

A brief on the Temporary Foreign Worker Program

by

**Migrant Worker Solidarity Network
Manitoba**

submitted to

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on Human Resources, Skill and Social Development
and the Status of Persons with Disabilities (HUMA)**

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1. Introduction

Each year approximately 400 Mexican men, migrant labourers under the Seasonal Agricultural Workers Program (SAWP), work on farms in Manitoba. These labourers perform physically strenuous work on vegetable farms and in greenhouses, jobs that most Canadians prefer not to do. Workers spend up to eight months in Canada, returning year after year for the agricultural season. Workers regularly toil twelve hours per day, six to seven days a week, and they live socially isolated from Canadian society.

AREAS OF CONCERN

2. Program Structure and Permanent Resident Status

The year 2016 marks the 50th year anniversary of the Seasonal Agricultural Worker Program. It is clear that the need for labour in the agricultural industry in Manitoba is a permanent need, not a temporary one. These migrant workers are indeed “permanently temporary” — continuing to return to Canada each year, but continuing to live without the protections provided by permanent residency. Some of the Seasonal Agricultural Workers have been coming to Manitoba to grow vegetable crops for more than 20 years. They pay taxes and contribute to Employment Insurance and the Canada Pension Plan without being able to access the services and benefits funded by these programs.

2.1 Employer-dependent

The temporary nature and program structure of the SAWP place workers in a vulnerable position. The program ties them to one employer, and without permanent resident status it is nearly impossible for a migrant worker to find another job if the working relationship with their current employer breaks down for any reason. It also makes it easier for employers to take advantage of workers who have little choice but to accept unfair treatment. Currently, employers have discretionary power to repatriate workers, or return workers to their country of origin, when they do not comply with some aspect of the work or program, when they refuse work, or for “any other sufficient reason” (HRSDC 2013; Walia 2010), including for medical reasons when workers become hurt or ill, as reported in a study from the Canadian Medical Association Journal Open.

Unique to the Seasonal Agricultural Worker Program, employers may specifically request workers by name to return the following season. This “naming” process places them in a precarious positions vis-à-vis their employers. Employers complete a performance report on an annual basis for each worker, and workers with complaints about living or working conditions may be repatriated, not invited to return, or effectively barred from the program altogether.

2.2 Family Separation

Furthermore, while some other temporary migrant workers in Canada are able to bring their families with them while they work, Seasonal Agricultural Workers are obliged to leave their families behind. Workers we have spoken with consistently express the difficulty of being far away from family members while in Canada.

“To have my papers, to bring my family, that is it. My dream is to have my papers and my family— to arrange things for my family. That’s it—to be with my family all the time and not be separated.” –Manuel

Canada has always needed workers to perform difficult and demanding physical labour. Canada prides itself on being a land of immigrants. Many of our ancestors came to Canada and worked in low-paying jobs, yet they were allowed to put down roots in our communities and had access to citizenship. Migrant workers in the Seasonal Agricultural Workers Program contribute to Canada’s economy and communities, year after year for decades, and yet do not have access to permanent residency.

2.3 Recommendations:

- **Migrant workers, including Seasonal Agricultural Workers, should be given permanent resident status.**
- **At the very least, providing open or sector-specific work permits that allow workers to change employers could increase job security and productivity, and would give workers some choice in deciding in which province or farm they would prefer to work.**

3. Health Care Coverage and Access

In 2014, the Manitoba provincial government began providing provincial health care coverage for Seasonal Agricultural Workers upon arrival. Yet most migrant agricultural workers across Canada do not have this coverage. Instead they must wait for a three month eligibility period and/or rely on private insurance, which leaves gaps in health coverage for workers. Workers are often uncertain of what private insurance covers and for this reason are hesitant to access care. Some are flatly denied coverage for injuries that are deemed pre-existing conditions.

“Some of the guys play soccer on Sundays but I don’t. I don’t want to get injured, because then what would happen? I’d have to go back early and insurance wouldn’t cover my injury because it didn’t happen at work.” –Manuel

Agricultural workers perform heavy and difficult physical work for long hours that puts them at risk for repetitive strain injuries in particular. Though their working conditions increase their risk of health problems, Seasonal Agricultural Workers in Manitoba face a host of barriers to accessing health care, even with provincial health care coverage. Workers face an unknown healthcare system, communication challenges, and difficulty accessing clinics because of their long work hours, remote locations, and reliance on employers for transportation to health care facilities.

Because provincial health insurance for seasonal agricultural workers is dependent upon a valid work permit, workers with serious health concerns face repatriation and a denial of important and sometimes life-saving medical treatment, like the tragic case currently in the media of Sheldon McKenzie a seasonal agricultural worker in Leamington, Ontario. McKenzie suffered a serious head injury at work and his family was pressured to send him back to Jamaica. The family hired a lawyer who succeeded in getting McKenzie a temporary stay to continue to receive medical care in Canada. McKenzie later died in Canada.

"It's worse than slavery — they dispose of them."

-Marcia Barrett, cousin of Sheldon McKenzie

Prior to leaving Mexico, seasonal agricultural workers must receive a health clearance, for which they are examined by a government-certified physician in Mexico City and undergo a series of medical tests. Yet neither the Canadian nor Mexican government requires or offers post-season medical check-ups to assess whether workers have acquired infections or injuries while in Canada. Thus, workers may be returning home with injuries sustained while working in Canada and be unable to access medical coverage for these maladies. In fact, they may undergo a medical assessment prior to their next season of work in Canada and only then discover health issues that make them ineligible to travel—and thus ineligible for continued employment in the SAWP.

Workers may also experience latent health issues that arise weeks or even years after a season of work, for example as the result of sustained exposure to pesticides/herbicides.

3.1 Recommendations:

- **All Seasonal Agricultural Workers across Canada should have provincial health care coverage provided upon arrival to Canada.**
- **Ensure that workers receive adequate workplace health and safety training in their own language so they can avoid injury and illness.**
- **Provide all workers in the Seasonal Agricultural Worker Program with an orientation program in their own language on how to access the health care**

system in Canada, on what it provides, and on what is provided in their private health insurance plans. Workers also must receive an orientation to the Workers Compensation System.

- Provide post-season medical check-ups for seasonal agricultural workers to identify injuries and illnesses acquired while in Canada and facilitate proper insurance coverage for treatment.

4. Access to Benefits and Settlement Services

4.1 EI benefits

Although they contribute to Employment Insurance (EI), SAWP workers are unable to receive benefits through the program (Gibb 2006; Verma 2003). While SAWP workers pay premiums and qualify after a few months of work, they cannot receive regular EI benefits because they must be living in Canada and available to work. When they are laid off, they are immediately returned to Mexico. The program structure renders these workers ineligible to receive EI benefits.

EI also provides sick benefits to those missing extended work for medical reasons. However, to access these a worker must remain in Canada, and SAWP workers experiencing medical difficulties are encouraged to return to Mexico as described above under Health Care Coverage and Access. (CBC News 2016; UFCW 2007).

Until recently, SAWP workers were eligible to receive parental benefits. Even when this benefit was available, our research and advocacy work showed that workers were often not aware of this benefit, or had great difficulty applying for it because of language and computer skills barriers (Read et al. 2013).

4.2 Settlement services

Many SAWP workers have been returning to work seasonally in Canada for years, some of them arguably living the majority of their lives on Canadian soil, but they remain socially and linguistically isolated from the communities where they live and work (Basok 2004; Gibb 2006; Hennebry 2012; Preibisch 2003). The SAWP workers we have interviewed and work with in Manitoba live in rural locations without access to public transportation and have limited English language skills. They have few encounters with Canadians—once a week they are driven into town for a short period of time to shop for groceries or do laundry and many use hand signals to complete transactions.

Workers we have spoken to want to learn English. Not only would it reduce their feelings of social exclusion, it would contribute to worker safety for all workers (Hennebry 2012).

However, while many SAWP workers continue to return to the same communities to work for decades, because of their “temporary” status they are not eligible for federally funded immigrant settlement services, including English classes.

4.3 Recommendations

- **Access to EI parental benefits should be reinstated immediately.**
- **Given that migrant workers pay the same rate into EI but receive very limited benefits, a portion of their EI contributions should fund English language training programs. A provincially-run, federally-funded system could provide workers with language training.**
- **Workers toil long hours in dangerous conditions and can succumb to illness and injury. Given that they pay into the EI system, they should receive sick benefits when they fall ill in Canada. The reality is that workers are often repatriated when ill, making it impossible for them to collect EI sick benefits.**
- **Provide government support for English language training and access to other necessary settlement services for temporary migrant workers, including SAWP workers.**

5. Monitoring of Working and Living Conditions

Dependent on their employers for their status in Canada, and faced with the possibility of repatriation or future exclusion from the program, workers are understandably reticent to voice concerns over working or living conditions. As several researchers have illustrated (e.g., Faraday 2012; Hennebry 2012), complaint-based systems where workers must lodge a grievance do not function effectively in the context of the powerful threats of termination and early repatriation.

Since the SAWP requires that farmers provide on-site housing for workers, the farm is both the workplace and temporary home for workers. Manitoba Health’s Safe Housing unit inspects temporary housing on farms and the Employment Standards branch is responsible for regulating certain conditions of employment. Inspectors are not mandated to coordinate their inspections or communicate with each other or with workers about the results of their investigations. Farms might fail a housing inspection or pay rates below the minimum wage, and neither workers nor worker advocates would know.

In the case of the SAWP, the Mexican Consulate is also responsible for providing oversight and ensuring acceptable housing, health insurance, and workers compensation coverage. Our research indicates, however, that the Mexican Consulate may not always provide adequate protection for workers (Read et al. 2013). Rather than focusing its efforts on ensuring that contractual obligations are met, it appears that the highest priority of the

Mexican Consulate is to ensure the greatest number of work placements for underemployed Mexican labourers (Gibb 2006; Verma 2003). When it comes to the issue of worker protections, the Mexican Consulate at times defers responsibility onto the Canadian legal system, a system that is not well known to workers. Although worker protections are included in Canadian laws, monitoring and enforcement is often uncoordinated and generally reactive in nature, and a lack of adequate government oversight of the program contributes to migrant worker vulnerability.

Recognizing the vulnerability of migrant workers, in 2009 Manitoba passed the Worker Recruitment and Protection Act (WRAPA). The Act (1) regulates agents that recruit migrant workers to the province by requiring them to hold a license and (2) requires that employers register with the province before they can recruit a foreign worker. Farms wishing to hire workers through the SAWP must register with the province. This ensures that employers have a good history of compliance with labour laws and employment standards prior to hiring workers (Allan 2010). It also provides Employment Standards Manitoba with a current list of employers in the province who have applied to hire migrant workers, which facilitates monitoring of employer compliance.

Employment Standards Manitoba created a Special Investigations Unit that conducts proactive site visits and audits of employers that hire migrant workers, and meets with worker advocates and community groups to hear their concerns. In 2012 the Special Investigations Unit of Employment Standards Manitoba conducted an inspection of approximately 25 farms employing foreign workers in Manitoba and found 56% of farms were non-compliant with provincial employment standards. Violations included not paying the Labour Market Opinion rate, not recording workers' hours worked, failure to pay workers regularly, and overtime wages not being properly calculated. In a follow-up investigation the following year most of these violations had been corrected, suggesting the effectiveness of proactive and regular investigations.

WRAPA is a step in the right direction toward a more proactive, coordinated effort to protect workers. However, enforcement of the Act remains largely complaint-based, and this more proactive effort to provide oversight and protect workers is jurisdictionally limited to the province.

5.1 Recommendations:

- **Upon arrival, provide SAWP workers with information, in their own language, on Employment Standards and Workplace Health and Safety and Workers Compensation. It should also be mandated that workers receive adequate workplace training in their own language so they can avoid injury and illness.**
- **Work with provinces to implement proactive enforcement of Employment Standards and Workplace Health & Safety in sectors employing migrant workers.**
- **Ensure all provinces have a mechanism for anonymous and third-party complaints to provincial authorities for Employment Standards and Workplace Health & Safety.**
- **Implement WRAPA-like legislation at the federal level that provides coordinated protections for workers and strictly enforce the legislation.**
- **Inspect all housing for Seasonal Agricultural Workers prior to occupancy and randomly throughout the season.**

6. Right to Unionize

"That's not my Canada."
- Pablo Arrellanos, Migrant Advocate

The right to form a union is enshrined in the Canadian Charter of Rights and Freedoms and upheld by Manitoba provincial laws. When workers are actively discouraged from organizing and threatened with repatriation for engaging in such activities, they face increased repression and vulnerability.

Even though agricultural workers in Manitoba have the legal right to organize, they are discouraged from participating in unions. Prior to leaving Mexico, workers are advised that they will jeopardize their employment by working or relating with unions or union organizers while in Canada, and the Mexican Consulate reinforces that message upon their arrival to Canada.

The United Food and Commercial Workers Union has recorded several instances of workers being identified as union sympathizers and subsequently excluded from participating in the SAWP program.

6.1 Recommendations:

- **Ensure migrant workers' representation and voice in the yearly re-negotiation of employment contracts.**

- **Protect the right of migrant workers to communicate with a union and protect their right to join a union if they wish to, without the risk of reprisals from their employer.**

7. Summary

“We’re benefiting hugely from these workers. They come and work for us for a low wage and to help these farmers become prosperous. They help us to have low cost vegetables and vegetables that we can export; we’re benefiting from it.”

- Pablo Arrellanos, Migrant Advocate

Seasonal Agricultural Workers make tremendous contributions to our province and country and make incredible sacrifices for their families. These workers return year after year to fill physically demanding and low-wage jobs that most Canadians prefer not to do. They live and work under precarious conditions, and endure the loneliness of family separation and social isolation. They provide their labour to Manitoba and its farms, which in turn provide Manitobans with affordable produce, yet they continue to be treated as second-class citizens, unable to access the rights and benefits afforded to other workers in Canada.

7.1 Summary of Recommendations

Program Structure

- Migrant workers, including Seasonal Agricultural Workers, should be given permanent resident status.
- At the very least, providing open or sector-specific work permits that allow workers to change employers could increase job security and productivity, and would give workers some choice in deciding in which province or farm they would prefer to work.

Health Care

- All Seasonal Agricultural Workers across Canada should have provincial health care coverage provided upon arrival to Canada.
- Ensure that workers receive adequate workplace health and safety training in their own language so they can avoid injury and illness.
- Provide all workers in the Seasonal Agricultural Program with an orientation program in their own language on how to access the health care system in Canada, on what it provides, and on what is provided in their private health insurance plans. Workers also must receive an orientation to the Workers Compensation System.

- Provide post-season medical check-ups for seasonal agricultural workers to identify injuries and illnesses acquired while in Canada and facilitate proper insurance coverage for treatment.

Benefits and Settlement Services

- Access to EI parental benefits should be reinstated immediately.
- Given that migrant workers pay the same rate into EI but receive very limited benefits, a portion of their EI contributions should fund English language training programs. A provincially-run, federally-funded system could provide workers with language training.
- Workers toil long hours in dangerous conditions and can succumb to illness and injury. Given that they pay into the EI system, they should receive sick benefits when they fall ill in Canada. The reality is that workers are often repatriated when ill, making it impossible for them to collect EI sick benefits.
- Provide government support for English language training and access to other necessary settlement services for temporary migrant workers, including SAWP workers.

Working and Living Conditions

- Upon arrival, provide SAWP workers with information, in their own language, on Employment Standards and Workplace Health and Safety and Workers Compensation. It should also be mandated that workers receive adequate workplace training in their own language so they can avoid injury and illness.
- Work with provinces to implement proactive enforcement of Employment Standards and Workplace Health & Safety in sectors employing migrant workers.
- Ensure all provinces have a mechanism for anonymous and third-party complaints to provincial authorities for Employment Standards and Workplace Health & Safety.
- Implement WRAPA-like legislation at the federal level that provides coordinated protections for workers and strictly enforce the legislation.
- Inspect all housing for Seasonal Agricultural Workers prior to occupancy and randomly throughout the season.

Right to Unionize

- Ensure migrant workers' representation and voice in the yearly re-negotiation of employment contracts.
- Protect the right of migrant workers to communicate with a union and protect their right to join a union if they wish to, without the risk of reprisals from their employer.

8. Migrant Worker Solidarity Network

The Migrant Worker Solidarity Network is a group of community, labour and faith activists founded in 2009. We work with migrant workers in the Seasonal Agricultural Program in Manitoba to provide them with support, educate the public about the realities they face, and promote changes to policies and programs that will improve their living and working conditions.

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