

## MIGRANT WORKER HEALTH EXPERT WORKING GROUP

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Dear Premier Ford, Minister Elliot, Minister Hardeman, Minister McNaughton, Mr. Teahen and Mrs. Witmer

We write to you with dismay and concern to learn about a third migrant agricultural worker who recently died of COVID-19 in Ontario, Juan Lopez Chaparro. His death follows that of two fellow migrant agricultural workers, Bonifacio E. Romero and Rogelio Muñoz.

Juan worked for Scotlyn Group, on a farm where an outbreak of 217 workers has been documented. His co-workers have reported that Juan asked his direct supervisors for timely access to medical assistance, but he was denied. If Juan had been able to access health care much sooner, rather than being dependent on his employer, he would likely have survived. Furthermore, over the years workers on this particular farm have consistently raised concerns about their working and living conditions, and the impact these conditions have on their health. They have bravely voiced these concerns despite their precarious status in Canada as temporary foreign workers who may be subject to retaliation or repatriation at any moment.

Bonifacio, Rogelio and Juan are three of the more than 20,000 migrant agricultural workers who come to work in Ontario each year, primarily from Mexico and the Caribbean. These workers make tremendous personal sacrifices to perform labour that is critical to maintaining Canada's food supply and feeding Ontario families, particularly vital during a global pandemic.

We are members of the Migrant Worker Health Expert Working Group, a team of academics and clinicians with decades of experience in community-based health research with migrant agricultural workers related to labour standards, occupational health and safety, as well as infection control. We have come together to provide evidence-based recommendations and resources to government and health officials in the wake of the COVID-19 pandemic.

Urgent action is needed to prevent further illness and deaths among this essential workforce. Now is the time for the Ontario government to show true leadership to prevent further tragedies, deaths and outbreaks in our fields, nurseries, greenhouses and packing plants. Given the complex challenges faced by this population, a concerted and collaborative **inter-ministerial strategy** is required to clarify and address gaps in accountability and action.

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Below, we outline what we see as responsibilities under each ministry, while affirming that the MOH, the MLTSD and OMAFRA must collaboratively work together across jurisdictions and levels of government to ensure the health and safety of this population. It is our hope that taking these independent actions, which are by no means exhaustive, can play an important first step in developing effective responses for migrant agricultural workers amidst the current COVID-19 pandemic. We thereby urge you to consider each recommendation, and how best to coordinate across agencies to address the gaps in protection, services and support for this population.

Not enough has been done to protect migrant agricultural workers in Ontario. Given the province's reliance on this vital labour force, who are critical to the maintenance of the Canadian food supply, we must do all that it takes to keep these men and women healthy and safe.

We would like to reiterate that future deaths are preventable among this population. We urge the provincial government to show strong leadership in implementing measures to avoid further needless tragedies.

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*Additional recommendations we have developed are available [here](#).*

## RECOMMENDATIONS

### **We urge the Ontario Ministry of Labour, Training, and Skills Development**

(MLTSD) to ensure worker health and safety and access to minimum employment standards and rights in agricultural worksites in Ontario. The following recommendations build upon issues raised by key stakeholders who attended the June 22, OFVGA and OHCOW webinars, which MLTSD representatives participated in. Priority actions include:

*1. Increase proactive, unannounced, comprehensive and ongoing on-site inspections that target compliance with regulations* under both the Employment Standards and the Occupational Health and Safety Acts at agricultural workplaces, in close coordination with public health units. To meet these aims, the MLTSD can:

- Ensure that inspectors are clear on the application of key legislation to COVID-19 issues (e.g., 25(2)(h) general duty clause and safety planning and action drawing from key federal and provincial guidance).
- Ensure every worker has received Basic Awareness training (per Reg. 297/13), or provide means (and order) to complete forthwith in the language of workers.
- Engage with workers, without the presence of a supervisor/employer, communicating in their preferred language. Provide workers with a clear understanding of the process, their related rights and implications of involvement (including anti-reprisal protections under both OHS & ESA) including clear (and reliable) complaint process guidance.
- Highlight the need for a Health and Safety Representative in any workplace with more than 5 workers for more than 3 months (or where a case has occurred - hazard is present). And provide information in English and Spanish (or workers' preferred languages) on the roles and responsibilities of such reps for the farmer and the worker.
- Ensure employers have a clear COVID-19 Safety Plan, and that they have informed, and instructed workers on this plan (OHS clause 25(2)(a)) in their preferred language, and that workers have had the opportunity to ask questions in their language as well.
- Identify a standard for safety communication capacity that is required at the workplace, as part of the employer and supervisor's responsibility to inform, educate, and supervise effectively, as well as part of ensuring the worker's right to participate. The MLTSD should clarify how it will assess compliance to this standard, and how it will support employers to comply.
- Assess competency of supervision including understanding of legislation, COVID-19 risks, and capacity to maintain two-way health and safety communication on a regular basis, which is essential to ensure comprehension,

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engagement, allow clarification, achieve direction, and ensure emergency/ safety critical compliance.

- Clarify a standard and practical framework for workplace [Internal Responsibility Systems \(IRS\)](#) on farms during COVID-19, and clarify how inspectors will support and assess employer compliance.
- Ensure inspectors are familiar with congregate living risks and solutions and ensure they review all such accommodations whenever they visit the workplace, and enforce associated occupancy, distancing and hygiene guidelines. Workers' living conditions, especially in bunkhouses, are critical to their health and safety, especially during the COVID-19 pandemic.
- Furthermore, at the conclusion of inspections, workers should also be provided with accessible information on how to call the MLTSD Contact Centre so that they know where to report workplace level concerns that are not resolved by farm management in the future.

2. Enhance worker reporting mechanisms (or complaints under the ESA) to the MLTSD to address workplace safety breakdowns and non-compliance. These worker reporting mechanisms draw important attention to minimum standards non-compliance and health and safety breakdowns and thus provide strategies to ensure that workers are not left in dangerous workplace situations. To do so, the MLTSD must:

- Foster worker awareness on when and how to report to the MLTSD through proactive ministry education and outreach through worker communication channels and advocates.
- Make reporting more accessible to these workers (e.g., establish a streamlined phone number for complaints in agriculture with clear and effective translation support).
- Provide workers with clear and accessible information on anti-reprisal protections, and safe processes to follow.

3. Increase Workers' Understanding and Clarify the Process to Refuse Unsafe Work Effectively in the COVID-19 Context

On June 22, as part of webinar presentations, MLTSD staff reported that, to date, there have been no work refusals related to COVID-19 in the farming/agriculture sector. As media and workers' advocates continue to document workers' experiences confronting unsafe work and attempting to raise COVID-19 safety issues not addressed at their workplaces, the dearth of work refusals is a concern. It raises questions as to whether workers are aware of this right, know how to report refusals and/or whether they feel safe in doing so without facing reprisals. Indeed, our past research has demonstrated all of these issues to be major concerns among this population. The right to refuse unsafe work is an important worker right and tool to ensure worker safety during this pandemic. It therefore needs to be effective. As such, we recommended that the MLTSD:

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- Work to increase workers' understanding (as well as that of third-parties involved in their representation, such as consular officials, worker advocates and service providers) of the right to refuse unsafe work in general, including anti-reprisal protections; and
- Clearly define its application and process in the context of COVID-19.

### 4. Make Anti-Reprisal Protections Meaningful and Accessible to Workers

Our research suggests that workers are fearful of facing reprisals when reporting a workplace problem. These fears are in great part due to their status as temporary foreign workers who can easily be subject to repatriation and job loss.

- The MLTSD should therefore develop an expedited process to address threats and acts of employer retaliation against workers who may wish to report violations. This may require collaboration with the Ontario Labour Relations Board (OLRB).
- Clear and reliable information on anti-reprisal protections should be provided to workers (as well as advocates and other representatives, including health practitioners) via proactive ministry outreach as well as other communication channels and as part of MLTSD inspections.
- The MLTSD should enable workers to access an anonymous and accessible phone line, with translation available, to report concerns, and seek expedited support as necessary.
- Sufficient resources should be devoted to promoting greater understanding of reprisal-related issues specific to TFWs in agriculture among MLSTD staff, especially those involved in providing guidance to workers and their advocates engaged in making complaints.
- In cases where reprisal has led to worker termination, and pressure to leave housing/ the workplace, the MLTSD should support the provision of emergency housing (in hotels) for workers throughout anti-reprisal investigations. Without emergency housing, workers will face pressure to return to their home countries, even if they want to stay in Ontario to see out the investigation process and continue to work. To address this issue, the MLTSD should, with due regard to protecting the worker(s) concern, also coordinate closely with federal agencies to ensure that workers at any facility involved in an investigation are not repatriated during the investigation process.
- The MLTSD should notify appropriate consular representatives of the rights of workers involved in anti-reprisal claims and apprise them of anti-reprisal provisions in the OHS and ESA more broadly, which the sending state should support.

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- The MLTSD, together with ESDC, should develop practices to coordinate with sending countries (i.e., via consular officials) to enable workers facing reprisals to secure alternative work and/or income support so that they are not financially affected for voicing workplace concerns. Specifically, these parties should work in cooperation to prevent repatriation against workers' will and ensure that workers' participation in an anti-reprisal complaint or complaint investigation will not affect their access to work in Canada in subsequent seasons.
- In instances where workers decide to return to their country of origin, anti-reprisal investigations should nevertheless continue.

### 5. Ensure that Information on Hazards, Safety and Labour Rights and Protections Reaches Workers

The following measures should be undertaken to ensure health and safety and labour rights information reaches workers:

- The MLTSD should develop accessible and make available (via employers, workers' advocates, regional health authorities etc.) educational materials (e.g. appropriate language and literacy) on COVID-19 hazards, key safety practices, as well as labour rights and protections to agricultural workers in the province, to ensure that workers understand COVID-19 safety and can assert key rights.
- This information should be delivered to workers at the workplace level. Employers and supervisors should be likewise informed of their responsibility to support and abide by these laws as well as to fulfill requirements under Health and Safety Awareness and Training, Reg. 297/13.
- MLTSD should also distribute information by direct outreach to workers through their communication channels and advocates.
- Making this information accessible will require the MLTSD to develop an outreach strategy directed at reaching workers that utilizes mediums such as:
  - (a) audio and video information links, sent through worker accessible channels (social media, advocate and service agency communication channels etc.);
  - (b) physically-distanced and safe outreach on farms, and;
  - (c) collaboration with public health units to garner their support in providing workers with information and resources regarding employment rights and occupational health and safety standards.

### 6. Increase Employer Compliance on Illness Reporting to MLTSD: Recognizing Missed Opportunities for Strengthening the Prevention of Further COVID-19 Infection

The MLTSD should continue to remind employers of their requirements to report illnesses via Occupational Illness Notices. Recognizing that as part of reporting this notice, employers are required to identify the steps they are taking to prevent further illness, reporting provides a vital impetus for employers to review and assess what may

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have led to safety breakdowns and infection, as well as have them clarify and strengthen prevention measures to protect from further infection. Remind employers of this reporting requirement through continued collaboration with industry associations and OMAFRA.

### 7. The MLTSD should collaborate with WSIB to promote and support employer compliance in reporting to both agencies and ensure that:

- All workers who lose income due to COVID-19 should be eligible for compensation, including workers who do not test positive but have to self-isolate due to a workplace exposure.
- Sufficient and continuous income support for workers facing illnesses and injury in the context of the global pandemic should also be ensured by expediting and aggregating workplace injury claims where outbreaks occur on farms. On these farms, all affected workers should also be made aware immediately when a claim has been made and informed of their eligibility for income support should they test positive for COVID-19. In the context of a global pandemic in which migrant agricultural workers are deemed essential to maintaining the food supply, when workers are worried about their health and indeed survival, they should not also have to be worried about any loss of income.
- The WSIB must follow the lead of BC's Workers Compensation Board and support the recognition of COVID-19 as a presumptive occupational disease in this cohort in Ontario. Taking this approach would alleviate the burden on ill workers, many of whom are far away from home and facing severe stress, to have to prove the work-relatedness of an illness. As the BC government has affirmed, essential workers should not have to go to the effort of proving their infection is work-related at a time when they should be focusing on their health and their families while confronting this disease, particularly given the well-documented magnitude of exposure among agricultural workers across the country and beyond.

**We urge the Ministry of Health** to develop systematic measures for all health units, primary health and hospital facilities to:

1. Ensure regular proactive on-site inspections by public health agencies at all operations employing migrant agricultural workers to evaluate whether public health guidelines are being followed, including the provision of adequate physical distancing, handwashing, environmental cleaning, in working and living environments, as well as in worker transport, and that inspections include verification that workers are being provided accessible information and instruction (e.g. in preferred languages) on all COVID-related safety measures,

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including the use of PPE. To be effective, these inspections must be unannounced and include consultations with workers in their preferred languages without the presence of an employer/supervisor. To allay workers' veritable fears of reprisal, inspectors should provide workers with information on their anti-reprisal rights under the OHS Act and the ESA, explain what to do if they face reprisal and be explicit in detailing this process. These inspections should be carried out in close coordination with the MLTSD and federal agencies and tied to ESDC's role in ensuring employer adherence to LMIAs, and, to inform necessary remediation of existing guidelines.

2. Ensure direct lines of communication and front-line care with each migrant agricultural worker who is affected by a COVID-19 outbreak via daily in-person check-ins and mental health services via an accessible toll-free phone line. Both of these services should be available in workers' preferred languages at all times. Prompts to support workers to both report and refuse unsafe work should be integrated into the assessment process for such services.
3. Fund and deploy mobile health teams to both monitor, screen and allow workers access to testing of COVID-19 on farms and provide comprehensive care and follow-up for migrant agricultural workers. In cases where an outbreak is detected, public health staff should coordinate with the WSIB, to either initiate or ensure that a WSIB claim has been initiated for each affected worker (please see point 4 and 5 as well) and ensure that the employer has fulfilled all reporting duties to both WSIB and the MLTSD, including the documentation of missed opportunities for virus spread prevention. In addition, public health should remind the employer facing the outbreak of their responsibility to report cases of all ill workers to the MLTSD. Under the *Occupational Health and Safety Act* (OHS Act), [subsection 52(2)], if an employer is advised that a worker has an occupational illness due to an exposure at the workplace, the employer is required to notify the MLTSD by way of an occupational illness notice. In this report, the employer is required to identify the steps they are taking to prevent further illness. Given current underreporting to the MLTSD by employers on worker COVID-19 illness, further collaboration between the MOH, MLTSD and WSIB is required to develop protocols for the prevention of further infections in workplaces and immediate action in the case of an outbreak (including employers' compliance with reporting requirements).
4. In close coordination with the MLTSD, the MOH should provide and distribute key COVID-19 hazard and safety educational information to migrant agricultural workers relevant to both working and living conditions In order for workers to

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report breaches in public health measures a direct phone line should be set up, with interpretation available. This phone line must be provided to all workers and be accessible over both regular phone messaging and WhatsApp (a common method of communication for migrant workers). Dedicated staff persons in charge of this phone line should be able to answer workers' questions and refer appropriately to other agencies, especially in regards to (a) income supports (i.e. CERB and WSIB); (b) employers' obligations and related reporting/compensation options and; (c) various primary care needs, including psychological support. No distinction to access services should be made between workers who have been identified as symptomatic or asymptomatic, to promote individuals' ability to refuse unsafe work (with income support), and to improve monitoring for workers who are, in fact, pre-symptomatic.

5. Develop integrated service models to increase independent access to primary care services for migrant agricultural workers. Such models will enable confidential reporting of symptoms without mediation by employers. These services should be developed by enhancing the capacity of CHCs with a track-record of serving migrant agricultural worker populations and replicating the model in regions where migrant agricultural workers are underserved. Furthermore, CHCs should be provided with new and increased funding to develop and maintain a province-wide virtual assessment contact centre that is able to provide immediate consultations and referrals for both health and non-health related concerns (as outlined in point 4).
6. Make available immediate and ongoing translation and accompaniment services to all migrant agricultural workers who are hospitalized. Such services should include culturally-appropriate access to mental health services in workers' preferred languages via an accessible toll-free phone line as well as financial and logistical support to ensure that workers can easily contact their families abroad.
7. Update the new health data platform to include data on inspections from local public health and other provincial ministries to better assess the risks and factors that may be contributing to outbreaks among this population. Furthermore, all workplace outbreaks should be documented on the Public Health and PHO data websites, and all essential workers (including farm workers) should be numbered there as well, not just healthcare workers which has been the practice. Such information should also be shared as part of education on the subject.

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8. Reverse the provincial guidance that allows migrant agricultural workers who are positive for COVID-19 and asymptomatic to work. Such guidance should be based on precautionary principles and evidence that workers are being kept as safe as possible from virus transmission and other health effects related to having this disease. Public health measures should not be determined by their ability to appeal to the agricultural industry's economic concerns. As outlined by [public health professionals across the province](#), this group often endures poorly monitored and hazardous working and living conditions, as well as inadequate health monitoring. And this group may also face coercion or retaliation when wishing to refuse unsafe work (as stated above).
  
9. Take up recommendations made by the [Alliance for Healthier Communities](#), and using the Expert Working Group's previously [published guidelines](#), work closely with federal agencies to address gaps in healthcare and protections for migrant agricultural workers.

**We urge the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA)** to take immediate action to protect the migrant agricultural labour force, and specifically to:

1. Develop comprehensive resources for employers that: (a) outline obligations to adhere to quarantine and all COVID-19 health and safety measures including physical-distancing; (b) facilitate timely access to medical care; and (c) guarantee adequate income continuity and compensation during the quarantine-period and in the case of an outbreak on farm (or exposure to someone with COVID-19). Resources and training should be rolled out simultaneously with a 24/7 phone line for employers, and a funding pool to support workers to implement adequate workplace and housing improvements that will better prevent virus spread.
  
2. Launch and coordinate a **dedicated taskforce** to investigate case-by-case workplace and housing factors that have contributed both to outbreaks and to COVID-19 related deaths among migrant agricultural workers, and failures to adhere to public health, occupational health and other workplace safety measures. The findings of these case studies should be made public and used to inform revisions to guidelines and inspection protocols for enhanced workplace safety. Farm operators found to be struggling to meet these measures should be followed on a continuous basis by OMAFRA in collaboration with the MLTSD to ensure greater adherence to safety, health, housing and workplace processes. Failure to cooperate among responsible parties should be communicated to both

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the Ministry of Labour, Training and Skills Development (MLTSD) and Employment and Social Development Canada (ESDC), at which point OMAFRA must support these agencies to conduct a full investigation. Disciplinary action of responsible parties should be published by OMAFRA to all farm operators, and protocols put in place to ensure the highest standard of workplace safety in agriculture in light of gaps in processes brought to light through ESDC and MOLTSD's investigation. For full transparency, this taskforce should include both community organizations and third-party academics and clinical leaders.

3. OMAFRA should work with the Ministry of Health, Ministry of Labour Training and Skills Development and other relevant agencies to coordinate a 14-day hotel quarantine for migrant agricultural workers upon arrival into Ontario (much like what has been implemented in BC). OMAFRA should also ensure that this initiative is financially supported, both through existing economic incentives that exist for farmers, and additional funding as deemed necessary.
4. OMAFRA should also work with the Ministry of Health to increase independent access to health care which does not require mediation by the employer. This is necessary to ensure workers receive needed care for health issues including COVID-19 and beyond and would enable workers to report symptoms if fearful of employer responses or if workers' reports have not been acted upon. Working closely with the MOH and federal agencies, OMAFRA must help fund and continuously distribute a register of all primary care clinics and services that can be made available to migrant agricultural workers and that will help to establish a province-wide virtual assessment contact centre. Both these primary care services and the maintenance and infrastructure to support them (as outlined under point 5 of the recommendations to MOH), should be supported through funding systems that OMAFRA and the MOLTSD develop in partnership with industry stakeholders and federal partners. OMAFRA should communicate to all employers that workers must be given access to both digital and paper-based copies of this register as well as a concrete and accessible protocol for workers to access these services.
5. OMAFRA should develop a dedicated department to focus on the health and safety of the people who are employed in food production that fuels the agricultural industry. This department can build off of findings and recommendations outlined by the taskforce (point 2) to develop more comprehensive and accessible programs and services that meet the safety needs of migrant agricultural workers. The implications of worker safety is

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inherently connected to food safety, food security and the economic success of the industry.

In closing, we hope that these recommendations are useful to your government, and we welcome further dialogue at any time. It is in our collective interest to protect the health and safety of migrant agricultural workers, and we wish to work collaboratively towards this aim in any way possible.