

**2020 CANADA-MEXICO SAWP NEGOTIATIONS:  
RECOMMENDATIONS FROM THE MIGRANT WORKER HEALTH  
EXPERT WORKING GROUP (MWH-EWG)<sup>1</sup>**

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*\*Perspectives expressed in this document do not necessarily represent views of all members of the expert working group, nor their organizations.*

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### 1. INTRODUCTION

This report presents a series of evidenced-based policy recommendations informed by the research and practical findings of members of the Migrant Worker Health Expert Working Group (MHH-EWG), 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, migrant worker housing, and access to health care and rights. The challenges identified, and the solutions proposed, are substantiated by current knowledge and evidence, much of which has been developed via primary research conducted by the authors of this report. Yet these conclusions are not ours alone. Rather, they reflect a broad consensus in the field of migrant worker research in Canada and beyond.

The suggestions we offer herein focus principally, but not exclusively, on modifications to the CONTRACT utilized under the Seasonal Agricultural Worker Program (SAWP). In principle, they are aligned with the objectives of the UN Global Compact for Safe, Orderly and Regular Migration (GCM),<sup>1</sup> and guided by the WHO Framework of Priorities and Guiding Principles to Promote the Health of Refugees and Migrants and the ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration.<sup>2</sup> The GCM outlines specific objectives regarding decent work and health of migrant workers. Particularly relevant are GCM Objective 6 and Objective 15, which assert that signatories:

Provide migrant workers engaged in remunerated and contractual labour with the same labour rights and protections extended to all workers in the respective sector, such as the rights to just and favourable conditions of work, to equal pay for work of equal value, to freedom of peaceful assembly and association, and to the highest attainable standard of physical and mental health, including through wage

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<sup>1</sup> UN. General Assembly. (2019). *Global compact for safe, orderly and regular migration: resolution / adopted by the General Assembly (A/RES/73/195)*. United Nations Conferences. <https://digitallibrary.un.org/record/1660537?ln=en>

<sup>2</sup> International Labour Organization [ILO]. (2006). *The ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration*. International Labour Organization Geneva. [https://www.unicef.org/socialpolicy/files/The\\_ILO\\_multilateral\\_framework\\_on\\_labour\\_migration.pdf](https://www.unicef.org/socialpolicy/files/The_ILO_multilateral_framework_on_labour_migration.pdf)

protection mechanisms, social dialogue and membership in trade unions (GCM, Objective 6, 22 i).

Incorporate the health needs of migrants in national and local health care policies and plans, such as by strengthening capacities for service provision, facilitating affordable and non-discriminatory access, reducing communication barriers, and training health care providers on culturally-sensitive service delivery, in order to promote physical and mental health of migrants and communities overall, including by taking into consideration relevant recommendations from the WHO Framework of Priorities and Guiding Principles to Promote the Health of Refugees and Migrants (GCM, Objective 15, 31 c).

The GCM rests on existing human rights frameworks to which states participating in the SAWP are parties, such as Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and other core international human rights treaties and ILO conventions on promoting decent work and labour migration, and is consistent with the 2030 Agenda for Sustainable Development.<sup>3</sup> Aligning the SAWP with these important globally agreed upon frameworks is key to ensuring the protection of migrant workers' rights and health in administering this long-standing bilaterally managed program. To this end, this report is divided into eight substantive sections that reflect key areas in which the CONTRACT for the 2020 season intervenes; namely, housing; occupational health and safety; labour standards; inspections and enforcement; health; dismissal and repatriation; recruitment and worker mobility; and access to entitlements and supports outside the parameters of the SAWP. In introducing each theme in this report, a rationale is offered and, where possible, relevant provisions of the CONTRACT are identified.

Before proceeding, it must nevertheless be noted that, ultimately, as scholars and health practitioners with decades of experience documenting the experiences and challenges of migrant agricultural workers, we remain aware that many vulnerabilities and challenges faced by this population *cannot* be fully addressed without clear and immediate access to permanent residence. Workers' temporary status creates serious obstacles vis-a-vis their health, dignity, and access to rights, by, for instance, interrupting or making inaccessible medical treatment, workplace compensation entitlements, the refusal of unsafe work environments and, more generally, putting workers in a precarious position in regards to the pursuit of their rights.<sup>4,5</sup> Furthermore, this document is not intended to comprehensively reflect, nor can it substitute for, the value of meaningful consultation with migrant agricultural workers and organizations that continue to support them. Nonetheless, we are optimistic that implementation of these recommendations can facilitate improvements in migrant agricultural workers' ability to access their rights and protections in freedom, dignity and health under the SAWP.

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<sup>3</sup> Hagen-Zanker, J., Mosler Vidal, E., & Sturge, G. (2017). *Social protection, migration and the 2030 Agenda for Sustainable Development*. Briefing Paper. Overseas Development Institute. <https://www.odi.org/sites/odi.org.uk/files/resource-documents/11583.pdf>

<sup>4</sup> Cedillo, L., Lippel, K., & Nakache, D. (2019). Factors Influencing the Health and Safety of Temporary Foreign Workers in Skilled and Low-Skilled Occupations in Canada. *New Solutions*, 29(3), 422–458. <https://doi.org/10.1177/1048291119867757>

<sup>5</sup> McLaughlin, J., & Tew, M. (2018). Migrant farm worker health care: unique strategies for a unique population. In A. N. Arya & T. Piggott (Eds.), *Under-Served: Health Determinants of Indigenous, Inner-City, and Migrant Populations in Canada* (pp. 253). Toronto, Ontario: Canadian Scholars.

## 2. HOUSING

### Relevant Clauses of the CONTRACT for the Employment in Canada of Seasonal Agricultural Workers from Mexico - 2020: Section II, 1A, 2B; Section VIII, 5.

**Rationale/Concern:** The SAWP requires that employers provide workers free-of-cost (with the exception of BC), “clean, adequate living accommodations.” Provinces and territories are responsible for the establishment of housing standards and related inspections prior to the arrival of workers, and in some cases, this responsibility is delegated to municipalities or private inspectors. Employers are required to submit inspection reports with their Labour Market Impact Assessment (LMIA) application to prove that the dwellings have been inspected and comply with applicable standards. Annual housing inspections focus on compliance; however, the guidelines are inadequate. Research shows the housing provided to workers is often “dilapidated, unsanitary, overcrowded and poorly ventilated,” as well as lacking in privacy and security.<sup>1,2</sup> Workers often lack adequate access to private space, bathrooms, kitchen amenities and laundry facilities. Too many workers trying to use too few showers, stoves or washing machines after long hours of work can create risks to health and well-being.<sup>3,4</sup> There are few employer consequences for non-compliance to even the limited housing guidelines and fewer still enforced. Prior research has documented that many workers face obstacles reporting concerns about their housing conditions both to federal agents and local authorities. Lack of jurisdictional clarity and consistency, lack of opportunities for confidential reporting without the presence of a boss/supervisor and announced inspector visits also contribute to authorities failing to address housing concerns even when concerns have been previously raised.

Although the health risks associated with migrant agricultural workers’ housing are not exclusive to the current global health pandemic, in the face of COVID-19, Employment and Skills Development Canada (ESDC) recently acknowledged these problematic conditions with the introduction of new guidelines for employers of temporary foreign workers (TFWs). These guidelines include recommendations that employer-provided shared accommodations allow for physical distancing such that beds “be at least two metres meters apart” and that common spaces be cleaned and disinfected on a regular basis. However, during the 2020 season, the standard to which these and other expectations were to be met was unclear, especially in the absence of proactive monitoring and enforcement. Furthermore, recent evidence illustrates that aerosol transmission of COVID-19 is possible,<sup>5</sup> as acknowledged by the Public Health Agency of Canada,<sup>6</sup> underscoring the inadequacy of existing standards for accommodations.

In response to the COVID-19 protocols, the Government of Canada opted to conduct desk-based federal inspections of agricultural worksites and living quarters. Furthermore, this year the federal

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<sup>1</sup> Preibisch, H. & Hennebry, J. (2011). Temporary migration, chronic effects: the health of international migrant workers in Canada. *Canadian Medical Association Journal (CMAJ)*, 183(9), 1033–1038. <https://doi.org/10.1503/cmaj.090736>

<sup>2</sup> Hennebry J, McLaughlin J, & Preibisch K. (2016). Out of the Loop: (In)access to Health Care for Migrant Workers in Canada. *Journal of International Migration and Integration*, 17(2), 521–538. <https://doi.org/10.1007/s12134-015-0417-1>

<sup>3</sup> Perry, J. (2018). Living at Work and Intra-worker Sociality Among Migrant Farm Workers in Canada. *Journal of International Migration and Integration*, 19(4), 1021–1036. <https://doi.org/10.1007/s12134-018-0583-z>

<sup>4</sup> Villanueva, F., Crespo Villareal, D., Gravel, S., Bernstein, S., Hanley, J. (2015). Les travailleurs étrangers temporaires au Québec : le paradis un peu plus loin. *Revue de droit comparé du travail et de la sécurité sociale*. 1: 58-69. [http://digitool.Library.McGill.CA:80/R/-?func=dbin-jump-full&object\\_id=168448&silolibrary=GEN01](http://digitool.Library.McGill.CA:80/R/-?func=dbin-jump-full&object_id=168448&silolibrary=GEN01)

<sup>5</sup> Government of Canada. (2020, November 5). *COVID-19: Main modes of transmission*. Retrieved from: <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/health-professionals/main-modes-transmission.html>

<sup>6</sup> Van Doremalen, N., Bushmaker, T., Morris, D. H., Holbrook, M. G., Gamble, A., Williamson, B. N., ... & Lloyd-Smith, J. O. (2020). Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1. *The New England Journal of Medicine*, 382(16), 1564–1567. <https://doi.org/10.1056/nejmc2004973>

government permitted some employers of migrant agricultural workers to submit three-year-old housing inspection reports instead of requiring up-to-date evidence of compliance with the TFWP.<sup>7</sup> These virtual inspections relied on photographs supplied by farmers and interviews with workers onsite as evidence, exacerbating the absence of enforcement measures in this policy response to COVID-19 in agriculture. As a mode of labour inspection, desk-based inspections are well-documented to be unreliable means of assessing the presence or absence of violations of minimum standards.<sup>8,9,10</sup> Furthermore, as more essential services and government agencies have focussed their attention on digital communication, barriers to services, support and communication have been further complicated for migrant agricultural workers. Common challenges to communication include a lack of access to landlines, poor cellular connectivity in rural areas and unreliable internet connections in workers' accommodations. The latter is particularly problematic for migrant workers who often only have access to WhatsApp, which does not permit toll-free calls, calls to landlines or to 911, creating further barriers for workers' access to emergency and general health care, which is especially crucial amid the COVID-19 context (see Section 18 for additional details).

Early in the pandemic, some local health units in Canada took steps to curb foreseeable on-farm outbreaks linked to shared housing. For instance, in Ontario, Haldimand-Norfolk's medical officer of health implemented requirements, through a Section 22 Order of the *Health Protection and Promotion Act* (1990), that no more than three workers could be housed together during the self-isolation period. Facing opposition from growers, the requirement was then overturned in July, but in August 2020, following outbreaks at large farms (which demonstrated the high risks of community-to-farm transmission associated with over-capacity and poor-quality congregate accommodations in the industry), a divisional court ruling reinstated the public health order of a maximum of three in shared accommodation to limit transmission.<sup>11</sup>

## **Recommendations:**

### **National Housing Standard**

To improve living conditions for workers and safeguard their health and safety, a federal housing standard must be established and enforced for the SAWP and all other agricultural workers coming through the Temporary Foreign Worker Program's agricultural stream. The National Housing Standard should conform with recognized standards for housing and related infrastructure, specifically fundamental principles outlined by the UN, and thereby encompass "security of tenure; availability of services, materials, facilities, and infrastructure, including... [potable] water, energy and space for food storage and preparation, etc.; affordability; habitability, i.e., protected against cold, damp, heat, wind, other threats to health, etc.; accessibility; location (i.e., not cut off from health-care services, grocery stores, and social facilities; and cultural adequacy)".<sup>12</sup> Accommodations must also

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<sup>7</sup> Smith, A. (2015). The bunk house rules: a materialist approach to legal consciousness in the context of migrant workers' housing in Ontario. *Osgoode Hall Law Journal* (1960), 52(3), 863.

<sup>8</sup> Baum, K. B. & Grant, T. (2020, July 13). Ottawa didn't enforce rules for employers of migrant farm workers during pandemic. *The Globe and Mail*. Retrieved from <https://www.theglobeandmail.com/canada/article-how-ottawas-enforcement-regime-failed-migrant-workers-during-the/>

<sup>9</sup> Vosko, L. F., Tucker, E., & Casey, R. (2019). Enforcing Employment Standards for Migrant Agricultural Workers in Ontario, Canada: Exposing underexplored layers of vulnerability. *International Journal of Comparative Labour Law and Industrial Relations*, 35(2), 227-254.

<sup>10</sup> Hardy, T., & Howe, J. (2019). Out of the Shadows and into the Spotlight: The Sweeping Evolution of Employment Standards Enforcement in Australia. In L. Vosko (Ed.), *Closing the Employment Standards Enforcement Gap: Improving Protections for People in Precarious Jobs*. Toronto, Ontario: University of Toronto Press.

<sup>11</sup> *Schuyler Farms Limited v. Dr. Nesathurai*, ONSC 4711 (2020, August 27). Retrieved from [https://www.cavalluzzo.com/docs/default-source/default-document-library/schuyler-farms-limited-v-dr-nesathurai-final-for-signing-aug-27-20-signed.pdf?sfvrsn=97e459d5\\_0](https://www.cavalluzzo.com/docs/default-source/default-document-library/schuyler-farms-limited-v-dr-nesathurai-final-for-signing-aug-27-20-signed.pdf?sfvrsn=97e459d5_0)

<sup>12</sup> UN. Office of the High Commissioner for Human Rights [OHCHR]. (2014). *The right to adequate housing*, Fact Sheet No. 21/Rev.1. [https://www.ohchr.org/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf](https://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf)

be gender-sensitive and responsive (i.e., ensuring privacy and security for men and women workers) and free of gender-based violence or harassment.

As this national housing standard does not yet exist, flowing from the experience with the first wave of COVID-19, the following modifications to the CONTRACT are required in the immediate term.

1. ***The CONTRACT should specifically outline housing standards and infrastructure.***  
Employers must provide clean, adequate living accommodations for workers. The CONTRACT should specify minimum bed size and spacing, number of windows and doors, privacy measures (including locking access doors and individual locked storage space), and maximum number of workers who can share bathroom, kitchen and laundry facilities to ensure adequate access during off-hours from work. Standards for ventilation, maximum occupancy and shared housing facilities must be outlined with sufficient detail to lead to the development of a rigorous national housing standard (as outlined in point 1). Exact standards for housing occupancy and safety must be determined by consultation with experts in health, ventilation and congregate living.<sup>13</sup>
2. ***The worker should not incur costs associated with employer compliance to housing standards.*** Section 2, article 2.b should be removed to ensure that the costs of the changes proposed above are not borne by the worker.
3. ***During the mandatory post-arrival quarantine period numbers of occupants in shared accommodations should be limited to 3 to ensure adequate space for physical distancing.*** A clause should be added to Section 2 of the CONTRACT to this effect. This proposal flows from the above-mentioned court decision in Ontario.<sup>11</sup> Furthermore, prior expert recommendations provide guidance as to measures that should be adopted to prevent virus spread, such as ideally, housing workers in a private room, and if not, with adequate distancing and floor to ceiling barriers to prevent virus spread and provision of maximum of 5 workers per hand-washing station/washroom, and regularly scheduled professional cleaning for all common areas (see MWH-EWG recommendations, June 2020).<sup>14</sup>
4. ***Following the quarantine period, housing requirements must still allow workers to have adequate distancing,*** both in bedrooms and shared washrooms, kitchens and other common living areas. Clear ratios that minimize risk of virus spread for all living areas should be outlined (see MWH-EWG recommendations, June 2020)<sup>15</sup> and enforced by federal authorities.
5. ***Wi-Fi and Landline telephones should be requirements*** for all agricultural worker housing to facilitate communication with necessary health and social care services, and to establish a consistent line of communication for up-to-date COVID-19 measures.

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<sup>13</sup> American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE]. (2014). *ASHRAE's Standard 62.2. Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings*. Retrieved from [https://www.energy.gov/sites/prod/files/2014/12/f19/ba\\_innovations\\_2014\\_ASHRAE%2062\\_2.pdf](https://www.energy.gov/sites/prod/files/2014/12/f19/ba_innovations_2014_ASHRAE%2062_2.pdf)

<sup>14</sup> Migrant Worker Health Expert Working Group [MWH-EWG]. (2020, June 09). *Recommendations for Overcoming Health Challenges Faced By Migrant Agricultural Workers during the COVID-19-Virus Pandemic*. (pp. 6-7). Retrieved from <http://www.migrantworker.ca/wp-content/uploads/2020/06/June-9-2020-HC-recommendations.pdf>

<sup>15</sup> Ibid. (pp. 13-14).

## Enforcement of Housing Standards

In the absence of adequate oversight, violation of and non-compliance to existing housing guidelines places workers at an increased risk for COVID-19, as evidenced by a recent outbreak among 40 workers in Elgin County, currently under investigation by Southwestern Public Health.<sup>16</sup>

6. ***Federal enforcement of housing standards through both regular unannounced onsite inspections and announced blitzes.*** To ensure forthcoming federal National Housing Standards are meaningful, they should be proactively enforced through regular, unannounced, on-site inspections coupled with announced blitzes as a measure of deterrence.

## National Integrated Complaints Hotline

An accessible and anonymous mechanism for workers to make complaints about their living accommodations should be developed. In order to be effective, this phone line should be staffed in real-time by individuals trained to understand barriers faced by migrant agricultural workers and operate at times that are accessible to workers. This hotline should provide a centralized method for workers to make complaints to facilitate enforcement, and staff members should also be mandated to refer workers to an overarching resources helpline (introduced and described below) providing for supports in areas such as health care.

7. ***A national, integrated COMPLAINTS HOTLINE, accessible to workers in multiple languages and via multiple applications (ex. WhatsApp), should be established*** to deal with issues where federal authorities are required to connect with provincial authorities in a timely manner (e.g., habitability, facilities etc.). The existence of this phonenumber should be noted in a new contractual clause in Section 2.
8. ***The CONTRACT should also mandate that workers have meaningful knowledge and access to the integrated COMPLAINTS HOTLINE*** by way of the addition of a clause stating that EMPLOYERS agree to notify WORKERS about, and provide a private phone line for WORKERS to access, the national complaints hotline. This should be mandated in Section 2 of the CONTRACT.

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<sup>16</sup> Dubinski, K. (2020, November 3). 40 workers at Elgin County orchard test positive for COVID-19. *CBC/Radio-Canada*. Retrieved from <https://www.cbc.ca/news/canada/london/elgin-farm-covid-1.5788053?fbclid=IwAR2Q2MY2n5-SxXpfpIzBZnlqYO-z0HGD8DK3EZ635jgZ04wbUbpjUiOg5M>

### 3. OCCUPATIONAL HEALTH & SAFETY

#### Relevant Clauses of the Contract for the Employment in Canada of Seasonal Agricultural Workers from Mexico - 2020: V Health and Safety Of Workers, VIII 3b. Obligations of the Employer

**Rationale/Concern:** Agriculture is one of the most hazardous industries in Canada. For example, in Ontario, the agricultural industry had the highest lost time injury rate in eight years between 2010 and 2019.<sup>1</sup> While reliable statistical data on injury and disease rates among seasonal agricultural and migrant workers does not exist, numerous reports document the hazardous conditions they face.<sup>2</sup> Most recently, the COVID-19 pandemic has severely affected migrant agricultural workers with well-documented outbreaks at several farms,<sup>3</sup> and three confirmed COVID-19 related deaths of workers. As acknowledged by Canadian federal government interventions, and documented by social movement organizations, the cause of these outbreaks has been traced both to housing and working conditions.<sup>4, 5</sup>

Yet despite the hazardous conditions and high risk of injury and disease compared to other work, the current CONTRACT makes scant provision for occupational health and safety regulation. Section V.1 stipulates that Employers agree to comply with all applicable laws and regulations and provide for compensation for work injuries in the absence of workers' compensation laws. The CONTRACT only spells out one specific obligation in Section V.2, which is that the Employer shall not require the worker to perform job duties for which they have not received training in accordance with applicable legal requirements and that workers may decline to perform such duties without penalty or consequence of any kind. Arguably, this is an extension of the right to refuse unsafe work beyond what the law may presently protect, but it may also create the misleading impression for workers who read the CONTRACT that this is the only circumstance in which they may refuse unsafe work.

Although health and safety legislation varies by federal, provincial, and territorial jurisdiction, research identifies gaps in health and safety that place workers at risk.<sup>6, 7, 8</sup> A commitment to supporting the workplace health and safety of workers has not been prioritised and standardised in the CONTRACT at the national level. Nor has enforcement been coordinated through federal collaboration with the provinces/ territories.

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<sup>1</sup> Workplace Safety and Insurance Board [WSIB]. *By the Numbers: 2019 WSIB Statistical Report*. WSIB Ontario. Retrieved from [http://www.wsibstatistics.ca/S1/Discussion%20and%20Analysis%20-%20WSIB%20By%20The%20Numbers\\_P.php](http://www.wsibstatistics.ca/S1/Discussion%20and%20Analysis%20-%20WSIB%20By%20The%20Numbers_P.php)

<sup>2</sup> Caxaj, C. S., & Cohen, A. (2019). "I Will Not Leave My Body Here": Migrant Farmworkers' Health and Safety Amidst a Climate of Coercion. *International journal of environmental research and public health*, 16(15), 2643. <https://doi.org/10.3390/ijerph16152643>

<sup>3</sup> Detsky, B. & Bogoch, I. (2020). COVID-19 in Canada: Experience and Response. *JAMA : the Journal of the American Medical Association*, 324(8), 743–744. <https://doi.org/10.1001/jama.2020.14033>

<sup>4</sup> Employment and Social Development Canada [ESDC]. (2020b, July 31). *Government of Canada invests in measures to boost protections for Temporary Foreign Workers and Address COVID-19 Outbreaks on Farms*. Retrieved from <https://www.canada.ca/en/employment-social-development/news/2020/07/government-of-canada-invests-in-measures-to-boost-protections-for-temporary-foreign-workers-and-address-covid-19-outbreaks-on-farms.html>

<sup>5</sup> Migrant Workers Alliance for Change [MWAC]. (2020). *Unheeded warnings: COVID-19 & Migrant Workers in Canada*. <https://migrantworkersalliance.org/wp-content/uploads/2020/06/Unheeded-Warnings-COVID19-and-Migrant-Workers.pdf>

<sup>6</sup> Gravel, S., Villanueva, F., Hanley, J., Bernstein, S., Crespo Villareal, D., Ostiguy, E. (2014). Les mesures de santé et sécurité au travail auprès des travailleurs étrangers temporaires: le cas du secteur agro-alimentaire. *PISTES*, 16(2). <https://doi.org/10.4000/pistes.3912>

<sup>7</sup> Hanley, J., Gravel, S., Lippel, K., & Koo, J-H., (2014). Pathways to Healthcare for Migrant Workers: How can health entitlement influence occupational health trajectories? *PISTES*, 16(2). <https://doi.org/10.4000/pistes.3980>

<sup>8</sup> McLaughlin, J., Hennebry, J., & Haines, T. (2014). Paper versus Practice : Occupational Health and Safety Protections and Realities for Temporary Foreign Agricultural Workers in Ontario. *PISTES*, 16(2). <https://doi.org/10.4000/pistes.3844>

## The External Responsibility System

Canadian OHS regulation is said to be built on the Internal Responsibility System (IRS), which emphasises an employee-employer partnership in ensuring a safe and healthy workplace through the formation of joint health and safety committees. However, in the context of the seasonal agricultural worker programs, wherein the precarious immigration status of migrant workers limits their ability to act as their own protagonists, the External Response System (ERS) must be given priority. Unlike the IRS focus on internal interactions between workplace parties, ERS prioritises the participation of parties outside of the workplace who have considerable influence and ability to control the workplace. Therefore, we start with recommendations that address the ERS and then turn to recommendations for the IRS.

### *Standards*

1. ***Establish standards that stipulate employer responsibility.*** Formulate OHS standards that specify employers' overarching duty to take every precaution reasonable in the circumstances for the protection of workers in *addition* to complying with specified statutory and regulatory requirements.

### *Enforcement*

Provinces/territories have exclusive jurisdiction to enforce their own laws and so have an important role to play in the ERS. However, the obligation to comply with provincial/territorial law also exists in the CONTRACT and thus any violation of those laws is also a violation of the CONTRACT and thus comes within federal jurisdiction. Still, despite the federal government's legal authority to take enforcement actions in response to violations of provincial/territorial OHS laws, currently, federal inspectors do not seem to be involved in OHS enforcement. As we have recommended in the Section on Labour Inspections, the primacy of federal enforcement of the CONTRACT, including violations of provincial/territorial laws that employers are contractually bound by, should be made clear.

2. ***The federal inspection regime must be given primary responsibility*** for enforcing the CONTRACT, including violations of provincial/territorial law.
3. ***The Canadian government should seek to enter into agreements with provincial/territorial governments*** where migrant agricultural workers are employed to share inspection information. In particular, violations of applicable provincial/territorial OHS laws and regulations detected by provincial enforcement authorities, in workplaces where migrant agricultural worker are employed and that affect these workers, should be automatically communicated to federal inspectors, who should then take appropriate action to secure compliance with the CONTRACT.

Currently, OHS enforcement is predicated upon complaint-based inspections, and is reliant on workers making complaints and inspectors conducting inspections in response to complaints received. However, there is ample evidence that workers are reluctant to make complaints in a climate where they fear being terminated or not being invited for the next season.<sup>6, 7, 8</sup> Other proposed CONTRACT provisions aim to ameliorate that concern, but fear of reprisal is likely to continue curtailing the willingness of workers to complain in the future.

4. ***Provide for anonymous complaints through a COMPLAINTS HOTLINE*** (discussed elsewhere), for third-party complaints through approved organizations and for complaints from the Government Agent to federal enforcement authorities.
5. ***Specify that when complaints are received by federal enforcement authorities they will be communicated to the relevant provincial or territorial enforcement agency.*** Further, federal authorities must insure that a complaint-based inspection is conducted as soon as possible by the federal enforcement agency or by the provincial enforcement agency or by both.

### **The Internal Responsibility System**

Despite the obstacles identified above, the IRS is vital to workplace health and safety, and the prevention of workplace illness and injury among agricultural workers in Canada. Under Canadian OHS laws, workers have a right to know, a right to participate, and a right to refuse. An effective IRS requires a clear commitment to worker OHS rights, and a commitment by employers to their OHS responsibilities, including providing workers with training on their rights, workplace hazards and safety practices, as well as supporting workers' inquiries and reporting of OHS concerns. Currently, the CONTRACT touches on worker rights in one context only: the right to training and the right to refuse work when training is not provided. Research has identified that many agricultural worksites do not have active health and safety committees or reps, even when they are a requirement.<sup>9</sup> The CONTRACT does not articulate worker participation rights in the IRS.

The right to know is foundational to worker protection and the exercise of worker rights. Therefore, it is vitally important that employers have an OHS communication plan so that workers understand the hazards involved in their work, as well as the safety practices and measures in place to protect from them. As part of that plan, it is also imperative that workers are able to ask questions, identify hazards, or raise concerns and understand responses provided by management. The capacity of employers to communicate with non-English speaking workers is crucial to a successful communication strategy. Further, many workers identify challenges with literacy, and therefore alternatives to written materials, especially materials conveying health and safety information and guidance, may be required.

An effective "worker right to know" also requires that workers receive proper health and safety training. OHS law currently mandates that workers do receive basic health and safety training; however, research has shown that many workers did not receive this training, or identified facing challenges in understanding it.<sup>8</sup> It is also imperative that OHS training be designed and delivered to address the communication barriers identified above. Finally, the importance of protecting workers' mental health and addressing workplace violence and harassment cannot be under-estimated. Currently, provincial health and safety laws require employers to have policies and programs to address workplace violence and harassment programs.

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<sup>9</sup> Cedillo, L., Lippel, K., & Nakache, D. (2019). Factors Influencing the Health and Safety of Temporary Foreign Workers in Skilled and Low-Skilled Occupations in Canada. *New Solutions*, 29(3), 422–458. <https://doi.org/10.1177/1048291119867757>

6. ***The CONTRACT should identify and briefly explain OHS rights to workers,*** specifically, workers' right to know, right to participate, right to refuse, right to participate in the IRS, and right to protection against reprisals.
7. ***Federal and provincial governments should clarify the requirement of OHS training for agricultural workers.*** This should include training in respect of the hazards that are present in the workplace and the safety practices in place to protect them, and must emphasize worker rights and protection from reprisals and access to workers' compensation in cases of work-related illness and injury.
  - a. Federal and provincial governments should prepare and provide comprehensive resources that address worker language and literacy needs to support employers in providing this training effectively.
  - b. Federal and provincial inspectors should ensure that workers receive the required training in a manner that is responsive to communications barriers identified above.
8. ***Provide that the employer must have a written OHS communication plan.*** Such plans must inform workers of the hazards involved in their work, the measures the employer is taking to address those hazards, and the ways in which workers can communicate their OHS concerns to the employer. Communication plans should also promote increased confidence and participation in OHS.
  - a. The CONTRACT should specify that employers should have an OHS communication plan that stipulates how they will provide training and OHS information to all workers, including non-English speaking workers and workers with low English literacy skills.
  - b. Employers should stipulate how they will follow-up training with sustained two-way OHS communication, and how they will support workers' capacity to ask questions or raise OHS concerns, on an ongoing basis throughout the season.
  - c. Employers should stipulate how they will promote worker participation in OHS, towards achieving the standard required of the IRS, and building a supportive OHS workplace culture, with a clear commitment to anti-reprisals.
  - d. The CONTRACT should specify that federal and provincial governments will develop a standard to assess OHS communication plans, and assess these plans during government OHS workplace inspections.
  - e. Provide that the federal government in partnership with provincial stakeholders shall identify, develop, and direct employers to resources and supports to effectively communicate OHS information to and with workers.
9. ***Clarify requirements for joint health and safety committees and health and safety representatives.*** The employer must clarify how they will plan and organise a health and safety committee, and how they will ensure participation in the committee addresses the language and literacy needs of workers. Where there is a requirement, the employer must clarify how they will establish and maintain the work of workplace Joint Health and Safety Committees or Health and Safety Representatives, and how they will ensure workers are able to participate and/or engage with committees and representatives, including workers with language and literacy needs.

9. ***Specify that workers cannot be subject to reprisal for exercising their OHS rights.*** The CONTRACT should specifically state: "Employers are prohibited from reprisals against the worker because the worker has exercised his or her legal rights or sought enforcement of the employer's OHS obligations."
10. ***Provide a COMPLAINTS HOTLINE for workers who have experienced a reprisal.*** This hotline should be overseen and staffed regularly by personnel drawn from Canada's federal enforcement agency who are multilingual.
- a. The federal enforcement agency shall forthwith advise the Government Agent of the alleged reprisal and notify the relevant provincial or territorial enforcement authority.
  - b. Additionally, the federal enforcement agency shall forthwith call the Employer against whom the allegation has been made to advise that the alleged reprisal shall cease and that if the employer believes that action adverse to the Worker is warranted on other grounds, it may apply to the Tribunal for permission to discipline or discharge the worker.
11. ***Health and safety training must address workplace violence and harassment, including psychological and sexual harassment and/or gender-based violence.*** Training must include modules on the employers' workplace violence and harassment programs and policies. These programs and policies shall be presented in ways that are responsive to the communications barriers identified above.
- a. The CONTRACT should specify to whom workers should appeal to if violence or harassment is not addressed by workplace management, and clarify how workers will be protected from reprisals if they seek this support.
12. ***Specify that health and safety training address workplace stress and mental health in the workplace.*** Training should include modules on workplace mental health and wellness, including a review of workplace stress. Employers should provide information on mental health resources to all workers they hire, and develop a workplace strategy that supports workplace mental health and wellness.

## 4. LABOUR STANDARDS

### **Relevant Clauses of the CONTRACT for the Employment in Canada of Seasonal Agricultural Workers from Mexico - 2020: I. Scope and Period of Employment, II. Lodging Meals and Rest Periods, III. Payment of Wages, IV. Deduction of Wages, V. Maintenance of Work Records and Statement of Earnings, X. Early Cessation of Employment**

**Rationale/Concern:** The conditions of work and employment of temporary migrant workers in agriculture are governed, at once, by provincial and federal immigration and workplace laws. Provincially, they are governed by employment standards legislation, and federally they are governed by regulations to the *Immigration and Refugee Protection Act* (2002). This overlapping jurisdiction, together with the limited scope of coverage of agricultural workers under provincial workplace laws, contributes to a series of enforcement gaps. At the provincial level, agricultural workers, including migrant workers employed under the SAWP, are often subject to a range of exemptions and special rules under the relevant employment standards legislation; for example, in Ontario they are exempt from the regulations regarding hours of work, rest and eating periods, overtime, and collective bargaining.<sup>1</sup> Consequently, in instances in which provincial labour inspection occurs, inspectors can only enforce a scant number of standards, just six of ten standards defined as core standards by the provincial inspectorate in Ontario.<sup>1</sup> Such inconsistencies not only contribute to gaps in enforcement, but to confusion and limited knowledge among migrant agricultural workers about their labour rights while working in Canada. For example, recent research conducted in British Columbia indicates that 48.6% of migrant agricultural workers are unsure or do not know what rights they have as workers.<sup>2</sup>

SAWP agreements, operating at a federal level, provide workers with entitlements that may exceed their ESA entitlements,<sup>1</sup> including the calculation of minimum wages (Canada-Mexico CONTRACT, III.6), seniority bonuses (III.5) and minimum hours (III.4). However, even though Canada's federal government granted ESDC and IRCC the power to actively review employers of migrant workers through Employer Compliance Reviews in 2011, and implemented further regulatory changes creating broader enforcement and inspection powers for ESDC in 2012, federal inspectors are directed to depend on provincial/territorial enforcement authorities to detect violations of provincial laws. These arrangements produce gaps in the enforcement of the Contractual provisions protecting the labour standards of migrant agricultural workers.<sup>3</sup> These gaps are amplified by the compliance orientation of both provincial and federal labour standards enforcement, which, in its reliance on complaints as the principal basis of enforcement activity, neglects power imbalances in employment relationships between workers and their Canadian-based employers, amplified by the veritable threat of employer reprisals confronting workers on account of their deportability. So, in practice, workers are burdened with various risks to report employment standard violations, with limited safeguards to ensure their short-term and long-term livelihood in pursuing their rights. The recommendations below aim to address these problems.<sup>2</sup>

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<sup>1</sup> Vosko, L., Tucker, T. & Casey, R. (2019). Enforcing Employment Standards for Temporary Migrant Agricultural Workers in Ontario, Canada: Exposing Underexplored Layers of Vulnerability. *The International Journal of Comparative Labour Law and Industrial Relations*, 35(2), 227–254.

<sup>2</sup> Caxaj, S., Cohen, A., & Colindres, (2019). *Testing a Support Model to Address Gaps in Service that Contribute to Migrant Agricultural Workers' Vulnerability in the Okanagan Valley. 2019-2021*. [Unpublished research funded by the Vancouver Foundation: FO118-0185].

<sup>3</sup> Marsden, S., Tucker, E. & Vosko, L. (2020). Federal Enforcement of Migrant Workers' Labour Rights in Canada: A Research Report. *Articles & Book Chapters*. 2795. Retrieved from [https://digitalcommons.osgoode.yorku.ca/scholarly\\_works/2795/](https://digitalcommons.osgoode.yorku.ca/scholarly_works/2795/)

## The Primacy of Federal Inspection and Enforcement

Canada's federal structure raises legitimate questions about the respective role of federal and provincial enforcement. However, the obligation to enforce the CONTRACT rests on the Canadian government, not the provincial governments. Moreover, because the CONTRACT requires employers to comply with provincial laws, violations of those laws are also violations of the CONTRACT bringing them within federal immigration jurisdiction to enforce. Given the gaps identified above, it is important that federal enforcement authorities be clearly recognized in the CONTRACT as having primary enforcement responsibility for all Contractual obligations.

1. ***The federal inspection regime must be given primary responsibility*** for enforcing the CONTRACT, including violations of provincial/territorial law.
2. ***The Canadian government should seek to enter into agreements with the governments of provinces/territories where temporary migrant workers in agriculture are employed to share inspection information.*** In particular, violations of applicable provincial/territorial laws detected by provincial enforcement authorities in workplaces where migrant agricultural workers are employed and that affect these workers should be automatically communicated to federal inspectors, who should then take appropriate action to secure compliance with the CONTRACT.

## Proactive Enforcement

The well-documented vulnerability of temporary migrant workers in agriculture discussed previously makes it crucial that proactive enforcement be central to the enforcement of labour rights in the CONTRACT.

3. ***The federal inspectors should schedule mid-term seasonal inspections*** of all farms employing temporary migrant workers. These inspections should be unannounced and include the meaningful participation of employees. This participation must be kept confidential from the employer and conducted in a culturally appropriate and accessible manner (e.g., in the languages that workers speak). Recruitment of these informants should be done at arms-length from an employer or employer representative (e.g., a supervisor or foreman). All inspections should have accessible signage and contact information posted so that anyone who has a concern can report these issues to an inspector. Given the evidence that they play a role in deterrence, announced blitzes, targeted both to agriculture and workplaces in which migrant workers are present, should also be carried out.<sup>1</sup>

## Reactive Enforcement

Reactive enforcement must complement proactive enforcement since violations may occur episodically, in which case they would not necessarily be detected on proactive inspections. However, measures must be put in place to ameliorate the reluctance workers may feel about making complaints. Measures should also improve transparency and communication throughout the

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<sup>1</sup> Vosko, L., Tucker, T. & Casey, R. (2019). Enforcing Employment Standards for Temporary Migrant Agricultural Workers in Ontario, Canada: Exposing Underexplored Layers of Vulnerability. *The International Journal of Comparative Labour Law and Industrial Relations*, 35(2), 227–254.

inspection process, key elements to bolstering workers' confidence in the enforcement regime and to ensuring a more comprehensive assessment of issues of concern.

4. ***The federal government should create a COMPLAINTS HOTLINE for all labour standards complaints***, that accepts anonymous complaints (including from third parties) and funnels them to the federal inspectors who will conduct follow up investigations (See Section 5 for more details).<sup>4</sup>
5. ***The federal government should enter into agreements with groups representing workers*** that recognize them as official conduits for worker complaints to the federal inspectors. Upon receiving complaints from these recognized sources, the federal inspectors will conduct follow-up investigations that endeavour to preserve the anonymity of workers raising concerns with these groups.<sup>5, 6</sup>
6. ***Comprehensive follow-up should be provided to the reporting party*** (i.e., the worker(s) or worker(s) representative) following the investigation of complaints (i.e., after federal inspection). This communication must occur in the reporting party's preferred language using a medium that is accessible to them (e.g. phone, WhatsApp messaging).

### Deterrence Measures

In their study of the federal enforcement regime introduced under the *Immigration and Refugee Protection Act* (2002) in 2015, Marsden, Tucker and Vosko found that federal inspectors overwhelmingly treat detected violations as justifiable, provided restitution is made to workers whose rights have been violated.<sup>3</sup> While securing restitution is an important enforcement goal, in the absence of a meaningful risk of penalties, employers may fail to exercise due diligence in ensuring that violations do not occur in the first place. Furthermore, workers may be risking their livelihoods and status in the SAWP by lodging a complaint, and thus, the federal government's response must account for this vulnerability.

7. ***The federal government should instruct federal inspectors to impose monetary penalties*** for violations of labour rights. Penalties for violations of administrative obligations (such as posting of notices) should remain discretionary.
8. ***The federal government should instruct federal inspectors to recommend more serious penalties*** for flagrant or repeat violations.
9. ***Workers who report violations should be provided with short-term accommodation and wage compensation, where required.*** The provision of these resources should be facilitated by federal officials and ensured by the federal government.

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<sup>3</sup> Marsden, S., Tucker, E. & Vosko, L. (2020). Federal Enforcement of Migrant Workers' Labour Rights in Canada: A Research Report. *Articles & Book Chapters*. 2795. Retrieved from [https://digitalcommons.osgoode.yorku.ca/scholarly\\_works/2795/](https://digitalcommons.osgoode.yorku.ca/scholarly_works/2795/)

<sup>4</sup> Parliament of the Commonwealth of Australia. (2020, September). *Interim report of the inquiry into the working holiday maker program*. Retrieved from [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportint/024543/toc\\_pdf/InterimReportoftheInquiryintotheWorkingHolidayMakerProgram.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportint/024543/toc_pdf/InterimReportoftheInquiryintotheWorkingHolidayMakerProgram.pdf;fileType=application%2Fpdf)

<sup>5</sup> Fine, J. (2017). Enforcing Labor Standards in Partnership with Civil Society: Can Co-enforcement Succeed Where the State Alone Has Failed? *Politics & Society*, 45(3), 359–388. <https://doi.org/10.1177/0032329217702603>

<sup>6</sup> Gordon, J. & Fine, J. (2010). Strengthening Labor Standards Enforcement through Partnerships with Workers' Organizations. *Politics & Society*, 38(4), 552–585. <https://doi.org/10.1177/0032329210381240>

10. ***Workers whose rights have been violated should be guaranteed positions in the SAWP*** for a minimum of two years going forward and/or, made immediately eligible for permanent residence (rather than solely having the option of applying for a vulnerable worker open permit under the IRPR (2015)).

### **Communications Strategy**

As documented elsewhere, communication with workers for whom English is not a first language or whose literacy level is limited, poses a challenge. However, effective labour inspection requires that enforcement officers be able to communicate with workers.

11. ***The federal government should create a communications strategy*** to provide for effective communication between federal inspectors and temporary migrant agricultural workers.

## **5. INSPECTION AND ENFORCEMENT**

**Rationale/concern:** The importance of inspection and enforcement has been emphasized in relation to housing, occupational health and safety, and labour standards. In each of those sections, we have made recommendations to improve upon current inspection and enforcement practices. However, it is important that the practice of inspection and enforcement not be compartmentalized into discrete areas, since that would result in unnecessary complexity, expense and, ultimately, ineffectiveness.<sup>1,2</sup> Therefore, we recommend a unified approach to inspection and enforcement that is undergirded by the following principles.

### **1. The Primacy of Federal Enforcement**

The CONTRACT (Section V.1) requires employers to “comply with all laws, regulations and by-laws respecting conditions set by competent authority...”. This obligation extends to local housing by-laws and to provincial occupational health and safety regulations and employment standards. A violation of these laws, therefore, is not just a matter for local authorities, but also a violation of the CONTRACT, which brings it within the exclusive jurisdiction of the federal government under its Immigration law powers.

It is essential that the principle of federal primacy be made clear, for several reasons.<sup>1</sup> First, the CONTRACT is an agreement between two state parties and so it is only the signatory governments that can be held responsible for its enforcement. Second, the efficacy of local and provincial inspection and enforcement regimes is highly variable and, as we have documented elsewhere, often results in significant compliance gaps. The primacy of federal inspection provides a way to address these compliance gaps that deprive workers of the legal protections that the CONTRACT provides. Finally, the primacy of federal enforcement will allow the creation of an effective centralized authority that workers and others can turn to for redress.

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<sup>1</sup> Marsden, S., Tucker, E. & Vosko, L. (2020). Federal Enforcement of Migrant Workers' Labour Rights in Canada: A Research Report. *Articles & Book Chapters*. 2795. [https://digitalcommons.osgoode.yorku.ca/scholarly\\_works/2795/](https://digitalcommons.osgoode.yorku.ca/scholarly_works/2795/)

<sup>2</sup> Vosko, L. F., Tucker, E., & Casey, R. (2019). Enforcing Employment Standards for Migrant Agricultural Workers in Ontario, Canada: Exposing underexplored layers of vulnerability. *International Journal of Comparative Labour Law and Industrial Relations*, 35(2), 227-254.

## **2. A Centralized and Integrated COMPLAINTS HOTLINE**

Although we have called for hotlines for worker complaints about CONTRACT violations in relation to housing, OHS or employment standards, a single COMPLAINTS HOTLINE, staffed by federal government personnel well-trained in these areas, who are instructed in how and where to direct complaints (normally to federal inspectors), is desirable. A communications plan for responding to complaints received from workers who are not fluent English or French language speakers is also necessary. Furthermore, there should be seamless coordination between both the integrated COMPLAINTS HOTLINE and the RESOURCES HELPLINE (see recommendations in Section 6) given that workers may have difficulty ascertaining the proper channel or department that is responsible for specific concerns. As well, in some cases, workers who are experiencing CONTRACT violations, may also require legal, medical or social support (and vice versa), further emphasizing the need for coordination between the COMPLAINTS HOTLINE and RESOURCES HELPLINE.

## **3. Formal Recognitions of Authorized Third Parties**

Because workers may be fearful of retaliation as a result of making complaints, they should be provided with additional pathways to raise issues.<sup>2</sup> In some cases, workers may already have established communication channels with non-government organizations that provide services and support and to whom workers might turn if they believe that they are experiencing a violation of the CONTRACT. The federal government should create a process whereby such organizations can become authorized third parties so that when they communicate a complaint to the federal inspectors, the federal inspectors are required to investigate the matter.

## **4. Federal Provincial Communication Agreements**

Notwithstanding the principle of federal enforcement primacy, local and provincial governments have jurisdiction to enforce their respective laws. Moreover, while there are often enforcement gaps,<sup>2,3</sup> these levels of government operate inspection and enforcement programs that detect violations of their laws. It is essential, therefore, that when local and provincial enforcement authorities detect violations at workplaces where migrant agricultural workers are employed and that may affect migrant agricultural workers, that they communicate these violations to the federal inspectors so that they take appropriate enforcement action. It should also be made clear that federal enforcement action is not in lieu of provincial or local enforcement, rather in addition to it.

## **5. Proactive Enforcement**

Research shows that vulnerable workers who are at greater risk of experiencing labour rights violations are also less likely to complain about violations than are more secure workers who

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<sup>2</sup> Vosko, L. F., Tucker, E., & Casey, R. (2019). Enforcing Employment Standards for Migrant Agricultural Workers in Ontario, Canada: Exposing underexplored layers of vulnerability. *International Journal of Comparative Labour Law and Industrial Relations*, 35(2), 227-254.

<sup>3</sup> Tucker, E., Hall, A., Vosko, L., Hall, R., & Siemiatycki, E. (2016). Making or Administering Law and Policy? Discretion and Judgment in Employment Standards Enforcement in Ontario. *Canadian Journal of Law and Society*, 31(1), 65–86. <https://doi.org/10.1017/cls.2015.34>

are at lower risk.<sup>4</sup> Therefore, a complaint-driven enforcement strategy will misallocate its limited resources and fail to detect and address violations in the sites where they are most common and against the population that is most vulnerable.<sup>5</sup> In the context of the SAWP, a complaint-driven enforcement strategy at both the provincial/territorial and federal levels will result in workers experiencing labour rights violations that remain unreported and, therefore, undetected, producing substantial enforcement gaps. A proactive enforcement strategy is essential in this context, which should be guided by an evidence-based analysis of where violations are most likely to occur.<sup>6</sup>

## 6. A Communication Strategy

The importance of an effective communication strategy has been emphasized at multiple locations throughout this document. It bears repeating, however, that it is crucial that the federal inspection and enforcement program develop an effective strategy for communicating with migrant agricultural workers who are not fluent in either English or French.

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<sup>4</sup> Vosko, L.F., et al. (2020). *Closing the Employment Standards Enforcement Gap: Improving Protections for People in Precarious Jobs*. Toronto: University of Toronto Press. (See especially Chapters 1-2)

<sup>5</sup> Vosko, L.F., Grundy, J., Tucker, E., Thomas, M. P., Noack, A. M., Casey, R., Gellatly, M., & Mussell, J. (2017). The compliance model of employment standards enforcement: an evidence-based assessment of its efficacy in instances of wage theft: The compliance model of ES enforcement. *Industrial Relations Journal*, 48(3), 256–273. <https://doi.org/10.1111/irj.12178>

<sup>6</sup> Noack, A. M., Hoe, H., & Vosko, L.F. (2020). Who to Inspect? Using Employee Complaint Data to Inform Workplace Inspections in Ontario. *Canadian Public Policy*, 46(3), 429–443. <https://doi.org/10.3138/cpp.2018-065>

## 6. HEALTH AND THE CARE AND TREATMENT OF WORKERS

### Relevant Clauses of the CONTRACT for the Employment in Canada of Seasonal Agricultural Workers from Mexico - 2020: V. Health and Safety of Workers, VIII. Obligations of the Employer (C4, C 6), X. Early Cessation of Employment, XI. Transfer of Workers, XII. Miscellaneous

**Rationale/ Concern:** Migrant agricultural workers have difficulties accessing health care independently. Oftentimes, agricultural work takes place in rural areas outside the reach of urban centres, which do not have adequate resources to provide appropriate health services that address the needs of this population.<sup>1</sup> In addition, housing for SAWP workers is typically located in amenity-poor locations away from clinics and hospitals, and workers routinely lack independent transportation to town centres. As such, in practice, workers must often rely on employers to mediate their access to care. At the same time, they may be justifiably reluctant to report health concerns to their employers or other program officials from either the sending or receiving state. This may be due to the personal nature of the health concern (e.g. sexual or reproductive health issue, mental health, pre-existing health issue they would rather keep private) and/or due to the veritable concern not to do anything to jeopardize a positive relationship with their employer and potentially risk their current or future employment.<sup>2</sup> And yet early treatment of health issues is critical to prevent more serious problems from emerging. These issues rose to the fore during the first wave of the COVID-19 pandemic, when relatively few workers received testing because of their dependence on their employer to facilitate their access.<sup>3</sup> In some cases, workers complained of symptoms but were not provided with access to medical treatment until they became severely ill.<sup>4</sup>

In addition, language and literacy challenges for workers, lack of knowledge about worker eligibility for health insurance, and lack of culturally appropriate care and translation services among providers exacerbate barriers to accessing care.<sup>5</sup> Furthermore, long work hours and lack of access to family doctors, mean that workers must rely on after-hours clinics and hospitals that are often farther away, have longer wait times, and do not sufficiently enable preventative or follow-up care.<sup>1,6,7,8</sup> Access to emergency medical services (EMS) may also be challenging in cases where workers may not have access to communication technologies, and the address and directions to the farm may be unknown to them. These factors have exacerbated COVID-19 outbreaks on farms.<sup>8</sup> They have also complicated the medical trajectory of workers even prior to the pandemic context.

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<sup>1</sup> Hennebry J, McLaughlin J, & Preibisch K. (2016). Out of the Loop: (In)access to Health Care for Migrant Workers in Canada. *Journal of International Migration and Integration*, 17(2), 521–538. <https://doi.org/10.1007/s12134-015-0417-1>

<sup>2</sup> Cole, D. C., McLaughlin, J. E., Hennebry, J. L., & Tew, M. A. (2019). Precarious patients: health professionals' perspectives on providing care to Mexican and Jamaican migrants in Canada's Seasonal Agricultural Worker Program. *Rural and remote health*, 19(4), 5313. <https://doi.org/10.22605/RRH531>

<sup>3</sup> CBC News. (2020, July 09). Leamington mayor wants faster COVID-19 testing, with only 19 farms swabbed. *CBC/Radio-Canada*. Retrieved from <https://www.google.com/url?q=https://www.cbc.ca/news/canada/windsor/on-site-farm-testing-covid19-temporary-foreign-workers-1.5643507&sa=D&ust=1604978760492000&usq=A0vVaw2dyIDGPxQoLXvh9qdrxAQG>

<sup>4</sup> Simpson, K. (2020, June 08). Migrant worker says COVID-19 outbreak mishandled at Norfolk farm. *CTV News*. Retrieved from <https://kitchener.ctvnews.ca/migrant-worker-says-covid-19-outbreak-mishandled-at-norfolk-farm-1.4975059>

<sup>5</sup> McLaughlin, J., Hennebry, J., & Haines, T. (2014). Paper versus Practice: Occupational Health and Safety Protections and Realities for Temporary Foreign Agricultural Workers in Ontario. *PISTES*, 16(2). <https://doi.org/10.4000/pistes.3844>

<sup>6</sup> McLaughlin, J. & Michelle, T. (2018). Migrant Farm Worker Health Care: Unique Strategies for a Unique Population. In A.N. Arya & T. Piggott (Eds.), *Under-Served: Health Determinants of Indigenous, Inner-City, and Migrant Populations in Canada* (pp. 553-264). Toronto, Ontario: Canadian Scholars.

<sup>7</sup> McLaughlin, J., Tew, M., & Huesca, E. (2018). Compounded Vulnerabilities and Creative Strategies: Occupational Health of Temporary Foreign Agricultural Workers. In S. Premji (Ed.), *Sick and Tired: Health and Safety Inequalities*. Canada: Fernwood Publishing.

<sup>8</sup> Cloe, D.C. (2020). Heightened COVID-19 risks to temporary foreign (migrant) agricultural workers (TFAWs) and recommended actions in the 2020 agricultural season: Occupational medicine perspective paper. Retrieved from [https://www.ohcow.on.ca/edit/files/news/covid19/dcc\\_occ\\_med\\_opinion\\_jun2020\\_final.pdf](https://www.ohcow.on.ca/edit/files/news/covid19/dcc_occ_med_opinion_jun2020_final.pdf)

Multiple research projects among our team members have highlighted these issues. For example, in a recent (2019) study of 177 workers employed under the Seasonal Agricultural Worker Program (SAWP), 83.7% of the workers who accessed medical care did not receive an independent translator; 72.1% of workers' care was done with translation by boss/supervisor; 63.7 % believed that their work in Canada put their health at risk; 26.4% believed they would not receive the medical attention they needed if a health issue arose; 61% did not believe they would receive the same quality of care as Canadians; and 44.7% did not believe health care workers understood how health issues would affect their employment.<sup>9</sup>

In an earlier survey of nearly 600 SAWP workers in Ontario, respondents cited numerous common health problems, including exhaustion (64.9%), back pain (59.2%), muscle fatigue (51.2%), headache (40.5 %), leg cramps (39.7 %), joint pain (35.2 %), burning or itching skin (34.2 %), stomach pain (23.9%), and sore throat (25.6%). Yet, few workers made visits to health care providers while in Canada, with fewer than 25% reporting seeing a doctor in relation to health symptoms. Furthermore, despite the fact that the majority of the workers attributed their health problems to work (52.4%), very few had accessed the workers' compensation system in Ontario.<sup>10</sup> This poor access flows in part from a lack of knowledge about the workplace insurance system; the overwhelming majority of workers surveyed (93 %) claimed they did not know how to access workers' compensation, and only 22 % (or 120) had received information on use of the Ontario health care and insurance system.<sup>1</sup>

Several studies conducted by MWH-EWG members have found widespread reluctance among workers to report workplace health hazards and illness for fear of repatriation or transfer to another farm offering worse conditions.<sup>1, 7, 11, 12, 13</sup> These fears are not unfounded, given that at least 787 SAWP workers over the previous decade (2001-2011) were repatriated from Ontario for medical reasons.<sup>14</sup> In an Ontario survey, nearly half of all workers (44.5%) indicated that their co-workers continue to work while they are sick or injured because they are afraid of telling the employer. Furthermore, 27% feared loss of employment due to their health problem, 20% reported that their employer was angry about the health problem, and 16% reported their employer pressured them to return to work.<sup>1</sup>

Not only do employers mediate workers' access to care by providing transportation, translation, and access to private insurance, but in some jurisdictions, they are also responsible for ensuring workers have up-to-date provincial health cards and photos. Despite having legal access to a provincial health card (which beneficiaries are encouraged to carry at all times and required to prove entitlement to health care services), nearly a fifth of respondents to an Ontario-based survey (19%) claimed not to have the card due either to employers not taking them to apply for it by the time of the survey, or withholding the cards so that workers could not independently access health care.<sup>1</sup>

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<sup>9</sup> Caxaj, S., Cohen, A., & Colindres, (2019). *Testing a Support Model to Address Gaps in Service that Contribute to Migrant Agricultural Workers' Vulnerability in the Okanagan Valley. 2019-2021*. [Unpublished research funded by the Vancouver Foundation: FO118-0185].

<sup>10</sup> Workplace Safety and Insurance Board [WSIB]. By the Numbers: 2019 WSIB Statistical Report. WSIB Ontario. Retrieved from [http://www.wsibstatistics.ca/S1/Discussion%20and%20Analysis%20-%20WSIB%20By%20The%20Numbers\\_P.php](http://www.wsibstatistics.ca/S1/Discussion%20and%20Analysis%20-%20WSIB%20By%20The%20Numbers_P.php)

<sup>11</sup> Hanley, J., Gravel, S., Lippel, K., & Koo, J-H., (2014). Pathways to Healthcare for Migrant Workers: How can health entitlement influence occupational health trajectories? *PISTES*, 16(2). <https://doi.org/10.4000/pistes.3980>

<sup>12</sup> Gravel, S., Villanueva, F., Hanley, J., Bernstein, S., Crespo Villareal, D., Ostiguy, E. (2014). Les mesures de santé et sécurité au travail auprès des travailleurs étrangers temporaires: le cas du secteur agro-alimentaire. *PISTES*, 16(2). <https://doi.org/10.4000/pistes.3912>

<sup>13</sup> Hanley, J., Park, S., Gravel, S., Koo, J-H, Malhaire, L., & Gal, S. (2020). Migrant Worker Strategies in Access to Health: Recognizing agency in a context of constraints. In B. Newbold & K. Wilson (Eds.), *A Research Agenda for Migration and Health*. Northampton, MA: Edward Elgar Publishing, 67-87.

<sup>14</sup> Orkin, A.M., Lay, M., McLaughlin, J., Schwandt, M., & Cole, D. (2014). Medical repatriation of migrant farm workers in Ontario: a descriptive analysis. *CMAJ Open*, 2(3), E192–E198. <https://doi.org/10.9778/cmajo.20140014>

When workers experience workplace injuries or illness, they also encounter numerous barriers to accessing workers' compensation. Several authors' Ontario-based research found that SAWP workers are generally not familiar with the provincial workers' compensation system or its processes, and most of those who make claims typically need help doing so.<sup>15</sup> Findings are similar in Quebec studies.<sup>16</sup> Many of the same barriers related to health care access (e.g. language, distance / transportation, etc.) also prohibit physicians' proper identification and treatment of work-related injury or disease, because workers are not able to access clinics, or health care providers are unable to understand the cause of their concerns. Some employers are reluctant to file claims because they do not want to increase premiums, while some workers may be reluctant to file claims because they do not want to disappoint employers or endanger current or future work possibilities. Communication between workers and compensation boards may be hampered due to language and cultural differences, limited literacy, and a lack of a consistent address and phone number where the worker can be reached. In addition, SAWP workers face particular challenges due to the fact that they can be fired and returned to their country of origin before their health conditions are investigated and resolved.<sup>16</sup> Once back in countries of origin, they are unable to benefit from employment retraining and reemployment opportunities, yet their loss of earnings benefits is determined on the assumption that they were able to attain Canadian employment. They also face substantial barriers to continuing their health treatment and claims investigations, though these processes and outcomes differ by country of origin<sup>17, 18</sup>

**Recommendations to mitigate some of the health issues and related concerns discussed above, we propose the following recommendations:**

1. ***Migrant workers require safe, confidential and independent transportation to health care services.*** Where public transportation is available, migrant workers should be provided public transportation passes by employers and receive instructions on how to access transit systems in their native languages. In the case where such services are not available, workers needing to seek care should be able to hire taxi services at pre-set rates (prepaid by employers) or be provided with access to a safe vehicle consistent with provincial transportation law. (See also proposed changes under housing and prohibition on workers' restrictions on movements).
2. ***Confidential health information must not be shared with employers,*** consistent with the Personal Information Protection and Electronic Documents Act (PIPEDA) and related provincial legislation regarding the collection, use and disclosure of personal health information.
  - a. Currently the CONTRACT (V-7) reads: "The WORKER will report to the EMPLOYER and the GOVERNMENT AGENT, within twenty-four (24) hours, all injuries sustained which require medical attention." Workers should not be required to notify employers or government agents of confidential health issues. In relation to

<sup>15</sup> Paz Ramirez, A. G. (2015). *Embodying and experiencing labour apartheid*. Conference on temporary migrant workers: Labour Rights and Organizing Strategies. (pp. 99–126). Vancouver, BC, October 8 & 9, 2015. Leo McGardy QC. Retrieved from <https://mcgradylaw.ca/pdfs/Conference%20on%20Temporary%20Migrant%20Workers.pdf>

<sup>16</sup> Melançon, C. G., & Grenier, G. (2015). Migrant Agricultural workers and labour relations in Quebec. Conference on temporary migrant workers: Labour Rights and Organizing Strategies. (pp. 3–24). Vancouver, BC, October 8 & 9, 2015. Leo McGardy QC. Retrieved from <https://mcgradylaw.ca/pdfs/Conference%20on%20Temporary%20Migrant%20Workers.pdf>

<sup>17</sup> McLaughlin, J., Hennebry, J., Cole, D. C., & Williams, G. (2014). The Migrant Farmworker Health Journey: Identifying Issues and Considering Change across Borders. *International Migration Research Centre. Policy Points*, (VI), 1–14. Retrieved from <https://scholars.wlu.ca/cgi/viewcontent.cgi?article=1001&context=imrc>

<sup>18</sup> Hennebry, J., McLaughlin, J. (2012). *Responding to Temporary Migration in Ontario's Agricultural Workplaces*. Final Research Report Submitted to the WSIB Research Advisory Council, September 30 (pp.1–76). Retrieved from [www.migrantworkerhealth.ca](http://www.migrantworkerhealth.ca)

personal health issues (not OHS-related), workers should only be required to notify employers of an *inability to work* due to health reasons (unless they are unable to do so due to serious injury or illness). We suggest the following re-wording: “The WORKER will report to the EMPLOYER and the GOVERNMENT AGENT, within twenty-four (24) hours, all injuries sustained which prevent them from carrying out normal working duties (if they are medically capable of doing so). All other health matters will remain confidential unless the WORKER wishes to disclose them. WORKERS have the right to independently access health care and other social services without disclosing the reason why.”

- b. Firewalls must be established so that health issues and access to care do not inform placement decisions or workers’ current or future participation in the SAWP.
3. ***To prevent loss of employment or status (of which the fear of this occurrence alone may prevent workers from seeking medical care), workers who become injured or ill should be guaranteed a minimum of 2 years of continued participation in the SAWP following their recovery, barring any significant breach of CONTRACT.*** Workers who are unable to fully recover should be granted full consideration by provincial OHS bodies for long-term disability benefits regardless of whether or not they return to Canada under the SAWP.
4. ***All workers should receive a minimum of 3 days of protected paid sick or personal days*** (or consistent with the highest number provided across provinces) without having to disclose the reason for their absence. Additional days may be required in the case of longer-term injury or illness (e.g. COVID-19 or otherwise). The use of sick days and the experience of short-term illness or injury should not be used as a reason for termination of contracts.
5. ***All workers must have access to communication technologies/services.*** In particular, workers need access to telephone communication (e.g. landline or cellular phone) and to the internet through Wi-Fi provided by employers, in order to contact emergency services and access health information and public health messaging and resources, rights and legal services, consular support, etc. In addition, access to communication is key to mental health and well-being. (See also prohibition on restriction of movement)
6. ***In case of medical emergency, workers must be able to access independent third-party transportation to medical care and assessment (e.g. Emergency Medical Services).*** If EMS are not accessible, employers should be responsible for providing timely access to medical care (immediately for medical emergencies, within 24 hours for urgent issues, and as soon as can be accommodated by medical practitioners for non-urgent issues). If employer-facilitated transportation is required and there is a disagreement as to the severity of the illness, the medical issue should be treated as a medical emergency.
7. ***Provide each worker with an information sheet on farm property on arrival (or pre-departure)*** including directions to the address of the farm and its accommodations, emergency contact telephone numbers, instructions on how to contact 911 (EMS) and what to do in the case of an accident or injury at work or on farm property (SEE SECTION ON OHS)
8. ***Provide a RESOURCES HELPLINE accessible to workers,*** staffed by knowledgeable staff in workers’ languages, who can answer workers’ medical questions in real-time (not an automated line or voicemail) and refer them to local supports and services as needed. The

line should also offer free interpretation services for workers seeking medical attention and should be staffed during the evenings and weekends when workers are able to call.

9. ***Establish specialized migrant worker health supports*** (e.g. health outreach workers, interpreters, mobile health outreach units, health care transportation, specialized clinics, etc.) in consultation with local communities and Public Health Units. Ensure that workers can easily access not only primary health care services, but also extended supports including but not limited to: mental health care, including addictions supports and counselling; sexual and reproductive health services; dental care; optical care; occupational therapy; physiotherapy; as well as testing, diagnostics, therapeutics, and access to secondary and tertiary care when needed. Workers should be made aware of the services available to them in each region and how to access these independently. Orientation packages by region should be compiled and provided to workers either during pre-departure sessions or upon arrival, which clearly outline the services available and how to access them. The federal government should fund the creation and maintenance of a central online hub with accessible, multilingual health resources (including fact sheets, videos, etc.) directed towards migrant workers, employers, health care providers and other stakeholders.
10. ***Provide all workers with health cards and insurance information immediately upon arrival, independently of employers*** and directly from the Canadian government (e.g. provincial health insurance systems are notified of work permits).
  - a. Employers should not mediate access to provincial health insurance. Penalize employers who withhold workers' health cards, identification or other information or fail to arrange for workers' health cards in a timely manner.
  - b. Create an information sharing agreement with ESDC, IRCC and the provincial health authority to ensure workers' health insurance cards and information is provided directly to workers on arrival.
  - c. In the case of interprovincial transfers, ensure that workers have immediate access to provincial health insurance systems, unmediated by employers.
  - d. Ensure that workers are registered with workers' compensation boards in receiving provinces (upon arrival and in the case of inter-provincial transfers).
11. ***Provide information to workers on their rights and entitlements*** through pre-departure sessions and upon arrival, including information about how to access health care and workers' compensation. Standardize basic information across countries of origin, although this should be adapted for different groups' cultural and linguistic needs.
12. ***No sick or injured worker should be repatriated until they have recovered*** and are well (as per a physician's assessment). Provide workers with health concerns access to housing, financial and logistical support to continue receiving treatment in Canada until the problems have been addressed. Fully investigate workplace injuries and illnesses *before* workers leave Canada. If it is a work-related injury, no worker should be sent home before filing a claim with the provincial workers' compensation board. In instances in which workers do return home without filing claims, both governments and their representatives should facilitate long-term OHS-related disability benefits regardless of whether or not individuals return to Canada under the SAWP.

13. ***Establish an intergovernmental and inter-jurisdictional workers' health and compensation committee*** with various stakeholders (including migrant workers and their advocates) to examine and address issues of workers' health and compensation, including:
  - a. Injured workers should be retrained and re-employed in Canada wherever possible. Where this is not possible, provincial workers' compensation systems should be reformed to provide full income loss benefits recognizing that workers cannot return to Canada to continue their former employment, instead of deeming workers (and ceasing benefits) as though they had access to Canadian employment opportunities.
  - b. For workers who require ongoing care, treatment and investigations in countries of origin, workers' compensation boards should ensure that workers and care providers are fully compensated for transportation and treatment costs in a timely manner.
  - c. Workers should be able to freely choose who represents them in workers' compensation claims without fear they will lose support from program officials or other consequences such as loss of future employment in the SAWP. They should be made aware of free (pro-bono) legal clinics that specialize or are well-versed in workers' compensation cases.
  - d. Other barriers to fair and accessible compensation should be identified and addressed.
14. ***Expand coverage of workers' supplementary health insurance plans*** to include longer-term, portable social security benefits. If a worker develops a health problem in Canada, they should continue to receive medical care until the problem is fully resolved, even if they choose to return to their country of origin.
15. ***EI disability and sick benefits should be made more accessible to workers*** such as through multilingual video instructions and staff available to assist with applications; online and telephone multilingual services; funding of settlement services in Canada to provide this support, or funding of services in the country of origin. SAWP workers are uniquely disadvantaged in their ability to access these benefits due to the seasonality of their employment. To improve access to these benefits, the qualifying hour threshold should be lowered (consistent with demands for lowering it for all workers), and/or should consider migrant workers' contributions from previous seasons.
16. ***A migrant worker health ombudsperson should be appointed*** to review the health issues facing migrant workers, advocate for individual cases, and ensure that all provinces are able to provide accessible health care, compensation and protections for migrant workers.
17. ***Employers should be educated about their responsibilities towards worker health.*** Canadian federal government officials should be responsible for providing a clear list of employers' obligations in regards to ensuring their employees' independent access to health care.
18. ***Those employers who are non-compliant on health and safety issues*** (e.g. failing to provide workers with their health cards, abide by provincial health and safety legislation, or report workplace injuries) ***should face penalties such as fines or temporary suspension from the program.***

## 7. DISMISSALS & REPATRIATION

### Relevant Clauses of the CONTRACT for the Employment in Canada of Seasonal Agricultural Workers from Mexico - 2020: VIII. Obligations of the Employer, X. Early Cessation of Employment, XI. Transfer of Workers

**Rationale/Concern:** Under the current SAWP CONTRACT, employers have the unilateral authority to terminate the employment of workers for any reason without having to establish just cause.<sup>1</sup> As documented by numerous Canadian researchers, workers are often dismissed for arbitrary or even unlawful reasons including, but not limited to: refusing unsafe work, getting sick or injured, failure to get along with others, getting pregnant, challenging or resisting abusive conditions, expressing concern about poor nutrition or housing, union activism, or simply because they are no longer needed.<sup>2</sup> Government agents have made efforts to arrange transfers. And an open work permit intended to address the needs of vulnerable migrant agricultural workers does exist. Yet this permit is underutilized and presents many barriers for workers to access. And given that a worker's ability to stay in Canada depends on securing or maintaining a specific job contract, dismissal from a farm is often tantamount to deportation.<sup>1,3</sup> Furthermore, repatriation has consequences for immediate employment and future employment.<sup>4,5,6</sup> Workers may be prevented from re-entry by the employer who sends a negative evaluation letter to the Mexican Ministry of Labour and Social Provision or denied program re-entry or placement by sending state officials.<sup>2,5,6</sup>

While the number of actual deportations is relatively low,<sup>1</sup> it is the fear of deportation that compels the workers to accept often exploitative and/or dangerous working conditions.<sup>3,4,7</sup> Fearful of dismissal and repatriation, workers are unlikely to complain or resist employers' excessive demands.<sup>8,9</sup> They are thus coerced to maintain high levels of productivity and may be forced to work in abusive and unsafe environments, even if these conditions violate applicable labour laws and result in exhaustion, accidents, and illnesses.<sup>4,10</sup> Fearful of dismissal and repatriation, migrant workers may also accept their living conditions, no matter how substandard or unhealthy.<sup>2</sup> In sum, the unchecked authority extended to employers by the CONTRACT makes migrants vulnerable to the loss of current and future income and to dangerous working and living conditions that place their physical and mental health at high risk.

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<sup>1</sup> Preibisch, K. (2010). Pick-Your-Own Labor: Migrant Workers and Flexibility in Canadian Agriculture. *The International Migration Review*, 44(2), 404-441. <http://www.jstor.org/stable/25740855>

<sup>2</sup> Basok, T. (2002). *Tortillas and tomatoes: transmigrant Mexican harvesters in Canada*. Montreal: McGill-Queen's University Press.

<sup>3</sup> Vosko, L. (2019). *Disrupting deportability: transnational workers organize*. Ithaca: Cornell University Press.

<sup>4</sup> Basok, T., Bélanger, D., & Rivas, E. (2014). Deportability, Discipline, and Agency: Migrant Agricultural Workers in Southwestern Ontario. *Journal of Ethnic and Migration Studies*, 40(9), 1394-1413. <https://doi.org/10.1080/1369183X.2013.849566>

<sup>5</sup> Vosko, L. (2014). Tenuously Unionised: Temporary Migrant Workers and the Limits of Formal Mechanisms Designed to Promote Collective Bargaining in British Columbia. *Industrial Law Journal (London)*, 43(4), 451-484. <https://doi.org/10.1093/indlaw/dwu026>

<sup>6</sup> Vosko, L. (2018). Legal but Deportable: Institutionalized Deportability and the Limits of Collective Bargaining among Participants in Canada's Seasonal Agricultural Workers Program. *Industrial & Labor Relations Review*, 71(4), 882-907. <https://doi.org/10.1177/0019793918756055>

<sup>7</sup> Vosko, L., Tucker, E., & Casey, R. (2019). Enforcing employment standards for temporary migrant agricultural workers in Ontario, Canada: Exposing underexplored layers of vulnerability. *International Journal of Comparative Labour Law and Industrial Relations*, 35(2), 227-254. Retrieved from <https://kluwerlawonline.com/journalarticle/International+Journal+of+Comparative+Labour+Law+and+Industrial+Relations/35.2/UJCL2019011>

<sup>8</sup> Bridi, R.M. (2013). Labour Control in the Tobacco Agro-spaces: Migrant Agricultural Workers in South-Western Ontario. *Antipode*, 45(5), 1080. <https://doi.org/10.1111/anti.12016>

<sup>9</sup> Hanley, J., Paul, L., Ravinthiran, J., Malhaire, L., & Mosseau, N. (2020). Protecting the rights of migrant farmworkers in Quebec: To what extent can unionization overcome the effects of precarious immigration status? *The Journal of Rural and Community Development*, 15(2), 122-146. Retrieved from <https://journals.brandou.ca/jrcd/article/view/1650/412>

<sup>10</sup> Caxaj, C. S., & Cohen, A. (2019). "I Will Not Leave My Body Here": Migrant Farmworkers' Health and Safety Amidst a Climate of Coercion. *International journal of environmental research and public health*, 16(15), 2643. <https://doi.org/10.3390/ijerph16152643>

In light of these realities, the following **principles** should guide CONTRACT revisions:

1. No discipline or discharge without just cause.
2. Burden of proof of just cause rests on the Employer.
3. The Employer cannot unilaterally terminate employment.

### **Recommendations**

1. An independent Tribunal should be established to adjudicate Employers' requests for dismissal. (Alternatively, the Canada Industrial Relations Board or the applicable Provincial labour relations board could be given jurisdiction to adjudicate employer requests to dismiss.)
2. This tribunal may only authorize a dismissal where the employer can establish just cause on a balance of probabilities.
3. In instances of Employer applications to the Tribunal, the Worker and Government Agent should be given notice of application.
4. The Worker should be entitled to representation at the Tribunal.
5. The Worker should be entitled to choose this representative (e.g., community legal aid clinic, pro-bono lawyer, or a support organization) if they so wish.
6. At the Worker's request, the Government Agent may be permitted to have observer status at the Tribunal.

**The following articles should be revised or added to reflect the proposed changes:**

**1. Revisions:** Article X.2 should read: "During the term of the contract, the EMPLOYER shall only be entitled to prematurely cease the WORKER'S employment for cause. To terminate the WORKER, the EMPLOYER must apply to the Tribunal (below) and provide the grounds for the dismissal. The EMPLOYER must provide a copy of the application to dismiss to the WORKER and the GOVERNMENT AGENT. The Tribunal will hold an expedited hearing at which the employer bears the burden of proving just cause. The Tribunal must provide the WORKER and the GOVERNMENT AGENT with at least (3) day notice of the hearing. The WORKER is entitled to appear and be represented by an agent of their choosing. In the event the GOVERNMENT AGENT is not selected as the WORKER's representative, at the WORKER's request, the GOVERNMENT AGENT is entitled to appear at the hearing as an observer. The Tribunal will make every effort to render a decision in an expedited manner."

**2. Additional Contractual Clauses/Articles: Establishment of independent tribunal and proactive complaint mechanism.** In line with the foregoing amendments, an independent Tribunal, supported by, yet at arms-length from, the Government of Canada, should be established (or, in the case of the Canadian Industrial Relations Board (CIRB), given jurisdiction) to hear employer applications or to promptly review, via a proactive complaint mechanism, all cases of dismissal subject to repatriation during a fixed-term contract (i.e., before workers are sent home). Under the auspices of this Tribunal, following a duty council model, a worker advocate should also be assigned to investigate all individual cases of early dismissal in order to eliminate reliance on worker-initiated complaints. Contractual clauses on these items should be added to Article X.

**3. Additional Article:** "The EMPLOYER is responsible for paying the WORKER's accommodation and wage replacement costs during the period required for the Tribunal to review the application."

NOT FOR CIRCULATION

## 8. RECRUITMENT & WORKER MOBILITY

### Clause in Mexico SAWP CONTRACT: Add to Section VIII

**Rationale / concern:** Workers' freedom of movement has long been restricted via curfew, workplace rules that prevent them from forming connections outside of the workplace, and other social restrictions that are both undignified, and limit migrant agricultural workers' ability to access supports.<sup>1,2,3,4,5,6</sup> This issue was exacerbated by the COVID-19 pandemic.<sup>7</sup> Ultimately, these restrictions increase this group's isolation, and make them more vulnerable when they experience workplace abuse.<sup>1,5,8</sup> Furthermore, in the case of abuse that is faced by many workers, necessary medical and social attention is made more difficult if workers' movement is restricted. To illustrate, 2019 survey data in BC, Canada indicates that 31.3% of workers have been discriminated against on the basis of their race, nationality or gender, and 21.8% reported being intimidated or threatened in the workplace and 15.1% reported being assaulted by a boss or supervisor.<sup>9</sup> Workers facing these issues need the ability to seek support from community members and service providers in the towns and cities where they work and live.

### Workers' Mobility in Canada

It is necessary to take steps to prohibit employer restriction of workers' movements in Canada. And furthermore, to work to mitigate restrictions in workers' labour mobility in the SAWP within current and subsequent seasons. These challenges can begin to be addressed by revising the transfer system, transitioning to open work permits and recognizing skills and work experience through the (re)recruitment process.

During the COVID-19 context, some migrant agricultural workers were given explicit instruction to not leave the farm for any reason. Some were forced to sign documents agreeing to this isolation.<sup>10</sup> Some were restricted from getting their own groceries and were not allowed visitors or any contact outside of the workplace. This further exacerbated barriers for service access for this population (as noted above). Furthermore, workers also experienced discomfort and hunger as a result of food

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<sup>1</sup> Cohen, A., & Caxaj, S. (2018). Bodies and Borders: Migrant Women Farmworkers and the Struggle for Sexual and Reproductive Justice in British Columbia, Canada. *Alternate Routes: A Journal of Critical Social Research*, 29. Retrieved from

<http://www.alternateroutes.ca/index.php/ar/article/view/22448>

<sup>2</sup> Horgan, M., & Liinamaa, S. (2012). Double Precarity: Experiences of Former Seasonal Agricultural Workers Who Settle in Rural Nova Scotia. Retrieved from [http://community.smu.ca/atlantic/documents/WP46HorganLiinamaa\\_004.pdf](http://community.smu.ca/atlantic/documents/WP46HorganLiinamaa_004.pdf)

<sup>3</sup> Horgan, M. & Liinamaa, S. (2016). The social quarantining of migrant labour: everyday effects of temporary foreign worker regulation in Canada. *Journal of Ethnic and Migration Studies*, 43(5), 713–730.

<https://doi.org/10.1080/1369183x.2016.1202752>

<sup>4</sup> Encalada-Grez, E. (2006). Justice for migrant farm workers: Reflections on the importance of community organising. *Relay: A Socialist Project Review July/August*, 23-25.

<sup>5</sup> McLaughlin, J. (2009). Migration and health: Implications for development a case study of Mexican and Jamaican migrants in Canada's Seasonal Agricultural Workers Program. Policy Paper. *Canadian Foundation for the Americas*. Retrieved from

<http://www.focal.ca/pdf/Migrant%20Health%20McLaughlin%202009.pdf>

<sup>6</sup> Perry, J. A. (2018). Living at work and intra-worker sociality among migrant farm workers in Canada. *Journal of International Migration and Integration*, 19(4), 1021-1036. <https://doi.org/10.1007/s12134-018-0583-z>

<sup>7</sup> Caxaj, C. S. & Cohen, A., Buffam, B. & Oudshoorn, A. (2020). Bodies and borders in the lives of migrant agricultural workers. Witness: The Canadian Journal of Critical Nursing Discourse. *Forthcoming*.

<sup>8</sup> Perry, J. A. (2020). 'Escaping' managed labour migration: Worker exit as precarious migrant agency. *Identities*, 27(4), 423-441.

<https://doi.org/10.1080/1070289X.2019.1589157>

<sup>9</sup> Caxaj, S., Cohen, A., & Colindres, (2019). *Testing a Support Model to Address Gaps in Service that Contribute to Migrant Agricultural Workers' Vulnerability in the Okanagan Valley. 2019-2021*. [Unpublished research funded by the Vancouver Foundation: FO118-0185].

<sup>10</sup> Mojtehdzadeh, S. (2020, April 13). Migrant farm workers from Jamaica are being forced to sign COVID-19 waivers. Toronto Star Newspaper. <https://www.thestar.com/business/2020/04/13/migrant-farm-workers-fear-exposure-to-covid-19.html?rf>

provision that was insufficient in quantity and culturally inappropriate.<sup>11</sup> Given the physical demands of agriculture, workers require a regular supply of nutritious, fresh, and familiar foods. Limited quarters make stocking up on produce unrealistic and a health and safety hazard.<sup>12</sup>

### **Workers' Ability to Transfer while in Canada**

The requirements for migrant agricultural workers to transfer to a different employer are cumbersome making it so that many workers are unable to transition to a different employer even when serious abuse has occurred. For instance, the requirement for workers to need permission not only from their future employer, but also of their current employer, to transfer creates a barrier for workers who may fear the repercussions of their request. Furthermore, this requirement reinforces employers' position of power over their employees. Given that many transfers are requested not only for logistical reasons (e.g., to extend a work season), but also, as an alternative when facing difficulties with a particular employer, requiring workers to request permission from an employer can make them more vulnerable. For example, if a worker is experiencing harassment from an employer, to require them to ask this employer to grant them a transfer equates to asking a worker to put themselves in further danger. Transfers are also difficult to secure because they require approval from the workers' sending country representative, and for the worker to secure a position with a different LMIA-eligible employer. Requiring approval from a sending country representative can delay the process of a transfer which can be a very time-sensitive endeavour. Furthermore, finding another employer is very difficult for workers, and a significant number of workers return to their home countries earlier than they had hoped because they fail to do so.

It is clear then that transfers offer an opportunity not only for workers to extend their time working in Canada, but also to escape a variety of concerns or hazards related to a position's workplace or living conditions. Nonetheless, because of their limited accessibility to workers, they are not a reliable tool for workers in this regard. Furthermore, by providing a non-legal mechanism to leave inadequate conditions, the provision of transfers functions to conceal employer misconduct, and does not deter employers from bringing on other workers who will face the same issues. Years of scholarship has documented that SAWP workers are prone to accept substandard workplace and living conditions for fear of losing their opportunity at a livelihood.<sup>12, 13</sup> This acceptance is shaped by a closed work permit tied to a specific employer that enables employers to recommend which workers should return, and logically then, put into jeopardy a worker's ability to return under the SAWP. Although workers are able to apply for an Open Work Permit for Vulnerable Workers, both migrant worker advocates and workers themselves report that this process is difficult and time-consuming. Since approval is not guaranteed, this is not a viable solution for many workers.

### **Challenges with existing criteria for (re)-employment under the SAWP**

Workers' precariousness in employment is heightened by closed work permits that are tied to a specific employer. A key activity perpetuating this vulnerability is the naming system, informed by employer evaluations conducted by the sending state, through which employers can request, decline to

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<sup>11</sup> Migrant Worker Health Expert Working Group [MWH-EWG]. (2020, June 09). *Recommendations for Overcoming Health Challenges Faced By Migrant Agricultural Workers during the COVID-19-Virus Pandemic*. Retrieved from <http://www.migrantworker.ca/wp-content/uploads/2020/06/June-9-2020-HC-recommendations.pdf>

<sup>12</sup> Weiler, A.M., McLaughlin, J. and Cole, D.C. (2017), Food Security at Whose Expense? A Critique of the Canadian Temporary Farm Labour Migration Regime and Proposals for Change. *Int Migr*, 55, 48-63. <https://doi.org/10.1111/imig.12342>

<sup>13</sup> Basok, T., Bélanger, D., & Rivas, E. (2014). Deportability, Discipline, and Agency: Migrant Agricultural Workers in Southwestern Ontario. *Journal of Ethnic and Migration Studies*, 40(9), 1394–1413. <https://doi.org/10.1080/1369183X.2013.849566>

request, or fail to recommend specific employees back for hire for subsequent years<sup>14</sup> Fear of not being recommended for re-employment or recall by an employer can create a poor climate in the workplace, putting pressure on workers to accept unsafe work, engage in speed-up, and endure subpar living conditions.<sup>1, 5, 7</sup>

It is thus imperative that workers be provided with reasonable assurance of return and re-employment in the program in subsequent seasons, assurances that are not contingent on the naming process. Indeed, the employer naming system, and allied employer-evaluation system, must cease. Given that prior experience reflects increased on-the-job training producing a fulsome skill-set and is indicative of qualitative investment in the SAWP, workers' years of participation or service should be recognized administratively under its auspices. Without regard to seniority and prior experience, migrant agricultural workers may be more inclined to accept unsafe or substandard working and/or living conditions, in part, because seniority can provide a method for "greater assurances of future employment."<sup>15</sup>

Upfront fees and contributions to various program-associated costs, such as visas and other administrative program fees, all can put additional economic pressure on workers, and by cutting into workers' ability to save, create more of an urgency to return in subsequent years.<sup>16</sup> Since prior research indicates that workers may feel forced to prioritize their livelihood, even if it requires them to suppress their own rights,<sup>6, 12</sup> administrative costs contribute to this coercive workplace dynamic under the SAWP.

As before-mentioned, a significant number of SAWP workers experience workplace abuse.<sup>17</sup> Furthermore, these workers' labour is typically both gender and race segregated, and many workers are subject to racist myths and gendered stereotypes that both restrict and burden them.<sup>1, 18</sup> Adding to this challenge, is the fact that certain groups continue to be disadvantaged in their application to participate in the SAWP. Estimates from 2015 for instance estimated that women made up only 3.29% of the SAWP workforce. Current research also shows that women are often provided with shorter-term contracts, and that many report being denied (re)entry into the program on the basis of their sex.<sup>7, 18</sup> Discretionary power to decide who is to be prioritized may also enforce discriminatory ideas of what type of woman is most eligible or fit to work under the SAWP, and furthermore, limit workers' ability to assert their rights.<sup>19</sup>

### **Recommendations to better protect workers' freedom of movement:**

1. ***Employers should be responsible for transportation for shopping and basic service provision.*** Incorporate a similar provision as the Caribbean CONTRACT Section IX clause 7 (new clause introduced in 2020): "To be responsible for transportation to and from shopping at a reasonable distance at no cost to the WORKER once per week."

<sup>14</sup> Basok, T (2007) Canada's Temporary Migration Program: A Model despite Flaws (Migration Information Source). Washington, DC: Migration Policy Institute. Retrieved from <http://www.migrationinformation.org/proxy1.lib.uwo.ca/feature/display.cfm?id=650>

<sup>15</sup> Faraday, F (2014) Profiting from the Precarious: How recruitment practices exploit migrant workers. Report, Metcalf Foundation, Toronto, ON, Canada. Retrieved from <https://metcalfoundation.com/site/uploads/2014/04/Profiting-from-the-Precarious.pdf>

<sup>16</sup> Vosko, L. (2018). Legal but Deportable: Institutionalized Deportability and the Limits of Collective Bargaining among Participants in Canada's Seasonal Agricultural Workers Program. *Industrial & Labor Relations Review*, 71(4), 898. <https://doi.org/10.1177/0019793918756055>

<sup>17</sup> Wells, D., McLaughlin, J., Lyn, A., & Díaz Mendiburo, A. (2014). Sustaining precarious transnational families: the significance of remittances from Canada's Seasonal Agricultural Workers Program. *Just Labour*, 22 (Autumn 2014). <https://doi.org/10.25071/1705-1436.9>

<sup>18</sup> Gabriel, C., & Macdonald, L. (2019). Contesting Gender Discrimination in the Canadian Seasonal Agricultural Worker Program. *Canadian Ethnic Studies*, 51(3), 17–34. <https://doi.org/10.1353/ces.2019.0018>

<sup>19</sup> Preibisch, K, Encalada Grez, E (2010). The Other Side of el Otro Lado : Mexican Migrant Women and Labor Flexibility in Canadian Agriculture. *Signs: Journal of Women in Culture and Society*, 35(2), 289–316. <https://doi.org/10.1086/605483>

2. **Transportation provided should be independent, safe, and offered weekly.** Employers should be required to provide independent and safe forms of transportation to workers in order to travel to grocery stores, health care providers, and other amenities on a weekly basis. Such a requirement would provide a base minimum standard to ensure workers have the ability to access services and amenities off-farm. SAWP participants should not have to depend on workplace supervisors and employers in order to access services. In the absence of an independent mode of transportation, employers should be responsible for providing timely transportation to workers until a more independent mode of transportation is made available to workers (see also health care recommendations)
3. **'House rules' that limit workers' ability to (a) have visitors; (b) leave the farm; (c) be home at a specific time of night and other unreasonable restrictions on freedom of movement or association should be prohibited.** Workers should be afforded the level of privacy provided to any tenant under provincial laws. This includes a mandatory requirement that employers give 24-hours' notice before entering the premises, as with lessor/lessee relationships. As well, employers must be prohibited from extra-legal 'house rules' such as restrictions on alcohol and drug use during workers' off-time, employer surveillance of social interactions and the requirement that visitors report their presence to employers. Consistent with anti-human trafficking laws in Canada (i.e. 279.01 of the criminal code and section 118 of the Immigration and Refugee Protection Act), there needs to be a comprehensive understanding of both physical coercion as well as deception, manipulation and other tactics that are unlawfully restricting workers' freedoms.<sup>20</sup>

#### **Recommendations to facilitate transparent and equitable labour mobility and recruitment:**

4. **Workers should not bear administrative costs,** including costs associated with visa processing, such as biometrics or security screening, as well as costs for medical assessment and transportation to Canada/return to Mexico.
5. **Recruitment and placement in the program should emphasize and recognize skills and experience in farming,** and work experience rather than factors such as number of dependants, levels of education, marital status or gender. Governments should develop and sign a mutual recognition agreement to facilitate recognition of qualifications and recognition of skills. Consistent with ILO Fair Recruitment Initiative's general principles and operational guidelines, and the Global Compact for Safe Orderly and Regular Migration,<sup>21</sup> recruitment should take into account policies and practices that promote efficiency, transparency and protection for workers in the process.
6. **Recruitment and hiring practices must be free from discrimination.** SAWP recruitment officers and employers must not be able to select workers on the basis of gender, with particular attention to ensure women and LGBTQI+ workers do not face discrimination. Recruitment and hiring practices, as well as transfers, seniority, etc., must be guided by the principle of fairness, consistent with the ILO Fair Recruitment and be free of gender and racial discrimination.

<sup>20</sup> Migrant Workers Centre [MWC]. (2018). Labour exploitation & trafficking handbook for migrant workers. Retrieved November 1 2020 from <https://mwc.ca/downloads/LabourTraffickingandMigrantWorkers.pdf>

<sup>21</sup> United Nations, General Assembly (2019, January 11). Resolution 73/195: Global compact for safe, orderly and regular migration, A/RES/73/195. Retrieved from [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/73/195](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195)

7. ***The naming system and employer evaluations should be eliminated.*** Rather, there should be a system based on recognition of merit and skill, where workers can have occupational mobility, seniority, and enhanced job security with commensurable differential pay levels.
  - a. End employer naming system for migrant agricultural workers, especially as a tool to prioritize re-entry into the SAWP. Enable workers to apply for specific advertised/available jobs.
  - b. Workers should be able to work in job classifications outside of the two National Occupational Classification (NOC) codes applied to SAWP workers (i.e. harvester and general farm labourer) in order to recognize the nature of contemporary agricultural work, and reflect the true skill level of workers.
  - c. Standardized differential pay levels should be based on skill and experience and average wage in the job classification.
  - d. In the absence of a serious breach of CONTRACT, workers should be guaranteed re-entry into the SAWP in subsequent years. Years of work should also be accounted for by both sending and receiving country officials as a method to begin to develop a framework that accounts for seniority under the SAWP.
  - e. Workers' seniority should inform pay rate increments that can be negotiated with industry, workers and government agents.
8. **Bring all SAWP workers under a sector-specific open work permit.** A sector-specific open work permit would encourage and promote workplace improvements in agriculture, an industry with exceptionally high workplace injuries and labour standards violations characterized by extensive occupational health and safety concerns. This sector-specific open work permit would also help provide meaningful feedback to employers about the quality of their operations and living conditions relative to other farms, and address the fear among workers of the unknown/potentially worse farm should they consider a transfer of employer (since they can choose to leave again).
9. **While transitioning to an open work permit model for SAWP workers, facilitate increased opportunities for labour mobility for workers by:**
  - a. ***Providing increased opportunities for workers to transfer freely.***
    - i. Transfers should not be contingent on the authorization of a sending country official and/or a current employer.
    - ii. Develop a database accessible to migrant agricultural workers listing all LMIA-eligible employers who may be accepting transfers.
  - b. ***Granting all workers who report a concern an open work permit that is triggered when the initial complaint is filed.*** By making an open work permit implied through the act of initiating a complaint (whether it be related to employment standards, health and safety, human rights, or to a federal agent overseeing the program), workers will be both supported to pursue their legal rights, while having a chance to secure their livelihood. Much research has documented how workers often feel forced to choose between these two things. As mentioned previously, the Open Work Permit for Vulnerable Workers is difficult to access and does not ensure a secure method for workers to pursue a legal claim (given that the application process does not guarantee success).

## 9. ACCESS TO ENTITLEMENTS & SOCIAL SUPPORTS AND PROTECTIONS

**Rationale/concern:** For decades, experts and advocates have documented the barriers that migrant agricultural workers face in accessing benefits to which they are entitled. Although workers pay into benefit schemes such as Employment Insurance and CPP/QPP, they face numerous barriers to access (e.g. technological restrictions, communication barriers upon return to home country).<sup>1</sup> Moreover, SAWP workers do not meet eligibility requirements for certain benefits (e.g. special EI benefits such as parental benefits).<sup>2,3</sup> Furthermore, workers may be delayed in receiving their private insurance cards that facilitate their access to certain medical support. Since many workers are not in possession of a provincial health card as noted above (see health care section),<sup>4</sup> workers are often forced to seek care solely through their private insurer. Because many medical facilities will not directly bill private insurance providers, this can result in out-of-pocket expenses for workers that may not be reimbursed in a timely manner (or at all because of the transient nature of their positions).<sup>5</sup>

Migrant workers face a great degree of isolation and familial stress,<sup>6,7</sup> and the majority of the workers under the SAWP have dependents in their countries of origin, especially children.<sup>8</sup> Yet they must inevitably leave them behind to participate in the SAWP.<sup>9</sup> Familial support is an important determinant of health, especially among underserved populations such as migrant agricultural workers.<sup>10,11</sup> Having family close could help safeguard this group's health and well-being and also help mitigate coercive acceptance of hazardous or exploitative work.<sup>11,12</sup> Lastly, returning workers can be very disoriented when placed in different regions of the country from year to year (see for example MWH-EWG 2020).<sup>13</sup> The ability to access and navigate services is often difficult for this group due to a multitude of factors. In some cases, migrant agricultural workers may develop rapport or a working relationship with supports or fellow co-workers in a particular city or region, and then lose contact or ability to be supported by these networks when they are placed in another region or province that is far removed from their prior SAWP placement.<sup>14</sup> As rules and services vary from

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<sup>1</sup> Hagen-Zanker, J., Mosler Vidal, E., & Sturge, G. (2017). *Social protection, migration and the 2030 Agenda for Sustainable Development*. Briefing Paper. London: Overseas Development Institute. Retrieved from <https://www.odi.org/sites/odi.org.uk/files/resource-documents/11583.pdf>

<sup>2</sup> Hennebry, J. (2014). Falling through the cracks? Migrant workers and the Global Social Protection Floor. *Global Social Policy, 14*(3), 369–388. <https://doi.org/10.1177/1468018114544765>

<sup>3</sup> Hennebry, J. (2017). Securing and Insuring Livelihoods: Migrant Workers and Protection Gaps. In M. McAuliffe & M. Klein Solomon (Conveners) (2017) *Ideas to Inform International Cooperation on Safe, Orderly and Regular Migration*, IOM: Geneva. Retrieved from [https://publications.iom.int/system/files/pdf/securing\\_and\\_insuring.pdf](https://publications.iom.int/system/files/pdf/securing_and_insuring.pdf)

<sup>4</sup> McLaughlin, J., Hennebry, J., & Haines, T. (2014). Paper versus Practice : Occupational Health and Safety Protections and Realities for Temporary Foreign Agricultural Workers in Ontario. *PISTES, 16*(2). <https://doi.org/10.4000/pistes.3844>

<sup>5</sup> Caxaj, S., Cohen, A., & Marsden, S. (2020). Supports for Migrant Farmworkers: Tensions in (In)access and (In)action. *Health and Rehabilitation Sciences Publications, 19*. <https://ir.lib.uwo.ca/hrspub/19>

<sup>6</sup> McLaughlin, J., Tew, M., & Huesca, E. (2018). Compounded Vulnerabilities and Creative Strategies: Occupational Health of Temporary Foreign Agricultural Workers. In Premji, S. (Ed.), *Sick and Tired: Health and Safety Inequalities*. Fernwood Publishing.

<sup>7</sup> Caxaj, S., & Diaz, L. (2018). Migrant workers' (non)belonging in rural British Columbia, Canada: storied experiences of Marginal Living. *International Journal of Migration, Health and Social Care, 14*(2), 208–220. <https://doi.org/10.1108/ijmhsc-05-2017-0018>

<sup>8</sup> Hennebry J, McLaughlin J, & Preibisch K. (2016). Out of the Loop: (In)access to Health Care for Migrant Workers in Canada. *Journal of International Migration and Integration, 17*(2), 521–538. <https://doi.org/10.1007/s12134-015-0417-1>

<sup>9</sup> Encalada Grez, E. (2019). Contestations of the heart: Mexican migrant women and transnational loving from rural Ontario. *International Journal of Migration and Border Studies, 5*(1-2), 118-133. <https://dx.doi.org/10.1504/IJMBS.2019.099697>

<sup>10</sup> Public Health Agency of Canada. (2018). Key health inequalities in Canada: A national portrait. Retrieved from <https://www150.statcan.gc.ca/n1/en/daily-quotidien/180528/dq180528e-eng.pdf?st=r16iX3PV>

<sup>11</sup> McLaughlin, J., Wells, D., Mendiburo, A., Lyn, A., & Vasilevska, B. (2017). "Temporary Workers", Temporary Fathers: Transnational Family Impacts of Canada's Seasonal Agricultural Worker Program. *Relations Industrielles, 72*(4), 682–709. <https://doi.org/10.7202/1043172ar>

<sup>12</sup> Paciulan, M., & Preibisch, K. (2013). Navigating the productive/reproductive split: Latin American transnational mothers and fathers in Canada's migration programs. *Transnational Social Review, 3*(2), 173-192. DOI: [10.1080/21931674.2013.10820763](https://doi.org/10.1080/21931674.2013.10820763)

<sup>13</sup> Migrant Worker Health Expert Working Group [MWH-EWG]. (2020, June 09). *Recommendations for overcoming health challenges faced by migrant agricultural workers during the COVID-19-Virus Pandemic*. Retrieved from <http://www.migrantworker.ca/wp-content/uploads/2020/06/June-9-2020-HC-recommendations.pdf>

<sup>14</sup> Caxaj, S., Cohen, A., & Colindres, (2019). *Testing a Support Model to Address Gaps in Service that Contribute to Migrant Agricultural Workers' Vulnerability in the Okanagan Valley. 2019-2021*. [Unpublished research funded by the Vancouver Foundation: FO118-0185].

province to province, migrant agricultural workers are disadvantaged in understanding their rights by being placed in different regions from year to year.

**Recommendations to facilitate access to entitlements:**

1. ***Provide all workers full access to regular Employment Insurance benefits as well as CPP and the Quebec Pension plan.*** The RESOURCES HELPLINE mentioned in prior sections should be able to assist workers throughout the application process in their preferred languages.
2. ***Facilitate ease of travel of family members of SAWP workers via an expedited tourist visa process and provide the opportunity for SAWP workers to bring their families to Canada through a dedicated immigration stream of this workforce.***
3. ***Sending countries should arrange for workers to be placed with their employer and/or region of preference,*** whenever possible.
4. ***Ensure immediate access to employer-paid private insurance coverage upon arrival to migrant agricultural workers in addition to provincial health coverage.*** The federal government should also provide clear guidelines to the province in ensuring that direct billing to private insurers is available in all outpatient and hospital settings for migrant agricultural workers, including private doctors' offices.

NOT FOR CIRCULATION

## 10. APPENDICES

*Appendix I – Contributing MWH-EWG Members’ Individual Biographies* (Authors are listed alphabetically to reflect equal contribution)

**Tanya Basok, PhD** is a Professor in the Department of Sociology and Anthropology at the University of Windsor. Her research focuses on migrant rights and the role of labour organizations and grassroots activists in advancing the rights of temporary migrant workers, asylum seekers, and non-status migrants in Canada, South and Central America, and Mexico.

**Susana Caxaj, PhD** is an assistant professor and registered nurse in the school of nursing at the University of Western Ontario. She has been documenting the challenges and experiences of migrant agricultural workers since 2014 in her prior role as assistant professor at the school of nursing at UBC Okanagan. She brings over 10 years of experience in immigrant mental health, healthcare access and social support, particularly among Central American populations and underserved populations.

**Amy Cohen, MA** is a college professor at Okanagan College in the department of Anthropology. In 2013 she co-founded RAMA, a migrant justice group that provides frontline support to farmworkers in the Okanagan valley. Her academic research focuses on migrant agricultural workers' resistance, reproductive justice, and their networks of support

**Jill Hanley, PhD** is Associate Professor at the McGill School of Social Work. Her research focuses on access to social rights (housing, health, labour) for precarious status migrants, and their individual, family and collective strategies to defend and expand these rights. She has studied the experiences of agricultural workers for more than 15 years. She is also Scientific Director of the SHERPA University Institute, a joint initiative of the Quebec Ministry of Health and universities, mandated to conduct applied research on access to health and social services for immigrant and racialized communities.

**Jenna Hennebry, PhD** is an Associate Professor at Wilfrid Laurier University’s Balsillie School of International Affairs. Hennebry’s research has focused on labour migration governance, migrant worker rights and health, and has involved empirical research with migrant workers in Canada for over 15 years. She is a member of the International Organization for Migration (IOM)’s Research Leaders' Syndicate, and the UN Migration Network's Working Group on Bilateral Labour Migration Agreements. She is co-founding Director of the International Migration Research Centre and co-founder of the Migrant Worker Health Project and the Migrant Worker Health Expert Working Group in Canada.

**Eduardo Huesca, MA** is a Program Coordinator with the Occupational Health Clinics for Ontario Worker’s (OHCOW). His work focuses on understanding the experiences of Ontario worker communities who face occupational health and safety (OHS) vulnerability, and he has developed, implemented, and evaluated OHS projects and interventions that support these communities. Since 2006, Eduardo has worked with Ontario migrant agricultural workers, coordinating OHCOW’s Migrant Farm Worker Program. Recently, Eduardo has led provincial initiatives focused on supporting the OHS of newcomer and refugee workers, promoting increased collaboration between Ontario’s OHS and Settlement systems. Eduardo collaborates with

researchers, community agencies, and government stakeholders to contribute findings from his work, towards policy assessment and improvement.

**Stephanie Mayell, MA** is a Doctoral Candidate in the Department of Anthropology at the University of Toronto. Her research investigates how annual employment under Canada's SAWP influences the health and well-being of Jamaican migrant agricultural workers. Stephanie has been professionally engaged with migrant agricultural workers since 2014, primarily connecting workers with social supports and health care in Ontario, assisting injured workers navigate the provincial workers' compensation (WSIB) system, and facilitating injured workers' access to health care and compensation from Jamaica.

**Janet McLaughlin, PhD** is an Associate Professor of Community Health and a Research Associate at the International Migration Research Centre at Wilfrid Laurier University. Since 2004, she has been conducting research on issues related to migrant agricultural workers' health and their access to health care and workers' compensation in Canada, Mexico and Jamaica. Dr. McLaughlin is co-founder and co-coordinator of the Migrant Worker Health Project and the Migrant Worker Health Expert Working Group.

**Michelle Tew, RN, BScN, DOHS, COHN(C)** is an Occupational Health Nurse with the Occupational Health Clinics for Ontario Workers. Since 2006, Michelle has been working with migrant agricultural workers as a clinician, researcher, educator and advocate with a focus on knowledge exchange, capacity building within communities and progressing worker health across relevant occupational health, worker health and compensation systems.

**Eric Tucker, LLB, LLM** is a Professor at Osgoode Hall Law School, York University, Toronto and Distinguished Scholar in Residence, Cleveland Marshall College of Law, Cleveland State University. He has written extensively on labour and employment law, including books on the history of health and safety regulation and collective bargaining law in Canada. He has also provided expert witness affidavits in support of constitutional challenges to the exclusion of farm workers from health and safety and collective bargaining laws and published studies of labour inspection and enforcement regimes, including that of the Canadian government to enforce terms of its temporary foreign worker programs.

**Leah F. Vosko, PhD** is a Fellow of the Royal Society of Canada, Professor of Politics and Tier 1 Canada Research Chair at York University. Her current research examines employment standards enforcement and access to rights among workers labouring transnationally. Her latest sole authored book, *Disrupting Deportability*, was published by Cornell University Press in December 2019 and her latest co-authored book, *Closing the Employment Standards Enforcement Gap: Improving Protections for People in Precarious Jobs*, was published in Spring 2020 with the University of Toronto Press. Professor Vosko is a member of the ILO's Expert Working Group on Temporary Labour Migration. She was awarded Canada's Social Sciences and Humanities Research Council's Impact Award (Insight Category) in 2019 for her contributions to knowledge on gender, work and international labour migration.

**Anelyse Weiler, PhD** is an Assistant Professor of Sociology at the University of Victoria. Her work investigates the intersection of social inequalities and environment crises in the food system, with a focus on struggles for viable agrarian livelihoods, dignified labour-migration, decent work, and resilient farm ecosystems.

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### **Appendix III – Other Resources**

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