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## BACKGROUND PAPER



# Temporary Foreign Workers

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**Sandra Elgersma**

Economics, Resources and International Affairs Division  
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*Temporary Foreign Workers*  
(Background Paper)

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# CONTENTS

1	INTRODUCTION.....	1
2	TEMPORARY FOREIGN WORKERS IN CANADA.....	1
3	ADMINISTRATION OF FEDERAL TEMPORARY WORK PERMIT PROGRAMS... 3	
3.1	Shared Jurisdiction.....	3
3.2	Legal and Policy Sources .....	3
3.3	Administration and Procedure at the Federal Level.....	4
4	PROGRAM STREAMS FOR TEMPORARY FOREIGN WORKERS .....	4
4.1	The Temporary Foreign Worker Program Stream .....	4
4.1.1	Higher-skilled Occupations.....	5
4.1.2	Lower-skilled Occupations.....	6
4.1.3	Primary Agricultural Stream.....	6
4.1.4	Live-in Caregiver Program.....	7
4.2	The International Mobility Programs Stream .....	7
5	POLICY CONSIDERATIONS FOR ADMINISTERING TEMPORARY WORK PERMIT PROGRAMS .....	8
5.1	Labour Market Impact .....	8
5.2	Facilitating Integration .....	9
5.3	Protecting Temporary Foreign Workers .....	10
6	CONCLUSION .....	12



# TEMPORARY FOREIGN WORKERS

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## 1 INTRODUCTION

A “temporary foreign worker” or “migrant worker” is a foreign national engaged in work activity who is authorized, with the appropriate documentation, to enter and to remain in Canada for a limited period. Until recently, the label “temporary foreign worker program” encapsulated many separate programs, masking the diversity of requirements and forms of authorized entry. Government of Canada changes on 20 June 2014 separated these programs into two streams with distinct characteristics – one called the Temporary Foreign Worker Program and one called International Mobility Programs.<sup>1</sup>

This paper offers an overview of temporary work permit programs in Canada and outlines some policy considerations surrounding this approach to meeting labour market objectives.

## 2 TEMPORARY FOREIGN WORKERS IN CANADA

The number of temporary foreign workers in Canada had increased at an average rate of 13% per year since 2002 to reach 386,406 by 1 December 2013, as shown in Table 1.<sup>2</sup>

**Table 1 – Temporary Foreign Workers Present in Canada on 1 December 2013 by Type of Work Permit Authorization**

Work Permit Authorization	Number	Percentage of Foreign Workers
<b>Subject to a labour market opinion, or LMO (now the only positions under the Temporary Foreign Worker Program)</b>	<b>126,816</b>	<b>32.8%</b>
Live-in Caregiver Program	16,927	
Seasonal Agricultural Worker Program	27,889	
Low skills pilot project	39,813	
Other workers requiring an LMO	42,187	
<b>Not subject to an LMO (positions now classified under International Mobility Programs)</b>	<b>259,590</b>	<b>67.1%</b>
Canadian interests <sup>a</sup>	212,937	
International arrangements	40,487	
Others not requiring an LMO	6,166	
<b>Total</b>	<b>386,406</b>	

Note: a. This category includes workers who are deemed to provide a social, cultural or economic benefit to Canada, such as those working under reciprocal employment agreements, spouses/common-law partners of higher-skilled workers, and those with research- and studies-related work permits.

Source: Employment and Social Development Canada, [Overhauling the Temporary Foreign Worker Program: Putting Canadians First](#), 2014, pp. 4–5.

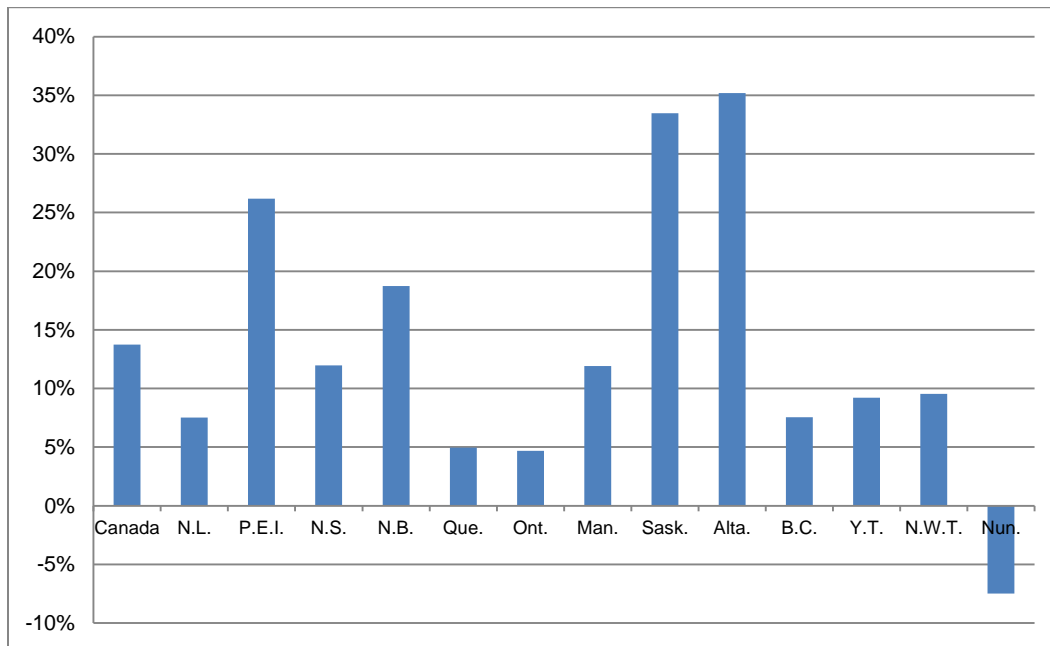
## TEMPORARY FOREIGN WORKERS

Unless stipulated otherwise in *the Immigration and Refugee Protection Regulations*, employers are required to obtain from the federal government – before hiring a temporary foreign worker – an assessment of the need for a foreign worker to fill a position due to the lack of suitable workers in the domestic labour force. This assessment was formerly known as a labour market opinion (LMO). As part of the June 2014 reforms, the federal government changed the assessment criteria and renamed this process as a labour market impact assessment (LMIA).

However, employers are not always required to obtain an LMIA. Sections 204 to 208 of the *Immigration and Refugee Protection Regulations* list situations in which a foreign national may obtain a work permit without requiring an LMIA.<sup>3</sup> Table 1 shows the number of temporary foreign workers present in Canada on 1 December 2013 by type of work permit authorization: LMO or LMO-exempt. These figures illustrate the complexity of temporary work permit programs and the variety of Canadian interests that they address. Only LMIA-required work permits are now captured under the heading “Temporary Foreign Worker Program.” Prior to 20 June 2014, all work permits issued would have been categorized under that heading, including those that were LMO-exempt.

The number of temporary foreign workers in Canada on 1 December 2013 subject to an LMO was 126,816, accounting for 32.8% of temporary foreign workers that year.<sup>4</sup> Employer demand for temporary foreign workers has increased the most in Western Canada, although there was also a significant increase in the Atlantic provinces, as indicated in the LMO statistics of Figure 1.

**Figure 1 – Average Annual Growth in the Number of Temporary Foreign Worker Positions on Positive Labour Market Opinions, 2005–2012**



Source: Figure prepared by the author using data obtained from Employment and Social Development Canada, [Labour Market Opinions – Annual Statistics](#).

The type of temporary foreign worker coming to Canada has also changed over the last decade or so, with lower-skilled workers making up a higher percentage since the introduction in 2002 of the Government of Canada's Pilot Project for Occupations Requiring Lower Levels of Formal Training.<sup>5</sup> Between 2002 and 2010, the number of lower-skilled temporary foreign workers increased by 74%.<sup>6</sup>

In 2013, roughly two thirds of temporary foreign workers in Canada – 259,590 – were authorized through a route other than the LMO. These forms of work permit authorization have now been designated “International Mobility Programs.” The largest category of International Mobility Programs is International Experience Canada, which accounted for 43% of entries under the International Mobility Programs in 2013.<sup>7</sup> International Experience Canada consists of 32 reciprocal agreements with other countries to offer young people travel authorization and temporary work permits for up to one year. The second largest category (28,073 workers, or 20%) entered Canada in 2013 by virtue of an international agreement, such as the General Agreement on Trade in Services.<sup>8</sup> Other categories under the International Mobility Programs heading include work permits for foreign students as well as open work permits for spouses and common-law partners of higher-skilled foreign workers.

### **3 ADMINISTRATION OF FEDERAL TEMPORARY WORK PERMIT PROGRAMS**

#### **3.1 SHARED JURISDICTION**

According to the *Constitution Act, 1867*, immigration is a matter of shared federal–provincial jurisdiction.<sup>9</sup> Authorizing the entry and removal of foreign nationals falls under federal jurisdiction, as do issues related to employment insurance and criminal law. Most provinces and territories play a limited role in immigrant selection through agreements for provincial nominee programs, which allow them to nominate immigrants to suit their regional interests.<sup>10</sup> Provincial/territorial legislation and standards protect foreign nationals in matters of employment, labour, education, housing and health care.

#### **3.2 LEGAL AND POLICY SOURCES**

The legislative framework governing the general principles, criteria and authority for immigration decision-making is the federal *Immigration and Refugee Protection Act*, which is complemented by the *Immigration and Refugee Protection Regulations* with respect to definitions and procedural issues.<sup>11</sup> Both the ministers of Employment and Social Development Canada and Citizenship and Immigration Canada may issue regulations and Ministerial Instructions in relation to aspects of the temporary work permit programs. In addition, regularly updated administrative guidelines help officers with Citizenship and Immigration Canada as well as the Canada Border Services Agency to make decisions.<sup>12</sup> Under the *Immigration and Refugee Protection Act*, the Minister of Citizenship and Immigration also has the authority to issue special instructions to immigration officers on how applications are to be processed.<sup>13</sup>

### 3.3 ADMINISTRATION AND PROCEDURE AT THE FEDERAL LEVEL

A work permit allows a foreign national to work in Canada, and a visa allows a foreign national to enter Canada. Depending on the nature of the activity in Canada and the foreign national's country of origin, a work permit and/or visa may not be necessary. Administration of temporary work permit programs at the federal level is divided among three departments:

- **Citizenship and Immigration Canada** manages and assesses visa admissibility requirements and ensures that the foreign national meets the requirements for the intended employment position and the relevant category of work permit. Citizenship and Immigration Canada officers assess applications made abroad as well as renewal requests. Citizenship and Immigration Canada is responsible for monitoring employer compliance where no LMIA is required and is the lead department for the International Mobility Programs stream of temporary foreign workers.
- **Employment and Social Development Canada** assesses (when required) whether having a foreign worker take a specific position would result in a positive, negative or neutral impact on the labour market; the department then issues an LMIA.<sup>14</sup> Employment and Social Development Canada considers the terms, conditions and genuineness of the employer's job offer and analyzes the employer's efforts to recruit Canadians to ensure that the foreign worker would not be occupying a job that a qualified Canadian citizen or permanent resident could fill. Employment and Social Development Canada is the lead department for the revamped Temporary Foreign Worker Program stream of temporary foreign workers and is responsible for employer compliance where an LMIA is required.
- The **Canada Border Services Agency** processes applications at a Canadian border or port of entry. Canada Border Services Agency officers are afforded wide discretion in assessing an application and have the final say on whether a foreign worker may enter Canada, subject to the legal and regulatory authorities described earlier (namely, the *Immigration and Refugee Protection Act*, the *Immigration and Refugee Protection Regulations*, administrative guidelines and Ministerial Instructions). The Canada Border Services Agency is also responsible for the removal of unauthorized individuals from Canada and other aspects of immigration enforcement.

## 4 PROGRAM STREAMS FOR TEMPORARY FOREIGN WORKERS

### 4.1 THE TEMPORARY FOREIGN WORKER PROGRAM STREAM

There are four categories in the Temporary Foreign Worker Program stream of work permits: higher-skilled occupations, lower-skilled occupations, the primary agricultural stream and the Live-In Caregiver Program. Work permit categories differ with respect to requirements for employers and employees, duration and eligibility for permanent residency.



## TEMPORARY FOREIGN WORKERS

However, all work permits under this stream are subject to the requirement to obtain an LMIA before hiring a temporary foreign worker. Work permits issued to these workers are for a specific job, employer and location.<sup>15</sup> As part of the revised labour market test (the LMIA), employers have to include with their application detailed information on how many Canadians applied and were interviewed for the position and why a Canadian was not hired.<sup>16</sup> As of 20 June 2014, the cost of an LMIA has increased from \$275 to \$1,000 per offer of employment requested.<sup>17</sup>

The June 2014 reforms clearly require employers to make the transition to a Canadian workforce and reduce their employment of temporary foreign workers. The transition requirement that an employer must meet as part of the company's LMIA application is determined by the wage offered for the position, in relation to the provincial/territorial median hourly wage.<sup>18</sup> Employers offering a wage below the median hourly wage are subject to a cap on the number of temporary foreign workers as a proportion of their workforce. Employers offering a wage above the median hourly wage are required – as of 20 June 2014 – to submit transition plans with their LMIA application.

The cap on low-wage temporary foreign workers is no more than 10% of the workforce for employers with 10 or more employees. The cap will be phased in for employers who are currently above the threshold and will apply to all employers by 1 July 2016. Furthermore, low-wage workers are limited to one-year work permits (as opposed to the previous two-year permit), meaning that their employers must re-apply every year for an LMIA. Finally, the total length of time that low-wage temporary foreign workers can work in Canada will be reduced in summer 2015 from the current four years to a length not yet announced.<sup>19</sup>

The transition plan required of employers seeking to hire higher-wage temporary foreign workers must show the employer's plans to recruit, retrain and/or train Canadians or permanent residents. The plan must also show the employer's intention to engage an organization serving under-represented groups (such as immigrant settlement offices or Aboriginal or youth unemployment centres) to identify potential candidates. Alternatively, the employer's transition plan may be to help a temporary foreign worker obtain permanent residence.<sup>20</sup>

The June 2014 reforms also acknowledged an acute need for temporary foreign workers in some parts of the country and committed to faster processing times for certain applications. Employment and Social Development Canada has pledged to complete LMIA's for certain positions in 10 business days. These are for in-demand occupations (skilled trades), the top 10 highest paid occupations and positions lasting 120 days or less.<sup>21</sup>

### 4.1.1 HIGHER-SKILLED OCCUPATIONS

The Temporary Foreign Worker Program's stream for higher-skilled occupations allows employers to hire workers in higher-skilled positions, including managerial, scientific, professional, technical and skilled-trades positions. Many LMIA applications under this stream would be eligible for the 10-day processing service standard explained earlier. There are no special employer requirements for hiring temporary foreign workers in higher-skilled occupations.

### 4.1.2 LOWER-SKILLED OCCUPATIONS

Under this category of the Temporary Foreign Worker Program stream, employers may hire workers in positions requiring at most a high school diploma or a maximum of 24 months of on-the-job training. Employers looking to hire a lower-skilled temporary foreign worker are required to sign a contract with the employee, to cover recruitment and return airfare costs, to ensure that suitable accommodation is available, to provide medical coverage until the employee is covered under a provincial/territorial plan, and to enrol the employee in workers' compensation insurance.

Following the June 2014 reforms, certain sectors of lower-skilled employment are excluded from the Temporary Foreign Worker Program in areas of higher unemployment. Specifically, Employment and Social Development Canada will not process an LMIA application when the position is:

- in a region defined economically by Statistics Canada with an annual unemployment rate over 6%;
- an occupation identified under the North American Industry Classification System as Accommodations and Food Service or Retail Sales; and
- an occupation with specific National Occupational Classification D skill levels.<sup>22</sup>

### 4.1.3 PRIMARY AGRICULTURAL STREAM

This stream includes the Seasonal Agricultural Worker Program as well as temporary foreign workers from any country engaged in on-farm primary agricultural work. National occupational classification codes eligible for an LMIA under this stream include both lower-skilled occupations (e.g., general farm, greenhouse and nursery workers) and higher-skilled occupations (e.g., farm managers and supervisors). Most temporary foreign workers under this stream, though, are lower-skilled.

The Seasonal Agricultural Worker Program is based in bilateral agreements with Mexican and Caribbean governments and is designed to provide seasonal employment in agriculture. Under the Seasonal Agricultural Worker Program, foreign workers are brought in during the planting and harvesting seasons for up to eight months of the year.

Under the primary agricultural stream, the work permit is valid only for a specified job and employer. Workers live in housing provided by the employer. Employers are required to cover certain costs, to sign a contract with the employee and to ensure that the employee is covered by workers' compensation and health insurance.

The primary agricultural stream is exempt from some of the recent changes to program requirements, including the fee, the cap on the number of low-wage temporary foreign workers and the one-year LMIA duration for low-wage temporary foreign workers. As well, for the Seasonal Agricultural Worker Program only, the anticipated reduction to temporary foreign workers' cumulative length of stay will not apply.<sup>23</sup>

#### 4.1.4 CAREGIVER PROGRAM

Created in 1981 as the Foreign Domestic Movement Program, the Caregiver Program creates temporary employment positions for the care of children, elderly family members or family members with disabilities. Significant changes to the program took effect 30 November 2014; most notably caregivers are no longer required to live in their employers' homes.<sup>24</sup> The changes also split the program into two streams, one for caring for children, and one for caring for people with high medical needs. Further, more stringent language and education requirements were introduced for permanent residency, and a cap was established for caregiver applications, set at 2,750 per stream for 2015.<sup>25</sup> Caregivers need to have two years of work experience within four years before applying for permanent residence.

In 2010 and 2011, a number of administrative changes were introduced in response to concerns about the Live-in Caregiver Program, as it was then called. These changes included mandatory clauses in the employment contract (e.g., with respect to accommodations, duties, hours of work, overtime, wages, holiday and sick leave entitlements, and terms of termination or resignation) and new employer-paid benefits (e.g., transportation, private medical insurance prior to provincial health coverage and workplace safety insurance).<sup>26</sup>

The Caregiver Program is exempt from some of the recent changes to program requirements, such as the cap on the number of low-wage temporary foreign workers, the one-year LMIA duration for low-wage temporary foreign workers and reduced cumulative length of time that a temporary foreign worker can remain in Canada.<sup>27</sup>

## 4.2 THE INTERNATIONAL MOBILITY PROGRAMS STREAM

As indicated in Table 1, two thirds of temporary foreign workers are in Canada under a work permit authorization now classified as part of the International Mobility Programs stream. According to the federal government, those in International Mobility Programs are generally working in Canada on an open work permit (not specific to an employer), tend to be more highly skilled / better paid and from developed countries, and do work that is considered to be in "Canada's broad economic and cultural national interest."<sup>28</sup>

Little is known about the jobs obtained by open work permit holders, as neither the workers nor their employers are subject to any reporting requirement after the permit is obtained. As part of its June 2014 reforms, the government announced plans to impose a \$100 "privilege fee" on holders of open work permits to help fund the collection of employment data. The fee would also finance efforts to promote international exchanges to Canadians, and promote immigration opportunities to open work permit holders and their employers.<sup>29</sup>

## 5 POLICY CONSIDERATIONS FOR ADMINISTERING TEMPORARY WORK PERMIT PROGRAMS

As temporary work permit programs have grown, many program and regulatory changes have been made to respond to concerns from various participants, including employers, unions and temporary foreign workers themselves. Three policy considerations are of enduring relevance: how to ensure that employers' use of temporary foreign workers addresses labour market shortages without creating labour market distortions, the extent to which temporary foreign workers are encouraged to integrate into Canadian society, and how to protect temporary foreign workers given their temporary immigration status. The considerable differences between temporary work permit programs and labour market conditions across Canada create challenges for policy-makers.

### 5.1 LABOUR MARKET IMPACT

As noted in Citizenship and Immigration Canada's 2013 *Annual Report to Parliament on Immigration*, "Temporary foreign workers (TFWs) are intended to help meet acute and short-term needs in the labour market that could not be filled by the domestic labour force; they are to complement, rather than substitute, the Canadian labour force."<sup>30</sup> The labour market test is the tool the federal government uses to ensure that this is the case. The test considers if an employer has made adequate efforts to recruit Canadians, has offered jobs at an appropriate wage, and has ensured that hiring a temporary foreign worker does not negatively affect an ongoing labour market dispute at the place of employment.

This labour market test has to strike the right balance between facilitating employers' access to skills and workers in a timely fashion and encouraging them to invest more in the domestic labour force through, for instance, higher wages, further recruitment or training. One concern is that easy employer access to foreign workers could lead to labour market distortions. For example, the use of these workers may limit wage increases, act as a disincentive to employers to seek productivity gains elsewhere (such as through the development of new technology) and may take employment opportunities from young Canadians.<sup>31</sup>

Between 2002 and 2013, the federal government facilitated employer access to temporary foreign workers through measures such as shortened advertising requirements, greater wage flexibility and accelerated processing. Research by one think tank found that one such measure, the Expedited Labour Market Opinion pilot project for employers in Alberta and British Columbia, contributed to rising unemployment in some occupations.<sup>32</sup> Further, government figures have revealed that some employers were becoming dependent on temporary foreign workers, with more than 3,500 employers using temporary foreign workers for 30% or more of their workforce (including 1,123 employers for 50% of their workforce).<sup>33</sup>

Critics charge that the government has been too accommodating of employer demand for temporary foreign workers, especially in lower-skilled occupations, allowing employers to keep wages low.<sup>34</sup> Other commentators have suggested that employers may prefer to hire temporary foreign workers over Canadians because of their work ethic.<sup>35</sup>

Employer demand for temporary foreign workers remains strong, particularly in some sectors and in some regions of Canada. For example, demand is strong from seafood processing plants in the Maritimes, meat processing plants in Western Canada and Alberta's forest products industry. In rural communities and areas with low unemployment, temporary foreign workers are also in higher demand.<sup>36</sup>

Employers claim they are having difficulty finding workers. A May 2014 Canadian Federation of Independent Business survey, for example, found that 80% of members had difficulty hiring new employees, despite expanding recruitment efforts and increasing wages.<sup>37</sup> As a consequence of skills shortages, employers indicate that they have had to postpone expansion and cut back operating hours. Some have also considered going out of business or relocating to another country.<sup>38</sup> Some commentators warn that restricting certain sectors from the program will lead to higher wages and higher consumer prices, and will hamper business activities.<sup>39</sup>

The Government of Canada's June 2014 reforms attempt to create a more nuanced Temporary Foreign Worker Program stream that facilitates access to temporary foreign workers for certain positions, while closing off access for other sectors in regions of higher unemployment. The LMIA also includes a more rigorous assessment of the employer's recruitment activities. Finally, the reforms take steps, such as introducing the privilege fee, to measure the labour market impact of entries of all temporary foreign workers – not only those subject to an LMIA. This is significant, given that a large part of the growth in temporary foreign workers in Canada has occurred under the International Mobility Programs stream.

### 5.2 FACILITATING INTEGRATION

The notion that temporary foreign workers come to fill short-term job vacancies and then return to their country of origin affects subsequent policy decisions. Most notably, as the policy goal is not settlement, temporary foreign workers are not eligible for federally funded settlement services. The government expects temporary foreign workers to have the required educational, occupational and language skills for their jobs and expects employers to take an active role in helping temporary foreign workers settle.<sup>40</sup>

Due to this lack of settlement services and other aspects of temporary work permit programs, temporary foreign workers often experience social exclusion in Canada.<sup>41</sup> A number of factors can contribute to the difficulties faced by temporary foreign workers in participating productively in society and forming relationships with local Canadians. Because lower-skilled workers generally come to Canada without their families, their social environment is temporary in nature. Long hours of work, linguistic barriers and limited mobility are also contributing factors. Isolation is a concern for those working on farms or in remote work camps, as well as for live-in caregivers residing in their employers' homes.<sup>42</sup>

However, some employers, civil society organizations, communities and provincial/territorial governments have stepped in to provide orientation and settlement support to temporary foreign workers. For example, some agencies that serve immigrants support temporary foreign workers using funding from sources other than

the federal government.<sup>43</sup> In other areas, churches and community organizations provide support such as language instruction, transportation assistance and orientation.<sup>44</sup> Since 2008, the Alberta government has funded settlement services for temporary foreign workers, provided by immigrant-serving agencies throughout the province. While these efforts help to better equip some temporary foreign workers, support is uneven across the country.

Providing greater integration assistance may warrant further policy consideration in light of the recent trend toward “two-step” migration, where economic class immigrants first enter Canada with temporary status (as a worker or student) and then convert their status to permanent resident through one of several avenues. (Permanent immigrants to Canada enter through one of three “immigration classes” or categories – family class, humanitarian class or economic class.)

Additional ways to move from temporary to permanent status have been created and are increasingly popular.<sup>45</sup> Transitions from temporary status accounted for 43% of all economic class permanent admissions in 2012, up from 15% in 2002.<sup>46</sup> Two out of five of these transitions took place through provincial nominee programs, suggesting that provinces are invested in temporary foreign workers with a long-term outlook.

Research suggests that when temporary foreign workers experience difficulties such as social isolation, labour standards violations or loss of skills, the effects linger, even after transitioning to permanent resident status.<sup>47</sup> Sometimes these negative effects also hinder the next generation’s ability to succeed to their full potential, as evidenced in research on the Filipino community in Canada.<sup>48</sup> Given that some temporary foreign workers will become permanent residents and Canadian citizens, policy-makers need to consider how to best support them in the short and long term.

However, not all temporary foreign workers will make the transition to permanent residence, which leads to additional policy considerations. Chief among them is what happens to those who wish to remain in Canada but do not have the opportunity, either because they do not secure a spot in a given year or because there is no permanent route for their skill set. The first of the four-year cumulative duration work permits will expire in 2015 and the government will have to be prepared for different possible outcomes, including the growth of a population without legal immigration status.

### **5.3 PROTECTING TEMPORARY FOREIGN WORKERS**

Various reports over the years have suggested that certain temporary foreign workers are vulnerable, due to their temporary status and to abuse by unscrupulous employers and/or recruiters.<sup>49</sup> In particular, temporary foreign workers in the stream for lower-skilled workers, the Seasonal Agricultural Worker Program and the Live-in Caregiver Program have been of concern. One common element for these workers that contributes to their vulnerability is a closed work permit that specifies an employer, employment position and work location. The resulting dependence on their employers makes it difficult for foreign workers to leave unsatisfactory working conditions. Furthermore, research has revealed that the fear of being removed from Canada is a very powerful deterrent for workers.<sup>50</sup>

## TEMPORARY FOREIGN WORKERS

Reports indicate that temporary foreign workers have been subjected to all kinds of injustices, on the work site and off.<sup>51</sup> Examples include unpaid overtime, inadequate wages, unsafe working conditions and assignment to the most dangerous or least desirable jobs. For those programs where the workers live in employer-provided accommodations, concerns have included substandard housing, crowding and employer control over personal lives during off-duty hours.

However, the full scale of human rights violations may be far greater than the stories reported, as many temporary foreign workers are reluctant to jeopardize their employment or temporary status in Canada by raising concerns over their conditions.<sup>52</sup> Language barriers, lack of knowledge about their rights and intimidating complaint-based redress systems also contribute to the inaction of temporary foreign workers in the face of abuse.<sup>53</sup> Despite these barriers, in a few rare instances (often with civil society assistance), temporary foreign workers have been awarded damages through court proceedings.<sup>54</sup>

The federal and provincial/territorial governments have made legislative and regulatory changes with the aim of better protecting temporary foreign workers. Responding to widespread concern about unscrupulous recruiters, several provinces introduced or strengthened related legislation, starting with Manitoba's *Worker Recruitment and Protection Act* in 2009.<sup>55</sup> Temporary foreign worker recruitment agencies in Manitoba are required to be licensed with the government and employers are responsible for any fees.

For the federal government, successive changes have focused on employer compliance with conditions of participation in temporary work permit programs. Changes have also focused on better information-sharing with provincial/territorial governments so that abusive employers may be identified and excluded from the program.

In 2010, a voluntary employer compliance review process was initiated in exchange for faster processing of repeat LMO requests. The compliance review process assessed whether the employer provided wages, working conditions and an occupation that was substantially the same as the terms and conditions of the job offer. Since then, employers found to be non-compliant without reasonable justification have been placed on a public blacklist and are ineligible to hire temporary foreign workers for two years.

This compliance regime was significantly bolstered through regulatory changes at the end of 2013.<sup>56</sup> Since that time, all employers of temporary foreign workers have been subject to compliance, whether or not an LMIA is required. Citizenship and Immigration Canada and Employment and Social Development Canada were granted new powers to inspect premises, obtain documents and interview people. Inspections can be triggered by complaints, by employers being deemed high-risk or at random. As well, a confidential tip phone line and website was established in 2014.

Further, additional program requirements could be inspected, such as:

- whether the employer has complied with laws regulating employment and recruitment in the employer's jurisdiction;
- whether the employer has made reasonable efforts to provide a workplace free of abuse; and
- whether the employer has met specific agreed-to commitments (as set out in the LMIA) regarding job creation and knowledge transfer for Canadians and permanent residents, among other things.

Also in 2013, the ministers responsible for the Temporary Foreign Worker Program issued instructions that enabled government employees to revoke a work permit and revoke, suspend or refuse to process an LMO in particular circumstances. These Ministerial Instructions took effect 31 December 2013.<sup>57</sup> Finally, in June 2014, legislation was passed to enable the government to impose fines on non-compliant employers.

The federal government announced, as part of the June 2014 reforms, that it would be increasing resources dedicated to inspections, so that one in four employers using temporary foreign workers (including those workers who are LMIA-exempt) are inspected each year.<sup>58</sup> The Canada Border Services Agency is also to receive increased resources to conduct more investigations of possible *Immigration and Refugee Protection Act* violations by employers.

## 6 CONCLUSION

Temporary foreign worker programs are one means by which policy-makers can address labour market shortages. Some of the policy considerations that must be taken into account include how to fill labour shortages without creating distortions, the extent to which to invest in worker integration, and how to protect workers. The Government of Canada's recent reforms will more clearly distinguish the labour market-oriented temporary work permits from work permits issued in pursuit of other policy goals. This should help to improve monitoring of potential labour market impacts and to evaluate the role of this program in Canada's overall immigration strategy. However, monitoring and compliance will also be important to ensure that there are no unintended consequences of the reforms that worsen workers' vulnerabilities.

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## NOTES

1. Employment and Social Development Canada [ESDC], [Overhauling the Temporary Foreign Worker Program: Putting Canadians First](#), 2014. These changes are referenced in this paper as "the June 2014 reforms."
2. ESDC (2014). The author's calculations are based on data from this publication.
3. [Immigration and Refugee Protection Regulations](#) [IRPR], SOR/2002-227.
4. ESDC (2014), p. 5.



## TEMPORARY FOREIGN WORKERS

5. This pilot project, which has since become a program called the Stream for Lower-skilled Occupations, allowed employers to hire temporary foreign workers in positions that usually required, at most, a high school diploma or a maximum of two years of job-specific training. These occupations are coded at the National Occupational Classification [NOC] C or D skill level.
6. Citizenship and Immigration Canada [CIC], [Summary Report: Temporary Foreign Worker \(TFW\) Program - Consultations with Stakeholders](#), 11 October 2011.
7. ESDC (2014), p. 2.
8. Other agreements that bring in workers include the *North American Free Trade Agreement* and free trade agreements with Chile, Peru and Colombia.
9. [Constitution Act, 1867](#), 30 & 31 Victoria, c. 3 (U.K.), s. 95.
10. Nunavut and Quebec are the only exceptions. By virtue of the [Canada–Québec Accord relating to Immigration and Temporary Admission of Aliens](#), the Quebec government is responsible for immigrant selection for, and integration into, that province. The Quebec government has its own requirements for employers and temporary foreign workers. For more information, see Immigration, Diversité et Inclusion Québec, “[Embaucher un travailleur étranger temporaire](#)” [available in French only].
11. [Immigration and Refugee Protection Act](#) [IRPA], S.C. 2001, c. 27.
12. For example, see CIC, [Temporary Foreign Workers](#), 18 July 2014.
13. IRPA, s. 87.3.
14. When the *Economic Action Plan 2013 Act, No. 2* received Royal Assent on 12 December 2013, the legal name of the department changed from the Department of Human Resources and Skills Development Canada to the Department of Employment and Social Development Canada.
15. ESDC (2014), p. 1.
16. *Ibid.*, p. 9.
17. [Regulations Amending the Immigration and Refugee Protection Regulations, SOR/2014-169](#).
18. ESDC, [Median Hourly Wages by Province/Territory](#)
19. ESDC (2014), p. 12. According to IRPR, s. 200(3)(g), most temporary foreign workers may work in Canada for a cumulative period of four years before leaving for a four-year period. Exceptions are made for temporary foreign workers who create significant benefits or opportunities for Canadians and for those whose work is pursuant to an international agreement.
20. ESDC, [Stream for Higher-skilled Occupations](#).
21. ESDC (2014), p. 8.
22. ESDC (2014), p. 12.
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## TEMPORARY FOREIGN WORKERS

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28. Ibid., p. 1.
29. Ibid., p. 28.
30. CIC, [Annual Report to Parliament on Immigration 2013](#), 2013, p. 20.
31. Christopher Worswick, "[Economic Implications of Recent Changes to the Temporary Foreign Worker Program](#)," *IRPP Insight*, October 2013, No. 4, pp. 5–8.
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41. Kerry Cundal and Brian Seaman, "Canada's temporary foreign worker programme: A discussion of human rights issues," *Migration Letters*, Vol. 9, No. 3, 2012.
42. Jason Foster and Alison Taylor, "[In the Shadows: Exploring the Notion of 'Community' for Temporary Foreign Workers in a Boomtown](#)," *Canadian Journal of Sociology*, Vol. 38, No. 2, 2013; Jelena Atanackovic and Ivy Lynn Bourgeault, "[Economic and Social Integration of Immigrant Live-in Caregivers in Canada](#)," *IRPP Study*, No. 46, April 2014. Atanackovic and Bourgeault identify the following impediments to the successful economic and social integration of live-in caregivers upon completion of the program: skills downgrading, limited use of settlement services, inequitable working conditions as a result of living in the employer's home and the requirement to obtain a study permit for courses longer than six months.
43. House of Commons, Standing Committee on Citizenship and Immigration, *Evidence*, 2<sup>nd</sup> Session, 40<sup>th</sup> Parliament, 3 December 2009, 0925 (Mr. Thomas Tam, Chief Operating Officer, S.U.C.C.E.S.S.).
44. Kerry Preibisch, "Migrant Agricultural Workers and Processes of Social Inclusion in Rural Canada: Encuentros and Desencuentros," *Canadian Journal of Latin American and Caribbean Studies*, 2004, Vol. 29, No. 57–58, pp. 203–239.

## TEMPORARY FOREIGN WORKERS

45. These avenues include the Canadian Experience Class (and, similarly, the Québec Experience Program) for highly skilled individuals, the provincial nominee programs for higher- and lower-skilled workers, depending on the provincial/territorial criteria, and the Caregiver Program. Having a connection to an employer will become even more valuable in early 2015 when the Government of Canada launches Express Entry, the new application management system in which employers can select certain economic class immigrants. See CIC, [Canadian Experience Class](#); Immigration, Diversité et Inclusion Québec, [Programme de l'expérience québécoise \(PEQ – Québec experience program\) – Temporary worker](#); CIC, [Determine your eligibility – Provincial nominees](#); CIC, [In-Canada Application for Permanent Residence \(Live-in Caregivers\)](#); and CIC, [Express Entry](#).
46. Umit Kiziltan, Director General, Research and Evaluation Branch, CIC, “Pathways to Permanent Residence: Transition Matters,” Presentation to the Metropolis Conference, Gatineau, Quebec, 13 March 2014. Please note that this figure includes transitions from all types of temporary status (e.g., student, refugee claimant, worker).
47. Luin Goldring and Patricia Landolt, “[The Impact of Precarious Legal Status on Immigrants’ Economic Outcomes](#),” *IRPP Study*, No. 35, October 2012, p. 28.
48. May Farrales and Geraldine Pratt, “[Stalled Development of Immigrant Filipino Youths: Migration, Suspended Ambitions and the ESL Classroom](#),” Metropolis British Columbia, Centre of Excellence for Research on Immigration and Diversity, Working Paper Series, No. 12–10, August 2012; Philip Kelly, “[Understanding Intergenerational Social Mobility: Filipino Youth in Canada](#),” *IRPP Study*, No. 45, February 2014.
49. See, for example, the Alberta Federation of Labour, *Temporary Foreign Workers: Alberta’s disposable workforce – The Six Month Report of the AFL’s Temporary Foreign Worker Advocate*, November 2007; the House of Commons, Standing Committee on Citizenship and Immigration, [Temporary Foreign Workers and Non-Status Workers](#), 2<sup>nd</sup> Session, 40<sup>th</sup> Parliament, May 2009; Auditor General of Canada, “[Chapter 2: Selecting Foreign Workers Under the Immigration Program](#),” *2009 Fall Report of the Auditor General of Canada to the House of Commons*, s. 2.108.
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51. Ibid., pp. 24–25; Fay Faraday, [Made in Canada: How the Law Constructs Migrant Workers’ Insecurity](#), Metcalf Foundation, September 2012, pp. 88–89.
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53. Delphine Nakache, “The Canadian Temporary Foreign Worker Program: Regulations, Practices, and Protection Gaps,” Chapter 4 in *Producing and Negotiating Non-Citizenship: Precarious Legal Status in Canada*, Luin Goldring and Patricia Landolt, eds., University of Toronto Press, 2013, pp. 71–98.; Faraday (2012), p. 81.
54. See, for example, [C.S.W.U. Local 1611 v. SELI Canada and others](#), (No. 8), 2008 BCHRT 436. In this case, the British Columbia Human Rights Tribunal awarded temporary foreign workers from Latin America damages for discrimination in the terms and conditions of their employment on the Canada Line project.
55. Other provincial efforts include Saskatchewan’s [The Foreign Worker Recruitment and Immigration Services Act](#), 2013, S.S. 2013, c. F-18.1; and Ontario’s [Employment Protection for Foreign Nationals Act \(Live-in Caregivers and Others\)](#), 2009, S.O. 2009, c. 32, modified by the [Stronger Workplaces for a Stronger Economy Act, 2014](#), S.O. 2014, c.10.
56. [Regulations Amending the Immigration and Refugee Protection Regulations, SOR/2013-245](#).

## TEMPORARY FOREIGN WORKERS

57. Department of Human Resources and Skills Development Canada, "[Ministerial Instructions Respecting Labour Market Opinions](#)," *Canada Gazette*, Part I, Vol. 147, No. 52, 28 December 2013; CIC, "[Ministerial Instructions regarding the processing of certain work permit applications](#)," *Canada Gazette*, Part I, Vol. 147, No. 52, 28 December 2013; and CIC, "[Ministerial Instructions Respecting the Revocation of Work Permits](#)," *Canada Gazette*, Part I, Vol. 147, No. 52, 28 December 2013.
58. ESDC (2014), p. 17.