

POLICY BRIEF

Changes to the Temporary Foreign Worker Program and Caregiver Program

Dr. Ethel Tungohan

Assistant Professor, Department of Political Science, York University

tungohan@yorku.ca

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Executive Summary

The 2014 changes to The Temporary Foreign Worker Program and the Caregiver Program that were designed to eliminate worker abuse have led to the opposite effect by making temporary foreign workers and caregivers more vulnerable. The continued system of tied work permits place workers in situations of precariousness because of the immense power discrepancy between workers and employers. Proposals to make employment agents caregivers' employers will not eliminate instances of abuse because caregivers' security of status in this case will still be dependent on their employers' good will.

Four key issues are highlighted in this policy brief:

1. Tied work permits lead to worker abuse.
2. Measures intended to eliminate worker abuse are insufficient.
3. Proposal to make 'regulated companies' serve as caregivers' employers will lead to more abuse.
4. There exist multiple barriers that make it difficult for caregivers to attain permanent residency.

Evidence-based policymaking dictates that the only way to truly eliminate worker abuse is to give workers open work permits that are not tied to their employers. Furthermore, temporary foreign workers and caregivers should also be given landed status upon arrival.

Background Information

Temporary Foreign Worker Program (TFWP)

The TFWP was initially established as a 'low-skilled pilot project' in 2002 to fill labour shortages in the construction sector and in the oil industry. In 2006, the pilot project was

extended. In 2007, processing times were expedited to enable employers to bring foreign workers in five days (Fudge and MacPhail, 2009). In 2010, the TFWP expanded to include 200 ‘low-skilled’ in-demand professions because of high employer demand. As a result of these policies, the numbers of temporary foreign workers entering the Canada increased annually from 2002 to 2011, eventually leading to more temporary foreign workers entering the country than landed immigrants (Foster, 2012).

Public outcry against the TFWP led to the passage in 2011 of the “cumulative duration rule”, otherwise known as the “Four Year In, Four Year Out” rule (CIC, 2011). Upon the passage of this policy, temporary foreign workers were allowed into the country for a period of up to four years, after which they would have to leave the country for a further four years before being allowed into the country again. In 2014, further changes to the TFWP were established following findings from journalists that purportedly show that foreign workers were being hired in favour of Canadians. These changes include putting limitations on the numbers of temporary foreign workers a workplace could hire, linking workplaces’ ability to hire temporary foreign workers to provincial unemployment rates, and placing punitive measures against workers found abusing temporary foreign workers (ESDC, 2014). In 2016, the Canadian government gave Atlantic Canadian seafood processors an exception to existing constraints by allowing them to bring in an unlimited number of seasonal temporary foreign workers in order to deal with endemic labour shortages (Curry, 2016).

The prospect of earning higher wages enticed temporary foreign workers to enter the program, as did the possibility of attaining permanent residency by getting sponsored for permanent residency through Provincial Nominee Programs.

Caregiver Program (CP)

The CP was established in 2014 and consists of two streams: the child-care stream and the high medical needs stream. Its predecessors were the Foreign Domestic Movement (FDM) established in 1981 and the Live-in Caregiver Program (LCP), established in 1992. Unlike the FDM and the LCP, which gives caregivers the opportunity to automatically apply for permanent residency upon their completion of a two-year live-in contract, the CP restricts caregivers’ ability to transition to permanent residency by imposing new language and licensing requirements and a quota for the numbers of permanent residency spots given per year. Unlike the LCP, the CP abolished the mandatory live-in requirement.

Key Issues

1. Tied work permits lead to worker abuse

As employer-driven programs, the TFWP and the CP tie workers’ permits to their employers. As a result, there is immense power discrepancy between employers and workers, making it difficult for workers to be forthcoming about abuse. In fact, research shows that employers use tied work permits as a way to enforce obedience (Arat-Koc, 2003; Fudge and MacPhail, 2009; Tungohan, et al., 2015). As a result, abuse is rampant, with research showing that workers suffer from abuse

of their labour rights. For example, the non-payment of wage and employers' refusal to follow occupational safety standards are rampant.

Many temporary foreign workers also find themselves being forced by their employers to live in housing owned by employers, who charge exorbitant rent. Some employers also download the costs of Labour Market Impact Assessments (LMIA) onto their workers. Yet others ask their workers to undertake jobs that are not part of their employment contracts.

Finally, the continued provision of tied work permits for caregivers also mean that despite measures eliminating the live-in requirement under the CP, worker abuse still continues.

2. Measures intended to eliminate worker abuse are insufficient

In 2014, the Canadian government imposed heavy fines on abusive employers, created a temporary foreign worker tip-line for temporary foreign workers to anonymously report abusive employers, and established a system of random workplace inspections (ESDC, 2014). There is little indication that these measures are working. For example, despite the evidence from research that employer abuse is rampant there are only four employers who have had LMIA's revoked as of May 15, 2016. When workers' statuses are tied to their employers, there is no incentive for workers to be forthcoming about abuse, particularly if reporting abuse means that they risk becoming unemployed and thus, being asked to leave the country because their employers are forbidden from employing foreign workers.

3. Proposal to make 'regulated companies' serve as caregivers' employers will lead to more abuse

Immigration Minister John McCallum's proposal to have regulated companies serve as caregivers' employers will not prevent abuse. In fact, multiple sources in Canada show many cases of agencies abusing caregivers. Even though agencies in Canada are prohibited from charging placement fees, for example, many still persist with this practice (Byl, 2010; Preibisch, 2012). The fact that provinces, with the exception of Manitoba, Nova Scotia, and Saskatchewan, do not have legislation regulating the activities of agencies exacerbate instances of abuse (Faraday, 2014). Furthermore, because agencies have a profit motive, they will not prioritize workers' interests. Findings from researchers examining the activities of agencies come to similar conclusions with respect to agencies' exploitation of workers (Cheng 1996; Abu-Habib 1998; Tyner, 1999; ILO, 2013). Moreover, implementing a 'temporary agency' model of hiring caregivers replicates the job insecurity and the worker precariousness found in this model (Vosko, 2000; Guest, 2004).

4. There exist multiple barriers that make it difficult for caregivers to attain permanent residency

- a. Processing backlogs** – there are currently 38 000 caregivers waiting for their permanent residency applications to get processed. In May 2016, Citizenship and Immigration Canada indicates that the current waiting time for papers to get processed is 49 months (CIC, 2016). Lengthy processing times means that caregivers have to be separated from

their families for even longer time periods and also hinder their settlement and integration into Canada (Tungohan, et al. 2015).

- b. Inconsistent expectations** – When the CP was classified under the TFWP, caregivers were asked to meet inconsistent criteria. On the one hand, immigration officials are now mandating that prospective caregivers prove that they intend to leave the country after four years. On the other hand, because caregivers are given the option to apply for permanent residency at the end of their contracts, they are also asked to prove that they can integrate in Canada in the long-term when they are applying for permanent residency status. Attempting to meet competing and contradictory expectations shows inconsistent policymaking.
- c. Emergence of general decision-making that does not consider the specificities of caregivers' Permanent Residency application leading to inhumane verdicts** – Caregivers applying for permanent residency found that their applications were getting rejected without sufficient justification. Specifically, many caregivers are finding that they are getting rejected on the grounds of 'medical inadmissibility,' even in cases where they have provided documentation showing otherwise. For instance, despite evidence showing that individuals with Down's Syndrome do not present medical 'burdens' on health care systems, many caregivers whose children have Down's Syndrome are getting rejected. In some cases, immigration officials have been compelled to reverse their decisions. Karen Talosig, a caregiver whose permanent residency application got rejected because her daughter is deaf, was able to show that her daughter would not be a financial burden on Canada after the British Columbia government issued a letter on her behalf attesting that this was the case (Carman, 2015). Talosig and her daughter were eventually granted permanent residency.

Recommendations

- 1. Give workers open work permits that are not tied to their employers** – abuse takes place when the power relationship between workers and employers are magnified. Having a system of tied work permits places workers in situations of extreme vulnerability. Giving workers open work permits will empower workers and reduce abuse. A crucial issue for employers, of course, is the fact that they need a stable and permanent work force. Rather than creating a captive work force, however, studies have shown that workers are more likely to stay with employers for longer time periods if positive incentives are created, such as decent workplace environments where workers are treated respectfully (Lewchuk et al., 2015). Furthermore, an option that the Canadian government may wish to consider is the provision of sector-specific open work permits.
- 2. Eliminate the Cumulative Duration Rule** – the cumulative duration rule run counter to workers' and employers' interests and impose limitations on workers' ability to stay on the basis of an arbitrary time frame.
- 3. Eliminate the quotas limiting the numbers of caregivers who could be given permanent residency** – The FDM and LCP were designed so that caregivers could enter

Canada as permanent residents. Establishing quotas limiting the numbers of caregivers who could get permanent residency each year, even when they have successfully completed all criteria, places caregivers in situations of vulnerability and, more crucially, goes against the spirit upon which Canada's caregiving programs were established. Furthermore, Canada is suffering from a childcare and elderly care crisis. Studies have shown that workers who finish the caregiver program are more likely to stay in care work (GATES, 2014), thereby providing Canada with a solution to its burgeoning care crisis.

4. **Give all workers landed status** – there is a permanent and on-going need for 'low-skilled' workers. In fact, Canadian immigration history is replete with examples of people who undertook the same low-skilled jobs undertaken by temporary foreign workers and caregivers and who were granted Canadian citizenship. Hence, pathways to permanent residency should be provided for caregivers and temporary foreign workers.

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