

# New changes to the Temporary Foreign Workers Program

July 12, 2014



## INTRODUCTION

On June 20, 2014, the Canadian government announced changes to the Temporary Foreign Worker Program (TFWP). Migrant workers and advocates can use this guide to learn more about those changes. This guide is not legal advice. Check that the information in this guide is up-to-date and applies to your specific circumstance, as more specific regulations will be coming.

The changes are bad for migrant workers, so it is important that we work together to advocate for justice. If you are a migrant worker, a service provider or advocacy organization, contact the Migrant Workers Alliance for Change. We work to connect advocates, allies and workers.



[www.migrantworkersalliance.org](http://www.migrantworkersalliance.org)

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## MAIN CHANGES TO THE TFWP

- There used to be a Labour Market Opinion (LMO). This has been changed to a Labour Market Impact Assessment (LMIA). The LMIA will cost \$1,000. You should not have to pay these new fees - please contact a local community organization or legal clinic if someone asks you to pay.
- There are no longer "High Skilled" and "Low Skilled" categories. Under the new rules, there are only "High-wage", "Low-Wage" workers and workers in the Live-In Caregiver Program and the Seasonal Agricultural Workers Program.
- Employers will not be allowed to hire more than 30% "low wage" TFWs in their business, if there are 10 or more employees. This will be reduced to 20% on July 1st, 2015, and 10% on July 1st, 2016.
- LMIAs can only last one up to year.
- An employer may not be able to get an LMIA for many jobs in Accommodation, Food Services, and Retail Trade sectors.
- More Inspections

## YOU MAY BE IMPACTED DIFFERENTLY IF YOU ARE IN ONE OF THESE PROGRAMS :

- **LIVE-IN CAREGIVER PROGRAM:** The only change is that the LMIA (which used to be the LMO) will now cost \$1,000.
- **SEASONAL AGRICULTURAL WORKERS PROGRAM:** These new changes do not apply to you.
- **AGRICULTURE STREAM OF THE TEMPORARY FOREIGN WORKERS PROGRAM:** If you work in on-farm primary agriculture, most of the rules have not changed. But you cannot stay in Canada as long as you could before the changes.

## SPECIFIC RULES FOR THE FOOD SECTOR :

### LMOs

- The Canadian government suspended some LMO applications during the food sector moratorium. The Canadian government is now processing those LMOs.
- If the (unsuspended) LMO is valid and has not expired, then you can get a work permit if you are named for a position approved on the LMO and the position is not yet filled.
- If the LMO expired during the food sector moratorium, then the employer must send in a new LMIA application. This application must follow the new rules about numbers of migrant workers in each workplace. Workers cannot use the expired LMO to apply. They must wait for the new LMIA to be processed.

### Work permits

- Some workers had applied for a new work permit or a work permit extension before or during the moratorium. The government will now start processing those applications.

## FOR MIGRANT WORKERS IN CANADA :

- **WITH VALID PERMITS:** If you have a valid work permit for any other part of the Temporary Foreign Workers Program, then you can stay until the end of the work permit - as long as you are still with the employer named on the work permit. You can continue to work for that employer until that work permit expires. This is true even if the number of migrant workers at the worksite is more than the number allowed under the new changes.
- **WITH PENDING LMOs:** If you applied for an LMO and it hasn't been processed, it will be returned. Your employer will have to apply for an LMIA on your behalf.

## GETTING A NEW JOB FROM INSIDE OR OUTSIDE OF CANADA :

There are rules if you want to switch employers - whether you are in the middle or at the end of your current work permit. These same rules apply if you are coming to Canada for the first time.

- Please read the rules very carefully. Make sure that recruiters and employers tell you the truth. You may want to talk to a trusted community organization that does not charge money. Or you might want to talk to a lawyer. This should not be the employer's lawyer.
- A new employer must apply for an LMIA for you. This LMIA used to be called an LMO. This LMIA costs \$1,000. You should not have to pay these new fees - please contact a local community organization or advocate if someone asks you to pay.
- For "low wage" jobs that pay less than the provincial median wage, there are new limits on how many migrant workers can work at each worksite.
- New LMIAs and **work permits will expire at the end of 1 year**. This means you will have to renew your LMIA and work permit each year. There is no guarantee that the permits will be renewed.

- If you have already been in Canada for several years, then you may not be able to get a new LMIA. As of April 2015, a migrant worker cannot work in Canada for more than 4 years. The government said it will lower this time limit but they have not set the new limit yet. This will not affect your current work permit. But if you have already been in Canada for more than 2 years, then you may not be able to get a new LMIA to switch jobs.
- In the future, it may be harder to renew your work permit. The number of migrant workers admitted for low-wage jobs in workplaces where the employer has more than 10 employees will drop from 30 percent in 2014 to 20 percent in July 2015, and then to 10 percent in July 2016.
- An employer cannot get an LMIA for some jobs in Accommodation, Food Services and Retail Trade in parts of the country where the unemployment rate is 6 percent or higher.

If you are trying to find work in this sector:

1. Check to see if your region has unemployment of 6 percent or more. You can check this online at: <http://srv129.services.gc.ca/rbin/eng/rates.aspx?id=2014#data>
2. If the rate is 6 percent or more, then your employer cannot apply for an LMIA in the following National Occupational Classification (NOC) codes:
  - 6641: Food Counter Attendants, Kitchen Helpers and Related Occupations
  - 6661: Light Duty Cleaners
  - 6611: Cashiers
  - 6622: Grocery Clerks and Store Shelf Stockers
  - 7611: Construction Trades Helpers and Labourers
  - 8612: Landscaping and Grounds Maintenance Labourers
  - 6672: Other Attendants in Accommodation and Travel
  - 6663: Janitors, Caretakers and Building Superintendents
  - 6662: Specialized Cleaners; and
  - 6651: Security Guards and Related Occupations

## NEW ENFORCEMENT :

1. There will be more inspections, prosecutions, and fines for employers.
  - Every year, the government now plans to inspect 1 out of 4 employers randomly or based on tips.
  - You may learn that your employer is being inspected or prosecuted by a federal agency such as *Employment and Social Development Canada* (ESDC) or *Canada Border Services Agency* (CBSA) and they may want to interview you. If that happens, you should try to speak to a lawyer, advocate, community organization, or union. These people understand that your labour and employment rights are tied to your limited right to temporarily stay and work in Canada. If you cannot speak to any of them before the interview, you should still contact them afterwards.
  - We do not know what will happen to migrant workers' ability to work and stay in Canada if ESDC or CBSA inspects, suspends, or prosecutes their employer.
  - Remember that ESDC and CBSA inspectors are not the same as provincial Ministry of Labour and/or Health and Safety Officers. Provincial ministries are separate from the Federal government and their decisions cannot stop you from staying in Canada. Feel free to talk to provincial Ministry officials about any problems you may have however remember that these agencies are not well placed to protect you from certain types of employer reprisals (like refusal to renew a job contract and repatriation). Also, the Federal government is renegotiating what information it can get from the Provinces so please make sure that the provincial ministries are still independent.

## 2. Information packages / Enforcing your rights

- If you are a migrant worker, you will now get an information package on your rights and responsibilities when you enter Canada.
- The Canadian government has not said what will happen to migrant workers who try to enforce their rights by making a complaint.
- The Canadian government says that it is not responsible for labour, recruitment, and health protections. It says provincial governments are responsible for those things. If you file a provincial complaint, know that provincial governments in Canada have almost no control over work permits, LMIA's, or immigration status, especially for 'low-skill, low-wage' workers.

**Migrant Workers Alliance for Change** is comprised of various advocacy and community groups, unions, workers and community members, aimed at improving working conditions and fighting for better protections for live-in caregivers, seasonal agricultural workers and other temporary foreign workers.

Migrant Workers Alliance for Change includes Alliance of South Asian Aid Prevention, Asian Community Aids Services, Caregivers Action Centre, Industrial Accident Victims' Group of Ontario, Justicia for Migrant Workers, KAIROS, Legal Aid Windsor, Migrante Ontario, No One Is Illegal – Toronto, Parkdale Community Legal Services, Social Planning Toronto, UNIFOR, United Food and Commercial Workers and the Workers' Action Centre.

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**MIGRANT WORKERS**  
**Alliance for Change**

## PROTECT YOURSELF :

### 1. Keep Records

- Keep records of your wages, hours and dates you worked. Keep this information in a safe place. This is your proof if your employer does not pay you properly
- If your employer threatens you, or does something that might be illegal, write down exactly what happened.

### 2. Get support

- You do not need to deal with the problem alone. Call a community organization in your region. Contact us and we will let you know who is nearby.
- If you ever feel in danger at work, contact the police right away.

### 3. Organize for change

- It is often hard to take action on your own. That is why caregivers, farm workers, and other temporary workers are joining together to make changes so that workers will have stronger protections, no matter where they work.
- Many different organizations and workers are coming together through the Migrant Workers Alliance for Change. They want to improve working conditions under the seasonal agricultural workers program, the live-in caregiver program and other temporary foreign worker programs.
- If you are in Ontario, join the Migrant Workers Alliance for Change. You can be part of this process and meet other workers who are fighting for change.
- If you are not in Ontario, you can still contact us. We will try to connect you with an organization near you.