



August 6, 2021

**Attn: Government of Canada, Department of Citizenship and Immigration**

Thank you for the opportunity to provide feedback on the [proposed amendments](#) to the Immigration and Refugee Protections Regulations (IRPR).

We write to you today in our capacity as members of the [Migrant Worker Health Expert Working Group \(MWH - EWG\)](#), an interdisciplinary team of scholars and clinicians with decades of experience working with, and studying the experiences of migrant agricultural workers in Canada. The MWH-EWG formed in April 2020 to address the needs of migrant agricultural workers in Canada during the COVID-19 pandemic. Since then, the MWH-EWG has provided [evidence-based guidance](#) to federal and provincial government agencies, local public health units, the Public Health Agency of Canada, and sending country officials, and we have authored several sets of recommendations to address the various health challenges faced by migrant agricultural workers in Canada, including general guidance related to workplace and living conditions.

We commend the federal government for taking steps to protect the safety and wellbeing of temporary foreign workers and prevent their mistreatment and abuse while working in Canada, however, we believe there are additional steps that can be taken to safeguard this vulnerable population.

We encourage the federal government to continue to work with provincial governments and foreign country officials (in cases where bilateral agreements are of relevance) to increase the accessibility of open work permits (OWP), which provide temporary foreign workers with the ability to refuse unsafe work without jeopardizing their livelihood and establish mechanisms by which workers can find new employment.

Additional measures to protect temporary foreign workers who are pursuing legal claims, including the lessening of barriers throughout the process (such as housing and employment), as well as actions to prevent reprisals, are important and necessary steps. If workers are to be given a fair chance to assert their rights as essential workers in Canada, the risk of repatriation and loss of opportunities to return to work must inform the Government of Canada's regulatory and enforcement processes.

Detailed below we have provided feedback specific to the proposed amendments, as well as recommendations arising from this feedback. The issues we identified, and the associated recommendations, are substantiated by current knowledge and evidence, much of which has been developed via primary research conducted by members of the MWH-EWG.

We look forward to the opportunity to discuss our recommendations with you.

Sincerely,

***The Migrant Worker Health Expert Working Group (MWH-EWG)***



## **Recommendations**

### **1.1 Providing information to temporary foreign workers about their rights in Canada**

1. The phrase “in the foreign national’s chosen official language of Canada” must be changed to “in the worker’s preferred language” (which would not preclude languages other than English or French). Many temporary foreign workers do not speak English or French, and so in order to make good on the commitment to providing workers information about their rights in Canada, this information must be delivered in the language preferred by the workers.
2. In addition to this language barrier, the provision of information in English or French does not address literacy barriers faced by many individuals working as temporary foreign workers. Information delivery must consider education levels and individuals’ limited understanding of the Canadian social, health and legal systems, and requires an explicit commitment by the federal government to provide workers with information in an accessible format.
3. Any information provided to temporary foreign workers should include information about how to report employer non-compliance. Prior research indicates that simply identifying a workplace violation or issue does not empower workers to refuse unsafe conditions or report the issue to authorities. At minimum, the information for reporting/seeking help should include:
  - a. a direct phone line in workers’ preferred language;
  - b. a phone number for a support person who can accompany the person in navigating reporting mechanisms.

### **1.2 Providing an employment agreement to the temporary foreign worker**

4. The same language, literacy and service navigation barriers as discussed above must be anticipated and addressed when drafting the employment agreements (e.g., content, language, format) and in discussing the details with individual workers (see points 1 - 3 under 1.1).

### **1.3 Amending the definition of “abuse” to include “reprisal” against temporary foreign workers**

5. It is encouraging to see reprisal explicitly included in the definition of abuse. However, the statement that employers must “make reasonable efforts” implies an exemption of certain behaviours that constitute abuse, therefore, it fails to fully address the myriad abuses many temporary foreign workers face. Oversight of employers’ responsibility to deter and refrain from abuse must include the employer’s positive duty to take proactive measures that will prevent and mitigate conditions of abuse.

### **1.4 Prohibit employers from charging or recovering fees for the provision of services in relation to an LMIA, employer compliance fee and recruitment fees and require that employers ensure that any recruiters they use do not charge these fees**



6. In order to effectively adopt this regulation and address the financial exploitation of temporary foreign workers, the federal government must address workers' limited knowledge of the differences between those fees that may be legitimately charged to them (i.e., legally-required fees related to temporary visas/ resident permits and work permits) and fees related to the LMIA process that are not their responsibility. Clear and accessible information is required for workers to ensure that they understand what fees they are required to pay.
7. There must be clear language and measures in place that prohibit employers (and recruiters) from attempting to recover fees both directly and indirectly (e.g., through wage deductions) from temporary foreign workers through additional charges or expectations (e.g., inflated amenity charges). These measures should be publicized.
8. All employers in Canada should be required to work exclusively with licensed recruiters. This follows the example set by Manitoba, where all foreign worker recruiters must have a licence. In Manitoba, the offence of recruiting without a licence is subject to fines as high as \$25,000 - \$50,000, and the employer hiring a temporary foreign worker is also held liable, subject to cancellation of the registration to recruit foreign workers for non-compliance. Similar provisions are to be included in IRPA amendments. Furthermore, ESDC is to undertake regular unannounced inspections to ensure that every employer complies with this requirement.
9. As elsewhere in the regulations, the language of "reasonable efforts" makes employers' compliance with this regulation conditional and fails to sufficiently protect workers from the threat of non-compliance. It also disincentivizes workers from reporting non-compliance. Employers should be required to work with licensed recruiters (see recommendation above), in order to prevent and mitigate illegal charges.

### **1.5 Protecting the health and safety of temporary foreign workers**

10. It has long been documented that when temporary foreign workers are reliant upon employers to access health services they are often more reluctant to seek medical care, which results in poorer health outcomes, and even death. Reliance upon employers also poses barriers to workers' access to adequate workers' compensation in the event of a workplace injury.
11. The specification that employers are NOT required to pay for transportation increases workers' dependency on their employer's discretion to seek healthcare. This dynamic may also create a coercive climate for help-seeking, and prevent workers' from accessing care until they are facing a life-threatening situation (e.g., transportation via an ambulance). These proposed amendments undermine workers' access to healthcare. Alternatively, employers should be advised that it is their responsibility to provide appropriate resources for workers to be able to seek independent healthcare, and to facilitate workers' access to healthcare when accessing care independently is not possible (e.g., because of the remoteness of living conditions).
12. The provision of private health insurance, albeit better than no health coverage at all, provides further discretion and oversight over workers' health service needs and help seeking than when they are covered under provincial healthcare. Furthermore, private healthcare coverage can be discretionary, and certain medical procedures may not be covered. During the course of an individual's care/treatment, hidden costs, such as lab/diagnostic tests and medication costs, may not be immediately evident until a worker is



billed at a later date. Hospitals and clinics have varying policies as to whether or not they directly bill insurance providers, or whether they expect the patient to pay out-of-pocket and then are reimbursed at a later date. Depending on the cost of the procedures/care, workers may depend on employers to pay for them (if they receive care/treatment at all). This creates a dependence and indebtedness to their employer, and furthermore, creates a continuous invasion of the employees' privacy over their healthcare matters.

13. To prevent unnecessary obstacles to accessing healthcare, each province should waive the waiting period for provincial health coverage. While this is outside of the federal government's jurisdiction, the federal government should provide leadership and encouragement to the provinces to adopt this policy. As a stop-gap measure, the federal government should provide bridging coverage to facilitate workers' access to provincial health coverage. Even after the provincial healthcare waiting period ends, many workers still cannot access their provincial health card, despite being eligible. Therefore, oversight and regulation are required to ensure employers provide immediate access to provincial health cards.
14. Employers should be responsible for providing temporary foreign workers with resources and information about local healthcare services, particularly clinics, services, and outreach workers who are aware of unique access issues faced by this population.

### **2.1. Requiring documents from third parties**

15. We are encouraged by the government's efforts to support a more comprehensive inspection process. In so doing, the federal government should continue to invest and expand their efforts towards unannounced on-site in-person inspections, as well as towards proactive inspections of other sorts (e.g., blitzes, sector-specific inspections etc). Due to the systemic challenges faced by temporary foreign workers and the threat of reprisal in the form of repatriation from future employment in the country, low levels of complaint-making must be anticipated and addressed proactively.

### **2.2. Reducing timelines to respond to notices of preliminary findings**

16. Explicit consideration of workers' safety, livelihood and employment conditions should be emphasized over an employer's request for an extension. Measures must be taken to ensure the safety and wellbeing of workers in these situations, especially, when a request for extension has been made by an employer.
17. Additionally, measures to prevent additional burdens, as well as repatriation and other forms of reprisal should be in place. Fifteen days is a long time for a worker to go without pay; therefore mechanisms that trigger housing and income alternatives for workers involved in reporting a complaint should also be in place.

### **2.3. Suspend processing of a request for an LMIA when there is reason to suspect employer non-compliance with certain regulatory conditions AND 2.4. New assessment requirements for employers applying for an LMIA**

18. Under 2.3 and 2.4, as noted previously, the language of "reasonable efforts" does not provide a framework for adequate protection for temporary foreign workers in the case of



abuse. Rather, employers should be required to adopt measures that prevent and mitigate conditions of abuse.

19. If the purpose of changes outlined under 2.4 is to increase capacity to assess potential wrongdoing, they should be applied to all employers (both new and those reapplying for a LMIA). Many employers who have been identified by workers and advocates as being non-compliant have a long history of employing workers under a LMIA. Therefore, the additional assessment requirements outlined in 2.4 should apply to all employers seeking a LMIA.

### **3.1 Compliance with provincial or territorial laws that regulate the employment or recruitment of employees, including foreign nationals, in the province where it is intended that the temporary foreign worker will work**

20. Clear protocols to both oversee and enforce compliance with provincial and territorial laws are required within the scope of the federal enforcement regime. Otherwise, these regulations cannot be operationalized.

#### **Additional Considerations**

- I. **Accessible communication for reporting abuse and non-compliance.** To address and mitigate the underreporting that is prevalent among temporary foreign workers who are facing abuse and unsafe conditions, the ESDC phone line should be staffed by persons who speak workers' preferred languages (e.g., Spanish, Tagalog, Thai), or have immediate access to a live translator. Individuals staffing the federal phone line should be trained and experienced in addressing the unique accessibility/contextual issues faced by this population.
- II. **To protect the workers from wrongful dismissal and premature repatriation:**
  - i. 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.
  - ii. This tribunal may only authorize a dismissal where the employer can establish just cause on a balance of probabilities.
  - iii. In instances of employer applications to the tribunal, the worker and government agent should be given notice of application.
  - iv. Workers should be entitled to representation at the tribunal.
  - v. Workers should be entitled to choose this representative (e.g., community legal aid clinic, pro-bono lawyer, or a support organization) if they so wish.
  - vi. At a worker's request, the government agent may be permitted to have observer status at the tribunal.
- III. **Workers have the right to stay in safe and secure housing.** As a measure of deterrence, national housing standards should be established and proactively enforced through regular, unannounced, on-site inspections, as well as announced blitzes.