

Best Practices: Manitoba's Worker Recruitment and Protection Act

Recent attention to the Temporary Foreign Workers Program (TFWP) has raised questions about how these workers are treated and how their presence affects Canadian workers, wages and labour and employments standards. These issues are of particular concern in Alberta – with the greatest number of TFWs in Canada and in Saskatchewan, where the number is growing faster than any other province. In an effort to improve the programs, both the federal government and some provinces have looked to Manitoba which has passed legislation to protect temporary foreign workers from predatory recruiters. Regulations designed under the legislation also allow Employment Standard's Special Investigations Unit to track who is working for what employer so it can use a proactive enforcement model to ensure minimum employment standards are adhered to.

Background

It is largely acknowledged that the relationship between TFWs and their employers is grossly unbalanced, with almost, if not all, the power in the hands of the employers. TFWs leave their families behind to work in a strange land because they are desperate to improve their lives. Once here some employers exploit them with impunity, knowing that the workers either do not understand their rights or they are afraid to demand fair treatment.

Many workers report that employers continually threaten to have them deported if they complain of unfair treatment.

It is not just employers who have the ability to mistreat these vulnerable workers. Private recruiters often charge foreign workers exorbitant fees (as high as \$15,000) to help them get accepted in a variety of sectors under the Temporary Foreign Worker Program. Making matters worse, often the terms and conditions of employment are very different than what was promised by the recruiter, but once here, the workers' lack of power makes it impossible for them to seek a remedy. Although the federal government and Ontario have taken some action to protect workers during recruitment, Manitoba is credited for having the most comprehensive legislation to protect TFWs.

Manitoba's Worker Recruitment and Protection Act (WRAPA)

On April 1, 2009, Manitoba's Worker Recruitment and Protection Act (WRAPA) came into effect. This legislation offers more protection to TFWs who work in Manitoba by dealing with abuses both in the recruitment stage and while TFWs are working. It has become an example of best practices for other jurisdictions. Even federal Employment

CCPA-MB

205 - 765 Main St.
WINNIPEG
R2W 3N5

PHONE

204.927.3200

EMAIL

CCPAMB@
POLICYALTERNATIVES.CA

WEBSITE

WWW.
POLICYALTERNATIVES.CA

BLOG

WWW.POLICYFIX.CA

TWITTER

@CCPAMB

Minister Jason Kennedy has referred to the legislation as “something of a model”.

The WRAPA provides three layers of worker protection. Firstly, it creates a provincial registry of all TFW employers in the Province so that Employment Standards knows where TFWs are. Secondly, it has built in mechanisms to prevent exploitation by recruiters, and thirdly, its proactive structure allows for the formal collection of data about the workers’ living and working conditions, pay as well as any expenses claimed by the employer. The Act also gives the Director and a Special Investigations Team the ability to undertake proactive investigations of workplaces and employer records.

The effectiveness of the legislation begins with the upfront cooperation of the federal government, as explained in the following section.

Certificate of Registration

A valid, original Certificate of Registration – issued by the government of Manitoba - must be included when any Manitoba employer applies to Employment and Social Development Canada (ESDC) for a Labour Market Impact Assessment (LMIA). By collaborating with the Province at this step of the process, the federal government is acting as a first gatekeeper, ensuring that Manitoba employers comply with the rules and regulations set out in the legislation.

In order to obtain a Certificate of Registration from the Manitoba Employment Standards Division, employers must provide the following information:

- The number of workers being requested
- The occupation of each worker
- Countries of origin of each worker
- The name of the approved foreign worker recruiter, if applicable.

Protecting workers from recruiters

Under WRAPA no employer can recruit TFWs without registering with the Director of Employment Standards and any third party that recruits on behalf of an employer must also be registered. The legislation also restricts eligibility of third-party recruiters to those who are members of the Law Society of Manitoba – or bar of another province - or members of the Immigration Consultants of Canada Regulatory Council. This protection ensures that recruiters adhere to the professional standards of the governing bodies they belong to, helping to stem the worst practices of overseas private recruiters. According to Faraday,

... WRAPA directly targets the behaviour that creates the insecurity to prevent the insecurity from arising. This is a more powerful and transformative approach than one that relies primarily on a reactive tool to help a precariously situated worker secure after-the-fact redress for the harm.

Any third-party recruiter must deliver an irrevocable letter of credit, a cash deposit or a security deposit for \$10,000. Should a recruiter contravene the Act, the deposit may be forfeited. The deposit also acts as a surety for TFWs who are illegally charged a fee by a recruiter. Recruiters are expressly forbidden from charging or collecting fees from TFWs, and an employer who uses the services of an unlicensed recruiter is liable for any illegal fees a recruiter charges.

Human resource personnel who find employees for their employers do not have to register under the WRAPA.

Protecting workers in Manitoba

Not only does the WRAPA force employers to keep detailed records, those records must be made available to the Director of Employment Standards upon request. The Director has express powers to ensure compliance with the Act and can share information with other provincial and federal departments or agencies. Although to date the Employment Standards Branch has been able to deal with noncompliance through working with employers, the legislation does allow for penalties of up to \$25,000 for individuals and \$50,000 for corporations.

The effectiveness of WRAPA is demonstrated in the proactive actions of the Special Investigations Unit of the Employment Standards Branch. The department investigated 25 farms and found eight of them with serious compliance issues and six with minor problems. The employers were educated and warned; follow up investigations revealed complete compliance with the regulations.

Those who advocate for precarious workers note the ineffectiveness of taking action to protect workers only when workers complain. Highly vulnerable workers do not have the power to advocate for themselves. Clearly only proactive auditing of workplaces, such as exercised under the WRAPA is the most effective way to protect TFWs.

How effective is WRAPA?

In the Canadian context, Manitoba's WRAPA offers a model that all provinces should consider. The three protective layers, combined with the power granted to the Director of Employment Standards to proactively investigate workplaces puts Manitoba closer to meeting International Labour Organization standards for TFW protection. Furthermore, the willingness of the federal government to cooperate in WRAPA's enforcement shows how and why national standards for recruitment should be included in the process for granting LMIAs. National standards on data collection would also help change the culture around hiring TFWs so that employers take more care in their treatment.

According to Faraday, the ILO's Multilateral Framework on Labour Migration provides the following recommendations. These could be used to measure the effectiveness of WRAPA:

- a. Develop standardized systems to license or certify agencies that engage in recruitment and placement services;
- b. Develop systems to ensure that migrant workers received understandable and enforceable employment contracts;

- c. Implement legislation to prohibit unethical practices and provides for penalties in the case of violations;

- d. Establish a system of protection, such as insurance or bond, to be paid by the recruitment agencies, to compensate migrant workers for any monetary losses resulting from the failure of a recruitment or contracting agency to meet its obligations; and,

- e. Provide that fees or other charges for recruitment and placement are not borne directly or indirectly by migrant workers.

WRAPA accommodates all the recommendations. With respect to b., federally the LMIA process does stipulate terms and conditions which will vary according to the TFW stream the worker falls under. Given the comprehensive framework already established under WRAPA and the overlap with the federal government, it would be relatively straight forward to introduce a new regulation requiring that employees receive a copy of the contract, ideally in the workers' first language, that explains each worker's conditions of employment.

Although Manitoba can be credited with having the best protections in place for migrant workers, there is much more that should be done to protect them. Research by the Migrant Workers Solidarity Network in Manitoba outlines the challenges that Seasonal Agricultural Workers face in Manitoba and offers the following recommendations (most, if not all, will apply in other provinces and to most TFW streams):

Provincial

- Provide government support for English language training.
- Foster better communication between government agencies and local advocacy groups to improve gov-

ernment oversight of the program.

- Ensure that workers receive adequate workplace training in their native language so than can better avoid injury and illness.
- Ensure that workers have ability and opportunity to communicate with a union and that they are not prevented from joining a union should they decide to.
- Create a Manitoba Migrant Worker Advocacy Centre.
- Use available provincial mechanisms to expand pathways to Permanent Residency for Seasonal Agricultural Workers interested in immigrating to Manitoba.

Federal

- Immediately reinstate Employment Insurance parental benefits.
- Restructure the program so employees can:
 - change employer
 - decide which province or farm they can work on.
- Create an accessible pathway to permanent residency, at least for workers who return year after year.

The fact that so many protections are needed in the first place indicates that the Temporary Foreign Worker Program is deeply flawed. Canada has created a new labour market that allows employers to exploit desperate people who have been economically disenfranchised by globalization and free trade agreements that do not respect the rights of citizens or workers. All categories of TFWs should have fair access to a reasonable pathway to immigration. Only then will Canada be able to meet future labour-market demands in a just way

that could eliminate the need for such legislation as Manitoba's WRAPA.

Complete referenced version available by emailing: ccpamb@policyalternatives.ca

CCPA-MB

205 - 765 Main St.
WINNIPEG
R2W 3N5

PHONE

204.927.3200

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