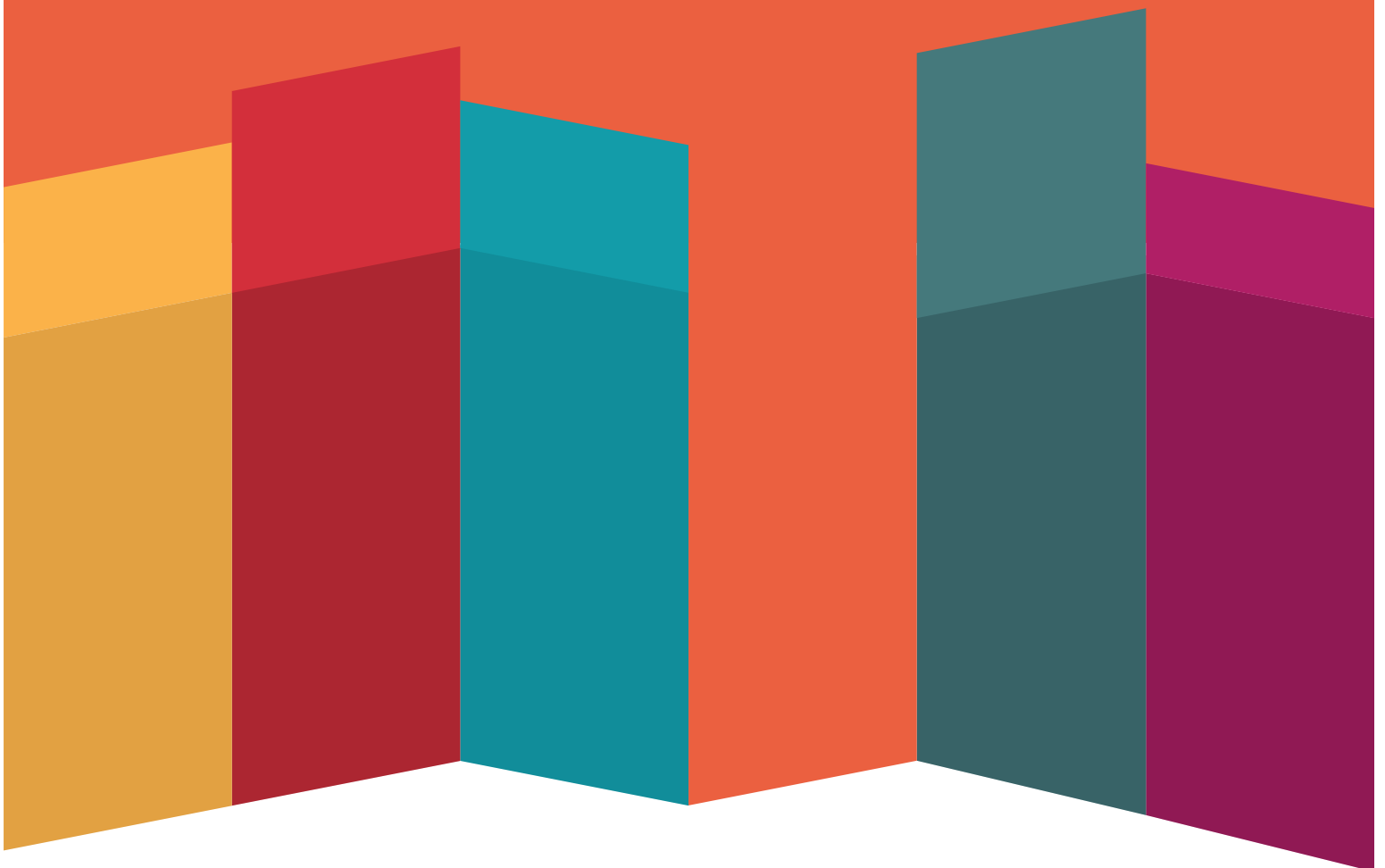


COLLECTIVE AGREEMENT LANGUAGE TO SUPPORT MEMBERS WITH TEMPORARY WORK PERMITS



CUPE



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Introduction

CUPE locals across the country represent members working under different temporary work permits. These permits include temporary foreign worker (TFW) permits, study permits and post-graduation work permits (PGWP).

This document is for CUPE bargaining teams and local executives. It will help you bargain strong collective agreements that meet the needs of members with temporary work permits.

The term “members with a temporary work permit” refers to members with temporary immigration status. Depending on their immigration program, these members may also be called migrant workers, foreign workers, temporary foreign workers, or international students.

CUPE members with temporary work permits are covered by existing collective agreements. They must also follow other rules and regulations, depending on their work permit and immigration program. CUPE locals should be ready to enforce and expand their collective agreement to protect the rights of members with temporary work permits.

Our solidarity is essential. Canada’s immigration system is often racist and is used to exploit workers from other countries. Workers with temporary immigration status face financial instability, employer abuse and exploitation, and can be deported if their status changes.

Negotiating the language in this guide into your contract will help protect CUPE members with temporary work permits and defend their rights. Collective bargaining is one way CUPE members and locals can support the fight for migrant justice. Locals should contact their national representative for more information about bargaining these provisions and other ways to support members with temporary work permits.



Collective agreement language

Notifying the union

Employers who want to hire workers with temporary work permits often need permission from the federal government through a Labour Market Impact Assessment (LMIA). Employers must prove there is a labour shortage before they can hire workers under the Temporary Foreign Worker Program. Your local should bargain language requiring the employer to notify the union about this assessment process and before hiring any workers with temporary work permits. This language is meant to support workers with temporary work permits, not create barriers.

Sometimes employers will claim there is a labour shortage when there is not. This puts workers in vulnerable situations. For example, employers hiring workers under the Temporary Foreign Worker Program must hire them to work full time (30 hours a week). But they may classify these workers as part time to avoid providing benefits and then provide overtime hours to meet the 30-hour requirement.

This can create division in the workplace if overtime hours are allocated in a way that violates seniority rights. It may also put members with temporary work permits at risk of not meeting program requirements, jeopardizing their ability to stay in Canada permanently. If the union is involved, we can ensure workers' rights and immigration program requirements are respected.

Even if an LMIA is not needed, your local should know about members with temporary work permits. This information helps stewards and executive members accurately assess the level of risk for a member who chooses to file a grievance or take job action.

Members with temporary work permits are more vulnerable than other workers because of their precarious immigration status. If speaking out leads to them losing their job or facing other employer retribution, they could be deported. It is still important to file grievances when the collective agreement has been violated if we are clear about the risks.

Requiring employers to notify the local when workers with temporary work permits are hired helps ensure workplace solidarity. This collective agreement language ensures your local is informed and can provide support to members with temporary work permits as soon as they arrive.



Labour shortage determination

The Employer agrees to follow the procedure outlined in Article(s) X of this agreement with regards to internal and external job postings and seniority. The Employer shall notify the Union of any intention to hire employees on a temporary work permit:


- When a Labour Market Impact Assessment (LMIA) is required, the Employer will notify the Union in writing within fifteen (15) days of submitting an LMIA application. The Employer will provide the Union with a copy of the LMIA application and supporting documents. The Employer will notify the Union when a positive LMIA and/or confirmation letter is received.
- In the event an LMIA is not required, the Employer will notify the Union in writing fifteen (15) days in advance of hiring an employee with a temporary work permit.

Documentation from the union

Some immigration streams require employers to submit a “union concurrence” letter when they apply to hire workers with temporary work permits, extend work permits, or support permanent residency applications. The union is often asked to confirm in writing that there is a labour shortage, that the hiring follows the collective agreement process, and that the hiring will not interfere with any ongoing labour dispute.

Employers sometimes request union concurrence letters at the last minute, without providing details about the situation. In other cases, employers do not submit the concurrence letter in their application package, leaving the worker to follow up with their local. Both situations are unfair to the worker and the local union and can lead to a worker’s immigration application being delayed or rejected.

This collective agreement language ensures the employer meets their obligation to provide the documentation needed for a successful immigration application. It also requires the employer to give your local advance notice and background information when requesting a letter as part of the employer’s application package.



Union concurrence

In the event the Employer requires a concurrence or a consent letter from the Union to employ workers with a temporary work permit, the Employer agrees to:

1. Notify the Union in writing in advance of issuing a job offer to an employee with a temporary work permit.
2. Issue a request for a union concurrence or consent letter in advance of the Employer's application to relevant government officials.
3. Ensure all documents are provided to the employee with a temporary work permit in a timely manner to ensure application requirements can be met.

Documentation from the employer

Workers with temporary work permits who want to apply for a work permit extension, for entry into a different temporary immigration stream, or for permanent residency often need a specific letter from the employer. This letter includes either a job offer or a confirmation of previous employment and is required for a successful application to Immigration, Refugees and Citizenship Canada. A letter may also be needed to get a provincial health card. These letters are extremely important.

Some employers could withhold these letters to punish a worker standing up for their rights, or to control vulnerable workers. Other employers may treat the letters as a bureaucratic burden, which can lead to delays or missed deadlines for the worker.

This collective agreement language sends a strong message to members with temporary work permits that the local union is ready to support them.

Application letters

The Employer will provide letters and other documentation requested for work permits and permanent residency applications, or to verify employment eligibility for a health card, within 48 hours of an employee's written request, in the format accepted by Immigration, Refugees and Citizenship Canada, or other relevant authorities.

If within the probationary period, this provision applies only upon the employee's written request and does not constitute a waiver of the Employer's rights under the probationary terms of this Agreement.



Time off for immigration-related issues

If a member with a temporary work permit has a problem applying for a work permit extension or permanent residency, they could lose their legal ability to work. They may need to meet with a legal or immigration representative during work hours to keep their immigration status. Under some programs, a worker who has lost their legal status will have 90 days to restore it, and in other cases it will take longer or may include “maintained status” (see Important Terms at the end). If they are successful, they can return to work or may not need to leave at all.

Language about immigration-related leaves of absence in the collective agreement will ensure workers have the time they need to navigate the often confusing and expensive immigration system. Paid leaves of absence protect workers with temporary work permits from being terminated if their work permit expires before they can restore their status.

It is not uncommon for employers to provide a worker with a termination letter when a work permit expires and then rescind it after the union requests a leave of absence be provided instead. If an employer refuses to provide a leave of absence, the union should consider filing a grievance.


Leave of Absence

The Employer will grant a leave of absence with pay and with no loss of seniority to employees who require time off work for immigration-related issues, including but not limited to the following:

1. to update, extend or make an application for a work permit, a study permit, or permanent residence status
2. for the time required to restore immigration status if a work permit expires prior to extension

Upholding the collective agreement

A worker with a temporary work permit in a unionized workplace is covered by the collective agreement. Despite this, some employers have asked locals to consider signing a Letter of Understanding (LOU) that does not align with the collective agreement.



The employer may try to use an LOU to lock wages at their starting rate for the duration of a temporary work permit, to limit access to benefits or to modify collective agreement provisions in other ways.

Locals should never agree verbally or in writing to an employer proposal that takes away rights for members with temporary work permits or otherwise reduces their collective agreement benefits and protections. In addition to this language, the local can file a grievance if an employer insists an LOU be signed.

This collective agreement language as written applies to all members but is particularly important to members with temporary work permits.

No Other Agreements

No Employee will be required or permitted to make any written or verbal agreement with the Employer or their representatives which may conflict with the terms of this Agreement.

Grievances

Workers with temporary work permits who need to file a grievance have unique needs. They may need an expedited grievance process to meet work permit expiry dates and immigration application deadlines.

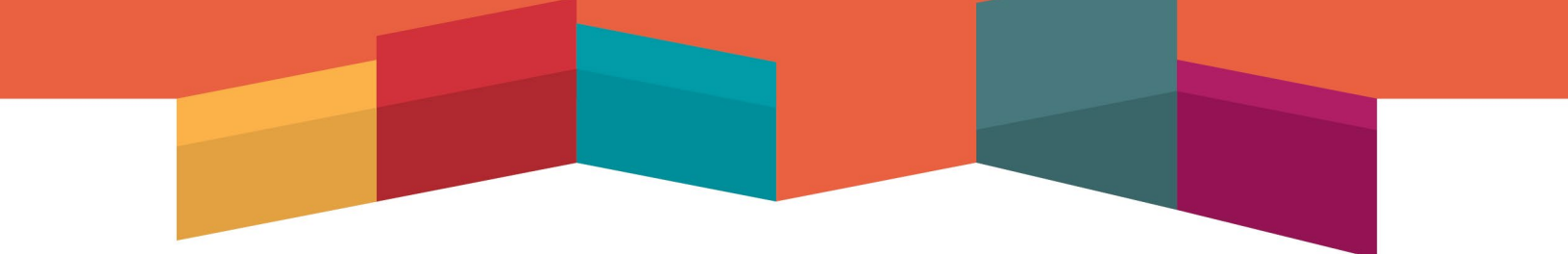
The outcome of a grievance could force a member to leave Canada before they are ready, so a timely process is critical.

This collective agreement language outlines a grievance process that helps address the precarious reality of holding a temporary work permit.

Expedited Grievance Handling

The parties agree to expedite the handling of a grievance where the outcome of the grievance may affect the ability of an employee hired on a temporary work permit to maintain their work permit and/or immigration status. The Parties agree to:

1. Advance the grievance to the last step of the grievance process. The parties shall have the grievance meeting within ten (10) days of the filing of the



grievance. The Employer will provide their response to the Union no later than five (5) days following the meeting.

2. After step X (insert the last step of the grievance process),
 - immediately determine which arbitrators are ready and available to hear the matter within thirty (30) days of the submission to arbitration, and
 - issue an oral award where possible, or a written decision where necessary or required by either party within a further fifteen (15) days of the conclusion of the hearing.
3. The Employer agrees to provide interpreters or translators as required by employees with temporary work permits to participate in the grievance process.

Orientation to the collective agreement

Locals should bargain language allowing them to orient all new members to the collective agreement on work time. It is also a good idea for your local to offer collective agreement orientation sessions specifically for newly hired members with temporary work permits.

Beyond providing essential information, an orientation creates a welcoming and trustworthy environment for members new to your local, city, or the country who are feeling vulnerable because of their immigration status. An orientation is especially important if there are language barriers or the employer has a history of exploiting or discriminating against workers with temporary work permits.

Collective Agreement Orientation

The Employer agrees to permit a two (2) hour meeting between the Union and new employees within ten (10) working days of their hire date to offer an orientation to the Collective Agreement, their rights as Union members and the grievance process.



No discrimination or harassment

Some employers have prevented members with temporary work permits from posting into full time or permanent positions because they hold a temporary work permit. This denial of their seniority rights is discrimination based on immigration status.

All provincial, territorial and federal human rights acts or codes prohibit discrimination based on national origin or place of origin. The Ontario *Human Rights Code* and the Nunavut *Human Rights Act* prohibit discrimination based on citizenship. Including immigration status in your local's discrimination and harassment language is another way to protect the rights of members with temporary work permits.

This collective agreement language includes discrimination based on immigration status.

Discrimination and Harassment

The Employer and the Union agree that there shall be no discrimination, interference, restriction, coercion, or harassment exercised or practiced in any matter concerning the application of the provisions of this Agreement by reason of age, marital status, family status, creed or religion, physical disability, mental disability, race, colour, ancestry, place of origin, national origin, social condition, political belief or activity, sexual orientation, gender identity or expression, sex (including pregnancy), citizenship, **immigration status** or type of employment.

Documentation, translation, application fees, and language training

There are other ways your local can use the collective agreement to support members with temporary work permits. Workers who are new to Canada face many barriers in the workplace and community. Their first language may not be English or French, and they are navigating an expensive and complex immigration system.

These collective agreement clauses are examples of how your local can negotiate employer support around documentation, application fees, translation, and language training.



Employer-provided documentation and application assistance

The Employer agrees to provide administrative support for work permit extensions and permanent residency applications to any employee with a temporary work permit.

The Employer will provide regular updates to the Union until the employee has been nominated for permanent residency. The update shall include, but is not limited to, date of expiration for work permit, status update for the immigration work program such as the nominee program, any information that could affect the employee's ability to work or remain in Canada.

Employer to provide translation of collective agreement and interpretation assistance

The Collective Agreement will be translated into any language that is the first language of at least twenty (20) employees. Where there is ambiguity in the translated text, the language of the text which was negotiated and agreed to by the parties shall prevail.

The Employer agrees to provide interpreters whenever required by employees on temporary work permits for employment related meetings. The Union and the Employer shall share the cost of translation equally.

Application fees

The Employer shall reimburse employees for work permit fees and permanent resident application fees.

Language training

The Employer agrees to provide financial assistance to employees who require language training to meet permanent residency application criteria



Conclusion

CUPE collective agreements can be a tool to help workers with temporary work permits defend their rights and work towards permanent resident status.

This guide has examples of language that can be included in your collective agreement. Not all language will be right for your specific circumstances. Members with temporary work permits know their needs best and whenever possible should be involved in the bargaining process.

Local leaders, bargaining teams and members with temporary work permits should work together on additional language that addresses their experiences as workers with precarious immigration status. Ask your national representative for help.

Collective bargaining is part of the broader fight for justice for migrant workers, and all workers. CUPE members must also join migrant workers and their organizations to campaign for fundamental changes to our immigration system so that everyone who comes here to work can also stay permanently.

For more information:

Temporary foreign workers in our union: A solidarity and action guide
cupe.ca/TFWguide



Important terms

Immigration status

Immigration status describes the permissions under which someone is allowed to visit or stay in Canada. For example, someone could be a citizen, a permanent resident or a tourist. Some people may not have an immigration status because they are undocumented

International Student Program

The International Student Program let students from other countries come to Canada to study at specific schools, known as designated learning institutions (DLI)s.

For many years, CUPE has represented international students who work on campus in the post-secondary education sector. Their study permit may function as a work permit, on and off campus.

Labour Market Impact Assessment (LMIA)

A Labour Market Impact Assessment (LMIA) is a document from Employment and Social Development Canada (ESDC) that gives an employer permission to hire a temporary foreign worker.


A positive LMIA, sometimes called a confirmation letter, will show there is a need for a foreign worker to fill a job. It will also show that no Canadian worker or permanent resident is available to do the job. The LMIA may be required for the foreign worker to apply for a work permit.

This is one of the documents your local should review to see if the specific terms of work, such as the starting rate of pay for a TFW, align with your collective agreement. It may also tell you how many TFWs the employer has permission to hire.

Some occupations and industries are “LMIA-exempt.” This means the worker can directly apply for a work permit if they meet certain requirements. The employer does not have to prove they tried to find a worker with Canadian citizenship or permanent resident status. The exemption list frequently changes and in general, an LMIA is required for the Temporary Foreign Worker Program (TFWP).

Maintained Status

If a worker, student or a visitor applies to extend their immigration status (this includes a work or study permit or via a permanent residency application) before their current



permit expires, then they can legally remain in Canada while their application is being processed by the government. They have what is called “maintained status.”

If their current permit expires while their application is being processed, they can remain in Canada under the same conditions of their previous permit until they receive a decision on their application.

For CUPE members, this could mean that they are legally allowed to continue to work, even if their work permit has expired. It is important to consider this possibility if a termination letter has been received from the employer and prior to negotiating a leave of absence for immigration related purposes.

National Occupation Classification (NOC)

The Canadian government maintains a list of job classifications known as the National Occupation Classification (NOC). The NOC is an important part of the immigration process for migrant workers seeking work in Canada. The government uses the NOC to identify which occupations have a labour shortage and to set the median wage rate.

Open and closed work permits

Work permits authorize migrants to work in Canada. Work permits can be closed or open. Workers with a closed work permit can only work for a specific employer, in a specific workplace, in a specific job. Closed work permits are a defining feature of the TFWP

Workers with an open work permit can apply for jobs from different employers. Some permits may include sector or location restrictions. International students who receive a post-graduation work permit often hold an open work permit.

Work permits are different from a visa or a temporary resident permit.

Permanent resident

A permanent resident is someone who has satisfied the legal requirements to stay in Canada indefinitely, without being a citizen of Canada.

People can get permanent resident status in several ways, including by immigrating to Canada, by receiving refugee protection or by successfully applying on humanitarian and compassionate grounds. People must meet certain residency criteria to maintain permanent resident status. Permanent residency can be lost or revoked.



Post-graduation work permit (PGWP)

After an international student graduates, they may be eligible for a post-graduation work permit. The PGWP is one of several permit options under the International Mobility Program.

The PGWP is an open permit that lets new graduates from designated learning institutions stay in Canada to work temporarily. The length of these permits varies, many expire after three years.

Recent changes to Canadian immigration policy have made it harder for PGWP holders to access permanent resident status when their temporary work permit expires.

Precarious worker

A precarious worker is someone who does not have stable employment or whose job conditions make them more likely to face financial instability, mistreatment and exploitation.

A precarious worker who has a precarious immigration status is doubly vulnerable. People with precarious immigration status can be deported from Canada if their permit to remain in the country is revoked or expires without the option to renew it.


Provincial Nominee Program (PNP)

The Provincial Nominee Program (PNP) is a federal program that allows provinces and territories to nominate people for permanent residency based on their specific needs and workforce requirements. Provinces choose workers based on different streams and criteria. The PNP is an important pathway that gives workers the option to apply to stay in Canada after they complete the requirements of a temporary work or study program.

Regularization

Regularization means giving permanent resident status to people whose immigration status is precarious because they have a temporary closed work permit or are undocumented.

There have been several programs since the 1960s providing broad or targeted regularization for migrants and refugees.



CUPE has adopted convention resolutions and policies supporting full and permanent immigration status for all migrants and refugees currently in Canada.

Sponsorship

Sponsorship is a Canadian immigration policy that allows Canadians and permanent residents to officially support someone to come to Canada under certain circumstances, with specified responsibilities. People being sponsored may include refugees, certain family members, and workers. Sponsorship often speeds up the immigration process.

Status for All

Status for All is a campaign led by migrant workers and their organizations and allies. It calls for all foreign workers to be given permanent residence status when they arrive in Canada.

Workers who come to Canada often arrive as temporary workers under closed work permits, meaning they are tied to one employer and one workplace. This makes them vulnerable to exploitation by their employers.

Having permanent residence upon arrival would give foreign workers same freedom to change jobs as other workers. It would also remove the fear of deportation for reasons beyond their control, such as job loss or an abusive employer.

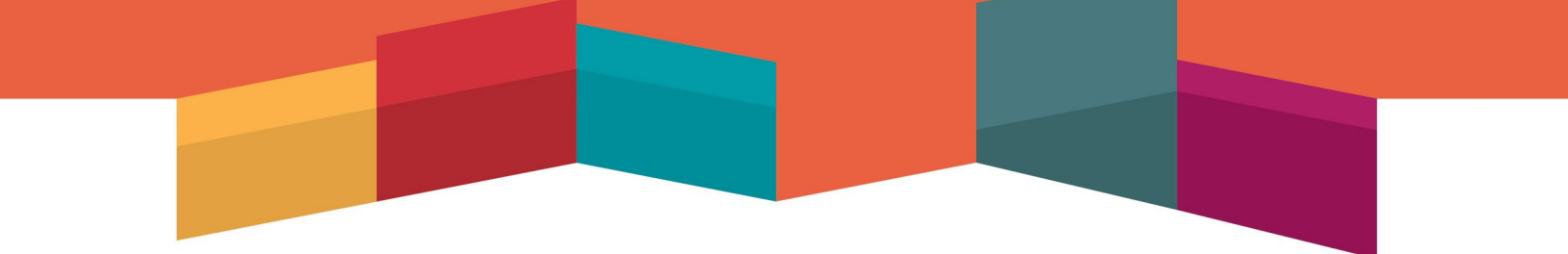
Temporary Foreign Worker Program (TFWP)

The Temporary Foreign Worker Program (TFWP) is a federal immigration program designed to bring workers from other countries to meet employers' short term regional and sectoral labour needs. The program has streams for seasonal agricultural workers, caregivers, high and low-wage workers, and more.

The TFWP is often used for workers who enter Canada under the low wage stream. These workers have employer-specific work permits, called closed work permits. Migrant rights organizations and United Nations experts have described closed work permits as creating the conditions for “modern day slavery.”

Third party representatives or recruiters

Employers commonly use “recruiters” or immigration consulting agencies to handle their LMIA applications. These agencies also help find foreign workers who are qualified and interested in working in Canada.



The business of recruiting foreign workers is profitable and often unethical. Recruiters often financially exploit migrant workers and make false promises about jobs, work permits and permanent resident status.

Some provinces have implemented rules for recruiters, which may involve licensing requirements, a registry, and a code of conduct.

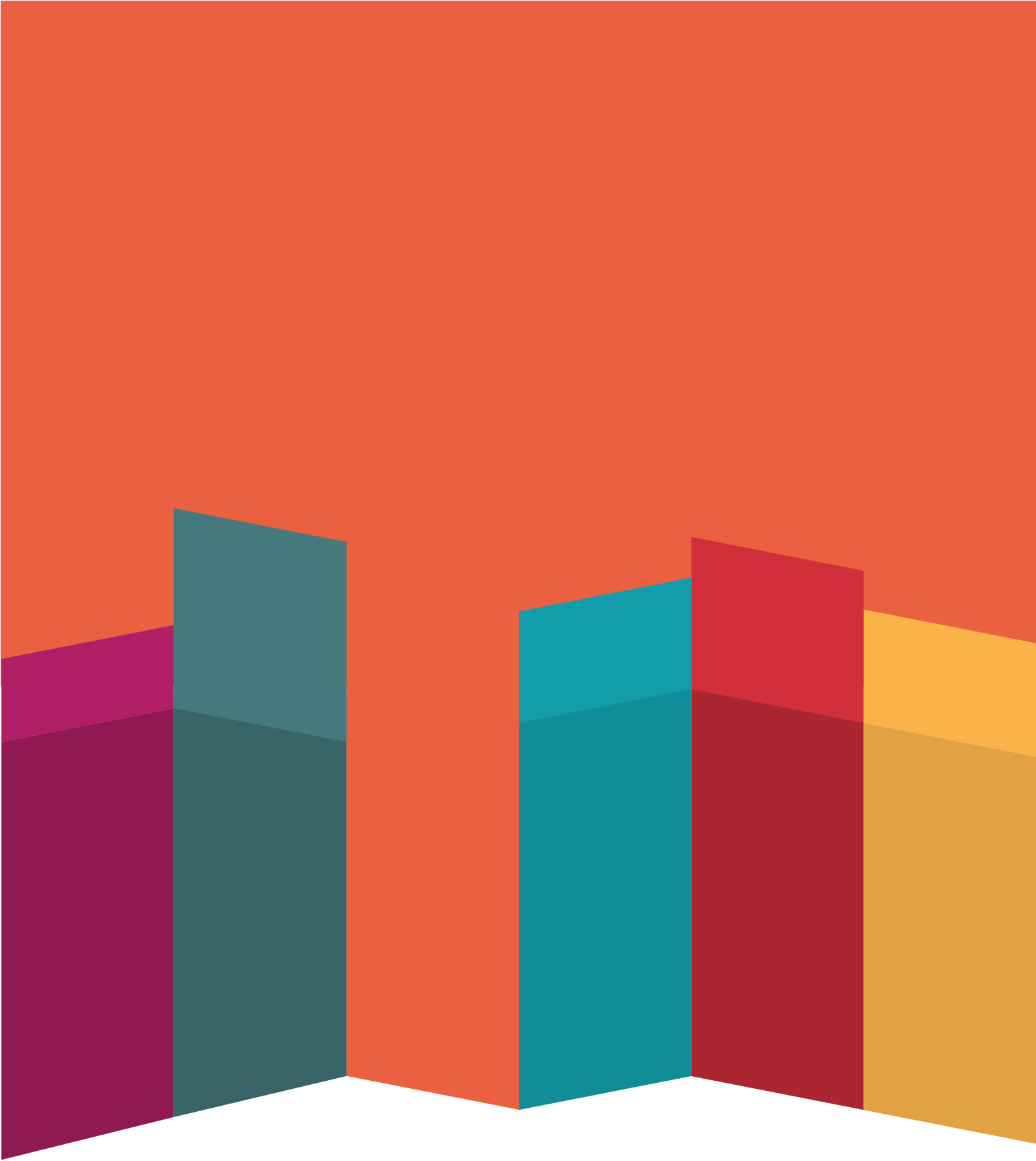
Undocumented

Undocumented is a general term used to refer to someone who is working or living in Canada without authorization. A person who does not have permission to stay in Canada (if they do not have the right kind of immigration status) may still be able to work in Canada if they hold a valid work permit.

A person can become undocumented because they entered the country without reporting to border authorities, or because they did not leave the country when their permission to stay expired. People do this for a variety of reasons, including financial insecurity or the risk of persecution in their country of origin.

Undocumented people risk being deported and are the targets of employer abuse and exploitation. They often face hate and negative treatment from the public.

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