



EMPLOYMENT RIGHTS POSITION STATEMENT

The current state of Employment Standards and labour law in Canada fails to adequately guarantee and uphold the rights of women and gender-diverse workers with precarious immigration status across the country. Women and gender-diverse workers (i.e., women and individuals who fall outside of mainstream gender expectations, including transgender, non-binary, gender non-conforming and other identities; OHCHR, 2023a) are vulnerable to harassment at work due to structural inequities, especially when also racialized (Canadian Labour Congress, 2022). In addition, precarious immigration status, i.e., not having full legal immigration status, specifically permanent residency or Canadian citizenship, amplifies barriers in accessing employment rights, leaving women and gender-diverse individuals with such status especially vulnerable to exploitation and mistreatment by employers and recruiters. This includes women and gender-diverse people who have been trafficked, who are in Canada on a temporary work permit and are employed in low-paid, precarious jobs, who are refugee claimants, international students, or migrant sex workers, who have been exploited by unscrupulous recruiters and immigration practitioners, and who are in the process of family sponsorship but have left their spouse due to domestic or gender-based violence. Gender inequities, stereotypes and discrimination are perpetuated throughout the migration cycle, which can lead to women and gender-diverse people being concentrated in low-paid work and in the informal economy—places where greater economic exploitation can occur (International Labour Organization, 2023). Poorer working conditions (e.g., long hours, little time off), low pay, harassment etc. are, generally, more likely to be experienced by them than by their male counterparts (ibid).

The Special Rapporteur on contemporary forms of slavery has raised several concerns with the Government of Canada, specifically with regards to migrant workers' employment conditions, with first-hand information gathered from migrant workers and other relevant stakeholders (OHCHR, 2023b). Women and gender-diverse people with precarious status or without status working in Canada face significant barriers to

accessing employment rights, including exclusions from provincial and federal legislation, lack of access to sectoral bargaining, and ineffective protections against gender-based violence or sexual harassment in the workplace. They tend to work in sectors that are characterized by low wages, non-unionization, and lack of access to pensions and other non-wage remuneration (Noack & Vosko, 2011). They are overrepresented in care work and domestic work (in private households), accommodation and food service, and other services such as repair, maintenance, personal care, and laundry (Government of Canada, 2021; Magalhaes et al., 2010; May, 2019; Noack & Vosko, 2011).

Canada has ratified the *ILO Forced Labour Convention* and its *Protocol* which requires taking appropriate steps to prevent abuses and protect victims and guarantee them access to effective remedies; Article 2 of the Protocol includes the following measure to be taken: “protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process” (Dixon-Perera, 2020).

The Alliance for Gender Justice in Migration was formed to identify trends and promote policy solutions aimed at ending discrimination against women and gender-diverse migrants in Canada. We are a network of people with lived experience, academics, advocates, and service providers across Canada. We conduct research, develop policy solutions, raise public awareness, and advocate for change by centering the voices of those with lived experience.

The Alliance calls for proactive, coordinated, and sustainable efforts to ensure women and gender-diverse workers with precarious immigration status are protected from employment-related abuses and that victims have full access to employment rights and justice in the form of proactive grievance mechanisms that do not further amplify their vulnerability.

Due to inconsistent and uneven protections across provinces, the current landscape of employment rights is not only difficult to navigate for people with precarious status but also leaves room for recruiter and employer-related abuse. This marginalizes women and gender-diverse individuals with precarious immigration status- often the same people whose contributions ensure that we have food in our grocery stores or that our elderly citizens are well cared for.

It is essential to take urgent action to make legislative and policy change to increase access to justice for women and gender-diverse workers with precarious immigration status.

Lack of Full Access to Employment Standards Increases Vulnerability to Exploitation

Women and gender-diverse individuals with precarious status currently lack full access to employment rights, both to individual employment rights and to collective bargaining guaranteed by provincial and federal legislation. While Employment Standards legislation is designed to provide a general set of minimum standards, it often includes exemptions and special rules that affect specific categories of workers resulting in selective inequity (Thomas et al., 2019).

All workers must be covered by Employment Standards legislation without exception. However, historically and continuing into present time, certain categories of workers, such as agricultural workers and domestic caregivers have been excluded from legal protections enjoyed by most other workers (Drolet & Etmanski, 2015; Thomas et al., 2019; Vosko et al., 2019). In many provinces, workers with precarious status are disproportionately working in such occupations that are excluded from protections under provincial Employment Standards, most notably farm work and care work (Gesualdi-Fecteau & Nakache, 2017).

For example, the *BC Employment Standards Act* exempts live-in home support workers, night attendants, and residential care workers from limits on overtime and hours of work (Employment Standard Regulation BC, n.d., s.34(q), (w), (x)).

The provisions of the *BC Employment Standards Act* concerning hours of work, overtime, and statutory holidays do not apply to farm workers (ibid, s.34.1).

Prior to the 2022 legislation that guarantees five paid sick days for workers in British Columbia, a study found that only 25% of workers with temporary status had paid sick days, and women represented the majority (58%) of non-citizen workers without paid sick leave (Ivanova & Strauss, 2020).

Furthermore, these exclusions from guaranteed labour rights disproportionately affect racialized migrant workers who predominately serve in sectors excluded. Over 90% of care workers in Canada are women, most of whom are from the Philippines, but also from African, Latin American, and Asian countries (Hanley et al., 2017).

Such exclusions further limit access to resources, such as those needed to seek proper healthcare and housing and to prevent food insecurity, in addition to the lack of economic resources for basic needs already experienced by women and gender-diverse people with precarious immigration status (Campbell et al., 2014; Gagnon et al., 2022; Hanley et al., 2019).

Considering such inequities, all exemptions under Employment Standards, such as those for agricultural workers and domestic caregivers, must be discontinued. It is crucial that all workers are covered by Employment Standards legislation.

Barriers to Accessing Unionization and Collective Bargaining Hinder Negotiation for Fair Employment Practices

One of the most effective ways of protecting women and gender-diverse workers with precarious immigration status from exploitation is by guaranteeing their collective bargaining rights, as these can result in fairer working conditions and wages, freedom from discrimination, protection against violence and harassment, sexual exploitation, trafficking etc. (International Labour Organization, 2023). Furthermore, the protection of their collective bargaining rights allows workers to expose human rights abuses of which they have been victims and seek reparation for these abuses (ibid).

A recent study of migrant home care workers in Manitoba found that 90% of workers interviewed were juggling at least two jobs throughout the pandemic. Although some of the workers were unionized, those who were not unionized often did not have formal employment contracts providing a clear scope of duties, regular schedules, or hours. Most workers did not receive breaks, sick days, or vacation time (Nicholson, Hande & Migrante Manitoba, 2023).

Women and gender-diverse individuals with precarious immigration status often work in industries that are non-unionized or face barriers to unionization and collective bargaining (Faraday, 2012; Hanley et al., 2020; Vosko, 2014). They are often most at risk for labour exploitation and thus most in need of collective bargaining rights protections as they tend to be situated in working conditions that can be more exploitative and restrictive than their male counterparts (International Labour Organization, 2023). They often face barriers to organizing and joining unions, such as long working hours, working in remote and isolated places, language barriers, limited knowledge of rights, fear of reprisal by employers etc. (ibid).

All workers must have the right to form unions and collectively bargain, including through broader-based bargaining such as sectoral bargaining. Sectoral bargaining is a type of collective bargaining in which labour agreements are negotiated to cover an entire industry or a sector of a country's economy, rather than just a single employer or workplace. In the case of care work and other domestic work performed in employers' homes, there are barriers to accessing unionization and collective bargaining because this right was designed for large workplaces, not for single employees of one employer (Migrant Workers Centre, 2018b).

Many migrant justice organizations recommend a sectoral bargaining framework that would allow migrant care workers to truly access collective bargaining.¹ Sectoral bargaining would guarantee that all care workers are able access the same employment rights as other workers in Canada. Proactive measures should be taken to ensure migrant workers can join unions without retaliation by employers.

Exploited via Recruitment and Labour Trafficking but Lacking Access to Justice

Regardless of the rights that women and gender-diverse workers with precarious immigration status may be entitled to on paper, the systemic barriers that prevent them from accessing their rights (e.g., lack of full access to employment rights and collective bargaining) leave them exposed to exploitation. Any changes to legislation and policy must consider the intersecting vulnerabilities faced by women and gender-diverse migrants to ensure that illegal recruitment practices and labour trafficking are not facilitated as they are vulnerable to labour trafficking and exploitation by bad actors including third-party recruiters and employers. Documented recruitment abuses include the charging of recruitment fees, misinformation regarding the terms and conditions of employment, and threats (Dixon-Perera, 2020).

A significant number of workers who find themselves in low-wage jobs after coming to Canada have experienced exploitation at the hands of recruiters, including demands for exorbitant and illegal recruitment fees and threats and intimidation for not paying fees (Faraday, 2016). Fees up to \$50,000 Canadian dollars have been reported by media and researchers, and indebtedness of this nature can force workers to stay in employment situations that are unfair and abusive, increasing the likelihood of forced labour and trafficking (Dixon-Perera, 2020). Issues arising from the charging of recruitment fees and misinformation about the intended employment are often further amplified by employer abuses (Hastie, 2021).

Migrant workers who have precarious immigration status are vulnerable to being trafficked for labour purposes because traffickers can take advantage of their structural vulnerability, e.g., due to closed work permits that tie their immigration status to working for a single employer, limited employment opportunities while having dependents who rely on their income, and knowledge that their activities may make them vulnerable to criminal charges related to violating immigration laws (Beatson et al., 2017).

In addition to these exorbitant and illegal recruitment fees, there are other abuses. The right to personal property is enshrined in law in various provincial jurisdictions, such as British Columbia, Saskatchewan, Ontario, Quebec, New Brunswick and Nova Scotia (Dixon-Perera, 2020). In addition, in some provinces, such as British Columbia, Saskatchewan, and New Brunswick the threat of deportation is explicitly prohibited, and

¹ Examples include the Migrant Workers Alliance for Change and Caregivers Action Centre (2017) policy submission on Bill 148 in Ontario and the Migrant Workers Centre (2018 b) submission to the Section 3 Panel Reviewing the British Columbia Labour Relations Code.

these provinces plus Alberta have regulatory prohibitions against unfair practices, such as giving false, misleading, and deceptive information to workers (ibid). However, due to a lack of proactive monitoring, the current labour and employment legislation is not reflected in the reality of the lives of many women and gender-diverse workers with precarious status.

For example, labour traffickers falsely represent the work opportunities available, deny payment, take control of or confiscate workers' documents including passports, demand excessive work hours, and deny freedom of movement. Most labour tracking occurs within official immigration programs by small business owners in legal employment sectors (Beatson et al., 2017).

Legislation that has been introduced to protect migrant workers from recruitment fees and trafficking has fallen short of being able to truly protect workers with precarious immigration status (Beatson et al, 2017; De Shalit & Van Der Meulen, 2016; Faraday, 2016; Ricard-Guay, 2016; Roots & De Shalit, 2015). Recruiters utilize strategies to avoid enforcement of Canadian legislation that forbid recruitment fees, such as not providing receipts, demanding the fees to be paid into offshore accounts or to pay the fees before arrival in Canada (Hastie, 2021).

Labour trafficking often operates off the radar of law enforcement because employers avoid identification and victims often do not come forward due to fear of criminalization (Beatson et al, 2017). Especially workers in 'low-skilled' streams, such as under the Temporary Foreign Worker Program (TFWP) are vulnerable to such abusive practices, as they receive tied work permits associated with one single employer. This facilitates the existence of such mistreatments and exposes workers to continued abuses which are well documented (Canadian Council for Refugees, 2016). Workers have reported debt from recruitment fees, unsafe working conditions, and difficulty changing jobs to be their greatest challenges (ibid).

In the face of such mistreatment, women and gender-diverse workers, regardless of their status, should have access to grievance mechanisms. However, especially where enforcement of legislation is complaints-based, workers may be less able and willing to access the complaint system due to their precarious status (Hastie, 2021). A major barrier is fear of and vulnerability to repercussions for asserting their rights or filing complaints regarding working conditions, namely job loss, loss of immigration status, and ultimately deportation (Beatson et al., 2017; Casey et al, 2019; Haley et al., 2020; Marsden et al, 2020). Undocumented workers are especially vulnerable to exploitation by employers because they are at a heightened risk of deportation or detention and in many cases feel they depend on their employer to maintain their immigration status or to work towards a more permanent status (Casey et al., 2019; Foster, 2021).

In addition, women and gender-diverse workers tend to have limited access to information about their rights, and limited or no formal access to legal services that are free or affordable (Migrant Workers Centre, 2018a). For example, temporary foreign workers do not have access to federally-funded settlement services, and on a provincial level such services are not widely available, or not available at all (Canadian Council for Refugees, 2018). Many women and gender-diverse people work in individualized and isolated situations, such as private households, where contact with others outside the household is minimal or non-existent, leaving them without assistance in the process (International Labour Organization, 2023).

Some jurisdictions, although not all, require employers and recruiters to actively inform workers about their employment rights. For example, in British Columbia, recruiters and employers must provide workers with information about their rights, as specified by the director (Hastie, 2021). However, this information is not always provided in the first language of workers, and no province requires contracts to be provided in multiple languages or a language that the worker holds sufficient fluency in.

Therefore, women and gender-diverse workers with precarious status face numerous practical barriers to knowing about and accessing services, such as language barriers, working in rural locations, disincentive to accessing services due to fear of serious repercussions, and other forms of marginalization (Beatson et al, 2017; Campbell et al, 2014; Gagnon et al, 2022; Machado et al, 2022).

This vulnerability is exacerbated due to a lack of proactive enforcement as the system is predominantly complaint-driven and depends on individual complaints by precarious workers. In addition, investigations, such as the statement of the Special Rapporteur on contemporary forms of slavery, have pointed out that culturally-sensitive and trauma-informed support is rarely provided to victims of abuse, if at all (OHCHR, 2023b).

Proactive enforcement strategies that focus on inspections and regular investigations of employers who employ migrant workers, such as the one adopted in Manitoba for farms employing migrant workers between 2012 and 2013 are needed. This strategy showed positive results in moving the majority of non-compliant employers who were investigated into compliance within one year (Migrant Worker Solidarity Network Manitoba, 2016).

A proactive enforcement strategy should prioritize industries and employment sectors such as agriculture, meat processing, and caregiving which employ large numbers of migrant workers. Inspections should involve confidential interviews with workers and use language interpretation services for these interviews on a consistent basis. More needs to be done.

While over the years, for example, changes to the TFWP promised an increase in inspections and more severe punishments, reports of abuse continue (Canadian Council for Refugees, 2016) . For instance, in 2020, The Migrant Workers Alliance for Change spoke to migrant workers who represented over 1000 workers , reporting a myriad of abuses, including wage theft from employers.

Specifically proactive and unannounced inspections of workplaces are needed to ensure standards are being adhered to. However, inspections conducted proactively are not common, and employers are typically notified in advance, and investigations may be conducted remotely by telephone or submission of photos, rendering many of these investigations grossly ineffective (Faraday, 2022; OHCHR, 2023b).

Legislation and systems created to protect workers from illegal recruitment practices must be proactive and trafficking legislation should incorporate feedback from victims of labour trafficking. Government-run migrant work programs should be designed so as to not increase their vulnerability to being trafficked and exploited for the purposes of labour extraction. Labour legislation in all provinces, including Employment Standards and workplace health and safety, should be proactively monitored and enforced to ensure rights are consistently upheld.

In addition, a proactive method of monitoring recruiter and employer activities, including potential past abuses, through the collection of more extensive background information and the maintenance of detailed public registries, coupled with a more streamlined information flow between provinces and the federal government would minimize the potential of recruiter and employer-related mistreatments (Hastie, 2021).

Enforcement must have real deterrent value for recruiters and employers. In terms of deterrence value, the prospect of large fines or prison time is significant, however, according to research such consequences are relatively rare as informal approaches of education and rectification are adopted before other enforcement mechanisms, and violations often do not come to the attention of enforcement officials (Dixon-Perera, 2020; Hastie, 2021; Vosko et al., 2019). Enforcements must not only be proactive but have real and serious consequences for employers and recruiters in order to ensure women and gender-diverse individuals with precarious status are protected from exploitation and harassment.

In response to reports of widespread abuse and exploitation of migrant workers, eight provincial governments in Canada have enacted regulatory frameworks to enhance protection of migrant workers from unscrupulous recruitment practices and abuse in their employment (Dixon-Perera, 2020). While these efforts are a recognition on the part of provincial governments that temporary foreign workers are a uniquely vulnerable workforce in Canada that merits specific regulation, the result is an

uneven and inconsistent patchwork of protections for workers which vary from province to province. In the absence of robust legislation and proactive enforcement to prevent and sanction the charging of recruitment fees and other related mistreatment in all jurisdictions where migrant workers are employed, recruitment-related abuse will continue to persist.

Disproportionally Impacted by Violence and Harassment

The barriers experienced in accessing employment rights and the lack of proactive enforcement options can leave women and gender-diverse people with precarious status disproportionately vulnerable to and impacted by harassment, including sexual harassment and other forms of gender-based violence in their workplaces. Women and gender-diverse migrants face added risks that come with being isolated due to location, job type, or immigration status (Ontario Women's Justice Network, 2014).

Women and gender-diverse workers with precarious status experience additional layers of harassment in the workplace not experienced by their male counterparts. For example, pregnant workers with precarious immigration status face barriers to accessing supports and protections such as access to parental leave and public childcare and protection from unfair dismissal (Hanley et al, 2020; Larios, 2022). Fear of reprisal and/or dismissal often result in individuals hiding their pregnancies because if employers find out, they may not renew their work permit, send them home, or refuse to hire them the following season (in the case of seasonal work; Larios, 2022). The negative impacts of limited Employment Standards such as lack of access to the minimum wage, overtime pay, and paid sick leave are exacerbated for women and gender-diverse individuals who are often responsible for children and other unpaid caregiving responsibilities. For migrants, they are also often responsible for sending money back to their families in their home countries. This may mean not being able to take time off to seek medical care for themselves or their children, and higher stakes for them if they lose their income. This exacerbates their fear of being fired and the power their employer has relative to them.

Mechanisms for reporting workplace harassment and abuse also create barriers for women and gender-diverse individuals who often experience abuse at the hands of their employers or supervisors. For example, accessing the right to provincial interpersonal, domestic or sexual violence leave, generally, requires workers to report to their employer (Women and Gender Equality Canada, 2021), which is not appropriate for individuals if violence is enacted by their employer/supervisor.

Women and gender-diverse individuals with precarious status deserve to feel safe at work. Since Gender-based Violence occurrences are rooted in unequal power dynamics

(Tan & Kuschminder, 2022), providing women and gender-diverse workers with precarious status with stronger protections and proactive enforcements that have higher deterrent value is a crucial step towards preventing such abuses.

Recommendations

The Alliance for Gender Justice in Migration calls for proactive, coordinated, and sustainable efforts to ensure women and gender-diverse workers with precarious immigration status are protected from employment-related abuses and that victims have full access to employment rights and justice in the form of proactive grievance mechanisms that do not further amplify their vulnerability. In response to these barriers we put forward the following recommendations:

Access to Justice

- Human rights complaints to the federal or provincial Human Rights Tribunals/Commissions by workers with precarious immigration status should be dealt with on an urgent basis given the likelihood of dismissal and deportation before complaints can be processed.
- Migrant workers should be eligible for affordable or pro bono legal services, settlement services, and all services eligible to Canadian citizens, and immigration status should have no bearing on migrants' access to services.
- Employment rights enforcement systems must be proactive and have real consequences for employers. They must take into account the lack of power that migrant workers have in relation to their employers.

Full access to Employment Standards

- All workers must be covered by Employment Standards. Any and all exemptions under Employment Standards for work predominantly being done by racialized migrant workers, such as those for agricultural workers and domestic caregivers should be discontinued.
- Employment Standards legislation must codify permanent universal paid sick days for all workers.
- Labour legislation in all provinces, including Employment Standards and workplace health and safety, should be proactively monitored and enforced. A proactive enforcement strategy should prioritize industries and

employment sectors such as agriculture, meat processing, and caregiving which employ large numbers of migrant workers. Inspections should involve confidential interviews with workers and use language interpretation services for these interviews on a consistent basis.

Access to Unionization & Collective Bargaining

- All workers must have the right to form unions and collectively bargain, including through broader-based bargaining such as sectoral bargaining.
- Proactive measures should be taken to ensure migrant workers can join unions without retaliation by employers.

Protection against Violence and Harassment

- Protection and leaves for workplace harassment and domestic and sexual violence should be administered through provincial governments for cases where an employer is the offender and/or not compliant with their legislated responsibilities in these areas.

Protection from Exploitation via Recruiters and Labour Trafficking

- Ensure worker recruitment legislation across provinces is consistent in who is protected. Adopt identified best practices and methods across Canada to ensure improvements are implemented in all provinces for a more streamlined fair recruitment framework/process.
- Legislation and systems created to protect migrant workers from illegal recruitment practices must be proactive and not rely on complaint-based processes.
- Policy and legislation with a focus on labour trafficking needs to be prioritized to ensure trafficking legislation incorporates victims of labour trafficking and government-run migrant work programs do not increase migrants' vulnerability to being trafficked and exploited for the purposes of labour extraction.

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