MIGRANT RIGHTS NETWORK

UNDERINSURED: ENDING THE EXCLUSION OF MIGRANTS FROM EI.

Submission of the Migrant Rights Network to the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA). April 9, 2021

Tri is a migrant care worker from the Philippines. After working for two years, she was entitled to apply for permanent residency, which she did. Due to a COVID-19 related backlog she is still waiting for a decision. In the meantime, she applied for an extension of her work permit, which itself is delayed in a backlog. Her work permit and SIN expired while she waited, but she was legally entitled to continue working with "implied" status. When her employer laid her off without notice, she applied for EI. Her application was denied on the basis that her SIN was expired. Tri remains without work or income in a public health pandemic.

The Migrant Rights Network (MRN) is Canada's largest cross-country coalition of migrant led organizations. We are an alliance of migrant farmworkers, careworkers, undocumented workers, student workers, refugee families and allies in nine provinces. In this document, unless otherwise noted, we use migrant workers to refer to residents in Canada engaged in work who do not have permanent resident status, including those with study or work permits or who are undocumented.

The Employment Insurance (EI) program is supposed to ensure that those who work in Canada, and who fund the program, are supported when they lose their jobs. But the COVID-19 pandemic has exposed and exacerbated the ways in which Canada's EI system fails to meet the needs of unemployed migrants in precarious work. From eligibility requirements that disadvantage part-time, seasonal and contract workers, to below-subsistence benefit levels for low-income workers, the program's failings are felt most starkly by the racialized and women workers who are forced into the most insecure parts of the labour market.

There are over 1.6 million migrants with precarious or no immigration status. While migrant workers are over-represented in insecure work, their immigration status adds yet another layer of precarity. EI is already inaccessible and inadequate for many unemployed workers, but it is exceptionally so for migrant workers.

This submission addresses the glaring and unjust gap in the EI program that denies income security to an entire group of unemployed workers. Fixing this gap requires reforms to EI as well as immigration laws.

Our central recommendation is full and permanent immigration status for all migrants in Canada now, and permanent resident status on arrival for all migrants that arrive in the future.

Part One provides a brief background on the intersection between migrant work and EI. Part Two addresses the ways in which workers with temporary work or study permits both contribute to but are denied access to EI. Part Three addresses the barriers faced by undocumented workers. Part Four addresses the particular issues that arise with respect to special benefits.

The Committee is studying EI at a critical juncture. A forceful and visionary HUMA report, including the MRN recommendations, has the potential to make a real difference for low-income workers and transform EI into a program that reduces rather than deepens inequality.

Part One: Migrant Work and EI – Structural precarity requires structural solutions

Migrant workers are employed in various sectors of the economy, including as care workers, farm workers, greenhouse workers, transportation workers and workers in food production, construction, delivery and retail services. The sectors where migrant workers labour are clearly not peripheral. Society could not function without the food, care, and service that we provide.

Migrant workers fall within several federal programs, including the Caregiver Program (formerly Live-in Caregiver Program, and comprised largely of Filipina, but also Indonesian and Latin American women); the Seasonal Agricultural Workers Program (SAWP, which is comprised largely of Black and Brown men from Mexico and the Caribbean), and the Temporary Foreign Worker Program stream for low-wage positions (which includes people from countries in the Global South) in primary agriculture and other streams. The majory of migrant workers are non-permanent residents engaged in low-waged work including those on study permits, International Mobility Program work permits, refugees and refugee claimants and undocumented residents.

Many migrants shift through different statuses over a period of years: for example, from refugee claimant to undocumented to “approved in principle” for inland processing to permanent residence. It is an understatement to observe that immigration laws are complex.

Precarious work is baked into the immigration system. Report after report has demonstrated that without permanent status, migrant workers are subject to intense exploitation, low-wage jobs, harassment, sexual harassment, violations of their rights and the risk of deportation and “black-listing” if they speak out.[1]

One consequence of this structural precarity is that migrant workers contribute to EI but are denied virtually all the benefits. The solutions lie in improving access to EI for migrants, not in further denying rights enjoyed by every other worker in Canada.

Part Two: Temporary work should not mean permanent disentitlement

Over 400,000 migrants have “open” work permits allowing them to work in any job (including post-graduate work permits, refugees with work permits and the International Mobility Program). There are approximately 90,000 workers with “closed” permits. That means that they

[1] See, for example: Caregivers’ Action Centre, Vancouver Committee for Domestic Workers and Caregivers Rights, Caregiver Connections Education and Support Organization, Migrant Workers Alliance for Change (2020), “Behind Closed Doors: Exposing Migrant Care Worker Exploitation During COVID-19”; Migrant Workers Alliance for Change (2020), “Unheeded Warnings: COVID-19 & Migrant Workers in Canada”; Fay Faraday (2012), “Made in Canada: How the Law Constructs Migrant Workers’ Insecurity” (Metcalf Foundation).

can only work for the employer listed on the permit. They cannot change jobs without getting a new permit. This is a modern form of indentured labour that is rife with abuse. It also leads to systematic EI disentitlement even though temporary migrant workers pay EI premiums on every paycheck.

Some of the reasons for disentitlement include:

- **Availability for Work:** Because their work permit is tied to one employer, EI typically denies benefits to temporary migrant workers with closed permits on the basis that they are not "available" for work. This problem is most pronounced for workers in the SAWP, who have closed permits and SINs that expire at the end of the growing season. They have to wait until the next season before they can get a new permit.

- **Administrative error by Service Canada:** Despite the gaps, migrant workers are eligible for EI in a number of circumstances, as EI policy documents explicitly recognize.[2] However, the Migrant Rights Network has collected many examples of workers being wrongly denied EI benefits. Trin's story told above is one example, as Service Canada policy specifically states that workers with "implied" status are not disentitled due to an expired SIN. In addition to demonstrating a profound lack of understanding of immigration laws, the frequency of such erroneous decisions suggests a culture in which Service Canada employees assume temporary workers are simply not entitled, and discourages them from applying or appealing.

- **Inaccessible application process:** Applying for EI is a complicated and difficult experience, even for those who have a high level of familiarity with the program. The streamlining inspired by the pandemic was very welcome and should be continued. But the lack of interpretation and emphasis on online application and communication, or calling applicants on the phone without interpretation, are serious barriers for many migrant workers. In addition, the rules are complex and poorly communicated. For example, many precarious workers face hurdles in getting a Record of Employment ("ROE") from their employer. EI does not require a worker to have an ROE when they apply and will assist workers with obtaining one. But many workers are unaware of this fact and delay or do not apply for EI at all when their employer refuses to provide a ROE.

Part Three: Undocumented workers are workers too

Undocumented workers are amongst the most exploited of workers in Canada, with employers taking advantage of their vulnerability to pay less than minimum wage, violating minimum employment standards such as overtime and failing to make contributions to EI.

As a result, employers are incentivized to hire undocumented workers as it saves money when they fail to make required payroll deductions. The workers themselves have no practical avenue for enforcing their rights. Those that speak out face being reported to immigration authorities

[2] Service Canada, "National Policy on Adjudication of 900 SINs."

and deported. If they lose their jobs, EI takes the position that they were not engaged in "insurable" employment and made no EI contributions. Workers fear that even applying for EI will result in their deportation.

This system does not just encourage exploitation of undocumented workers; it rewards employers. The consequences punish the workers and deprive the EI system of contributions.

EI does not need to be complicit with this abuse and there are easy reforms that will solve the problem. First, all work in Canada should be treated as "insurable" employment. Second, workers have no control over the premiums paid on their behalf. If an employer failed to make the necessary payroll deductions, they should be forced to do so when the issue comes to light, rather than denying EI benefits to vulnerable workers. There is precedent, as this is the approach taken when employers misclassify employees as "independent contractors." Finally, Service Canada must guarantee that no information will be shared with federal immigration enforcement.

Part Four: The special case of Special Benefits

The "special benefits" are an exception to the expectation that EI beneficiaries must be capable and available to work. These benefits are available for parents of newborns, those caring for ill family members and those who are sick themselves. Workers accessing these benefits are understood to be unable to work.

Given that the main barrier to accessing EI relates to migrant worker "availability" to work, one would expect that migrant workers could at minimum access the special benefits. In fact, nothing could be further from the truth.

Indeed, the federal government intentionally changed the EI regulation in 2013 to exclude migrant workers (SAWP workers in particular). Since that time, workers outside of Canada can only access parental benefits (and now the "care" benefits) if they have a valid SIN number. No other category of worker faces this requirement. In other words, a Canadian citizen can travel to Jamaica with their newborn and still qualify for EI parental benefits. Because their SIN expires with their work permit, a SAWP worker returning to Jamaica following the birth of a child or to care for a sick family member is denied those same benefits despite making the same EI contributions.

The problem also extends to sickness benefits. Sick migrant workers who wish to return to their home countries to receive care from their families will be denied benefits.

These rules serve no valid EI purpose because special benefits recipients are not expected to be working in Canada. The EI program intentionally discriminates against migrant workers.

Conclusion

The Migrant Rights Network endorses the recommendations made by the Interprovincial EI Working Group, which outlines five main priorities: Better EI Financing, Better EI Access for More Workers, Better EI Benefits and Better Supports and Access to Justice for EI Claimants.

In addition, we make the following recommendations:

Solution #1: Canada must reform its immigration laws to ensure full and permanent immigration status for all migrant and undocumented people in Canada. In the short-term, all restrictions on work must be removed including employer specific work permits, restrictions on hours of work, and exclusion of work in "businesses related to sex trade".

Solution #2: Canada must amend the *Employment Insurance Act* to ensure that all work in Canada is "insurable" for the purposes of accessing EI, regardless of SIN. Canada should pursue employers who fail to submit EI premiums, rather than punishing workers.

Solution #3: In order to end disentitlement due to administrative error, Service Canada must immediately issue instructions to Service Canada agents confirming eligibility for EI for migrant workers and ensure this information is incorporated into training.

Solution #4: Service Canada must ensure the EI application process is accessible to all, including through interpretation services, simple explanations of the process, clear information upfront that the Record of Employment is not needed to submit an application, and alternatives to online applications / communications.

Solution #5: Amend the *Employment Insurance Regulation* to end discriminatory disentitlements to special benefits for workers outside of the country or with expired SINs.

Solution #6: Canada must take all steps necessary to ensure that information workers submit to EI is not shared with immigration officials.

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