

Briefing Note

re: Alliance for Gender Justice in Migration (11/22/23)

Issue:

Employment rights in Canada for women and gender-diverse workers with precarious immigration status.

Background:

The Vancouver-based **Migrant Workers Centre** (MWC) and the coalition it leads, **Alliance for Gender Justice in Migration** (<https://mwcbc.ca/alliance-for-gender-justice-in-migration/>), is playing an active role in the current debate about migrant worker policy reform at the federal level.

The Alliance for Gender Justice in Migration is concerned with the often-neglected concerns facing women and gender-diverse individuals. We are a network of people with lived experience, academics, advocates, and service providers from across Canada formed to identify trends and promote policy solutions aimed at ending discrimination against women and gender-diverse migrants in Canada.

Migrants are at the centre of our policy development because we believe policy regarding rights and protections for undocumented migrants cannot be properly developed without their knowledge, understanding and expertise based on lived experience.

We call 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.

Key Considerations

- 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 characterised by low wages, non-unionization, and lack of access to pensions and other non-wage remuneration. Additionally, women and gender-diverse workers with precarious status experience additional layers of harassment and violence in the workplace not, generally, experienced by their male counterparts.

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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. Documented recruitment abuses include the charging of recruitment fees, misinformation regarding the terms and conditions of employment, and threats. Especially workers in 'low-skilled' streams, such as under the Temporary Foreign Worker Program (TFWP) are vulnerable to employment-related abusive practices, such as harassment and wage theft, as they receive tied work permits associated with one single employer.

- Enforcement systems are predominantly complaint-driven and depend on individual complaints by precarious workers. However, fear of job loss, deportation, and vulnerability to repercussions for asserting their rights prevent most from filing complaints regarding working conditions. In addition, women and gender-diverse migrant workers tend to have limited access to information about their rights, face language barriers, may live in rural locations and have limited or no formal access to legal services that are free or affordable. Even when investigations occur, 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. Furthermore, oftentimes informal approaches of education and rectification are adopted, and more serious enforcement mechanisms are not as common.

Recommendations:

- 1. Expedite or improve conditions for migrant workers' access to Justice.** This includes the prioritization of their complaints to the Human Rights Tribunals/Commissions at the federal or provincial level given they can be time-sensitive due to dismissal and deportation. In addition, such migrant workers should be able to access affordable or pro bono legal services, and other settlement services as well as regular services available to Canadian citizens. Access to justice also includes effective enforcement systems and consequences towards unfair and abusive employers.
- 2. Full access to Employment Standards** through the removal of exemptions for work predominantly done by racialized migrant workers, such as agriculture and domestic caregiving roles. Permanent and universal paid sick days should be codified, and workplace health and safety legislation should be proactively monitored and enforced. Employment sectors such as agriculture, meat processing, and caregiving which employ large numbers of migrant workers, should be prioritised for enforcement. Such enforcement should involve proactive and unannounced inspections with confidential worker interviews and availability of language interpretation services if required.
- 3. Access to Unionization & Collective Bargaining,** including broader-based bargaining such as sectoral bargaining. There should be proactive measures to prevent employer retaliation if employees with precarious status join unions.
- 4. Protection against Violence and Harassment** 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.

5. **Protection from Exploitation via Recruiters and Labour Trafficking** through a nation-wide adoption of best practices and methodologies that are consistent across provinces. Enforcement systems should not rely heavily on complaint-based processes given the fear and vulnerabilities that prevent employees from filing complaints, so a proactive approach is necessary. In addition, trafficking legislation should incorporate victims of labour trafficking and ensure 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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