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Policy Alternatives
Manitoba Office

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Manitoba's Proactive Enforcement of Temporary Foreign Workers' Rights is a model for Canada

Canada's Temporary Foreign Workers Program (TFWP) has become a hot potato for the federal government, which is frantically attempting to quell widespread outrage sparked by revelations of Canadians fired to be replaced by cheaper, more vulnerable and thus more compliant migrants, abusive working conditions, illegal fees charged to foreign job-seekers, and the importation of low-skilled workers while unemployment remains unacceptably high. The TFWP includes several sub-programs such as the Seasonal Agricultural Worker Program (SAWP) – the first TFWP; the Live-in Caregiver Program; the Stream for Lower-skilled Occupations; and, the Stream for Higher-skilled Occupations. Some programs allow for consideration of permanent residency. The SAWP does not.

Despite the difficult conditions many workers face, the TFWP became a political issue only last year when forty-five RBC employees revealed that they were being forced to train migrant workers to replace them in their own jobs. To quell the scandal, the federal government quickly changed the rules that allowed employers to pay migrant workers less than Canadian residents for the same jobs and temporarily suspended the accelerated approval process, but the abuses continued.

The federal government has responded to criticism with assurances that temporary foreign workers have essentially the same rights as Canadians. Federal Employment Minister Jason Kenney recently announced new regulations that he claims will enhance their rights. But the legislation includes no mechanisms for enforcement, although the evidence shows clearly that rules that re-

quire workers to be aware of their rights, overcome language barriers, know how to contact the right authority and identify themselves as complainants are of little use to these acutely vulnerable workers.

Proactive audits can reduce the abuses of this program. Since 2009, the Special Investigations Unit of Manitoba's Employment Standards Branch has proactively investigated workplaces with especially vulnerable workers. Manitoba's Worker Recruitment and Protection Act requires all employers who want to recruit temporary foreign workers to register with the Branch. The Unit monitors industries that employ especially vulnerable workers, including temporary foreign workers, and conducts proactive investigations to ensure employers are complying. Its resources are modest: with between 5 and 6 staff, the Unit can only investigate between 400 and 450 workplaces a year, affecting 5,000 to 10,000 workers, including some 5,500 temporary foreign workers, but its results are nonetheless impressive, and it has solved many problems by simply educating employers. Investigations of the 25 Manitoba farms that employ seventy per cent of migrant workers under the SAWP revealed eight with significant violations and six with minor problems. Follow-ups found most problems resolved. Most staff in sushi restaurants are immigrants or temporary foreign workers, and investigators found 95 per cent were failing to comply with the regulations, mostly wage violations, but follow-up checks found almost all in compliance. Thirty-five per cent of twenty families with live-in caregivers were breaking the rules, but once informed

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of their obligations, they paid wages owed and began complying. Most of the small manufacturers investigated were already compliant, and the small number who weren't began following the rules once they were educated.

By requiring employers to register before they hire temporary foreign workers, the Branch believes it has significantly reduced the incidence of recruitment fees of up to \$10,000 that unscrupulous recruiters illegally charge migrant workers. First-time employers are interviewed and instructed about the risks of illegal recruitment, including fines of between \$25,000 and \$50,000, in addition to reimbursing the worker. Employers may use only licenced recruiters who have paid a security deposit to the province. Recognizing that migrants may be reluctant to reveal whether they paid a recruiter, the Unit is talking to workers to learn more about their journey to Canada and test whether they were charged fees. In addition, the Branch's records identify employers with a poor record of compliance. Employers who have failed repeatedly to follow the rules with their Canadian workers are unlikely to be approved to hire vulnerable temporary foreign workers.

The Branch has extensive powers to ensure enforcement, including fines of up to \$10,000 per investigation. The objective is not to punish employers but to encourage compliance. Many employers are initially unaware that they're covered by the legislation, and after instruction, only about 20 per cent are non-compliant. Perhaps surprisingly, some employers report that they favour enforcement, including penalties for non-compliance, because they prefer to abide by legal minimums, something they say they can only do if there's a level playing field.

Although proactive auditing of workplaces is an effective way to resolve problems, it's rare. Only Manitoba registers and tracks employers who employ temporary foreign workers, although other provinces are adopting the Manitoba model. Typically, investigations are conducted only in

response to complaints, a practice that demonstrably fails to protect migrants and other vulnerable workers. Most migrants are reluctant to complain about unpaid wages if they'll be identified to the employer, who can make up reasons to fire them. Since they're permitted to work for only one employer, losing their job means they'll be returned to their home country.

The abuse of temporary foreign workers is a significant and growing problem, and it's important to all of us to stop it. The number of temporary foreign workers coming to Canada is rising steadily, often exceeding the number of immigrants, who, unlike migrants, have rights as permanent residents and can become Canadian citizens. In 2012, Canada accepted a record high 257,887 immigrants, yet the same year, we admitted 213,573 temporary foreign workers-- almost as many temporary "guest workers" as the highest number of immigrants ever. The increase in migrant workers while unemployment rises suggests that some employers are hiring temporary foreign workers in preference to Canadians, and not as the program is designed, which is to fill jobs for which there are no qualified Canadians or for which no Canadians can be found. Abuse of temporary foreign workers drives down wages and working conditions for everyone by eroding basic rights. Rather than relying on temporary foreign workers, a more generous immigration program would solve the labour shortages by ensuring a reliable and stable workforce for the unfilled jobs in retail, hospitality, agriculture, and other industries.

In the meantime, increased resources would allow the Special Investigations Unit to be more pro-active in addressing the problems facing many of these workers.

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