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Submission to The Ministry of Labour Consultation on Foreign and Resident Employment Recruitment in Ontario

by the

Ontario Federation of Labour

and the

Canadian Labour Congress

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Introduction

The Ontario Federation of Labour (OFL) represents over 700,000 workers who belong to 1,500 affiliated local unions in Ontario. Our members work in hundreds of occupations -- from government employees to construction workers; from nurses to industrial mechanics.

The OFL is the collective voice of union members on issues relevant to working people – from labour relations to health care to economic policy.

The Canadian Labour Congress represents the interests of more than three million affiliated workers in every imaginable occupation from coast to coast to coast. The CLC is the umbrella organization for dozens of affiliated Canadian and international unions, as well as provincial federations of labour and regional labour councils.

The CLC has been active on the migrant worker file intensely since 2006, when federal measures allowed for the rapid expansion of the program without adequate consideration for the well-being and protection of these workers. We work with senior levels of the federal government who are mandated to manage the TFW program as well as with our affiliates, migrant rights advocates, immigration/settlement agencies, faith groups, researchers and agencies working in a development capacity with sending countries and importantly with migrant workers themselves. As a result the CLC has acquired an in depth, critical analysis of the TFW program.

Federal Regulation

Because the entry point for migrant workers begins with Canada's Immigration and Refugee Act, a number of policy reforms that are sorely needed fall within the federal sphere and within the operational duties of federal departments (HRSDC-Labour Branch/TFW Unit; Citizenship and Immigration and Services Canada) who are each tasked with specific administrative responsibilities for the overall program.

Terminology

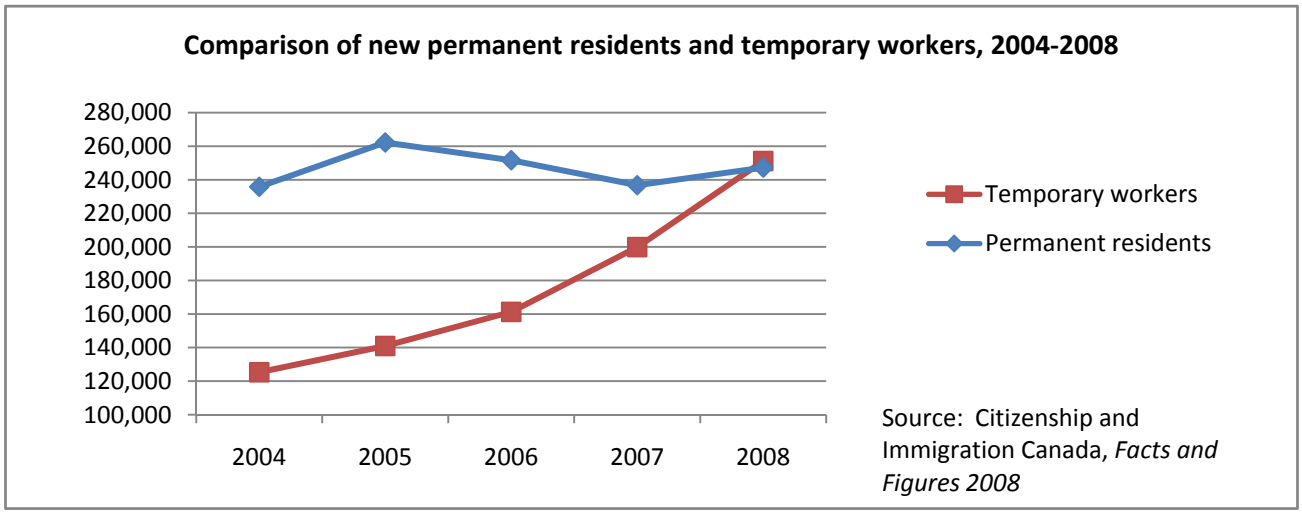
Regarding terminology, the labour movement uses the term international migrant workers (or migrant workers) rather than Temporary Foreign Worker for the following reasons.

I. The term 'temporary' is a misnomer. Many international migrant workers are in fact transitory, either returning to Canada regularly as many agriculture workers do[1]. Other migrant workers who are interested in seeking permanent residency but don't qualify under Immigration Canada's points system (*see* Federal Skilled Worker Program or the Ministerial Instruction Directive Nov. 08)

access the TFW program and then seek residency status via Provincial Nominee Programs [2](PNP).

II. Using the term 'Foreign' is problematic because it suggests these workers are 'alien' or something "other" than from here. Terms like these tend to marginalize and unjustly segregate people.

While racial status data is not collected on migrant workers, we do know the top 10 source countries and it is obvious these workers are largely racialized. In 2006, nearly 35% of the then 160,000 plus migrant workers came from countries where the majority of the population is racialized. [3]



Furthermore, as of December 2008, the number of migrant workers had topped 250,000 – greater than the number of newcomers who were granted permanent residency status (247,196), and the principal source countries (see bar chart) for these newcomers are in Asia and the Pacific, Africa and the Middle East, and South and Central America. There is little doubt migrant workers are disproportionately racialized.

Live in Caregivers are almost fully a cohort of racialized women. According to Cecilia Diocson, Chair of the National Alliance of Philippine Women in Canada (NAPWC) -- over 96% of domestic workers are Filipino women.

The colour coded and gendered reality of who is a migrant worker requires policy makers to address racial and gender labour force/economic status distortions that are systemically inherent in temporary migration programs.

While there are many flaws in this program design, some of the most critical are those that create, sustain or reinforce unfair employment conditions for international migrant workers.

The first of these is that work permits for both seasonal agricultural workers and migrant workers are tied to individual employers. That means that an individual can only work for the employer who has been approved under the respective program to hire him or her. The ability to change employers, should a migrant worker become exploited, abused, or pressured to work beyond agreed upon contract conditions, is extraordinarily limited.

Accommodation requirements under the various work programs present another barrier to accessing workplace rights. Agricultural workers live on the employer's farm. Caregivers are required to live in the employer's home. This limits these workers' access to information about their rights, and privacy, and, their ability to meaningful exercise of their rights.

It is important to underline the extent of power wielded by employers as a result of these mobility restrictions and accommodation requirements.

The time limitation on these work permits is another barrier to these workers accessing their workplace rights. Seasonal agricultural workers have work permits that are generally for less than one year and must reapply each year.

For most other workers, the permit is for a maximum two-year period. Caregivers must work 24 months in a 36 month period for an employer that has been approved under the Live-in Caregiver Program (LCP).

Furthermore, caregivers cannot make applications for landed status until after they complete the LCP. This means that not only are caregivers tied to one employer, but those seeking status are unfairly at risk of receiving an unwarranted negative status recommendation from their employers.

The abuses that live-in caregivers often contend with have been well-documented by agencies such as INTERCEDE, PINAY, SIKLAB, faith communities, labour organizations and major media outlets.[4]

The abuses faced by agricultural workers have also been well documented. The United Food and Commercial Workers and the Agriculture Workers Alliance of Canada for example have decades of experience documenting wage, working conditions and accommodation abuses, occupational health and safety violations, injustice in accessing benefit programs that workers have paid into, and being denied the right to join a union.

- In southwest Ontario, low-wage agricultural workers – principally recent immigrants just getting a foot on the bottom rungs of the job ladder – are being replaced by migrant workers supplied by

shrewd contractors exploiting programs that ensure the lowest-wage costs, and least regulated programs possible.[5]

As the program has expanded in scope and sectors, so too have the cases of abuse of migrant workers in all sectors of the workforce:

- In the summer of 2007, a Burlington based labour broker was permitted to bring in skilled trades workers from the Philippines (plumbers & welders) who believed they would be plying their trade for wages of $23/hr. The broker has acknowledged he did not have confirmed jobs for them. "It is better to have a 'bank' of workers ready to go, than to waste a chance to profit from a government process that can be too slow." claimed the broker.[6] The process enabled him to obtain a positive LMO and temporary permits for these workers, who had paid $10 USD in 'fees' to a third party recruiter. The workers were sent to do menial labour in a bottled water plant in Barrie where they were told they would be paid $14/hour, but the employer paid them nothing for over 2 months. Starving and desperate, they complained, only to receive a mere $800/each for two months work with the bonus of a threat of deportation if they complained further. [7]

The CLC has been advocated for sweeping policy reforms to Canada's TFW program:[8]

Some of the relevant reforms call for all level of policy makers to ensure that:

- Employers and labour brokers using migrant worker programs must be held accountable to a high standard of effective workplace protections. The systemic lack of comprehensive compliance, monitoring and enforcement measures is no longer an option;

- While it is clear the federal government has the primary obligation to put in place a comprehensive federal framework that ensures all provinces and territories have the capacity to deliver agreed upon compliance, monitoring and enforcement mechanisms the Ontario government must demand the federal government undertake the requisite national leadership;

- The federal government also needs to show leadership and negotiate an inter-governmental agreement that ensures an adequate number of provincial labour inspectors are in place. These inspectors must be able to scrutinize workplaces of migrant workers and report in a timely fashion to both federal and

provincial authorities, any violations of employment agreements and provincial/territorial labour standards;

- The TFW program must have in place a progressive penalty system that will apply to all employers & brokers using the program. This system should include the potential of an appropriate jurisdictional regulatory or judicial body to apply fines and/or jail time for employers or brokers found to have violated labour law or administrative requirements of the TFW program.

Additional reforms measures must:

- provide a transparent, impartial appeal process and dispute resolution mechanism, available to all migrant workers prior to the deportation or repatriation of workers;

- remove mobility restrictions and allow migrant workers to live in accommodation of their choosing in Canada;

- eliminate requirements for migrant workers to live on their employer's property and allow workers to change employers;

- remove residency requirements and assure full access to social benefits for migrant workers, including EI, maternity leave and healthcare;

- assure that all employment agreements under the various streams of the TFWP specify that: a) wages will be equal to those of locally recruited workers; b) workers will receive rest and meal breaks, and weekly rest periods; c) workers will be protected from unauthorized pay deductions; d) in the event of dismissal, workers will have access to the impartial appeal process and dispute resolution mechanism; and e) where dismissal is deemed unjust, workers will have the opportunity to change employers.

Canada's aging population and low birth rates combined mean we must plan prudently to replenish our population and workforce via progressive immigration programs that favour permanent rather than temporary migration. Additionally our migrant worker program must be seen as a tool that can support nation building and not singularly address employers' demands for workers. Thus, live-in caregivers should be able apply for permanent residency upon arrival rather than be subject to the discriminatory and restrictive 24 in 36 month, employer dependent waiting period requirement.

As noted, migrant workers are disproportionally racialized.

Racism, both systemic and overt, all too often greets these workers once in Canada. We have found this to be the case with live-in-caregivers, agricultural workers, and those working in the service or transportation sector, to name a just a few realities.

Canada's TFW program needs to be fundamentally re-designed so as to avoid the predictable, costly and discriminatory experiences migrant workers face.

- The labour movement recommends the TFW program actively engages the services of the Racism Free Workplace Unit of HRSDC/Labour Branch and appropriate provincial and territorial departments and services that have proven capacities to counter racism in the workplace.

Ontario must advocate for these types of comprehensive policy reforms to the federal program.

If the existing federal legislative environment remains in place, the Ministry of Labour should work with the federal government to ensure that there are no repatriations of migrant workers who have filed *ESA* claims with the Ministry of Labour.

Ensuring Migrant Workers Can Access Their Rights

Some of the difficulties for temporary workers accessing existing rights in the workplace were outlined above. As a result, a fundamental policy questions is how to enhance these workers' access to employment standards, health and safety, and human rights.

A complaints based system is inadequate for workers whose employment and immigration status is dependent on their employers. To access both existing rights and any new rights the government is contemplating will require a more active enforcement regime. This regime would require increased education, pro-active enforcement by government through increased monitoring and reporting requirements, and increased resources dedicated to enforcement.

However, the most effective method of enforcing rights at the lowest cost to government is unionization. It is notable that the two largest occupational groups of migrant workers in Ontario general farm workers and live-in caregiver's are prevented from unionizing.[9]

In late 2008, the Court of Appeal for Ontario declared the *Agricultural Employees Protection Act, 2002* (AEPA) to be unconstitutional as it provides no statutory protections for collective bargaining. The Ontario government sought leave to appeal to the Supreme Court of Canada, and it was granted.

The government should abandon this effort to defend legislation that has been found to be unconstitutional; it should instead restore to agriculture workers their constitutional rights to unionization and collective bargaining. It should also remove the prohibition on unionizing for domestic workers, and implement a regime that will give these workers meaningful collective bargaining rights.

Employment Standards Act **Changes**

Given the difficulties that workers experience accessing their rights, the following changes should be made to the *Employment Standards Act:*[10]

- **Update limitations and Caps**

  Bring the *ESA* limitation periods and amount of wages recoverable in line with small claims court. Extend the monetary limit on wages that can be recovered to $25,000. Extend the time limit for filing an *ESA* claim to two years and allow workers to go back two years in determining amount of wages and entitlements owing. This extension of time limits is needed because of the barriers to timely reporting that migrant workers face.

- **Improve Anti-Reprisals**

  Currently, employers are able to immediately "repatriate" (deport) seasonal agricultural and other migrant who are trying to enforce employment standards. This creates substantial barriers to enforcing employment standards.

  The government should develop an expedited process for investigating claims for migrant workers.

  The anti-reprisals provision of the *ESA* should explicitly prohibit an employer or other party from forcing "repatriation" on an employee who has filed an employment standards claim.

  Agencies and employers should only be entitled to worker's information pertaining to employment and recruitment, and should not be allowed to seize or withhold passports or other employee documents.

- **Enforcement**

  Employers who hire individuals under the TFWP must be required to undergo government-administered education on employer responsibilities under the *ESA*.

  Employers must be required to provide written information about employment standards rights to employees hired under the TFWP. The required written information should be developed by the Ministry of Labour and provided in languages appropriate to workers under the TFWP.

The OFL's and CLC's responses to the questions posed in the Ministry's consultation paper are outlined below.

A. Prohibition of fees charged to migrant workers and other job seekers

1. Are there any categories of individuals that should be exempt from any prohibitions on fees?

The *ESA* does not allow employers who hire workers directly to charge workers a fee for being hired.[11] The costs of recruiting workers are properly costs of doing business. When these costs are externalized to an agency, it is in the public interest to maintain the purpose of the *ESA* and ensure that they are not subsequently transferred to employees through fees charged by agency or employer for placement.

Ontario needs an expansive prohibition on direct and indirect fees for all workers to avoid creating opportunities for employers to bypass the intent of any regulation prohibiting fees for work. The vulnerability of migrant workers, and many others seeking work from placement agencies, suggests that rigorous protections are required. Full prohibition of fees would bring the Ontario regulatory environment back to where it was prior to the repeal of the Employment Agencies Act in 2000; and, in line with most other Canadian jurisdictions (Nova Scotia, Manitoba, Saskatchewan, Alberta, British Columbia, Northwest Territories, Nunavut, and Yukon).[12]

As a result, the *Employment Standards Act* must be amended to clearly prohibit fees. No party (employer, agency, etc) should be able to request, charge or receive -- directly or indirectly -- from workers or prospective workers any payment (fee) for employment or obtaining employment for the person seeking employment, or for providing information about employers seeking employees.

Any payment received under these provisions should be considered wages owing.

Furthermore, a way to curtail the spread of agencies that lure unsuspecting workers into disguised employment scams is through a prohibition of false representations of availability of work and conditions of work. Ontario can follow British Columbia's *Employment Standards Act* which states that an employer must not induce, influence or persuade a person to become an employee, or to work or to be available for work, by misrepresenting any of the following: a) the availability of a position; (b) the type of work; (c) the wages; and (d) the conditions of employment. (See Section 8).

Finally, where recruitment agencies fail to meet their obligations to recruit and place workers in employment, then the recruitment agency should be held responsible for all monetary losses incurred by the worker.

2. Are there any categories of recruiters that should be exempt from any prohibition on fees?

It is in the public interest to ensure that all recruiters (international and domestically-based) and employers face the same prohibitions on charging fees for work. This creates a level playing field for employers and recruiters, as well as reducing discrimination against workers because of their form of employment.

The vulnerability of migrant workers, and many others seeking work from placement agencies suggests that rigorous protections are required to prevent agencies and employers from charging fees. Ensuring that there are no exemptions will avoid creating opportunities for employers or agencies to bypass the intent of the regulation.

3. Should a recruiter be allowed to charge other job seekers for help in finding employment?

As discussed above, there is a public interest in providing a level playing field so that all workers have the protection from being charged fees for employment.

Fees are generally applied to lower-wage workers with limited labour market mobility. [13]

Higher paid workers that are sought after in the labour market do not face fees. Rather the traditional "head hunter" model is followed in which the client pays the agency a fee for recruiting an employee for the client. Prohibiting fees is consistent with the remedial purposes of the *ESA* to protect workers and create a level playing field for workers and employers.

4. Are there specific ways in which the government could impose a fee prohibition to make it more effective?

Experience shows that effective enforcement tools are essential to ensure agency and employer compliance.[14]

Update the *ESA* Time Limits: Terms of the TFWP prevent most migrant workers from filing claims for unpaid wages, much less prohibited fees, until well after the 6 month time limit on filing a claim has passed. To give these workers a real opportunity to recover prohibited fees, workers should be entitled to recover fees, wages and entitlements for all violations which occurred in the 2 year period before the claim was filed (as is the current limit on filing a small claims court case). Further, because the fee will have been paid or prohibited costs for recruitment deducted from wages at the beginning of the employment contract, migrant workers need time limits longer than 6 months (or one year where the violation is repeated). Therefore, the *E*SA time limit for filing a claim should be extended to two years and workers should be able to recover entitlements for the two years prior to the claim being filed. A two year limit would bring the ESA in line with Ontario's Small Claims Court.

Update the *ESA* Maximum Amount Recoverable: Some migrant workers face fees of $10,000. But $10,000 is the current maximum amount recoverable under the *ESA*. Unless the maximum amount recoverable is increased, expanding protections in one area (e.g., recovering prohibited fees) will make it impossible to recover entitlements in another area (e.g., unpaid wages). The maximum recoverable under the ESA should be increased to $25,000 (the maximum under the Small Claims Court process).

Joint and Several Liability: Employers and agencies must be jointly liable for any prohibited direct or indirect fee charged to a worker. In this way, employers will have to compel agencies to comply with the prohibition of fees charged to workers as a condition of their arrangement.

Penalty: It is not sufficient to prohibit agencies from charging fees. Experience shows that employers and agencies either do not comply or move non-compliance beyond the jurisdictional reach of government. Rather than simply prohibiting fees, penalties should be established for violating any prohibition on fees. The fines should escalate for any subsequent violation of the fee prohibition.

All parties found in violation of the prohibition of fees shall be made public by the Ministry of Labour.

Fees Recoverable: Prohibited fees must be recoverable by order under the *Employment Standards Act*.

Enforcement:

- The government must allocate adequate resources for proactive enforcement of recruiters and employers.
- Recruiters and employers must undergo training on legal responsibilities developed by the Ministry of Labour.
- Employers should be required to provide written information about employment standards rights to employees hired under the TFWP. The required written information should be developed by the Ministry of Labour and provided in languages appropriate to workers under the TFWP.

5. Would a fee prohibition have an impact on the supply of migrant workers coming to Ontario?

Alberta's experience with prohibiting fees suggests that it will not limit the number of workers available under the TFWP. There agencies cannot charge workers fees under Alberta's *Fair Trading Act*[15], yet Alberta experienced a 55% increase in the number of migrant workers coming to that province in one year and a quadrupling of the program in five years.[16] Similarly, British Columbia, which bans the charging of fees to workers through the *Employment Standards Act*, has seen high levels of take up of the TFWP.

6. What would be the impact of a fee prohibition on the recruitment industry and Ontario's economy?

It will improve practices in the industry. Deregulation of Ontario's employment and staffing services industry in 2000 has opened the door to unscrupulous agencies that charge workers fees of $5,000 to $10,000 for promises of jobs under the Live-in Caregiver and Temporary Foreign Worker programs.[17] Prohibiting fees will make it harder for unscrupulous agencies and employers from exploiting workers under these programs.

For other job seekers, prohibition of fees will reduce employment scams and agencies that exploit workers who are desperate for employment. Agencies in other jurisdictions have shown their ability to thrive without charging workers' fees for work placement. Other provincial jurisdictions such as British Columbia, Alberta, Saskatchewan, and Manitoba prohibit fees. This has not hurt the industry. As Statistics Canada data show, these provinces posted double-digit increases in employment and staffing industry operating revenues in 2006, the last year for which this data is available.[18]

B. Scope of Prohibition

1. What would be the impact of prohibiting all fees charged to migrant workers?

This prohibition would increase fairness. It would protect migrant workers from facing fees that are not contemplated under the *ESA* for any other form of employment. It would protect workers under the TFWP who earn low wages, face little job security and little protection against violations of their rights because of the nature of the employment relationship and their precarious immigration status.

2. Should a recruiter be able to charge fees for other services, such as resume writing, to migrant workers? Under what conditions?

Any fees involving recruitment and placement services, or job training should not be paid by the worker. If resumes or job preparation/orientation services, etc. are required by the agency or employer, these costs must be born by the agency or employer. These business costs must not be passed on to workers in the form of fees. This would also require the Ministry to regulate the fairness of fees which would not be administratively feasible.

Given the vulnerability of migrant workers, opportunities for employers and/or agencies to avoid the intent of the legislation must be minimized.

3. Should a recruiter be able to charge fees for other services, such as resume writing, to other job seekers? Under what conditions?

If employers hire workers indirectly through a recruitment agency, the employer, not the worker, must bear the costs of recruitment and hiring. Fees for resume writing or job preparation become an indirect fee on the hiring process that is paid by the worker. This would also require the Ministry to regulate the fairness of fees which would not be administratively feasible.

Higher-paid workers with greater labour market mobility that are “head hunted” through the employment and staffing industry do not face such fees. Agencies have taken advantage of deregulation of fees to begin a practice of charging fees to people in low-wage and precarious work who are the very people the ESA is supposed to protect from such practices.

Ontario has a publicly-funded system to support job seekers who need this form of assistance.

4. Should the government set limits on or otherwise regulate the fees charged for services such as resume writing

Please see answer to B.3., directly above.

C. Prohibition on Employer Recovery of Recruitment Costs

1. Should an employer be prohibited from recovering from an employee any costs that the employer may have incurred in recruiting the employee?

The *ESA* does not allow employers who hire workers directly to charge workers a fee for being hired. This would be an illegal deduction from wages under the *ESA* 2000, s. 13. The costs of recruiting workers are properly costs of doing business. This would also require the Ministry to regulate the fairness of cost recoveries which would not be administratively feasible.

These costs should not be passed onto workers who are extremely vulnerable due to their status under the TFWP. A prohibition on recovery of recruitment costs will also ensure that agencies and employers cannot bypass the intent of the regulation to eliminate fees by replacing fees with cost recoveries.

The costs associated with recruitment of migrant workers provide an important incentive to train and retain workers with permanent status.

2. Should the government create exemptions from the prohibition on recovery of costs in certain situations, for example, if an employee fails to report to work without reasonable cause?

Exemptions from the prohibition on passing costs of recruitment on to workers are contrary to the remedial purposes of the *ESA*. Higher income earners that are 'head hunted' receive ample and direct incentives from employers, while low-income workers recruited under the TFWP face direct and indirect fees for such work. Any exemptions then would discriminate against those the Act is supposed to protect.

Workers only real power in the employment relationship is his or her ability to leave the job. To set limits on that right, by placing costs on it, runs contrary to the remedial purposes of the *ESA*. Further, it creates barriers to labour market mobility of people in low-wage and precarious work.

Opening the door to employers to pass on the costs of the recruitment and hiring process to workers would be a setback for all workers in Ontario, particularly those in low-wage work who would be most affected.

Ontario should not follow the section of the Manitoba *Worker Recruitment and Protection Act* that enables employers to recover costs of recruiting a migrant worker in situations where the worker allegedly does not act in a way condoned

by the employer or fails to report for work, is deported or does not finish the term of contract. (*See* s. 16(2)).[19] This particular provision in Manitoba's *Act* does not conform to the purpose of the Ontario *ESA*, which is to protect workers in vulnerable situations. Section 16(2) of the *WRPA* constrains workers ability to leave substandard employment conditions and creates substantial loopholes to enable employers to bypass the intent of the legislation.

3. What would be the impact on employers of not having an exemption as described in question two?

Establishing a comprehensive prohibition on fees and recovery of recruitment costs encourages a positive regulatory framework that will encourage employers to attract and keep employees by abiding by the minimum employment standards set out in the Act and paying competitive wage rates.

4. Should an employer be allowed to recover costs that are allowed under the federal TFWP, such as airfare and accommodation?

The current patchwork of guidelines relating to recovery of recruitment costs and employer costs under the TFWP and provincial regulation of accommodation is confusing for all parties involved in the process.[20]

Workers should never be required to live in their employer's establishment or have their ability to change employment limited. These conditions give rise to vulnerability of workers and exploitation by employers. Until the federal TFWP, regulations are changed; however, we believe that workers should not be required to pay the costs of accommodation when they are required to live in their employers' establishment. Airfare should be deemed part of the recruitment costs for migrant workers paid by the employer. Employers should be prohibited from recovering these costs from employees. This would alleviate the need for the Ministry to regulate the fairness of fees which would not be administratively feasible.

D. Prohibition on Changes to Wages or Terms and Conditions of Employment

1. Should employers be prohibited from changing the terms and conditions of employment?

Employers should be prohibited from reducing any of the terms and conditions of employment. Employers should be able to improve the terms and conditions of employment, but because of the vulnerability of workers under these programs, they should be prevented from reducing **any** of the terms and conditions. Given this vulnerability, the normal process of adjustments of total compensation costs would be a potential avenue for exploitation.

A penalty must be assigned to employers who reduce wages and working conditions provided in an employment contract or other statutory provisions.[21]

As the Consultation paper notes, most migrant workers come to work in Ontario with employment contracts setting out greater benefits than the *ESA* minimum. However, many employers reduce wages, benefits and working conditions once the worker arrives in Ontario.[22]

2. What would be the impact of such prohibition on employers and employees?

An explicit prohibition and penalty assigned to employers who fail to provide a greater contractual or statutory right will bring fairness to migrant workers by assisting these workers in accessing the same rights that other Ontario workers have.

3. Are there any circumstances that require exemptions from such a prohibition?

See D.1., above.

E. Licensing Regime for Recruiters

1. Should persons who provide recruitment-related services in respect of migrant workers be licensed by the Ontario government?

- **If no, why not?**
- **If yes, why and what should be the elements of a potential licensing regime?**
- **Should all recruiters of migrant workers be required to be members of an association such as the Law Society of Upper Canada or Canadian Society of Immigration Consultants before they could apply for a licence?**

Experience shows that both employers and agencies are responsible for levying unjust fees for work both directly and indirectly. Therefore, regulation of such practices must capture both employers and agencies.

In addition, in some cases employers and agencies charge workers' fees outside of Ontario and any regulatory approach must capture these practices as well. Ontario job seekers and migrant workers need a comprehensive approach to protecting workers in these precarious situations. Licensing regimes should be part of a comprehensive regulatory framework.

Malaysia has a comprehensive licensing and regulatory regime that warrants provincial examination. [23] Key elements of its program include:

- Tripartite involvement of government, employers and brokers.

- Explicit definitions of each stakeholder's roles and responsibilities in the program.
- Obligatory licensing of all brokers.
- Strong monitoring and enforcement capacities by government.
- Stiff penalties for employers and brokers, including both fines and incarceration for program violations.

Ontario should require employers under the TFWP to register with the Ministry of Labour as does the Manitoba's *Worker Recruitment and Protection Act.*[24] The information required should include: the employer, the position to be filled by the migrant worker, and contact information for individuals who will directly or indirectly be involved in recruiting migrant workers for the employer. Requiring this kind of information would assist workers and the Ministry of Labour in ensuring compliance with the ESA. Employers should be refused the right to register to hire migrant workers if the employer has provided false information, has previously violated the ESA directly or indirectly or there is reasonable grounds to believe the employer will not act in accordance with the law.

Security from Employers of Migrant Workers

Before an employer is registered by the Ministry of Labour to hire a migrant worker, the employer must provide an irrevocable letter of credit or deposit of at least $25,000 for an individual employee. Workers under the TFWP face immediate repatriation upon completion of the contract with the employer or termination of employment under some programs. Such securities improve workers chances of recovering unpaid wages and entitlements.

Licensing

- In defining who must have a license, the government must ensure an expansive approach to capture all the parties that are directly and indirectly involved in recruiting workers (domestic or international-based recruitment agencies).
- Before any party is licensed to recruit migrant workers, an irrevocable letter of credit or deposit of at least $25,000 should be provided to the Ministry of Labour.

Enforcement

- The government must allocate adequate resources for review of licensed agencies and registered employers.

- Licenses should be renewed each year, and employer should register before each application for a Labour Market Opinion.

- Licenses and registration should only be renewed if it is verified that all Ontario labour laws and regulations have been complied with (for example, verification by previous workers).

- The Ministry of Labour should conduct proactive (unannounced) inspections of individuals or agencies licensed to recruit workers to Ontario and employers registered to employ migrant workers.

- To receive a license or registration, agencies and employers must undergo training on legal responsibilities developed by the Ministry of Labour.

- Employers should be required to provide written information about employment standards rights to employees hired under the TFWP. The required written information should be developed by the Ministry of Labour and provided in languages appropriate to workers under the TFWP.

- Recruiters granted licensees should be listed in a Licence Registry accessible to the public on the Ministry of Labour website as in Manitoba.

2. Should persons who provide recruitment-related services in respect of other job seekers be licensed? If so, what should be the elements of a potential licensing regime?

Yes, it should be the same regime as for migrant workers.

3. Should any persons providing recruitment-related services be exempt from holding a licence?

No.

4. What would be the impact of a licensing regime on the recruitment industry?

The Association of Canadian Search, Employment & Staffing Services (ACSESS), the recruitment industry lobby group, reports that the 20 largest employment agencies generate 38% of the industry's revenues. These large agencies operate in other provincial jurisdictions where the recruitment industry is licensed and fees on workers are prohibited.[25] Agencies licensed in Alberta and British Columbia posted double-digit increases in operating revenues in 2006.[26]

5. What would be the impact of a licensing regime on other industries that rely on recruitment agencies?

See discussion, above.

6. Are there any actions the government could take to address the potential impact on industry?

See discussion, above.

7. What would be the impact of a licensing regime on migrant workers and other job seekers?

As long as licensing employment agencies and registering of employers is developed within a comprehensive enforcement framework and regulatory changes as addressed in previous sections, then a licensing regime could help protect people in vulnerable work from exploitative fees and conditions.

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[1] Up to 70% of agricultural workers return each year to work on Canadian farms due to the recruitment protocol used by farmers to hire specific workers they want to return to their operation each year. Recruitment of farm workers is administered by officials from sending countries and farmers name specific workers they want to hire from previous seasons. The process is known as 'naming' and at any given time, approximately 70% of workers return as "named" participants. Workers typically return for several seasons, the average stay being seven years. Some participants have been involved in the program for over twenty years. (Source: The Seasonal Agricultural Workers Program: Considerations for the Future of Farming and the Implications of Managed Migration Nelson Ferguson Concordia University, Our Diverse Cities: Rural Communities (Volume 3, Summer 2007).

[2] Under the PNP provincial and territorial governments nominate foreign nationals for permanent immigration

[3] Citizenship & Immigration Canada 2006 data tables.

[4] Brazao, Dale and Cribb, Robert. (2009, March 14). "Nannies trapped in Bogus Jobs". *The Toronto Star.* Retrieved from http://www.thestar.com/article/602352

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[11] *This* would be an illegal deduction from wages under the ESA 2000, S. 13.

[12] *The Worker Recruitment and Protection Act*, C.C.S.M., c.W197, *Employment Services Act*, C.C.S.M. c. E100, *Employment Agencies Act*, R.S.Y. 2002, c.71, *Employment Standards Act*, S.N.W.T. 2007, c.13, *Employment Agencies Act*, R.S.N.S. 1989, c.146, *Fair Trading Act*, R.S.A. 2000, c. F-2.

[13] Caregivers' Action Centre, Workers' Action Centre, and Parkdale Community Legal Services. (2009, July). Submission to the Ministry of Labour Consultation on Foreign and Resident Employment Recruitment in Ontario, p.15.

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[15] *Fair Trading Act*, A. Reg. 189/99. Employment Agency Business Licensing Regulation.

[16] Alberta Federation of Labour. (2009, April). "Entrenching Exploitation"

[17] Caregivers' Action Centre, Workers' Action Centre, and Parkdale Community Legal Services. (2009, July). Submission to the Ministry of Labour Consultation on Foreign and Resident Employment Recruitment in Ontario, p.17

[18] Statistics Canada. (2008, May 7). Employment services industry. *The Daily.* [Bulletin]. Ottawa, Ontario: Author.

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[20] For example, employers of workers under the Seasonal Agricultural Workers Program and Foreign Temporary Worker program must cover travel costs and employers of LCP and SAWP workers must provide accommodation. Provincial statutes contribute to the patchwork of regulation on how accommodation is regulated. Justice for Migrant Workers has documented many complaints from migrant workers in the SAWP program on sub-standard and dangerous housing conditions. Justice for Migrant Workers has called for improved regulation and more proactive enforcement of housing conditions.

[21] Currently Employment standards officers can only issue fines for violation of the Act if the specific offence is listed in regulations.

[22] Caregivers' Action Centre, Workers' Action Centre, and Parkdale Community Legal Services. (2009, July). Submission to the Ministry of Labour Consultation on Foreign and Resident Employment Recruitment in Ontario, p. 24.

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