC does have considerable powers and it is more likely than ever to use them and any violation, big or small, can have a significant impact on a business.