



Backgrounder: Amnesty for Undocumented Workers

April 29, 2020

Introduction

The Migrant Workers Centre has launched the *Amnesty for Undocumented Workers* campaign calling on the Government of Canada to regularize the status of the thousands of undocumented workers in Canada. This campaign calls on the government to create a permanent residency program for migrant workers, including undocumented workers, who provide essential services and work in jobs where there are labour shortages. This campaign also calls on the government to grant open work permits to workers while they are in the process of applying for permanent residence. This measure would allow these essential workers to continue working and contributing to our society without fearing arrest, detention, and removal and would allow them to access much-needed services including health care.

These measures are urgently needed in light of COVID-19, which has exposed the extent to which the Canadian economy and society depend on migrant workers who lack permanent resident status and, as a result, lack access basic rights and services that we as Canadians expect. These measures will protect workers who are already here and acknowledge the vital contributions they make to our society.

Background – migrant workers and the COVID-19 pandemic

Migrant workers in Canada are on the frontlines of the COVID-19 pandemic. Hundreds of thousands of migrant workers across the country work in our grocery stores, as cleaners, care workers, truckers, and farm workers. They grow the food that we eat and make sure that it reaches our shelves. They build our homes, schools, and workplaces, and keep these buildings clean and safe. They take care of our children, the elderly, and those with disabilities. These workers come to Canada with temporary, rather than permanent status in Canada. Despite their vital contributions to the Canadian economy and society, many of these essential workers have no way of becoming permanent residents of Canada. For those who are undocumented, they face the risk of arrest, detention, and removal from Canada despite their contributions to the economy and society.

The number of temporary migrant workers in Canada has increased significantly since 2000. Temporary foreign workers are able to work in Canada by obtaining a temporary work permit, which is tied to a specific employer. Unlike permanent residents and Canadian citizens, temporary foreign workers cannot circulate freely in the labour market. This creates a power imbalance as workers depend on their employers for their jobs and ability to remain in Canada. These conditions make it difficult for workers to negotiate their rights and working conditions, make a complaint against their employer, or leave an abusive employment situation. The threat of job loss and removal from Canada makes temporary foreign workers uniquely vulnerable to control and exploitation.¹

Undocumented workers face similar challenges. Many have contributed to the Canadian economy for years, filling labour market shortages by working in low-wage and dangerous jobs that are undesirable to many Canadians. Yet, their lapsed immigration status makes them more vulnerable to abuse and less likely to exercise their rights. Since undocumented workers are unable to obtain a work permit or social insurance number (SIN), they often face low wages, unsafe working conditions, and have limited or no access to workers compensation or publicly funded health care. These conditions make them vulnerable to dismissal, abuse and exploitation by their employers. In addition, undocumented workers face barriers in accessing health care even if they experience serious injuries or illnesses requiring medical assistance due to fear of arrest or inability to pay hospital bills.

The COVID-19 pandemic has exposed and exacerbated these vulnerabilities. More than ever, Canadian employers are depending on migrant workers to fulfill needed labour shortages in essential industries.² At the same time, many migrant workers in Canada have been deeply affected by the COVID-19 pandemic. For those who are working on the frontlines of the COVID-19 pandemic, the work is difficult and dangerous and poses a heightened risk of exposure to disease. Additionally, many other migrant workers have lost their jobs, such as those working in the restaurant industry, and they are in Canada with no ability to renew their work permits or work elsewhere, while being unable to leave the country. For undocumented workers who have lost their jobs, there is no access to emergency relief without a valid SIN.

With employers facing labour shortages and fewer temporary foreign workers entering the country, Canadian employers should look to the pool of undocumented workers, and workers who are at risk of becoming undocumented, who have Canadian work experience to fill these

¹ See Fay Faraday, *Profiting from the Precarious: How recruitment practices exploit migrant workers*, (Toronto: Metcalf Foundation, 2014) at 37-41; Canada, Parliament, House of Commons, Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, *Temporary Foreign Worker Program: Report of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities*, 42nd Parl, 1st Session, No 4 (September 2016) (Chair: Bryan May) available online: <https://www.ourcommons.ca/DocumentViewer/en/42-1/HUMA/report-4>.

² CBC News “We need all hands on deck’: Canadian farmers struggle with labour shortfall due to COVID-19” Apr 20, 2020, available online: <https://www.cbc.ca/news/canada/farm-labour-foreign-workers-covid-19-1.5535727>

shortages. These workers are already here, and are ready, willing, and able to fill these positions. They should be able to do so safely and legally.

Granting permanent resident status to migrant workers

The Amnesty for Undocumented Workers campaign calls on the federal government to address these issues by immediately:

1. Creating a new permanent residency program for migrant workers, including undocumented workers, in industries facing labour shortages
2. Allowing migrant workers in Canada, including undocumented workers, to apply for a 12-month open (unrestricted) work permit to maintain or regularize their status while their application for permanent residency is in process.

All migrant workers should be able to apply for permanent residency regardless of their immigration status. In other words, undocumented workers, workers whose permits are about to expire and who are at risk of becoming undocumented, and workers with valid work permits but no means to apply for permanent residence under the current system, should be able to apply.

The permanent residency program for migrant workers should be as broad and inclusive as possible. It should be open to workers with past experience or who are currently working in industries with labour shortages, including agriculture and agri-food, food retail, construction, cleaning/janitorial, trucking, and care work industries, among others. It is essential that workers are allowed to change employers during the process and there should not be arbitrary thresholds, limits, or restrictions based on education credentials or language abilities that are unrelated to the ability to do the job. Workers may be afraid to come forward due to fear of arrest and removal – that is why workers must be allowed to regularize their status with an open work permit while their permanent residency application is in process. Granting open work permits to migrant workers would enable them to continue working while allowing them to access needed services like public health care.

Allowing migrant workers to regularize their status will strengthen Canada's economy by ensuring that hardworking migrant workers, including undocumented workers, can contribute to our country during these uncertain times without facing added stress and insecurity created by lack of immigration status or fear of losing immigration status. In addition, it makes sense from a public health perspective to employ workers who are already in Canada. Workers in the agricultural, cleaning, retail, trucking, construction, and care work sectors will continue to be in demand in Canada even after the COVID-19 crisis passes. These labour market needs are in most cases permanent, not temporary ones. Migrant workers filling these needs should be able to continue contributing to our society as permanent residents.

Who we are

The Migrant Workers Centre (MWC) is a non-profit organization dedicated to legal advocacy for migrant workers in BC. Established in 1986, MWC facilitates access to justice for migrant workers through the provision of free legal advice and representation. MWC also works to advance fair immigration policy and improved labour standards for migrant workers through public legal education, law and policy reform, and test case litigation.