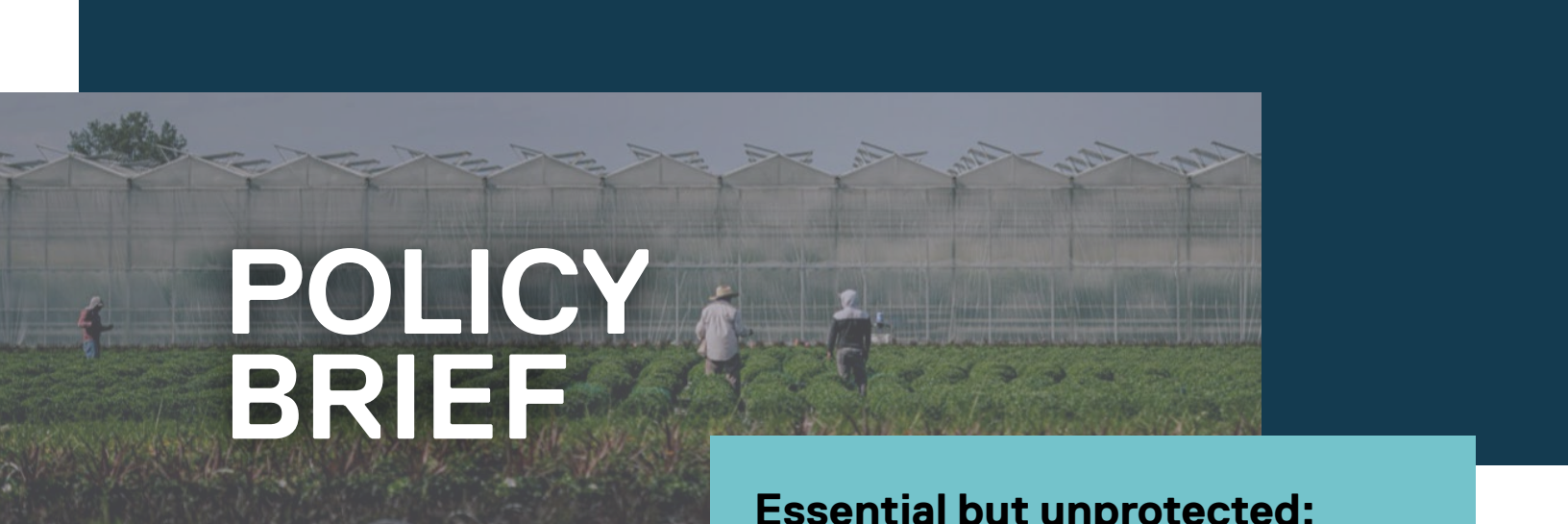




POLICY BRIEF

No. 20, April 2024
Erika Borrelli

Essential but unprotected: Migrant farmworkers in Canada

EXECUTIVE SUMMARY

Canada's agricultural sector has increasingly relied on the temporary labour of migrants to address labour market gaps and ensure national food security. Yet, their conditions of entry, exclusions and restrictions to essential legal protections, coupled with a lax and gap-ridden inspection and enforcement regime, render temporary migrant farmworkers vulnerable to exploitation and inadequately protected.

Recognizing their essential contributions, the Canadian federal government is committed to streamlining the recruitment of migrant labour. It has introduced various initiatives during and after the COVID-19 pandemic, with the most recent being the addition of the Recognized Employer Pilot Program in 2023. However, none of these initiatives include enhanced regulatory protections; instead, they simply make it easier for employers to access a vulnerable workforce.

Elsewhere in the world, notably in the United States and Italy, non-state initiatives have emerged to fill gaps in worker protection in the agricultural sector, such as market-based approaches to proactive inspections and enforcement. Admittedly, these initiatives cannot sufficiently address structural vulnerabilities produced by the state, and can only complement state regulations. Therefore, collaboration between state enforcement mechanisms and non-state initiatives is needed to strengthen essential protections.

This policy brief first analyzes the policy backdrop contributing to the structural vulnerability of migrant farmworkers in Canada. It then outlines the initiatives taken by the federal government to facilitate employers' access to migrant labour and acknowledges the important role that non-state initiatives can play in ensuring workers' essential protection.

The brief proposes recommendations for multiple levels of government on how to:

- address vulnerabilities produced by Temporary Foreign Worker Programs (TFWPs),
- enhance legal protections,
- address inspection and enforcement gaps,
- reform the Recognized Employer Pilot program, and
- facilitate and coordinate with non-state initiatives.

By adopting these recommendations and employing a more coordinated, systematic approach to the protection of migrant farmworkers, the Canadian government can maintain its access to an essential labour force without compromising workers' access to crucial labour and human rights.

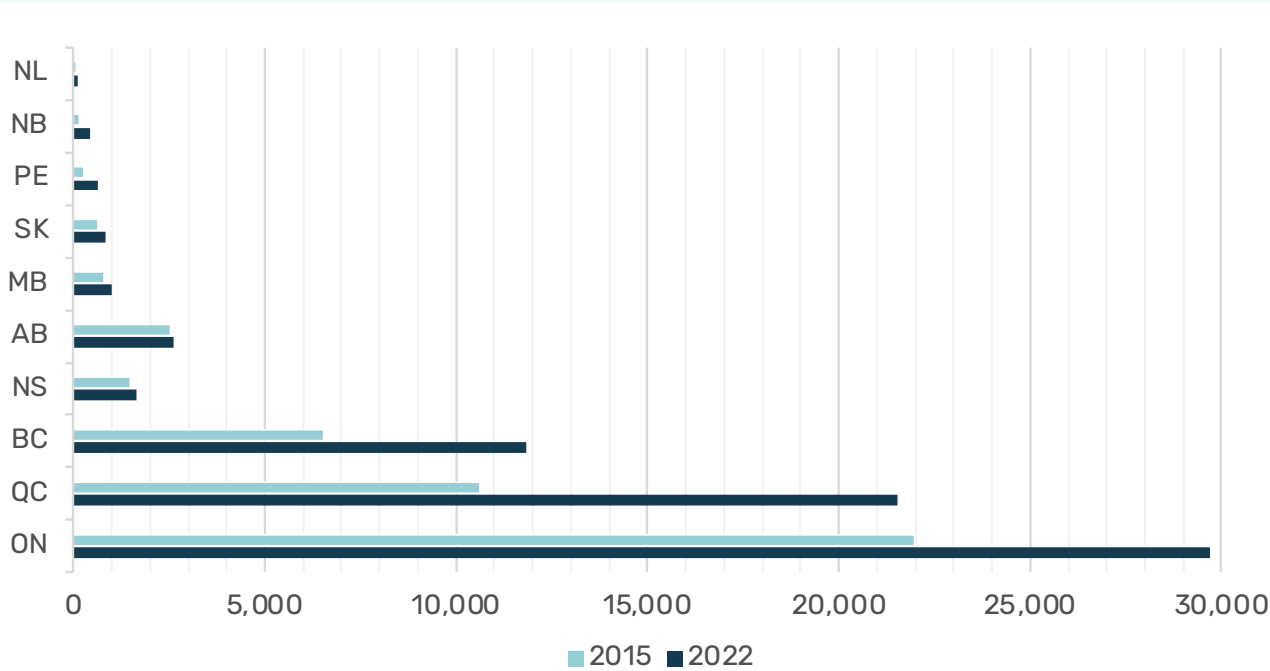
INTRODUCTION

The growing reliance on migrant farmworkers

The Canadian agricultural sector, a frontrunner in sustainable food production and processing with substantial economic growth potential, has necessitated an increasing number of temporary migrant farmworkers to address domestic labour shortages. In 2022, the agricultural sector reported a record high revenue of \$87.7 billion, reflecting an average [annual growth rate of 5.6% since 2012](#).

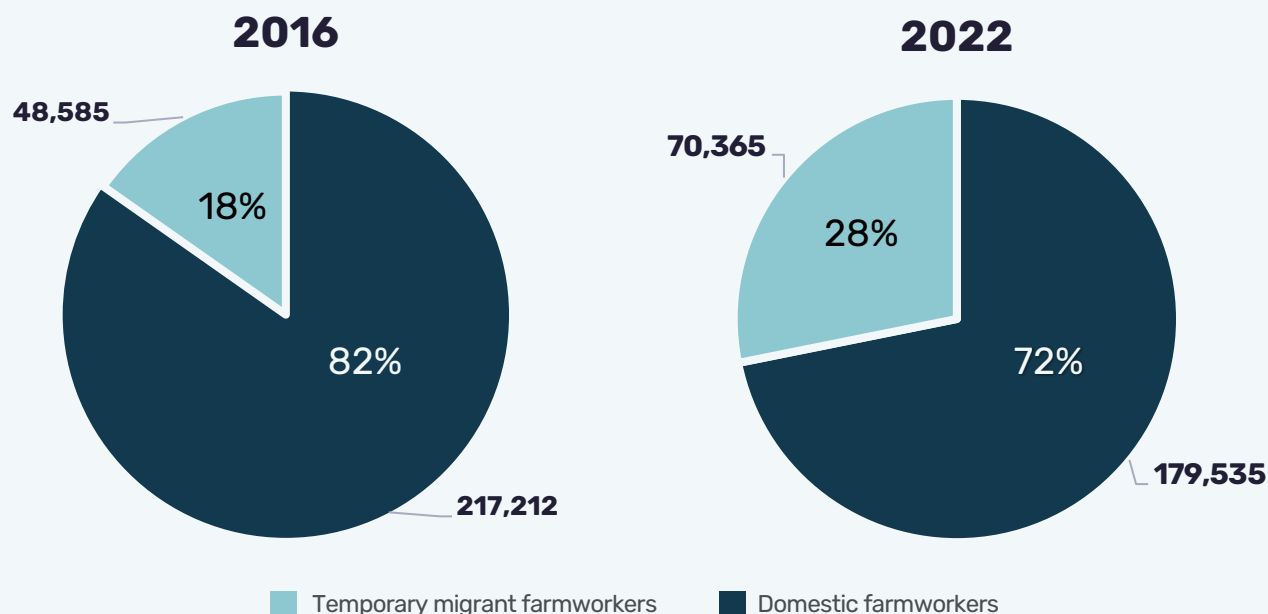
Over the past half-a-century, agricultural employers have relied on federally governed Temporary Foreign Worker Programs (TFWP) to secure a 'dependable' source of labour to support the growth in this sector. Dependence on these temporary migration pathways has increased, resulting in a notable rise in the number of migrant farmworkers in Canada, who, in 2022, accounted for nearly [25% of the total workforce in primary agriculture](#). In 2017, Canada welcomed 53,842 migrant farmworkers, and by 2022, this number increased to [70,365, reflecting a 30% rise over five years](#). This upward trend is also evidenced in the distribution of workers across the provinces, showcasing a consistent growth since 2015.

Figure 1: Temporary migrant farmworkers employed in agriculture, by province (2015-2022)



Source: [Statistics Canada](#)

Figure 2: Share of temporary migrant farmworkers in primary agriculture (2016 and 2022)



Source: [Statistics Canada \(2020\)](#); [Statistics Canada \(2023\)](#); [Agriculture and Agri-Food Canada \(2023\)](#)

Given a [significant domestic labour gap in the agricultural sector](#), Canadian agricultural employers continue to rely heavily on migrant farmworkers, to sustain crops, maintain economic growth, and feed the country. However, this increased dependency has not translated into [improved policies, protections, and service provision commitments](#) for this essential workforce.

Three different temporary labour streams

Before hiring migrant farmworkers through TFWPs, employers must obtain a [Labour Market Impact Assessment \(LMIA\)](#), issued by Employment and Social Development Canada (ESDC), that assesses the impact that a foreign worker will have on the Canadian labour market. To obtain an LMIA, employers must demonstrate the reasonable need for a migrant worker, given the unavailability of local workers despite consistent job advertisements. LMIA requirements include a detailed job offer indicating job duties, working conditions and wages consistent with prevailing wage rates. Completion of a [housing inspection](#) for employer-provided housing is also required to ensure a positive LMIA outcome.

Employers have the flexibility to select from three distinct migration streams or TFWPs. These streams:

the Seasonal Agricultural Worker Program (SAWP), the Agricultural Stream, and the Low-Wage Stream, vary in duration of stay, employment contracts, consular support, housing provision, and how wages are determined (see Table 1). However, they all issue closed work permits that tie the worker to a specific employer in the agricultural sector.

Established in 1966, the [SAWP](#) is Canada's longest-standing and most widely utilized TFWP. This pathway enables employers to hire migrant farmworkers from select nations to fulfil seasonal labour needs for up to eight months per year. However, ESDC is currently considering [revisions to the SAWP](#) to allow year-round employment for workers in primary agriculture, seasonal fish, seafood and primary food processing. Governed by bilateral agreements, both the sending and receiving country governments play integral roles in overseeing key processes, including worker recruitment, and employment contract negotiations and compliance. Consequently, SAWP workers are supported by the consular services of their home country during their stay in Canada.

Employers can recruit workers to provide year-round labour through the [Agricultural Stream](#) and the [low-wage stream](#) from any country. Unlike the SAWP, both these streams operate independently of sending country governments and as a result, rely

Table 1: Key distinctions between Temporary Foreign Worker Programs

Stream	SAWP	Agricultural Stream	Low-Wage Stream
Source Countries	Mexico and Caribbean	All countries	
Consular Support	Yes according to bilateral agreements	By request with serious access limitations	
Housing	Employer must provide housing on or off-site		Employer not required to provide housing but it must be available and affordable
	No wage deductions for housing	Wage deductions allowed up to \$30 per week for housing	
Employment Contracts	Bilaterally negotiated between governments	Must contain what was in LMIA job offers approved by Service Canada	
Work Permits	8-month max. (seasonal) with return by December 15th	24-month max (seasonal or non-seasonal)	
	Tied to specific employer in the agricultural sector		
Wages	National Commodities List wage methodology		Job bank median wage

on private recruiters and limited involvement from sending country governments in the development and compliance of employment contracts. Both the SAWP and Agricultural Stream require employers to provide workers with adequate housing whether on-site or in the community. The low-wage stream does not require employers to provide housing, but they must attest to the fact that adequate affordable housing is available in the community in order to be approved for an LMIA.

Due to Canada's [significant concentration of greenhouse crops](#) relative to field crops, there is a growing preference for year-round contracts offered by the Agricultural Stream and low-wage streams. However, [data indicates](#) minimal recruitment through the low-wage stream compared to the SAWP and Agricultural Stream. This may be due to the distinct wage calculation methodology employed by the low-wage stream, which results in comparatively higher wages.

However, employers have identified several serious challenges arising from costly, lengthy and complex administrative procedures during the LMIA process, leading to delays in labour acquisition. As a result, [employers have urged](#) the federal government for a more efficient and transparent LMIA application process.

POLICY BACKDROP: FAILURE TO PROTECT

1. The design and structure of TFWPs

Historically, TFWPs have been attractive, cost-effective models [for governments](#) and employers, however, they impose significant limitations to the rights and freedoms of the migrant farmworkers they recruit.

TFWPs prioritize the temporary recruitment of migrants which limits their access to essential supports that are available to [immigrant newcomers](#). Limited entitlement or access to these rights arises from the perception that migrant farmworkers are not considered future immigrants, thereby placing them beyond the scope of efforts [intended to integrate and support such groups](#).

Designed to address structurally high, short-term labour demands in low-skilled sectors, employers rely heavily on recruiting workers with minimal human capital criteria but with experience in agriculture. Therefore, migrant farmworkers are restricted to work in an industry that is traditionally marked by low wages, extended working hours, [highly hazardous conditions](#), and exclusions or limitations to certain labour protections. This exposes migrant farmworkers to an increased risk of job-related illnesses and injuries,

and low remuneration with limited access to regulatory protections. In this context, the agency, mobility and bargaining power of migrants, who are easily replaceable, are limited. Research has shown that the relatively easy access by employers to a steady stream of migrant farmworkers acts as a disincentive to retain workers, improve wages, working conditions and housing, or invest in technology and training.

TFWPs wield a more substantial influence on the working conditions of migrants compared to domestic farmworkers. Upon arrival, migrant farmworkers are issued closed work permits that are employer-specific, thereby 1) denying them the right to labour mobility, even within the agricultural sector, and 2) tying their work status to their legal status in Canada. This design exposes them to [immigration-related repercussions](#), such as deportation or exclusion from future work contracts, following dismissal or other employment sanctions. This forces migrant farmworkers into a working arrangement marked by fear of reprisals, severely inhibiting their ability to report misconduct, injuries, wage theft or deductions, or to refuse unsafe work, raise complaints, and access [essential services and supports](#). TFWPs, therefore, generate power

imbalances by effectively giving employers not only greater control over the work arrangements of migrant farmworkers compared to domestic farmworkers, but also control over migrant farmworkers' human rights and legal right to remain in Canada.

2. Exclusions and barriers to legal protections

All farmworkers in Canada have been historically and contemporaneously excluded from many rights and protections that are applicable in other sectors. However, unlike the domestic workforce, "[farmworker exceptionalism](#)" has a disproportionate impact on migrant farmworkers who are confined to the agricultural sector and face fear of reprisals.

Provincial employment standards and labour relations legislation commonly exclude farmworkers from various fundamental labour protections (see Table 2). These legislative exclusions result in subpar working conditions, and limitations such as restricted access to a labour union which leave migrant farmworkers without a collective mechanism for negotiating for improved conditions.

Table 2: Farmworker exemptions in Employment Standards and Labour Relations legislation in provinces where the majority of migrant farmworkers are employed

Province	Employment Standards Legislation							Labour Relations Legislation
	Overtime	Minimum wage	Hours of work	Daily rest periods	Weekly rest periods	Public holidays	Vacation with pay	Collective bargaining
Ontario	Exempt	Exempt for most farmworkers	Exempt	Exempt	Exempt	Exempt for most farmworkers; special rules for others	Exempt for most farmworkers; special rules for others	Exempt
Quebec	Exempt	Covered	Covered	Covered	Special rules apply	Covered	Covered	Exempt for most farmworkers
British Columbia	Exempt	Exempt	Covered	Covered	Covered	Exempt	Covered	Covered
Alberta	Exempt	Covered	Exempt	Exempt	Covered	Exempt	Covered	Exempt

Despite eligibility for some legal protections, migrant farmworkers experience many barriers and obstacles to accessing their rights and entitlements under provincial and federal legislation. For instance, while farmworkers in British Columbia are covered under labour relations legislation, and despite having achieved union certification, migrant farmworkers remain [susceptible to threats, acts of removal and blacklisting](#). Additionally, migrant farmworkers' temporary status complicates access to benefits such as workers' compensation and employment insurance. For example, the legislative definition of being [“ready, willing, and able” to work](#), under the Employment Insurance Act, fails to account for those workers who are legally bound to a single employer who no longer provides work.

3. Lack of national standards and ineffective inspection and enforcement

Inspections and enforcement to ensure employer compliance with legislated or contracted standards play a vital role in ensuring that all farmworkers have meaningful access to the legal protections to which they are entitled, and can enjoy safe and healthy workplaces and living conditions. For migrant farmworkers with limited labour mobility and fear of reprisals, the significance of minimum standards, and effective labour inspections and enforcement is even more important. However, the Canadian inspection regime is characterized by significant enforcement and compliance gaps.

a. Lack of national standards and jurisdictional ambiguity

Agriculture stands as one of the most hazardous industries in Canada, yet there are no national labour or housing standards in place to ensure the health and safety of farmworkers. The lack of national standards, therefore, results in limited impetus for the federal government to lead the enforcement process.

This lack of primacy in federal inspections and enforcement leads to significant jurisdictional ambiguity. For example, primary responsibility for the administration of the TFWPs lies with two departments of the federal government: Immigration, Refugees and Citizenship Canada (IRCC) and

ESDC. The interface with employers regarding TFWP contract requirements is through Service Canada, an arm of ESDC. At the same time, primary responsibility for the oversight of employment standards, occupational health and safety protections, and healthcare lies with provincial governments. Public health and housing standards are the responsibility of provincial and municipal governments.

Employment contracts under TFWPs, which are overseen by ESDC, include a provision stating that employers are [“required to comply with all applicable provincial or territorial legislation”](#) thereby, making any violations of provincial legislation, a breach of contract and, therefore, a federal matter. However, federal departments are rarely involved in the enforcement of contract breaches of provincial or municipal requirements.

b. Complaint-driven and reactive models

Agricultural inspections in Canada are characterized by complaint-driven models, predominantly relying on worker complaints as the main ‘trigger’ for inspections. [This approach is ineffective](#) for workers whose employment is directly linked to their legal status in Canada, as they fear employer reprisals if they raise or report concerns. These challenges are exacerbated by the absence of confidential reporting opportunities and proactive inspections, which have historically played a secondary role in the enforcement regime.

For instance, after initial inspections during the LMIA process, which are often insufficient (see below), inspections of congregate housing and working conditions remain sporadic and reliant on migrant farmworkers' complaints. Proactive on-site inspections after the arrival of the workers are necessary to ensure safe, clean and code-compliant living accommodations for migrant farmworkers who are housed in settings provided by their employer. Additionally, the enforcement of occupational health and safety legislation in Canada relies on an [internal responsibility system](#) consisting of health and safety committees comprised of employees and management. However, this system requires workers to be aware of their rights and responsibilities under provincial occupational health and safety legislation and to be forthcoming in reporting concerns.

c. Lack of deterrence measures to encourage compliance

Compliance measures involve issuing orders mandating employers to adhere to the law. However, deterrence measures such as penalties or fines or being excluded from the LMIA process are rarely imposed. The absence of adequate deterrent measures results in little incentive for employers to comply with requirements, and an enforcement gap that adversely impacts workers.

Ineffective inspections resulted in significant public health concerns

In response to COVID-19 outbreaks in the agricultural sector, IRCC amended the regulations to increase the requirements for employers hiring migrant farmworkers. ESDC, responsible for their enforcement, introduced a plan to enhance protections for migrant farmworkers, including mandatory minimum requirements for employer-provided accommodations. However, a [2020 Auditor General Report](#) highlighted significant problems with federal housing inspections associated with these new requirements. The report revealed instances where compliance was affirmed without sufficient evidence, and in some cases, acknowledgement of non-compliance was not followed up. Most inspections were conducted virtually, relying on photographs and videos supplied by the employer without verification.

In total, the report found problems in 73% of quarantine inspections examined in 2020. This rose to 88% in 2021. Therefore, in both years, the federal department's inspections provided little assurance that employers complied with even the additionally mandated requirements to ensure the health and safety of the migrant farmworkers they employed.

STATE ACTIONS TO FACILITATE LABOUR RECRUITMENT

Agricultural employers have long been concerned over the protracted and time-consuming LMIA process. In response, the federal government introduced the following initiatives to streamline migrant farmworker recruitment.

1. COVID-19 Special Measures

In April 2020, ESDC introduced several measures to expedite labour recruitment during the pandemic:

- LMIA applications and work permit processing for [essential occupations was prioritized](#).
- The two-week minimum advertising requirement for LMIAs was waived.
- The duration of work permits for the low-wage stream was increased from one to two years.
- Employers recruiting under the Agricultural Stream or SAWP were able to submit a Housing Inspection Report that was valid in the past three years as part of their LMIA application.

To strengthen Canada's economic recovery from the pandemic, [the ESDC-suspended minimum advertising requirements](#) for LMIA applications continued until 2024 and LMIA applications for specific agricultural occupations continue to be prioritized. [It was recently announced that](#) some of these COVID-19 measures are to be removed effective May 1, 2024. None of these measures introduced additional protections for migrant farmworkers, who were [disproportionately impacted by the pandemic](#), and some even reinforced their vulnerability to COVID-19. Allowing employers to submit three-year-old housing inspections illustrates the federal government's commitment to employers and labour recruitment at the expense of increased and sufficient quarantine-related housing inspections. The [federal government fell short in ensuring the safety of migrant farmworkers](#), who were ravaged by the COVID-19 virus as a result.

2. Recognized Employer Pilot Program

In September 2023, ESDC launched a three-year pilot project, called the [Recognized Employer Pilot Program \(REP\)](#). The REP provides a streamlined approach for employers who frequently utilize TFWPs to fill in-demand labour positions. Accepted employers who meet the eligibility requirements and program criteria (see Table 3) will enjoy longer validity time for their LMIAs (up to 36 months), access to a simplified LMIA process when hiring additional workers, and a job-bank designation that shows their recognized status to prospective workers.

Table 3: Recognized Employer Pilot eligibility and employer commitments

Eligibility Requirements	Employer Commitments
Employers must: • have received at least three favourable LMIA decisions over the last five years, and • meet the highest standards for working and living conditions, and worker protections through TFWPs.	Participating employers must: • continue to make reasonable recruitment efforts to hire Canadians or permanent residents until all positions are filled, • participate in random REP check-ins, • undertake an annual wage review on January 1st of every year to ensure prevailing wage is paid, • meet the housing inspection requirements of the stream for which the application was made, and • remain in good standing with the current inspection system.

The REP continues to prioritize the needs of employers over those of migrant farmworkers. Although the REP emphasizes the necessity for compliance with TFWP requirements, it falls short of defining “highest standards” or introducing additional standards for employers or inspections. The central principle of the REP is to ensure compliance with the existing inspection and enforcement system, which is still characterized by lax inspections, inadequate enforcement, and a jurisdictional framework that results in significant gaps in protection.

While Recognized Employers are required to commit to participating in random “check-ins”, the definition, frequency and criteria for these are not transparent. These “check-ins” cannot sufficiently replace proactive and comprehensive inspections and, therefore, only provide a superficial notion of compliance. Employers in the pilot are only required to undergo a yearly wage review, confirm completion of pre-existing housing inspections and adhere to TFWP requirements. The pilot does not outline any consequences for failure to comply. Finally, the designation of “Recognized Employer” perpetuates the employer-driven nature of TFWPs by giving employers easier access to a vulnerable workforce without demanding any more of them.

NON-STATE INITIATIVES TO RAISE AND ENFORCE LABOUR STANDARDS

In other countries, notably in the United States and Italy, various non-state initiatives have emerged to address the lack of sufficient efforts in ensuring compliance with labour and housing standards in the agricultural sector. Social certification initiatives aim to strengthen the compliance of employers by leveraging consumer and retailer purchasing power. Retailers commit to sourcing from certified growers and farms, who must comply with established ethical labour and housing standards. The produce from certified farms is then labelled for consumers to see the producer’s certification status and dedication to ethical labour standards.

In recent years, [voluntary social certification](#) has been introduced in Canada, with a handful of employers committing to regular, proactive, third-party audits and inspections, the implementation of confidential complaint mechanisms, and enhanced workforce training and education plans. These initiatives, however, rely mainly on the voluntary participation of agricultural employers willing to undergo additional audits for prioritized purchasing of their products. Participation, therefore, ultimately depends on well-intentioned employers, many of whom are not

significant offenders. Moreover, many have questioned whether the market consequences are sufficient to ensure compliance.

Non-state initiatives, like voluntary social certification such as the Equitable Food Initiative (EFI), therefore, can complement, but not replace, state roles in the essential protection of migrant farmworkers. These initiatives can offer an additional layer of protection by prioritizing worker empowerment through training, education, and the integration of workers' voices.

“They always remind us, that if we have any questions, recommendations or complaints that we are free to speak up and there will be no retaliation. They have proved that that’s true.” - Migrant farmworker at EFI- certified farm

RECOMMENDATIONS

The following recommendations are proposed to strengthen the protections of migrant farmworkers in Canada:

1. Address vulnerabilities produced by Temporary Foreign Worker Programs

- Introduce open-work permits or sector-wide permits to allow labour mobility, thereby encouraging employers to improve wages and working conditions to attract and retain workers.
- Expand the [Agri-Food Pilot](#) program and other federal and provincial pathways to increase permanent residency opportunities, given the growing trend of non-seasonal work in the sector and the ongoing need for a secure, permanent agricultural workforce.
- Introduce provisions to allow for family unification or reunification in rural communities to complement Canada's regionalization objectives.
- Implement federal and provincial initiatives to reduce Canada's excessive dependence on migrant farmworkers through improvements to wages, working conditions, and the increased use of technology.

2. Enhance legal protections

- Revise the Employment Insurance Act and provincial workers' compensation legislation to address current exclusions and access limitations for migrant farmworkers.
- Amend provincial Labour Relations legislation to include migrant farmworkers in the right to representation and collective bargaining.

3. Address inspection and enforcement gaps

- Introduce national housing standards developed collaboratively with provinces specifically for employer-provided accommodations.
- Consult and collaborate with provincial representatives to establish a systematic approach to an education and training plan for all migrant farmworkers about their rights and entitlements.
- Introduce a comprehensive, systematic and coordinated strategy, developed in collaboration with provinces and municipalities, to conduct on-site proactive inspections based on national housing standards, TFWPs' requirements, and employment standards and occupational health and safety legislation. These inspections should be done both during the LMIA application process and consistently thereafter.
- Introduce appropriate deterrent measures for employers that fail inspections. These measures should include appropriate fines, and/or suspensions and expulsions from participation in TFWPs if corrective action is not taken.
- Establish a confidential federal complaint mechanism for migrant farmworkers to ensure ongoing compliance with all standards and rights, and that there are no reprisals against those who raise concerns. All allegations and complaints must be investigated in a timely manner, and remediation measures imposed that are commensurate to the violation.

4. Reform the Recognized Employer Pilot program

- Reform the REP to introduce higher standards for participating employers to earn additional privileges, such as streamlined LMIA processing and prioritization.

- Higher standards for the REP should include:
 - a. More rigorous criteria in the initial inspection to review documentation and wages, and to include confidential interviews with workers. The higher standards expected of REP employers (listed in b. to e. below) should be monitored in subsequent annual inspections in order to retain REP status.
 - b. Employers to implement a comprehensive training and education plan that includes information on workplace policies, available community services, legal rights and entitlements and available complaint mechanisms. Distribution of this information must consider the language requirements of all migrant farmworkers at the place of employment.
 - c. Employers to facilitate the presence of community service providers and health care practitioners to provide onsite demonstrations or services for migrant farmworkers.
 - d. Employers to go beyond minimum national housing standards for accommodation and facilities for migrant farmworkers.
 - e. Employers to establish a confidential in-house mechanism that is suggestion-focused. Employers to address worker suggestions where appropriate.

5. Facilitate and coordinate with non-state initiatives

- The federal and provincial governments should acknowledge the value of non-state initiatives, develop national public awareness campaigns, and allocate financial resources and other necessary support to strengthen their capacity.
- Agrifood-Canada should provide incentives to Canadian farm businesses to participate in complementary non-state initiatives dedicated to ethical and responsible practices in the agricultural sector.
- Agrifood-Canada should provide incentives to wholesalers and retailers of Canadian farm products, to purchase products from employers who engage in these non-state initiatives and to highlight these products to their consumers.

- The federal and provincial governments should foster a culture of information sharing between non-state initiatives and relevant government agencies, allowing for better coordination and understanding of effective mechanisms to ensure safe and healthy workplaces.

“Before certification, communication was a bit fearful, maybe not wanting to say anything, but now people have confidence in this program and they feel more free to speak up.” - Migrant farmworker at EFI certified farm

CONCLUSION

The vulnerability of migrant farmworkers in Canada stems from several factors: federal migration streams that limit labour mobility and produce a fear of reprisals, exclusions and restrictions to legal protections, and a lax inspection and enforcement regime marked by jurisdictional ambiguity and lack of national standards. Recent federal initiatives, like the REP, have primarily attended to employers’ needs by streamlining processes to obtain essential migrant labour. However, only through the implementation of a more coordinated, systematic approach, coupled with key reforms, can the safety and security of migrant farmworkers, who are so essential for our food security, be assured.



About the Author

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Suggested Readings

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