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Dear Campion Carruthers,

Re: Regulatory proposals to enhance the Temporary Foreign Worker Program and International Mobility Program compliance framework.

I am writing to you today as the Coordinator of the Migrant Workers Alliance for Change (MWAC). MWAC is Canada's largest migrant worker rights coalition. Our members include migrant worker groups (Justice for Migrant Workers, Migrante ON, Workers Action Centre, Caregivers Action Centre); labour unions (UNIFOR, United Food and Commercial Workers); legal clinics (South Asian Legal Clinic of Ontario, Parkdale Community Legal Services, IAVGO); health support services (Asian Community Aids Services, Alliance for South Asian Aids Prevention); and research, community and faith groups (Social Planning Toronto, No One Is Illegal – Toronto and KAIROS).

MWAC's primary concern is ensuring that low-waged migrant workers (Temporary Foreign Workers) in Canada have access to equal protections, rights and fairness. As such, we commend Employment and Social Development Canada for expanding inspections and abuse detection from three program requirements to all twenty-one program requirements as of December 31, 2013. In particular, ensuring that:

1. Employers are in compliance with federal and provincial/territorial laws that regulate employment and recruitment in the province/territory in which the foreign worker is employed;
2. Employers have made reasonable efforts to provide a workplace that is free of abuse which includes:
    1. physical abuse;
    2. sexual abuse;
    3. psychological abuse; and
    4. financial abuse.

3. Employers of live-in caregivers must also ensure the foreign worker resides in a private household and provides child care, senior home support care or care of a disabled person in that household without supervision.
4. Employers of live-in caregivers must also provide the foreign worker with adequate furnished and private accommodations in the household.
5. Employers have provided each foreign worker with employment in substantially the same occupation as stated in the offer of employment.
6. Employers have provided each foreign worker with wages that are substantially the same as those in the offer of employment.
7. Employers have provided each foreign worker with working conditions that are substantially the same as those in the offer of employment.

Expanding inspection on these requirements seems to show an understanding of the precarity that migrant workers face as a result of being tied to a single employer with limited access to labour rights and social entitlements based on their immigration status or occupation.

The proposed compliance framework may be able to lead to real implementation steps that ensure the principle of equal protections for migrant workers is met. However, three critical changes are needed to ensure that these regulations do not end up doing the opposite:

1. The compliance mechanisms and sanctions must not in any way punish workers for their employers' abuse. The regulatory mechanism should include open work permits, and access to permanent residency for migrant workers. Failure to do so would make these regulations extremely punitive for migrant workers.
2. There should be no exceptions to workplaces that are being inspected or sanctioned. All migrant worker employers, that is those who are part of the Seasonal Agricultural Workers Program, Live-In Caregiver Program and the Temporary Foreign Workers Program, should be equally and comprehensively assessed for abuse.
3. These regulations will result in a convergence, and possible confusion between provincial and federal jurisdictions. MOUs on information sharing, and specific protocols to ensure that migrant workers are able to gain lost wages, or have access to other entitlements under provincial jurisdiction, must be developed.

Much more clarity is needed on when any of these regulations will come into force, as well as clarity on how increased powers since December 31, 2013 have already been enacted.

Specific changes include:

(1) **Context specific sanctions:** The compliance mechanism institutes sanctions' based on points accumulated. For example, an employer in Ontario who owes a worker $195,000 in unpaid wages, as in the case of Lilliane Namukasa would be fined $750 under the proposed regulations. Ontario laws currently have a cap of $10,000 that workers can claim under the Employment Standards Act, and a limit of 6 months under which wages can be claimed. These sanctions would barely be a slap on the wrist for the employer, and would not ensure

any justice for the migrant worker. Similarly, employers that physically or psychologically harm their migrant worker employees might receive a $25,000 penalty, but the worker may be traumatized for life. Further, these administrative penalties go to the government, not to provide monetary damages to traumatized workers. The sanctions associated with these compliance mechanisms must be adapted and responsive to the context of migrant workers, including sanctions that directly compensate and benefit migrant workers.

(2) **Separate immigration enforcement and TFWP compliance**: Employer abuse and workplace specific violations are distinctly separate from immigration enforcement. In provincial jurisdictions, Ministries of Labour do not compile immigration status of workers, do not check for immigration status when ensuring Employment Standards are being upheld, and do not proactively reach out to immigration enforcement when status does come up. Such a separation ensures stronger workplaces for everyone. If an employer is prone to abusing migrant workers, they may also have failed to ensure consistent immigration status for those workers, or misled them about their responsibilities. If workers, and community groups see compliance mechanisms as another means to remove workers from Canada, they are less likely to support these processes. Ensuring broad community buy-in is necessary for effectively detecting abuse and ending it, even more so in complaints-based mechanisms. According to the announcements made on June 12th, one in four employers using temporary foreign workers will be inspected each year, and migrant workers there may be interviewed. Separating immigration enforcement and TFWP compliance is essential to ensuring that migrant workers being interviewed are actually able to honestly share experiences of abuse -- and to ensure that enforcement visits result in better overall labour standards for all workers at that workplace.

(3) **Create access to permanent residence for migrant workers where employer abuse has taken place**: Under the proposed regulations, violations that harm the individual (Types B & C) may result in suspension or revocation of LMIAs and/or work permits. This would mean that migrant workers who have either already paid up to two years of their salary to recruiters for their permit processing would be under immense financial duress. Workers that are already in the country would suddenly find themselves without work, and with very limited ability to gain alternate employment. This punishes migrant workers for their employers' abuse. Such measures will serve as an immense disincentive for workers to speak out about abuses at the workplace and would in fact further open workers to abuse for employers will warn workers away from seeking support and guidance. As such, mechanisms should be put into place to stop removals of migrant workers where abuse has been alleged, and pathways to permanent residency be provided to workers that face abuse. This would incentivize migrant worker cooperation, and make employers accountable to workers. At the very least, open work permits should be built in to the regulatory process to allow workers to pay any debts, support their families, and insulate them from employer reprisals.

(4) **Joint and several liability between employers and recruiters**: Often enough, abuses against workers are carried out by recruiters rather than employers. Contract negotiation, setting of wages, determining accommodations, etc may all be recruiter responsibility. We

have heard multiple reports of the increased LMIA fees being downloaded directly on to workers. As such, all parts of the enhanced compliance framework should be extended to cover recruiters. This would require a comprehensive recruiter licensing system where provincial legislation does not already provide for it. Employers and recruiters must be jointly liable for any prohibited direct or indirect fee charged to workers regardless of where and how the fee was levied. Joint and several liability would help to bring about portable justice for migrant workers. Recruiter liability should extend all the way down the recruiter pipeline and must include recruiters based abroad. Inter-provincial reciprocal agreements around recruitment practices should also be developed to account for recruiters who operate in multiple jurisdictions. The federal government is particularly well-placed to pursue such a pan-Canadian effort (as it has done with respect to efforts at coordinating the launch of the contested Express Entry system). There are currently no recourses for workers who pay recruitment fees in one province but are employed in another. Developing agreements with foreign governments will also help to ensure that recruiters operating abroad can still be held accountable for charging fees and misrepresenting work.

(5) **Delineate provincial-federal authority:** The proposed regulations allow Federal inspectors to sanction for abuses that are under provincial jurisdiction. This requires a number of steps to be taken in advance so that workers' facing abuse can be protected.

   a. We urge the development of comprehensive information-sharing processes between the federal and provincial government to ensure protections for migrant workers (like Manitoba has with Canada) in consultation with community organizations. This information sharing should be limited to sharing information about employer abuse from the Federal government to the provinces, and from the provinces to the Federal government.
   b. The information sharing agreement should specifically bar sharing of worker immigration status or other identifying information from the province to the Federal government.
   c. The information sharing agreement should delineate the process by which workers will gain rights and entitlement. For example, in circumstances where wage theft is alleged, mechanisms must be developed to ensure that either provincial or federal authorities can adequately oversee the repayment of all wages.
   d. Given that specific provincial laws may limit the ability of workers to be to get repatriations, more clarity is needed on how employer sanctions will protect workers. For example, many workers are only comfortable filing a claim once their immigration and employment status has been made less precarious which might be five years after the wage theft has occurred. Provincial legislation, however, may limit the time within which claims can be made to six months. Where Federal authorities are made aware of wage theft that took place 2-3 years ago, what steps will be taken to ensure that workers are compensated?

(6) **Third-party and anonymous complaints:** The regulations should allow for anonymous and third party complaints beyond the tip-line and complaints website. This change should <u>only</u> take place where previous recommendations on open work permits, and access to permanent

residency have been implemented. Complaints brought forward by a third party (for example a worker advocate or community stakeholder) should automatically trigger an inspection. The inspection team should collaborate with the worker advocate or third party in determining investigative strategies. Reporting tools to third-party complainants should also be developed. When migrant workers, worker advocates, and community organizations bring forward individual complaints and there are confirmed violations, investigations should expand to the entire workplace and carry out ongoing follow-up to ensure compliance.

(7) **Anti-reprisals protections:** Employers are able to immediately deport seasonal agricultural workers who try to enforce workplace rights. We have heard many reports of employers threatening other migrant workers with deportation or contacting immigration authorities, even when they do not have that authority. This intimidation, and very real ability to repatriate workers, leads to substantial barriers to enforcing protections for migrant workers. With the Federal government now giving itself the power to interview workers, and enforce provincial laws, comprehensive anti-reprisal protections must be developed. These include working with provincial authorities to:

   a. Develop an expedited process for investigating claims of abuse for all migrant workers.
   b. Provincial and federal laws must be strengthened to ensure that workers' rights are protected against repatriations or when repatriations takes place. The anti-reprisals provisions should explicitly prohibit an employer from forcing "repatriation" on an employee who has filed claims of abuse.
   c. Migrant workers who have filed complaints must be granted open work permits.
   d. Establish a moratorium on repatriations of migrant workers with ongoing workers' rights complaints.

Thank you for reading this brief summary of our concerns and some proposed changes. I urge you to sit with migrant workers and us at MWAC to develop a broader, more consistent and more comprehensive set of changes to ensure that migrant workers have full and equal access to rights and protections, as well as full immigration status on landing.

Best regards,

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