

Report Card Federal Government



Enforcement of TFWP Rules and Regulations

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Inspections of employers of migrant workers (promised since 2013) and application of administrative penalties and bans have finally been implemented since 2016. Workplaces may be randomly selected for inspection, or chosen as a result of a tip. The names and information of non-compliant employers, with their infraction and penalty, are published online.

Protections from Unscrupulous Recruiters

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Employment and Social Development Canada (ESDC) relies on an anonymous tipline and an online reporting tool to hear of cases of abuse by recruiters or immigration consultants in Canada, which are referred to the RCMP or elsewhere for investigation. No action has been taken to protect against recruitment fraud and abuse in the country of origin.

Ensuring Decent Housing

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More stringent requirements regarding housing for migrant agricultural workers were put in place on January 1st 2018. Workers' lodgings must be inspected before the employer is granted a Labour Market Impact Assessment (LMIA). No strategy is in place to mitigate housing-related abuses for other migrant workers, notably in inappropriate accommodations and excessive rent.

Access to Permanent Residence

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"Low-skilled" migrant workers are excluded from federal immigration programs, with the exception of caregivers. Access to permanent residence for caregivers was reduced in 2014 with a cap on applications and more stringent language and education requirements under the two caregiver streams that replaced the previous program. A 2019 deadline to apply under these streams was recently announced. The federal government limits "low-skilled" workers' access to Provincial Nominee Programs by imposing language requirements as well as numerical caps on the number of nominees.

Access to Benefits

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Migrant workers are not entitled to full Employment Insurance benefits, despite making the same contributions as Canadians. They may not receive even those benefits they theoretically qualify for, if Service Canada declares them "unavailable to work" while between work permits. In 2012 eligibility to EI parental, maternal and compassionate benefits was restricted to those in Canada with a valid work permit.

Access to Recourses

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Migrant workers have access in theory to the same recourses as Canadians, but face huge barriers in practice. Closed work permits make them dependent on their employer for status and employment, and thus reluctant to make complaints. There is no anti-reprisal mechanism to prevent employers from repatriating them, and where workers do submit a formal complaint, only in British Columbia is there a policy to grant them permission to remain in Canada while the complaint is investigated.

Information, Settlement and Support Services

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Migrant workers in the TFWP are not eligible for federally funded settlement services. In December 2017 ESDC announced pilot funding for a migrant worker support group in British Columbia. ESDC has published an online information sheet on migrant workers' rights, available only in English and French. Workers have difficulty accessing information about their contracts from ESDC.

Family Unity

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"Low-skilled" migrant workers in the TFWP and the Seasonal Agricultural Workers Program are separated from their families while in Canada.

Noteworthy



In December 2016 the Federal Government eliminated the "cumulative duration" rule that limited participation in the TFWP to four years.

Recent developments show promise, but a paradigm-shift is necessary



The number of migrant workers in Canada remains high: in 2017, the government issued 79,055 work permits to workers in the Temporary Foreign Worker Program. Since 2016, the federal government has shown an increased sense of responsibility for the protection of the rights of migrant workers in Canada.

Unfortunately, the root causes of migrant workers’ precarity – the closed work permit and temporary status of the worker – are still in place. In the short term, the federal government must allow migrant workers to have labour mobility so that they can leave bad work situations. Work permits should be open, or sector- or region-specific. In the medium term, Canada must revise its economic immigration program to reflect the broad needs of the Canadian labour market by including workers of all skill levels. The federal government should eliminate barriers to migrant workers’ access to Provincial Nominees Programs by making seasonal workers eligible and by reducing or eliminating language requirements, which are unfair given that migrant workers generally can’t access language instruction.

Despite some information-sharing agreements, several provinces have reported barriers to obtaining information in a timely way from the federal government for use in enforcement and information distribution, sometimes citing a high staff turnover at ESDC as a key challenge. ESDC must support the provinces in their efforts to protect migrant workers, and encourage those that haven’t taken such initiatives to do so.

Inspections Carried Out by ESDC

Fiscal Year	Agricultural Employers	Total TFWP
2016-2017	387	3,666
2017-2018 (as of January 31, 2018)	294	2,493

In the wake of the 2016 federal review of the TFWP, and of the 2017 reports of the Auditor General of Canada, the government has begun to take some actions to improve protections for migrant workers, with increased enforcement of program rules in 2016-17. At the end of October 2017, ESDC reported a 50% non-compliance rate in pre-arranged workplace inspections of employers who hire migrant workers, indicating a need for increased enforcement. These efforts are a positive step, but remain fraught: workers are unlikely to submit even an anonymous tip for fear of losing

their work permit and status if their employer is banned from the program. In light of the impact of enforcement on migrant workers, the government must automatically grant open work permits to workers whose employer is suspended, and implement an anti-reprisal mechanism to ensure employers don’t unjustly repatriate workers (whether for complaining or due to injury or illness). The collaboration between the BC and federal governments to provide an open work permit to abused migrant workers who file a complaint is a promising initiative to encourage access to justice: it should be implemented across the country as long as work permits remain tied to employers. The real solution to counter abuse is to open work permits and provide a viable option of permanent status to all workers.

Lack of access to support services exacerbates migrant workers’ vulnerability. IRCC funds most settlement services offered across Canada but excludes migrant workers. In many parts of the country, the only groups providing support to migrant workers are grassroots, volunteer-run groups with little to no budget. The government should extend eligibility for settlement services to migrant workers, and ensure that services are adapted to the needs of these workers, as well as funding grassroots organizations. Promisingly, the federal government has shown interest in funding a support network for migrant workers.

ESDC’s announcement of housing requirements and inspections for employers prior to hiring migrant agricultural workers is a positive step that should be extended to employers of caregivers and other migrant workers. Its effectiveness will depend on maintained proactive inspections of accommodations.

When ESDC is responding to employer demands, it must consider the impact on migrant workers. In early 2016 the federal government announced that unlimited 180-day LMIA would be offered, a concession to employers facing 10 and 20% hiring caps on migrant workers. Many migrant workers paid high fees to recruiters for these jobs, unaware that they were limited to 6 months. At the end of the 6 months, some workers fell out of status, not having paid off the debt incurred to recruiters. Others were able to renew their work permits, but suffer as a result of being ineligible for provincial healthcare and for permanent residence via provincial programs because their work permits are too short.

Predatory recruitment practices in the country of origin as well as in Canada remain a significant problem for migrant workers in the TFWP. Workers are indebted as a result of paying recruitment fees, reportedly up to \$40,000, and are thus more vulnerable to abuses including human trafficking. In some cases the recruiter is also the trafficker. Canada must take responsibility for these problems and collaborate with sending countries to find solutions. Canada should also commit to protecting migrant worker rights by signing the International Convention on the Rights of All Migrant Workers and Their Families and the 2014 Protocol to the Forced Labour Convention.

Human trafficking for labour exploitation remains a problem within the TFWP. In several cases, trafficked workers have fallen out of status and the Canada Border Services Agency has detained and deported them, with no access to justice. This inequitable enforcement acts as a deterrent for those who might otherwise report abuse. Survivors of trafficking are not always granted Temporary Resident Permits, especially in cases of labour trafficking.

The current government has shown initiative in protecting migrant workers. This must be accompanied by a longer-term vision of nation-building, and non-discriminatory labour and immigration policies.

Number of Work Permits Issued	2017
Live-in Caregivers	3,325
Agricultural Workers	48,105
Other Temporary Foreign Workers with LMIA	27,625
Total	79,055

