

July 19, 2019

Uttara Chauhan, Director
Policy and Program Design
Temporary Foreign Workers Program
Employment and Social Development Canada
140 Promenade du Portage,
Gatineau, Quebec
K1A 0J9

Jordan Thompson, Acting Director
Temporary Resident Policy and Programs
Department of Citizenship and Immigration
365 Laurier Avenue West,
Ottawa, Ontario
K1A 1L1

RE: Canada Gazette, Part I, Volume 153, Number 25, June 22, 2019.

Introducing Occupation-Specific Work Permits (OSWP) Under the Temporary Foreign Worker Program

The Ontario Federation of Agriculture (OFA) is pleased to provide comments to Immigration, Refugees and Citizenship Canada (IRCC) and Employment and Social Development Canada (ESDC) on the proposal to amend the *Immigration and Refugee Protection Regulations* to allow for occupation-specific work permits under the Temporary Foreign Worker Program (TFWP). OFA is Canada's largest voluntary general farm organization, representing over 38,000 farm families across the province. These farm businesses form the backbone of a robust food system; helping to drive the Ontario economy forward.

The Canadian agricultural sector is facing a critical labour shortage. According to recent research by the Canadian Agricultural Human Resources Council (CAHRC), the gap between the available Canadian supply of workers and the agricultural sector's demand has doubled in size since 2007 to over 62,000 people in 2017. Thankfully, Canada is fortunate to have an effective Temporary Foreign Workers Program to bring willing workers to our farms and processing operations to satisfy much of this gap. However, even though the number of temporary foreign workers has significantly increased over the last several years, there remains over 16,000 unfilled vacancies in Canada's agricultural workforce representing \$2.9 billion in lost sales. While OFA supports the principle of providing jobs to Canadians first, the critical value of the TFWP to the continued success Canada's agriculture and agri-food sector simply cannot be understated.

OFA is a member of the Canadian Federation of Agriculture (CFA) and works closely with CFA to develop national agriculture and agri-food policy positions. OFA supports the position and perspectives of the employer representatives on the CFA TFWP Service Delivery Working Group with regards to Occupation Specific Work Permits (OSWP). CFA's submission to this consultation is attached to this letter.

We would like to take this opportunity to emphasise specific points in CFA's submission:

- Labour continuity and predictability is vitally important to meet labour needs of farmers during peak periods of the production cycle. OFA is concerned about the negative impacts this proposal will have on those farm employers who have invested time and effort into following the application process.
- The capacity to move between employers with a valid Labour Market Impact Assessment (LMIA) already exists for TFWs across all streams with some variation in the extent of that capacity between the Seasonal Agricultural Worker Program (SAWP) and the agricultural and low-wage streams. Rather than adopting a universal occupation-specific work permit, most meaningful contribution to year-round worker mobility would occur with expedited treatment of those workers' applications for new work permits. Mechanisms to facilitate expedient access and work permit processing should be the focus for year-round workers and employers.
- SAWP is a long-running, stable and effective program and must not be affected by any proposed changes to the agricultural and low-wage streams of the TFWP.
- SAWP should be used as a model for seasonal employers of the Agricultural and Low-wage streams. Seasonal work permits within the Agricultural and Low-Wage streams of the TFWP should be restructured to reflect what is currently offered within SAWP and all seasonal, agricultural TFWs would be given work permits limited to agricultural employers authorized by an LMIA, and involve Service Canada, both employers, and an appropriate consular liaison officer.
- Universal adoption of OCWPs would create significant uncertainty for year-round employers, who expend considerable time and resources in the training and professional development of their employees. OSWPs raise a fundamental question of concern to all employers - *Who will pay the costs carried by the current employer (such as those associated with TFW recruitment and transportation), if they chose to seek employment with another employer?*
- It would appear that the introduction of open work permit in instances of abuse or potential abuse negate the need for OSWPs in situations outside of seasonal agricultural production.
- Most employers using the program are ethical, rule-following employers, and employer-specific work permits provide important protections for workers, when compared to OSWPs. While the intent behind OSWPs is to promote worker protection, their implementation holds the potential to create a system that exposes workers to greater potential for abuse and reduces the capacity of the TFWP to provide critical protections.
- Under an OSWP, there is significant potential for TFWs to unintentionally work illegally because they either assume, or are poorly informed by unethical employers/recruiters, that their workplace does, in fact, have an approved LMIA.
- An OSWP holds the potential to create inequities by providing an incentive for employers to avoid costs associated with program participation. This would enable them to adopt a model based on recruiting workers already brought in by other producers by offering a slightly higher wage, based on the savings they accrue through avoiding associated recruiting and transportation costs.

Finally, OFA requests that IRCC and ESDC refrain from using the term “migrant worker” when referring to the hard-working and highly valued workforce who come to Canada each year to fill the many vacant jobs on our farms and processing facilities. The term “migrant” has taken on a very negative connotation, typically seen as referring to those unfortunate individuals fleeing violence or economic turmoil to cross international borders irregularly, only to be left undocumented in precarious situations, and without the rights and protections afforded to citizens. None of these conditions reflect the journeys and experiences of Canada’s Temporary Foreign Workers. We believe that use of the term “migrant worker” synonymously with Temporary Foreign Workers is a disservice to those workers and provides an false connotation in the minds of Canadians on a program that provides real value and benefits to all participants involved. In the interests of showing due respect to the people who come to work in Canada each year, we believe the term “migrant” should be removed from all Government of Canada documents when referring to workers participating in the Temporary Foreign Worker Program.

OFA appreciates this opportunity to provide comments on the proposal to allow occupation-specific work permits under the Temporary Foreign Worker Program (TFWP). Moving forward, we believe extensive consultation on a more detailed proposal is required with users of the TFWP before any regulatory amendments are considered. Furthermore, we believe that a comprehensive analysis of economic impacts of the proposal on employers and Canadian workers is required, including labour market impacts, and the potential effects on current worker protections.

Sincerely,



Keith Currie
President

Encl (1)

cc: Mary Robinson, President, CFA
OFA Board of Directors

TEMPORARY FOREIGN WORKER (TFW) PROGRAM: EXPLORING AN OCCUPATION-SPECIFIC WORK PERMIT

The comments below reflect the perspectives of the employer representatives on the CFA TFWP Service Delivery Working Group (the Working Group), following their review of the proposed consultation questionnaire entitled 'Temporary Foreign Worker (TFW) Program: Exploring An Occupation-Specific Work Permit'.

1. What do you perceive as the main challenges for employers with respect to employer-specific work permits under the TFW Program? Would an occupation-specific work permit address these issues?

Generally speaking, employer-specific work permits provide employers with critical predictability in meeting critical labour needs, where employers have been unable to find available Canadians to fill these positions. This predictability is key to ensure there is a meaningful return on the significant investment employers make in hiring a TFW, as these workers are essential to the livelihood and ongoing viability of farmers facing chronic labour shortages.

It is critical to emphasize that TFWs, across all streams, already have the ability to move between employers with a valid LMIA. The extent of this mobility varies:

- The Seasonal Agricultural Worker Program (SAWP) already provides occupation-specific work permits (OSWPs) coupled with a streamlined transfer mechanism, while
- The agricultural and low-wage streams allow workers to request a transfer to another LMIA-approved employer, requiring processing of a new work permit.

It is our understanding that the proposed OSWP would still be limited to those employers with an open Labour Market Impact Assessment (LMIA). The Working Group would emphasize the importance of this limitation, to ensure employers cannot utilize this mechanism to circumvent all the other rules around the TFWP or create competition for Canadians seeking employment.

Expediting Work Permit processing for year-round workers: Given the existing capacity for workers to transfer between employers within all streams, the Working Group believes the most meaningful contribution to year-round worker mobility would occur with expedited treatment of those workers' applications for new work permits. Representatives on the working group have highlighted countless instances where workers have requested transfers between employers with approved LMIA's, and those workers have been able to secure new work permits in the vast majority of cases. In many instances, those workers able to visit a Port of Entry (POE) have even been able to see those work permit applications processed within the same day. Similar to the processing improvements on agricultural LMIA's, a concerted focus on expedited work permit processing, supported by consistent service delivery standards, would significantly promote worker mobility.

Rather than adopting a universal occupation-specific work permit, which would expose workers to potentially abusive or illegal workplace arrangements, this approach would allow ESDC and IRCC to maintain close controls over the program and ensure workers remain in approved workplaces. This is essential to ensuring the oversight mechanisms within the TFWP remain in place for all workers. These vulnerabilities are discussed in greater detail in the response to **Question 4**.

Where there is concern of an abusive workplace, the recent introduction of open work permits for those workers claiming abuse provides the necessary protections. Additional communication and guidance materials provided to workers entering Canada, which outline workers existing rights and mobility options would seemingly be sufficient

to increase mobility, so long as work permit processing service delivery standards were made consistently expedient to reduce any existing mobility barriers.

If workers face challenges with regard to the existing application processes and infrastructure, or the fees associated with new work permits, these challenges should be assessed and addressed through process improvements and/or reduced costs for TFWs seeking transfers. However, it is important to note that employers typically pay the costs associated with work permit processing, therefore costs associated with the fee for a new work permit would typically not limit workers' mobility, but would represent a cost to the new employer. Beyond this review and need for greater expediency, it is unclear how OSWPs would benefit workers, particularly given the significant costs and challenges presented to employers, as well as the increased vulnerability this proposal would introduce for workers. These concerns are articulated in greater detail in response to the questions that follow.

SAWP as a model for seasonal users of the Agricultural and Low-wage streams: However, there are a number of situations facing employers hiring on a seasonal basis that would benefit from an occupation-specific work permit and the additional worker mobility it affords. These are, importantly, specific to those utilizing the TFWP for seasonal purposes only, particularly those in the fruit and vegetable industries due to their acute seasonal labour needs. Grain and oilseed producers, by and large, do not require workers for similarly short periods of time and it's important to recognize that the benefits afforded to seasonal employers would be limited to those capable of sharing workers throughout the year. There are distinct differences between year-round agriculture and SAWP, which raises different concerns regarding the economic impact to these businesses. While mobility might be an asset in the seasonal program, there could be serious repercussions for year-round agricultural employers.

Potential situations affecting seasonal employers and workers include where:

- The employer has a very short production period (asparagus, for example);
- There is no more work with the employer for unforeseen reasons (destruction of the crop by hail, for example);
- Tensions or workplace conflict may create a desire to change employers during the season.

To address these issues, the Working Group would propose that seasonal work permits within the Agricultural and Low-Wage streams of the TFWP be restructured to reflect what is currently offered within the Seasonal Agricultural Worker Program. Under this system, all seasonal, agricultural TFWs would be given work permits limited to agricultural employers authorized by an LMIA, enabling all parties to request transfers through a similar mechanism as the transfer confirmation form that must be submitted to Service Canada, both employers, and the appropriate consular liaison officer.

Seasonal employers and workers would both benefit from this system. In particular, it would resolve problems experienced by apple producers, who are often the second employer of the season. With this open permit, agricultural employers would have access to TFWs who are already in the country and can be made available quickly, while limiting transportation costs associated with additional flights. This same mobility would benefit agricultural and low-wage stream workers in seasonal industries, as it would enable workers to extend their seasons where they desire through transfers between employers with short production seasons that do not significantly overlap. It is therefore essential that all seasonal agricultural workers have access to this type of work permit.

However, unlike SAWP, neither the Agricultural or Low-wage streams have access to similar consular liaison officers at this time. For this reason, there is reason to believe that occupation-specific work permits (OSWPs) could lead to a reduced protection for workers and increased vulnerability. If adopted appropriately, this type of work permit could benefit both employers and workers, however it would require a similar liaison structure to provide critical

oversight. For more information on the need for liaison officers in other program streams, similar to what is offered under SAWP, see the Working Group response to **Question 5**.

o Would an occupation-specific work permit help or hinder employer efforts to address their labour market needs? In what way?

The intent of the OSWP seeks to reduce the challenges TFWs currently face in order to transition to a new employer, making it difficult for them to leave their current employment situation. However, as identified previously, the processing time of applications associated with such a transfer remain the primary impediment to their use in the agricultural and low-wage streams.

The LMIA is the lengthiest part of the application process when looking to change a work permit from within Canada. Under the existing program rules, once an employer has obtained an approved LMIA, a worker in Canada can generally visit the nearest POE and apply for the permit there the same day. For this reason, mechanisms to facilitate expedient access and work permit processing should be the focus for year-round workers and employers. To facilitate easy access to timely work permit processing, international airports should be granted the capacity to process new work permits. Many farm operations are a day's drive from the nearest border and these additional locations with processing capacity would greatly reduce the time required for workers and employers to secure new work permits. This would contribute to more timely processing and reduce barriers to acquiring a new work permit for all involved.

Under the proposed OSWP, it is unclear how this process would speed up the time for TFWs to start working with a new employer if that new employer is going to have to get an LMIA – it essentially results in the same situation already faced by TFW's. If the point of concern is an abusive or problematic work environment, the recent introduction of open work permits for workers facing abusive situations means that TFWs already have the option of applying for an open work permit without the wait time of an employer getting an LMIA or the limitations imposed by limiting work permits to those with pre-existing approved, unutilized LMIA's.

o What concerns/challenges would an occupation-based work permit pose to employers? How could these challenges be mitigated?

First and foremost, universal adoption of OSWPs would create significant uncertainty for year-round employers, who expend considerable time and resources in the training and professional development of their employees. Farm employers pay between \$8,000 to \$12,000 per worker in costs associated with the employer obligations of the TFWP. This is documented in the Labour Task Force's Workforce Action Plan and a report on the Canadian mushroom industry from the Canadian Agricultural Human Resource Council (CAHRC), published in 2017.

The costs identified in these reports, which represent considerable investments on the part of employers, could financially bankrupt employers, especially smaller employers who are paying for transportation, recruitment, and a number of other skills training costs. For most year-round employers, where possible, these employees are trained and supported to seek permanent residency, where of interest to the worker and possible within their respective immigration options.

OSWPs raise a fundamental question of concern to all employer -- Who will pay the costs borne by the current employer (such as those associated with TFW recruitment and transportation), if they chose to seek employment with another employer?

2. What are the main challenges for TFWs with respect to employer-specific work permits? Would an occupation-based work permit address these issues?

With the recent introduction of open work permits for workers facing abuse or the threat of abuse, and the existing capacity for workers to transfer between operations, the Working Group does not see any significant challenges inherent to the employer-specific work permits in the current TFWP for year-round employers. The challenges for seasonal employers and workers are outlined in the response to **Question 1**.

It is the Working Group's assessment that the introduction of open work permit in instances of abuse or potential abuse negate the need for occupation-specific work permits in situations outside of seasonal agricultural production. The measure is intended to mitigate immigration-related disincentives to leave and report abuse to authorities; minimize regulatory differences on worker protection between jurisdictions in Canada (as a similar measure is currently in place in British Columbia); and facilitate the availability of regular pathways for migrant workers in abusive situations. In addressing these objectives, it is unclear to the Working Group why occupation-specific work permits, and the challenges they introduce, are warranted for year-round agricultural employers.

o Do you think there will be uptake of an occupation-based work permit by TFWs? Why or why not?

See the response to **Question 1**.

o What would be the barriers to workers changing jobs? How could these barriers be addressed?

See the response to **Question 1**.

3. Would employers be likely to hire a TFW who is already working in Canada?

This would depend on the particular needs of each employer and the context surrounding the workers' request to transfer between operations. However, evidence from SAWP, to date, suggests there would be considerable uptake from seasonal employers looking to address acute, seasonal needs.

4. How likely it is that this new work permit would help lead to more competitive wages and working conditions for TFWs and Canadians? What other impacts (positive or negative) might this work permit have for Canadian workers?

Positive impacts for seasonal employers and workers: See the response to **Question 1**.

Potential exposure to abuse: Most employers using the program are ethical, rule-following employers, and employer-specific work permits provide important protections for workers, when compared to OSWPs. While the intent behind OSWPs is to promote worker protection, their implementation holds the potential to create a system that exposes workers to greater potential for abuse and reduces the capacity of the TFWP to provide critical protections.

For example, if an employer who has never used the program is approached by a TFW with an OSWP, how would they know they require an LMIA? They would very likely assume the TFW could start working immediately, without having undergone any of the checks and balances within the program. This not only exposes the employer to considerable risk, it also results in TFWs working illegally outside the protections afforded by the TFWP and the associated integrity regime.

Unethical recruitment: Under an OSWP, there is significant potential for TFWs to unintentionally work illegally because they either assume, or are poorly informed by unethical employers/recruiters, that their workplace does, in fact, have an approved LMIA. These situations already arise, wherein workers are misinformed or make incorrect

assumptions about their ability to work at other facilities. An OSWP makes these workers even more susceptible to employers who will hire them without an LMIA in place. Based on extensive experience within the current program, the Working Group believes many TFWs will assume that they can go work for another employer without ensuring that a) the new employer has the LMIA, and b) that the LMIA is for the same NOC. Without clearly communicated roles and considerable on-the-ground oversight, OSWPs would just exacerbate worker vulnerabilities and expose them to a greater likelihood of abusive situations.

Inequities between employers: In addition, an OSWP holds the potential to create inequities by providing an incentive for employers to avoid costs associated with program participation. This would enable them to adopt a model based on recruiting workers already brought in by other producers by offering a slightly higher wage, based on the savings they accrue through avoiding associated recruiting and transportation costs. For example, if a Mushroom farm were to bring in TFWs under NOC 8431 at \$15.00, dedicating significant time and financial resources to their recruitment and on-boarding, a nearby Hog farm in need of workers under NOC 8431 could simply apply for an LMIA and provide housing without taking on any of the associated costs with securing an actual worker.

By not undertaking any recruiting efforts from overseas, the Hog farm would not need to wait 3 months for workers to arrive, nor would it need to book and pay for flights, set up SIN, banking, or health care, amongst other costly processes. By just running an ad stating he has an LMIA and paying \$16.00 an hour, the Hog farm would be able to hire workers at very minimal cost and the mushroom farm would be left bearing considerable costs for their efforts to work through the program as designed, without the essential labour they require to maintain their operation.

5. What considerations do you think should be taken into account when designing an occupation-specific work permit?

While the Working Group appreciates the opportunity to provide preliminary input on the concept of an OSWP, extensive consultation on a more detailed proposal is required before any regulatory amendments should even be considered. Without sufficient details, it is difficult to provide meaningful insight into the various permutations that may be under consideration.

Furthermore, any such proposal requires a comprehensive analysis of economic impacts to employers and Canadian workers, labour market impacts, and potential effects on worker protections. The completion and publication of these analyses are critical, in advance of the consideration of specific regulatory amendments or policy changes, to provide stakeholders an understanding of what is specifically being proposed and those proposals' actual implications.

As noted previously, it is the Working Group's assertion that OSWPs are only beneficial in the context of seasonal, agricultural employers, and should be the focus of further efforts to promote worker mobility.

o What supports should the government provide?

Governments should enhance communications to workers, through materials published in multiple languages, outlining the existing worker mobility options that exist within all program streams and the means of enacting those options. These communications should also provide insight into workplace protections within existing provincial legislation, such as prohibitions against employer Reprisals (such as those laid out in the [Ontario Employment Standards Act](#)).

Were an OSWP to be introduced for seasonal users of the agricultural and low-wage program streams, Governments should assess the best practices associated with transfers within the SAWP and pursue their adoption

within these other streams. These would include annual meetings with stakeholders to assess the overall program efficacy, provide an opportunity to review contracts, and address any emerging issues arising from changes in policy, programs, or the broader labour market.

The government should also explore implementing an independent liaison service for all program streams outside of SAWP, providing similar functions to those available through the Consular Liaison officers within the SAWP. Such an independent liaison office would have a mandate to provide conflict resolution services, contribute to overall program oversight (including approval of transfers), and provide communications support to assist workers seeking mobility from their existing workplaces. This independent liaison office should also provide an ombudsman-like function for both employers and workers seeking to appeal results of integrity inspections, particularly those triggered by complaints of abuse. This office's independence would contribute significantly to trust on the part of both workers and employers in the broader TFWP and associated integrity regime.

For additional details or further discussion on the contents of this submission, please contact Scott Ross, Assistant Executive Director at the Canadian Federation of Agriculture, at 613-236-3633 or scott@canadian-farmers.ca.