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Dear Kirsten,

Marites Angana died on December 02, 2014. As a domestic worker, she was excluded from the *Occupational Health and Safety Act*, which means that she did not have the same rights to refuse work, and no Ministry of Labour investigation will take place in to her death. Marites death is not an anomaly. Migrant workers arrive in Ontario having passed multiple health checks, and many return home sick, and injured, sometimes dead. Just last week, the Toronto Star did an in-depth story on Winston Morrisson who worked in Canada as a Seasonal Agricultural Worker. He was sent home with a leg injury, and lack of adequate health care supports means that he was forced to have his leg amputated.

It is time for such tragedies to end. Its time that migrant workers work in healthy jobs, not in those that make them sick. With that in mind, I am outlining some key issues that migrant workers face in accessing health care, and an initial set of recommendations for legislative and regulatory reform. I have focused on some key asks, but am happy to provide supporting research, documentation and worker information that led to the development of these.

The four three areas in reference to health care are:

- a. Occupational Health and Safety Act
- b. Access to Health Services
- c. Workplace Safety Insurance Board
- d. Ontario Works and the Ontario Disability Support Program.

#### **(1) Occupational Health and Safety Act**

- a. Eliminate the exclusion of Domestic Workers: This exclusion, in addition to compromising the health and safety of a significant percentage of the Ontario workforce, is discriminatory and has an adverse effect on workers in the LCP program, many of whom are racialized

women. This is even more important in the current work environment where many Live-In Caregivers are involved in elderly care, and responsible for lifting and moving employers. Including domestic workers in OHSA expands protections from reprisals and guarantees the ability to refuse unsafe work.

- b. Industry specific regulations for agriculture: There is an urgent need for industry-specific regulations for agriculture to ensure migrant agricultural workers have access to bathrooms in the fields, clean drinking water, and regular breaks. In addition, agriculture-specific hazards such as confined spaces; prolonged exposure to pesticides and exposure to extreme heat and weather must be addressed in regulations targeted to agricultural work. A mandatory Coroner's Inquest must follow all agriculture related deaths.
- c. Broader review of OHSA in regards to migrant work: With migrant workers now entering many different sectors of work, regulations must be modernized with a view to protecting vulnerable workers in those industries, including consultations from workers and community organizations.
- d. Expanded definition of violence: The *Occupational Health and Safety Act* definition of violence should be expanded. The Canadian Centre for Occupational Health and Safety (CCOHS) for example defines workplace violence as: "any act in which a person is abused, threatened, intimidated or assaulted during the course of, or as a result of his or her employment".
- e. Racist and sexual harassment: Racial and sexual harassment are an integral component of workplace harassment and should be included in OHSA. These include:
  - i. All sources of workplace related violence
  - ii. all forms of violence
  - iii. all impacts of violence be it physical, psychological, or emotional
  - iv. all workplaces
  - v. all work related violence
  - vi. specific language addressing both racial and sexual violence and harassment in the workplace
- f. Increase resources to community groups to advocate for workers employed in non-unionized workplaces.
- g. The reality of many non-unionized precarious workplaces is that there are no joint health and safety committees and no health and safety reps so the Ministry should take measures to enforce the creation of these committees, and representatives in non-unionized workplaces.
- h. Strong language for both anti-reprisals and job protection. There should also be an expedited investigation process, job protection against reprisals and an option to take a job-protected paid leave for claimants of workplace violence.

## Access to health services

- a. Migrant workers should receive health cards on arrival.
  - i) Eliminate the three-month waiting period that serves as a key barrier to ensuring public health standards are met for migrant workers.
  - ii) Develop procedures to remove processing delays and ensure employer compliance. Migrant workers are facing unreasonable delays in getting their applications for health status processed even after the three-month period, sometimes waiting the entire length of their contract to receive health care.
- b. Create regulations to ensure access to health care for workers on 'implied status'. Migrant workers in between work permits have what is termed 'implied status'. That is, they are legally able to continue to stay in Canada, and work for their employer, while their permits are being processed. During this time, workers' SIN and health cards expire and provincial regulations make it impossible to get health coverage. Workers on implied status includes Live-In Caregivers who have completed their work requirements and are in process to become permanent residents, and temporary foreign workers moving from one job to another. These groups are often the more vulnerable to failing health.
- c. Migrant workers, particularly agriculture workers, often require translation services to gain healthcare. With a lack of translation services in place at health centres and hospitals – translators often end up being fellow workers or the employer. As a result of this, and generally a patronizing attitude towards workers, health care providers share personal information with employers that results in 'medical repatriation', or just lay-offs. Regulatory mechanisms need to be created to further strengthen privacy laws, and to develop accountability measures when such information is shared with employers. Specific interpretation services in key hospitals should be provided.
- d. Migrant workers should be granted access to provincial health services regardless of their immigration status. Though federal law does not deny health care funds on the basis of immigration status, provincial legislation does. Workers are able to access life-saving and emergency services if they are able to pay, but can't access preventative, routine care. This leads to significant public health problems.
- e. Migrant workers who must stay in Ontario for medical treatment past the end of their work permit (for example, injured migrant workers where the WSIB has required that they stay in Ontario for health care for their work-related injuries) don't have OHIP coverage. The divisional court has looked at such a case and has suggested that the Ontario government fill the gap. See: OHIP v. Clarke & Williams, 2014 ONSC 2009

- f. Seasonal Agricultural Workers Program workers should, at least, have access to OHIP for the entire duration of their normal work contract regardless of their ongoing connection to their employer. Current MHLTC policy enables employers to cancel OHIP coverage upon termination / completion of the employment contract. This is especially problematic for workers who are fired because of (often work-related) injuries.
- g. Specific interpretation services in key hospitals should be provided. Migrant workers often require interpretation services to gain health care. With a lack of translation services in place at health centres and hospitals –interpreters often end up being their employers or supervisors. As a result of this, and generally a patronizing attitude towards racialized and non-English speaking workers, health care providers share personal information that can negatively impact their employment.
- h. Health and legal outreach (occupational health clinics, migrant health bus, specialized legal clinics) should be implemented or expanded in regions with greater migrant workers.
- i. Housing guidelines should be revised with workers' input to address health-related concerns (quality of housing, quantity and location of bathrooms, temperature, telephones, privacy, availability of laundry on farming operations where pesticide is used, etc.).

## **(2) Workplace Safety and Insurance Board (WSIB)**

- a. Provide fair access to Loss of Earning benefits for migrant workers. Under 'deeming' practices, migrant workers are deemed 'fit to work' at jobs in Ontario they can do with their injuries (such as gas station attendant) and taken off WSIB. Pretending injured workers are working when they are not is an unacceptable practice for all injured workers but is especially unfair to migrant workers because they are not legally allowed to work on the open labour market in Ontario. Indeed, leaving the country is expected as part of their employment contract and is not a "material change in circumstances" that would warrant the reduction of benefits. The WSIB has partially acknowledged this unfairness by giving 12 weeks of Loss of Earnings Benefits to SAWP workers only. This is considerably less than they would give to an Ontario resident with the same injury and occupation. Further, there is no policy or adjudicative advice document for non-SAWP migrant workers who return to their home country because their work permits expire.
- b. Migrant workers must also be able to access retraining programs.
- c. Give injured and ill migrant workers the choice and the means to stay in Ontario for health care. After suffering a workplace injury, migrant workers are sent home either pre-maturely or at the end of their contract / work permit. Migrant workers who are still injured often lack access to health care in their home countries for their work-related injuries because the cost of transportation expenses, medical appointments, testing and follow up care is prohibitive – especially to pay up front. All migrant workers injured because of their work

in Ontario must be given the choice of whether to return to their home countries or take advantage of accommodation expenses and WSIB-sponsored health care in Ontario. If workers decide to stay in Ontario, the WSIB should pay for family members to visit.

- d. Live-in Caregivers who care for the elderly (instead of caring for children) are not considered by WSIB to be “domestic workers” and therefore do not qualify for WSIB coverage unless their employer opts in. This practice contradicts public information provided by the Ministry of Labour. The MOL should clarify its regulation that Live-in Caregivers are domestic workers and are covered by WSIB.

### **(3) Ontario Works (OW) and Ontario Disability Support Program (ODSP)**

- a. Many workers that are unable to access WSIB because of deeming or other regulatory issues turn to ODSP for support. Many injured workers who are unable to access WSIB should be able to turn to ODSP for much needed support. However, ODSP’s directives ban visitors from receiving any social assistance. While anyone who meets the geographical criteria of residing in Ontario should have access to social assistance; the failure of the directive to distinguish between visitors and people who came to Ontario under a work permit is especially unfair. Immigration status as a barrier to accessing OW and ODSP should be removed. Particularly migrant workers on open work permits, on implied status, or on visitor status should be able to get social assistance.
- b. According to the legislation, the only migrants barred from receiving OW and ODSP are visitors (unless they have filed a refugee claim or a permanent residence application like an H&C) and people subject to an enforceable removal order (unless they cannot leave Canada for reasons wholly beyond their control or they have filed a PR application – these exceptions capture most people). The visitor exclusion is the one most likely to apply to migrant workers so should be clarified. Migrant workers on open work permits, on implied status, or transitioning in and out of visitor status while awaiting processing of their applications should be able to get support.

It would be great to speak to you further on these and develop some pragmatic changes that can benefit the most workers at the earliest.

Sincerely,

Syed Hussan

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