

Temporary foreign
workers in our union:

A SOLIDARITY AND ACTION GUIDE

CUPE





Photo: Migrant Workers Alliance for Change

Illustration by Mariana Escobedo - migrantworkers.org



INTRODUCTION

CUPE locals across the country represent members working in Canada under various immigration statuses, including temporary foreign workers (TFWs), international students, refugees and others.

This document is about TFWs, often referred to as migrant workers, who come to Canada under the Temporary Foreign Worker Program (TFWP).

The TFWP is a federal program that brings workers to Canada from abroad to meet short-term, regional and sectoral labour needs. These workers are tied to their employers through closed work permits and usually have to leave Canada when their temporary employment ends.

TFWs in unionized jobs are covered by existing collective agreements. However, their unique immigration and work situations demand our special attention and support.

TFWs in Canada are part of over 200 million workers globally who have left their homes and families in search of decent work in other countries. Often, they have been forced to migrate due to poverty, unemployment, the climate crisis and the legacy of colonialism and capitalism.

The export of this labour is systematized, racist and exploitative. Workers in poorer countries must often find jobs abroad. This allows workers to earn money and send it back to their families in their home countries who depend on this income. Meanwhile, wealthier nations, like Canada, have set up temporary foreign worker programs for the benefit of employers, who are able to maintain low wages for workers whose rights cannot easily be protected.



Historically, Canada's TFWP and similar programs have used racist and exclusionary policies to exploit Black and racialized workers without offering them permanent status. Programs like the West Indian Domestic Scheme and the Live-in Caregiver Program, for example, exploited women from the Caribbean and the Philippines for decades. Opportunities for these workers to obtain permanent residency have been inconsistent. Similarly, the Seasonal Agricultural Worker Program, which started in 1966, brings workers in seasonally but doesn't allow them to stay permanently, based on the racist belief that these workers won't fit into Canadian society.¹

A significant migrant rights movement, led by migrant workers, has emerged in Canada in response to the injustice and abuse of these programs. Migrant workers have long been advocating for their rights, raising awareness of their difficult living and working conditions and the racism and discrimination they face. CUPE members have strongly supported their efforts and this document is guided and inspired by the leadership, political action and courage of migrant workers.

Temporary foreign workers in our union: A solidarity and action guide is designed to help CUPE bargaining teams and local executives support members who are TFWs at the bargaining table and in the workplace. It seeks to contribute to the broader fight for justice for migrant workers, and, by extension, all workers. This fight must take place in workplaces, in the government and on the streets. As trade unionists, we must continue building an anti-racist union and stand in solidarity with migrant workers.

¹ Mooten, N. (2021). *Racism, discrimination and migrant workers in Canada: Evidence from the literature*. Policy Research, Research and Evaluation Branch, Immigration, Refugees and Citizenship Canada.

IMPORTANT TERMINOLOGY



ILLEGAL

This is a term that is often used to describe migrants who are living in Canada without government permission. It is sometimes used synonymously with “undocumented.” The term “illegal” creates divisions within the working class, dehumanizing migrants by equating them with illegality. The “No one is illegal” movement advances solidarity with migrants and rejects the criminalization of migration.

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.

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 that 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. A positive LMIA is provided to the employer by ESDC and is a requirement for the worker to apply for a work permit. It essentially functions as a contract between the Canadian government, the employer and the worker.

This is a document the union will want to access to determine whether the specific terms of work for a TFW align with the provisions of the collective agreement. Otherwise, the union can consider recourse such as a grievance.

There are some industries and occupations that are deemed “LMIA-exempt,” which means that the government believes that there are either circumstances in a specific occupation or an acute enough labour shortage in that industry that the employers can hire TFWs without first obtaining an LMIA. The list frequently changes, and in general, an LMIA is required for the TFWP.

NATIONAL OCCUPATION CLASSIFICATION (NOC)

The National Occupation Classification (NOC) is a list of job classifications maintained by the Government of Canada. 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 what the median wage rate will be.

OPEN WORK PERMITS AND CLOSED WORK PERMITS

Work permits authorize migrants to work in Canada. Work permits can either be closed or open.

Closed work permits allow someone to work for a specific employer only. Closed work permits are a defining feature of the TFWP.

Open work permits allow a worker to seek employment from different employers. Some may include sector or location restrictions. International students who receive a post-graduate 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 requirements set out in law to stay in Canada indefinitely, without being a citizen of Canada.

People can obtain permanent residence in several ways, including by immigrating to Canada, by receiving refugee protection or by successfully applying for it on humanitarian and compassionate grounds. Certain residency criteria must be met to maintain permanent resident status. Permanent residency can be lost or revoked.

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. Precarious immigration status is characterized by the possibility of deportation from Canada if a permit to remain in the country is revoked or expires without renewal.

REGULARIZATION

Regularization means giving permanent residence status to those whose immigration status is precarious, such as those who have a temporary closed work permit or who 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. Recipients of sponsorship may include refugees, certain family members and workers. It 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 upon arrival 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 allow workers the freedom of mobility afforded to other workers and would remove the fear of deportation for reasons beyond their control, such as job loss or an abusive employer.

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. Migrant workers are frequently financially exploited by recruiters and given false promises of jobs, work permits and permanent residency status.

Some jurisdictions have implemented rules for recruiters, typically involving licensing requirements and a code of conduct. As of 2024, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, Prince Edward Island and Nova Scotia have established, or plan to establish, licensing systems for recruiters.

UNDOCUMENTED

Undocumented is a general term used to refer to someone who is in Canada without authorization to reside and/or work. A person can become undocumented because they entered the country without reporting to border authorities or because they did not leave the country after the expiration of their permission to stay. This can happen for a variety of reasons, including financial insecurity or the risk of persecution in their country of origin.

Undocumented people are at risk of being deported and subjected to employer abuse and exploitation. They often face hate and negative treatment from the public. Someone who may 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.



CHALLENGES FACED BY TEMPORARY FOREIGN WORKERS



If a TFW starts a job in a unionized workplace, and their job classification falls within the scope of the collective agreement, then they have the same rights under the collective agreement as any other person employed in the bargaining unit and are likewise entitled to union representation. But the circumstances under which TFWs work are different in important ways.

The TFWP is based on the premise that there is a labour shortage in certain sectors and in certain regions across the country. When an employer can't find a Canadian or permanent resident to fill a position, they can hire a foreign worker temporarily. These foreign workers come to Canada on a closed work permit, which means they can only work for that particular employer and at that specific workplace. Typically, they have to leave Canada when their temporary job ends.

The maximum amount of time a temporary worker can work in Canada may depend on the contract they sign with their employer and the conditions set in the Labour Market Impact Assessment (LMIA) if the employer was required to get one.

There are a few different streams of the TFWP. These include the low-wage stream, the high-wage stream, the agricultural stream, the Global Talent Stream and the caregiver program. CUPE members who are TFWs are most likely to be in Canada under the low-wage stream and the caregiver program.

Depending on the stream, the employer may have certain obligations. These can include providing housing, transportation to and from the worker's home country and private health insurance coverage.

On paper, the worker is free to quit their job. In practice, however, quitting may risk not only their income but also their housing, health care and even their permission to remain in the country.

TFWs are not allowed to find another job unless they find another employer with permission from the government to hire TFWs. This process can take months. Quitting is often not an option, and many are therefore forced to stay in jobs that are exploitative. Migrant workers in Canada often refer to this situation as modern-day slavery. This charge has been echoed by the United Nations Special Rapporteur on contemporary forms of slavery who described Canada's closed work permit system as "a breeding ground for contemporary forms of slavery."²

ROLE OF THE UNION

Like other contract or temporary workers, migrant workers are often reluctant to join union activities, file grievances or take job action because they fear losing their jobs. But unlike other precarious workers, migrant workers face the additional risk of losing their immigration status and being deported. This risk creates an enormous financial and emotional burden.

Migrant workers also have legitimate reasons to be worried about filing complaints against employers with various levels of government. This is because the TFWP has been established to meet the needs of employers rather than workers.

These conditions may sow division in the union if migrant workers' concerns are misconstrued as anti-union. These tensions can also become fertile ground for racism and discrimination.

² Obokata, T. (2023). *End of mission statement of the special rapporteur on contemporary forms of slavery, including its causes and consequences*. United Nations. <https://www.ohchr.org/sites/default/files/documents/issues/slavery/sr/statements/eom-statement-canada-sr-slavery-2023-09-06.pdf>

Employers can take advantage of these divisions, making it more difficult for workers to achieve better working conditions and gains at the bargaining table. Union solidarity is the most effective tool to fight back.

Locals need to closely monitor the treatment of migrant workers in the workplace and make sure employers follow their requirements under the TFWP. Failing to address employers' violations or to educate members about the TFWP may lead to union members feeling resentful of migrant workers.

Sometimes workers can misdirect their legitimate frustrations about poor working conditions, high living costs and other issues toward migrant workers, wrongly blaming them instead of focusing on the actions or inactions of employers. Migrant workers are frequently accused of "taking our jobs" and can face hostility for speaking languages other than English or French.

The union should also be aware that the safety measures for migrant workers set up by federal, territorial and provincial governments are often insufficient or even harmful. For example, reporting issues through the federal government's tip line may lead to an investigation of the employer. In small workplaces, this could accidentally reveal the identity of the worker who suffered harm, exposing them to retaliation. The union must therefore carefully consider all the complaint and grievance processes available to migrant workers before moving forward.



LOOKING TO DO MORE?

Here are some steps your local can take to support temporary foreign workers. Not all actions may be right for your local's specific situation.

Migrant workers know best what their needs are. Whenever possible, migrant workers should be involved in and lead this work.



ACTION 1:

SHOW UNION SOLIDARITY

The union should **identify and address structural barriers** in the local that prevent migrant workers from fully participating in the union. For instance, the union can address language barriers by providing information in multiple languages.

The union can offer collective agreement **orientation sessions** specifically for newly hired TFWs. This would not only provide TFWs with essential information, but also create a welcoming and trustworthy environment for members who might be new to the union or the country, and who are experiencing the vulnerability of their immigration status.

The union could **create committees** for migrant worker participation. This would encourage lived-experience leadership in local unions so that the union's efforts on behalf of migrant workers are led by migrant workers. Trust-building may be required before migrant workers participate on committees or in other union structures. Contact your CUPE national representative for help.

Locals can also **organize events** to increase migrant worker involvement. Events could include inviting migrant worker organizations to host "lunch and learns," celebrating significant cultural days or holding a community barbecue. Remember to consider the cultural and religious backgrounds of migrant workers when selecting food and drinks for events.



ACTION 2:

BUILD COMMUNITY CONNECTIONS

The union can **build connections with local migrant justice advocacy groups**. These groups often have experience with connecting migrant workers to resources such as psychological support and legal aid.

Migrant justice advocacy groups may also be able to **connect workers** to other members of their community. This can help workers who are suffering from isolation feel a sense of belonging.

CUPE has debated and adopted policy at our national conventions in support of the **Status for All campaign** aimed at building a migrant-led movement to win full and permanent immigration status for all migrants, including undocumented people.

To keep up to date on this campaign, visit migrantrights.ca. Our work together inside the union and in the community is a contribution to this movement.



Photo: Migrante Canada

ACTION 3:

REQUEST DOCUMENTS

Requesting a wide range of documents and information about employers' plans to hire TFWs is a good strategy for the union to gather the necessary information to protect everyone's rights.

Employers often use third-party immigration consultants for TFW applications and might not automatically share all relevant information without a specific request. But this information can be very helpful for unions.

The TFWP application requires employers to prove no Canadian citizens or permanent residents are available to fill the position. They also need to prove that they have advertised the job for a specific time and publicized that it is in a unionized workplace.

The evidence employers provide may show that their job advertisements were minimal or misleading, did not state that the workplace is unionized or failed to include the union in the process.

If the union wasn't informed of these job postings, the local may be able to contest the claimed labour shortage by demonstrating that bargaining unit members were interested and available to do the work. This could take the form of a grievance or a complaint to the Employment and Social Development Canada (ESDC) tip line. Either the worker or the union can make complaints to the tip line, but care is required to ensure the immigration status of temporary foreign workers is protected in the process. CUPE does not recommend using the tip line without consulting a CUPE national representative or migrant rights advocate.

Contesting a labour shortage could put the union in a difficult position of having to protect the seniority rights of existing members while also ensuring that they do not jeopardize the employment of TFWs whose immigration status – and livelihoods –

could be at risk if they lose their jobs. Such a situation is ripe for xenophobia and racism, and an employer can exploit division in the local. The union must take steps to simultaneously protect both groups. There is no easy solution to this tension. Each situation is unique and may require a specific approach.

Here is a list of possible **document disclosure requests** regarding the employer's intentions and/or actual plans to hire and/or house foreign workers:

1. Copies of all applications made to any level of government in relation to the hiring of foreign workers. This includes, but is not limited to, all Labour Market Impact Assessments received and/or applied for.
2. All promotional material and an explanation of all steps taken to advertise and promote locally the positions for which foreign workers will be hired.
3. The number of foreign workers the employer plans to hire.
4. A list of all job classifications for which the employer plans to hire foreign workers.
5. Expected start and end dates for hired foreign workers, as per relevant program requirements/restrictions.
6. A copy of any contracts, agreements or other such documents between the employer and any recruitment agencies that are providing services to the employer to help hire and recruit foreign workers for positions in or outside the bargaining unit.
7. A copy of any contracts, agreements or other such documents between the employer and any foreign worker in the bargaining unit. No agreements should be signed that undermine the union's role as the official bargaining agent.
8. The employer's plans to provide housing support.
9. The employer's plans for the settlement and integration of the foreign workers that arrive, including details of the employer's plans to provide information to foreign workers about their rights.
10. The employer's plans to support foreign workers to acquire permanent residence status in anticipation of the expiration of the temporary work permit.

ACTION 4:

NO TWO-TIER AGREEMENTS

CUPE's national bargaining policy opposes two-tier agreements in our workplaces.

These agreements create different conditions for workers doing the same work, often excluding new employees from protections that workers with more seniority enjoy. Two-tier agreements weaken union solidarity and limit our ability to make meaningful gains in bargaining.

Employers may seek two-tier agreements by proposing a separate letter of understanding (LOU) to lock in lower wages or different conditions for newly hired migrant workers. CUPE considers this discriminatory and locals should never agree to lower terms based on immigration status.

Employers may also point to federal TFWP rules to justify lower provisions for migrant workers. But these rules only set out minimum labour standards and should not be used to undermine provisions already stated in the collective agreement.

In addition to the collective agreement, employers may have a duty to provide specific support to workers they hire under the TFWP, such as housing support, transportation and health care coverage. These basic provisions are not perks; they are obligations that the employer must meet depending on the kind of program through which the workers arrive.

Despite this, employers sometimes attempt to negotiate LOUs to lower these standards. For example, an employer might try to avoid providing housing and transportation by offering migrant workers a wage enhancement in lieu of these benefits. This is not allowed. The employer's duty to provide the entitlements laid out under the TFWP is non-negotiable because these entitlements are set out in the laws and regulations governing the program. However, it is possible to bargain language that makes improvements to these basic entitlements, like better health care coverage.

The union should also be aware that signing an LOU could violate human rights legislation if the agreement is deemed to be discriminatory.

Finally, locals should ensure that the existence of distinct employer support for TFWs, like housing, health care and transportation, is understood by the membership. The provision of these benefits is the employer meeting minimum legal standards set up by the federal government, not preferential treatment. Educating members about the TFWP will be helpful. Contact CUPE's Human Rights Branch for assistance.



Photo: Solidarity Across Borders

ACTION 5:

FILE GRIEVANCES AND COMPLAINTS

If the employer violates the collective agreement or their obligations under the TFWP, the union can **file a grievance or a complaint**.

Employers using the TFWP must follow specific standards. Regulation of these standards is shared by federal and provincial or territorial authorities.

The federal government handles violations of immigration rules, while provincial and territorial governments deal with violations of provincial and territorial labour laws.

Sometimes, municipalities may investigate public health issues or the state of migrant worker housing.

Some jurisdictions have special protections for foreign workers, typically found in specific legislation or in the relevant Employment Standards Act.

These rules vary, from specifying rights for foreign workers to establishing a licensing system for recruiters. Each jurisdiction is different.

In certain situations, it might be beneficial to file a complaint at the federal level, file a grievance against the employer that could reach a provincial or territorial tribunal or board, and also lodge a complaint under a provincial or territorial temporary foreign worker protection act, if available.

For example, if the union suspects the employer has threatened a TFW with deportation for being involved in the union, the union could consider a grievance as well as a complaint with ESDC. In jurisdictions where unionized members have access to the Human Rights Commission, the member may be able to file a human rights complaint concurrently. In jurisdictions with specific protections for TFWs, there may be another complaint process available.

The union must aim to ensure that collective agreements are respected while also protecting any affected TFWs in the workplace.

If an employer signs a contract with a TFW without mentioning the workplace is unionized, and if they intend to employ the worker without respecting the collective agreement, the union can file a complaint with the ESDC. The union could also file grievances for the employer's violations of the collective agreement, like contracting out bargaining unit work, failing to follow posting procedures or violating the scope clause.

While ESDC guidelines recommend that employers consult with the union when hiring a TFW into a unionized position, this is not required. However, the guidelines state that the hiring of TFWs cannot "affect current or foreseeable labour disputes at the workplace." If there is evidence that hiring a TFW could affect the "course, outcome or settlement of any labour dispute," the employer's application for an LMIA could be refused.³ For example, an employer cannot use TFWs during a strike or a lockout even if they are in a jurisdiction that does not prohibit the use of replacement workers.

ESDC runs a confidential tip line for complaints against employers, including abuse faced by TFWs or LMIA requirement violations. However, migrant workers have criticized this tip line as it sometimes results in more abuse. This is because the government notifies employers about complaints, making it easy to guess who made the complaint in small workplaces. As such, the union should use the tip line cautiously and generally should rely on processes set out in the collective agreement to protect worker rights.

³ Employment and Social Development Canada. *Program requirements for low-wage positions*. Retrieved March 18, 2024, from <https://www.canada.ca/en/employment-social-development/services/foreign-workers/median-wage/low/requirements.html>

ACTION 6:

OPEN WORK PERMITS FOR VULNERABLE WORKERS

If a worker is experiencing abuse or at risk of experiencing abuse, they can be eligible to get an open work permit to leave the employer. The federal government has a process through which a worker can apply for a temporary open work permit. The process requires the worker to submit evidence to back a claim of abuse or risk of abuse. The union should be aware of this option for members who may be experiencing or at risk of abuse.



ACTION 7:

TEMPORARY RESIDENT PERMITS FOR VICTIMS OF TRAFFICKING

It is common for migrant workers to be victims of labour trafficking. Labour trafficking is a criminal code offense. It happens when someone is recruited, moved or held to force them into doing work. Migrant workers with closed work permits are at high risk of labour trafficking.

Trafficked workers frequently lack immigration status. Immigration, Refugees and Citizenship Canada can issue a special permit called the Temporary Resident Permit for Victims of Trafficking which will grant the holder temporary status for a minimum of 180 days as well as an open work permit. The union should be aware of this option for members who may be victims of labour trafficking.



Photo: Migrant Workers Alliance for Change

ACTION 8:

ASK FOR HELP

Immigration law is complex. CUPE representatives, local executive members and the union in general are not expected to be experts in immigration law. **Reach out to your CUPE national representative, human rights representative or legal representative** to determine options for support when proceeding with a case involving migrant worker exploitation or abuse.



Photo: Migrant Workers Alliance for Change



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