The Legal & Regulatory Framing of Migrant Workers: Protections and Precarity

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UN envoy links temporary foreign worker program to 'contemporary forms of slavery'

Migrant workers make up about 15 per cent of Canada's agricultural workforce, Statistics Canada says
Temporary Foreign Workers: Framework

Jurisdiction:
- Concurrent Jurisdiction for immigration, with Federal Laws being paramount: CA 1867, section 95.
- Federal jurisdiction over entry, removal and ‘naturalization’ of foreign nationals: CA 1867, section 91(25)

Key Bodies:
- Immigration, Refugees and Citizenship Canada (IRCC)
- Employment and Social Development Canada (ESDC)
- Canada Border Services Agency (CBSA)

Key instruments:
- *Immigration and Refugee Protection Act, 2001*
- *Immigration and Refugee Protection Regulations, 2001*
Programs or “streams” for Temporary Migrant-Based Labour

TEMPORARY FOREIGN WORKER PROGRAM
• High-Wage Stream (wages are at or above provincial median salary)
• Low-Wage Stream (wages below provincial median salary)
• Primary Agricultural Stream
  • On-farm agricultural worker
  • Seasonal agricultural workers
• Global Talent Stream (Specialized positions & accelerated process– salary 80K +, or on a list of occupations such as civil engineers, database analysts)
• Caregiver Program(s) (often contemplate transitioning to permanent status)

INTERNATIONAL MOBILITY PROGRAM
• International trade agreements, intra-company transfers, youth work-exchanges, international graduate students post-program, etc
Figure 5: Total number of temporary foreign worker positions approved, by stream (2013 to 2020)

Source: ESDC Evaluation of the Temporary Foreign Worker Program (June 2021)
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Agricultural Workers Programs

Seasonal Agricultural Workers Program (SAWP)
- Bilateral MOUS – Canada & Mexico, Canada & 11 Caribbean states
- Home states select workers... but employers select source state, & can nominate individual workers to return
- 6 week to 8 month work term with an employer
- Closed work permit

General Agricultural Stream
- Little state involvement, often a broker who will expect a commission, a private K.
- Usually 1 to 2 year agreement
- Closed work permit
Protections

Federal, Provincial, and Territorial labour laws, occupational health and safety law, all apply to temporary foreign workers.

PLUS Regulations authorize:

• Mandatory compliance reports from employers
• Mandatory information sheets on employee rights
• Hotlines to raise concerns
• ‘Surprise’ inspections of worksites (requires a warrant)
• Vulnerable worker open work permit process
Pillars of health protections (Legislated or via the MOUs)

1. Health Care Insurance
2. Workers Compensation Regimes
3. Workplace Standards and Safety
• TFW continue to work when ill or injured
• 69% attribute health problems to work
• Less than 25% seek medical assistance

When do seek health assistance, non-legal access barriers include
• Barriers inherent to work
• Barriers inherent to not having knowledge base of nationals
• Pressure of economic precarity

*Barriers also arise from the intersection of the regulatory regime and reality*
How the Regulatory Regime is implicated

(1) Private health care is not medicare – promise of equivalency fails in practice
How the Regulatory Regime is implicated

(2) Workers compensation regime designed to serve resident nationals – rules effectively undermine recover for migrants
How the Regulatory Regime is implicated

(3) Facilitates medical repatriation being abused (and vulnerability results in self-policing)
We supply health care, hospital care, workers compensation.... But only as long as the worker’s illness or injury does not preclude their continuing to work.

Then the worker gets deported.

Irony: because covered by WC lose right to bring private civil suit (unless injury caused by third party)
Deportation & Nomination

- Unfettered discretion of employers to invoke medical deportation – no procedural rights of employees
- Unfettered discretion of employers to nominate workers to return

Can you really be surprised that 69% of Mexican SAWP workers in BC reported they worked while ill or injured, due to concerns about jeopardizing future employment
THANK YOU