

Know Your Rights!

A Manual for
Temporary Foreign Workers
in Quebec

Created by: The Immigrant Workers Centre

KNOW YOUR RIGHTS!

INFORMATION FOR TEMPORARY FOREIGN WORKERS IN QUEBEC

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INTRODUCTION

Immigration is important for Canadian society and necessary for Canada's economic wellbeing. Lately there has been a shift from permanent to temporary migration. Canada relies more and more on temporary labour from migrant workers, with little concern for the problems of discrimination – and even exploitation – experienced by these workers.

People come to Canada from all over the world¹ to work in all kinds of jobs. Temporary Foreign Workers (TFWs) are found in many sectors: health care, service, information technology, food and meat processing, manufacturing, agriculture and hospitality industries. Each job are classified as “low-” or “high-skilled” – sometimes arbitrarily – by the government. There are four main TFW programs: Professional TFWs; the Live-In Caregiver Program (LCP); the Seasonal Agricultural Worker Program (SAWP); and the Low-Skill Pilot Program.

Over 300,000 people work in Canada under the temporary migration programs, and over 26,000 in Quebec. In 2009, for the first time, more temporary foreign workers came to Canada than permanent residents. Given this drastic increase in numbers, and the exploitation reported by many TFWs, the IWC/CTI has created this guide to inform TFWs of their rights and how to find help.

The Immigrant Workers Center believes that temporary workers should have a path to permanent residency open to them if they wish to stay in Canada, and that governments at all levels must ensure that migrant workers work in decent conditions for decent pay and benefits, with the same rights as all Canadian born and permanent resident workers.

Unfortunately, migrant workers sometimes don't know their rights or their situation makes it really hard to enforce them. This manual tries to support TFWs in defending their rights by:

- Describing how the Temporary Foreign Worker Program (TFWP) works
- Giving the details on immigration rights
- Explaining Quebec Labour Standards
- Describing the social benefits available to TFWs
- Explaining options for permanent residency

¹ Most migrant workers are racialized workers (62%) and come from low income countries (63%) (CLC. 2011. Canada's Temporary Foreign Worker Program (TFWP) Model Program — or Mistake? p. 13 <http://www.canadianlabour.ca/news-room/publications/canada-s-temporary-foreign-worker-program-tfwp-model-program-or-mistake>

The manual also provides links to government departments or advocacy groups for further detail or assistance on certain issues.

What is the Temporary Foreign Worker Program (TFWP)?

Officially, the Temporary Foreign Worker Program (TFWP) allows Canadian employers to hire foreign workers to fill immediate labour shortages when Canadians are not available. Employers can recruit workers from any country into any lawful occupation as long as employers and workers meet specified program criteria and respect compliance requirements.²

Human Resources and Skills Development Canada (**HRSDC**) is the federal department responsible for issuing Labour Market Opinions (see below) and setting rules for work contracts. It is the department most employers deal with.

Citizenship and Immigration Canada (**CIC**) is the federal department responsible for issuing work permits to temporary workers and temporary resident visas. This is the department the worker coming to Canada deals with.

If you are working in Canada but are not a Canadian citizen, permanent resident or refugee, you are probably on the TFWP.

Occupational skill levels – the NOC

All jobs in Canada are categorized according to the National Occupational Code (NOC). Even though the skill level given on the NOC can be arbitrary and may not reflect the actual skill or training required to perform a certain job, **a TFW's right to apply for permanent residence depends on how their job is categorized on the NOC. Currently, Canada and Quebec only accept levels O, A & B for permanent residency (see the section on immigration).**

SKILL LEVEL 0: Management occupations

SKILL LEVEL A: Occupations usually require university education.

SKILL LEVEL B: Occupations usually require college education or apprenticeship training.

SKILL LEVEL C: Occupations usually require secondary school and/or occupation-specific training.

SKILL LEVEL D: On-the-job training is usually provided for occupations.

Levels C and D are considered 'low-skilled'.³

² The TFWP is governed by the Immigration and Refugee Protection Act (IRPA: <http://laws-lois.justice.gc.ca/eng/acts/I-2.5/index.html>)

³ <http://www30.hrsdc.gc.ca/NOC/English/NOC/2006/html/Matrix.html>

How Long Can a Worker Stay in Canada?

A TFW can accumulate a maximum of 48 months (4 years) of work in Canada. The 48 months do not have to be consecutive (in a row). After that, workers are supposed to leave Canada and won't be able to come back to work as a TFW until 4 years later.

However, not all workers are treated the same. 'High skill' workers can apply for permanent residency after working for one year in Quebec and fulfilling their obligations under the program (see section on immigration).

The LMO: a responsibility of employers

Employers have to apply to HRSDC for a Labour Market Opinion (**LMO**) before hiring foreign workers. HRSDC checks how the offer of employment to a migrant worker would affect Canadian jobs and whether the employer really tried to recruit Canadian workers for the job.

If an employer hires "low-skill" workers, they also have to provide:

- **Transportation:** Pay the worker's transportation costs from his/her current place of residence to the location of work in Canada, and pay the return transportation costs to the country of permanent residence.
- **Housing:** Help the TFW to find housing or provide the housing at a *fair* cost (free for LCP workers)
- **Health insurance:** Pay for health insurance if the TFW is not covered by the provincial plan (at least the first 3 months in Quebec - see section on Health Coverage and related rights)
- **Travel documents:** Leave all travel and other identity documents in the possession of the TFW. They do not have the right to keep your passport! Note that if your employer tries to keep your identification documents, you may be at risk of trafficking or further exploitation. See section on trafficking.

An employer needs to show how they will respect these requirements before the government will issue them an LMO.

The foreign worker needs a copy of the positive Labour Market Opinion in order to apply to Citizenship and Immigration Canada for a work permit.

NOTE: Even if an agent recruited you and the agent arranged the contact with the employer, you still have a right to have copies of all of your documents.

How do migrant workers get on the TFWP?

Foreign workers who want to work in Canada must first obtain a job offer from a Canadian employer. They then apply to Citizenship and Immigration Canada for a permit to work temporarily in Canada. Applicants must include a copy of the HRSDC letter confirming that their employer received a positive Labour Market Opinion.

What are the obligations of the employer once they have hired a TFW?

Employers have many obligations under the TFW Program. These include providing workers with:

Time sheets – To ensure that workers are working the number of hours set out in the LMO confirmation letter and annex. In most cases this is usually defined as 30 or more hours per week.

A job description – To ensure TFWs are working in approved occupations and under the same labour standards as their Canadian counterparts.

The temporary foreign worker's work permit – To ensure the information on the work permit issued by Citizenship and Immigration Canada (CIC) accurately reflects the information on the LMO confirmation letter and annex.

Registration with provincial/territorial workplace safety – Proof that the employer has registered for workplace safety insurance, to ensure that workers are covered in case of injury.

Working Conditions [for more detail see the section on Labour Rights]

- 1) TFWs hired on a full-time basis are expected to work approximately the same number of hours per week and receive at least the same wage as indicated in the LMO confirmation letter and annex.
- 2) TFWs employed in one location cannot work in another location without the employer applying for and receiving a new confirmed LMO, and the workers receiving a new work permit from CIC.

TFWs are expected to spend the majority of their time performing job duties that are consistent with the occupation specified in the LMO confirmation letter and annex.

Employers must review the wage of TFWs working in low-skilled occupations after one year of employment to ensure the correct prevailing wage is being paid.

Payroll records (e.g. wages, deductions, holiday, and vacation pay) must be consistent with federal-provincial/territorial employment standards including payment and record keeping practices.

Payments by cheque or electronic transfers provide a record to help verify that TFWs have been paid appropriately.

What if there is a problem?

We hope that this manual will help you avoid problems. We firmly believe that the first step to protecting your rights is knowing your rights! But if you do run into problems, we encourage you to reach out and seek help. The Immigrant Workers Centre is here to support workers. Get in touch!

COMING TO QUEBEC AS A TFW- IMMIGRATION ISSUES

Coming as a Temporary Foreign Worker to Quebec requires both provincial (Quebec) and Canadian approval. In order to work in Quebec, international workers must:

- 1) Get a job offer from an employer with a valid Labour Market Opinion (LMO)
- 2) Apply for a Certificate of Acceptance (CAQ) from Immigration Québec (MICC)
- 3) Apply for a Temporary Resident Visa from Citizenship & Immigration Canada (CIC)
- 4) Apply for a Work Permit from Citizenship & Immigration Canada (CIC)

How do I apply for a CAQ (Certificate of acceptance) for temporary work?

A CAQ is the provincial (MICC) decision to approve your application to work temporarily in Quebec. To get a CAQ, you must send the following documents to your employer:

- An application for Certificate of acceptance (CAQ) for temporary work
- Application fees
- Supporting documents required to process your CAQ application (a photocopy of your passport, and a copy of your latest resume that describes your work experience related to the job you are applying for in Québec.)
- Detailed information is available on the Government of Quebec website here:
<http://www.immigration-quebec.gouv.qc.ca/en/forms/search-title/dca-work.html>

If the application submitted by your employer to hire you is accepted by Quebec's Ministère de l'Immigration et des Communautés Culturelles (MICC) and Service Canada, you must then apply to the Government of Canada for a temporary resident visa and a work permit.

How do I apply for a Temporary Residence Visa?

A temporary residence visa from Citizenship and Immigration Canada (CIC) gives you the right to stay in Canada for a set amount of time. In order to apply, you must fill out the Temporary Resident Visa (see below for the link to the website) and complete the following steps:

- Submit the required documents (see document checklist online)
- Submit your CAQ Quebec's Acceptance Certificate
- Include payment for application
- Interview and medical examination before leaving your home country

Detailed information and forms can be found on the Citizenship and Immigration Canada website here: <http://www.cic.gc.ca/english/information/applications/visa.asp>
More information can be found at: <http://www.cic.gc.ca/english/visit/apply-how.asp>

You will be asked to go to the Canadian Embassy in your country of origin in order to have the visa put into your passport. You will then be able to plan your travel to Canada.

How do I apply for a work permit?

A work permit from CIC gives you permission to work for a specific Canadian employer for a specific amount of time. To apply for a work permit from outside Canada, you must complete the online application (<http://www.cic.gc.ca/english/information/applications/work.asp>) and submit the following documents together:

- Your CAQ
- A letter describing your job offer from a Canadian employer
- A copy of the employer's LMO (they must give you a copy of the LMO decision that gives them the right to hire temporary foreign workers)
- Proof of payment (fees receipt or credit card receipt) of the work permit application fee

Your work permit will be printed out by immigration officials at the border when you arrive in Canada.

More information is available on Citizenship and Immigration Canada's website here: <http://www.cic.gc.ca/english/work/apply-how.asp>.

What are the specific conditions of a work permit?

- You can only work for the employer written on the work permit
- You can only do the kind of job designated on your current work permit
- Your occupation classification (example: A, B, C) is designated by the employer, and written on your work permit. This classification is important because it indicates the level of formal training required to do your job and it has implications for your future immigration options (see below).
- Most categories of TFWs can work in Canada for a maximum of 48 cumulative months. (Workers who come to Canada in the managerial occupational category, through the North America Free Trade Agreement and other free trade agreements, and Seasonal Agricultural Workers Program are exempt from the 48-month restriction.)

Can my family join me while I'm a TFW?

- Yes. Most categories of TFWs – except for agricultural and domestic workers – can bring their families with them to Canada while they are working.

- While they are here, your family members have all the same social rights as you do, especially in terms of health care.
- Children under 18 have full access to free, public education.
- If you are on a “high skill” work permit, your spouse can also apply for an open work permit, take part-time courses or register for a French course. But, although it’s totally unfair, the spouses of Low-Skill Pilot Project workers cannot work or study without becoming TFWs or getting a study permit.

Can I renew my work permit?

Yes. You may renew your work permit with the same employer as long as the employer still has a valid LMO. The process is very much like the process for a first work permit. It is recommended that you apply for a renewal 3 months before the end of your current work permit due to processing times. Processing times are often shorter if you apply online (<http://www.cic.gc.ca/english/work/extend-stay.asp#change>)

As long as you apply to renew your work permit before the old one expires, you can continue to live and work in Canada until the answer to the new application is received.

Can I change employers?

Yes. You have the right to find a new employer who has a valid LMO and apply for a new work permit. Until you have the new work permit, you can continue to work for the old employer (as long as the permit is still valid). You cannot work for the new employer until you have the new work permit. You can apply here: (<http://www.cic.gc.ca/english/work/extend-stay.asp#change>: You are offered a different job in Canada)

What if I lose my job?

If you lose your job, your work permit becomes invalid but your temporary resident visa is still good for 3 months from your last day of work. This means you have the right to remain in Canada and, if eligible, collect employment insurance (see the discussion of EI in the Social Rights section) while you look for another LMO employer. **As long as you apply for a new work permit before the end of your 3-month limit, you can remain in Canada until you get the answer to that application.**

Could this be human trafficking?

If you have been recruited to Canada for the purposes of exploitation and are working under threat of harm to yourself or your family, this can be considered human trafficking, and the recruiter could be prosecuted. CIC can also help secure your immigration status with a special 180-day temporary resident permit (TRP), which can be renewed. If you receive a TRP you are

eligible for health-care services through the Interim Federal Health Program and may apply for an open work permit. TRP applications should be submitted in person at CIC local offices.

A criminal or immigration offence could be made out if the worker's decision to come to Canada is based on the recruiter's or agency's deception about conditions and opportunities that await the worker in Canada, or threats against the worker or his or her family if they are unable to pay back debts.

If the recruiter knowingly organized your coming into Canada by means of abduction, fraud, deception or use or threat of force or coercion, they could be prosecuted under section 118 of the *Immigration and Refugee Protection Act*.

QUEBEC LABOUR RIGHTS

Check list for this section:

Here are some key pieces of information you should have about your job:

- Is your work place unionized?
- Do you know who your union representative is?
- If you are a member of a union, do you have a copy of the collective bargaining agreement?
- Do you receive a pay stub that indicates the deductions made from your pay every pay period?
- Do you keep a personal log of your hours? Or do you punch in and punch out for work?
- Do you have a copy of your work contract?

What are the Quebec Labour Standards?

The Quebec Labour Standards are a set of rules regulating things such as:

- Your conditions at work
- Your wages and pay
- Leaves and absences
- Standards for accommodation fees
- The terms around the end of your employment (dismissal, lay-off, resignation, etc.)

These standards are administered by a provincial government commission called the **Commission des normes du travail**, more commonly known as the **CNT**. You can find more information about the Labour Standards at the CNT Website:

<http://www.cnt.gouv.qc.ca/en/home/index.html>

Who is covered under these standards?

Almost all workers in Quebec are covered. **Labour Standard coverage applies even if workers are in Canada under a temporary work permit.**

Unionized workers are governed by their collective bargaining agreement (CBA). However, their CBA may not be below the labour standards in Quebec. The Quebec Labour Standards sets the bar for “minimum” standards for both unionized and non-unionized workplaces.

The most important thing you can do in order to protect your rights is to know them! Contact organizations like the Immigrant Workers Centre to get free labour standards workshops for you and your co-workers.

You can also refer to the Website of the Commission des Normes du Travail:
<http://www.cnt.gouv.qc.ca/en/home/index.html>

Some of your minimal rights that you should absolutely know:

What about vacations and other time off

On “statutory holidays” – January 1st, June 24th, July 1st, the 1st Monday in September and December 25th, among others – you are supposed to get a paid vacation day. If you are asked to work, you should either get paid double your hourly rate or be given another paid day off.

>Each year, you have the right to paid vacation with the dates chosen by the employer. If you choose not to take the vacation or leave your job before taking it, you should get your “vacation pay”. You get 4% of your hours worked as vacation for the first 5 years (2 weeks paid vacation) and 6% (3 weeks) when you’ve worked somewhere more than 5 years.

>Employees have the right to *maternity*, *paternity* and *parental leave* when having (or adopting) a child, with the right to return to their job afterwards. For example, a pregnant woman has right to 18 continuous weeks of maternity leave and the father to 5 consecutive weeks after the birth of his child. These leaves are paid by the **Quebec Parental Insurance Plan**, not by the employer. In addition, the father and the mother are entitled, each of them, to a parental leave without pay of up to 52 weeks while keeping the right to return to their job.

>An employee has the right to 1 day with pay in the case of the *death* or *funeral* of his/her spouse, his/her child, the child of his/her spouse, his/her father or mother, or his/her brother or sister. He/she has also right to 4 more days of leave without pay in these cases.

>An employee may be absent for work for 1 day with pay for his/her *wedding* or *civil union*.

Work hours and getting paid:

>The *minimum wage rate*, as of May 1, 2013, is \$10.15 an hour. Employees receiving tips and employees of the clothing industry have different rates.

>After the first pay, pays must be issued at regular intervals up to 16 days. The employer must remit a *pay sheet* to the employee with each pay, describing the period of work corresponding to the payment, the wage rate, the number of hours paid at the regular rate, among other information.

>An employee must be paid when he/she is on the work-site waiting for work to be assigned and during *trial periods* or *trainings* required by the employer.

>After 5 consecutive hours of work, the employee has right to 30 minutes without pay for his/her meal. If he/she cannot leave the workstation, he/she must be paid for this period. They also have the right to at least 32 hours of rest in a row every week.

>A normal workweek lasts 40 hours. More than that is considered overtime. *Overtime* hours must be paid at time and a half (the hourly rate plus the 50% of that). For example, an employee who is normally paid \$12 an hour must receive \$18 an hour for overtime hours.

Losing a job:

>When an employer wants to finish the contract of an employee, he/she must give the employee a *written notice* of termination of employment, except in the case of employees with less than 3 months of uninterrupted service.

>The period between the notice and when the employee leaves varies according to the length of uninterrupted service.

>The employee has the right to a *compensatory indemnity* if his/her employer wants him/her to leave the job before. This indemnity is equal to the wages that the employee would normally have earned between the date when the notice should have been given to him/her and the date of his/her last day of actual work.

Deadlines for making Labour Standards complaints

For any complaints related to money compensation or wages owed, called pecuniary complaints, you usually have up to one year to file a complaint.

For complaints related to unjust dismissals, you have 45 days from the date of dismissal to file your complaint.

For complaints related to psychological harassment, you have 90 days from the time of the last incident to file your complaint.

Even if you are unsure if you are within the limited period to file your complaint, you should

do so anyway as soon as you can!

These are only some rights that are guaranteed by the *Commission des normes du travail*. A complete list of workplace rights can be found on the CNT website!

What do I do if my labour rights aren't being respected?

- Try to keep as much information as possible, preferably at home. Keep copies of all documents (contracts, pay sheets, etc.), maintain a record of the hours and dates you work; make a note of all employer's information and colleagues.
- Know your rights! Don't forget to check your collective bargaining agreement (CBA), if you are unionized, and ask for advice from your union. If you are not unionized look to the CNT and the rights described above.
- Talk with your employer and explain to him/her the situation. Discuss the problem with him/her and check together if labour standards are being respected.
- If he/she does not seem willing to change, send a formal letter to your employer, describing the situation and measures that could repair it. Try to be specific.
- File a complaint with the CNT. Remember that this should be done within a period of time after the problem occurred (see above for the time periods that define when you must file a complaint).

Finally, there is always strength in numbers. If your rights are being violated in your workplace, chances are that several, if not all of your co-workers, are also victims of these violations. It is important that you try to unite with as many as possible to ensure that all the workers in the workplace are protected. Collective action is almost always more effective than individual acts. And you can always come to the IWC. We will help you find answers to your questions when your rights are not respected!

CSST information – What if you get hurt or sick at work?

What is CSST?

The letters "CSST" stand for *Commission de la santé et de la sécurité du travail*, or "Workplace Health and Safety Board" in English. Most people just use the letters "CSST" no matter what language they speak.

The CSST is a Quebec government agency. The CSST has 2 jobs in Quebec: 1) to help prevent accidents and illnesses related to work, and 2) to compensate workers who are injured or get sick on the job.

The CSST works like an insurance company. Employers pay fees to the CSST for every worker they hire. If a worker has a workplace injury or illness and has to leave work temporarily, she or he can apply to the CSST for a salary replacement. Workers can also apply for money for medical expenses.

Who is covered?

Many people are protected and don't even know it! The only TFWs who are currently excluded are domestic workers. We are fighting for them to be included, but it hasn't happened yet.

The insurance coverage is automatic – you do not have to register for the CSST in most cases. Even if your employer has not been paying the CSST fees that he owes, you can still be covered in most cases.

There are some exceptions to CSST coverage, so it can be helpful to confirm this information with someone who knows your circumstances.

If you want to know if you are covered, you can contact the CSST directly at 1 866 302-CSST (2778), or call the Immigrant Workers Centre at (514) 342-2111.

How do I access it?

If a worker is injured, the first thing to do is seek medical attention. When the worker speaks with a doctor, they must state that the injury happened at work. The worker asks the doctor for a CSST claim form. A worker can also get the form from CSST directly. The worker then fills out the form and sends it to the CSST. The CSST will evaluate the information in the worker's file to see if the claim is valid.

The injured worker has the right to be paid the full day's wages for the day of the injury. The employer is responsible for paying this.

If the injured worker must be absent for more time, the employer must pay 90% of the first 14 days or partial days of the worker's salary while they are away. The employer then asks to be reimbursed by the CSST. After the first 14 days, the CSST is supposed to pay 90% of the worker's salary while they are away.

It is possible to report a workplace injury to the CSST even if the worker does not need to take time off. This can be helpful, especially in cases where an injury doesn't seem serious at first, but becomes more severe with time.

In addition to the replacement of salary, the CSST can cover medical expenses of workers who are injured or become ill on the job. For example, the CSST can pay for necessary physiotherapy.

In the tragic event of a death at work, the CSST also offers a death benefit to the immediate relatives of the deceased worker. For this reason, although it might feel strange, it is important to speak with family about your own workplace rights before going to Canada.

What happens if there is a problem (refusal, etc.)?

For a worker to be covered by CSST insurance, the injury must be a “workplace injury” under the law.

The CSST must decide whether the worker’s injury fits the legal definition before paying compensation to the worker.

Sometimes when a worker applies to the CSST, they are refused. This can happen for a number of reasons.

- The CSST might not define the injury as a workplace injury;
- The worker might have waited too long before applying for compensation (the time limit to apply is six (6) months from the date of the injury/illness, but it can be helpful to apply early);
- The CSST might decide that the worker is not really injured;
- The CSST may decide that the worker is not a “worker” within the meaning of the law.

If there is a refusal and the worker has already received salary replacement, the CSST may ask for the money back – BUT:

- If the CSST refuses compensation, this is not the end of the story!

It is possible to contest the refusal within the time limit stated on the refusal letter. The Immigrant Workers Centre works with other organisations that help people to contest CSST decisions when necessary. If you are refused CSST, you can contact an organisation for assistance with a possible contestation.

What if the employer punishes the injured worker?

It is unlawful for an employer to punish a worker for being injured or for applying for CSST compensation. If the employer fires or punishes an injured worker, the worker can file a complaint with the CSST within 30 days of the violation.

The worker's CSST file is confidential. This means that if the worker changes jobs after filing a CSST claim, the new employer will not have any right to know about the worker's CSST file. If the new employer calls the CSST to check on a job applicant's injury record, the CSST must *refuse* to give them this confidential information.

Can Temporary Foreign Workers claim CSST compensation?

Yes. Temporary foreign workers have the same right to health and safety on the job as their Canadian co-workers.

At the same time, the application process can be complicated when a temporary foreign worker is injured. For example, if the work permit is expired on the day of the injury, the CSST may refuse the first application for compensation. If this happens, a worker can contact the IWC for a referral to a specialised organization for help.

Recruitment agencies

What are recruitment agencies?

Canadian companies will often outsource the recruitment of TFWs to third-party recruitment agencies that operate beyond Canada's borders. These recruitment agencies, also known as labour brokers, employer brokers or recruiters, may be involved in the advertisement of positions, selection of new employees, provision of information or the processing of paperwork to bring TFWs to Canada.

Recruiters often take advantage of migrant workers' vulnerability and lack of information regarding their rights. Lack of regulation of recruitment agencies can create conditions for exploitation and abuse of TFWs.

Recruitment or consulting fees:

According to the terms of the Temporary Foreign Worker Program, the employer must pay for all recruitment and placement fees, as well as for part or all of their travel costs to Canada.

It is illegal for recruiters, both in Canada and in your country of origin to charge recruitment or "consulting" fees. Recruitment is a normal part of running a business, and employers should bear these costs! It is your employer's responsibility to pay recruitment agencies for their services.

Beware:

Recruitment agencies will often charge workers exorbitant fees to be placed in a job. Workers will agree to pay these fees for fear that their chance to work and stay in Canada will otherwise be jeopardized. Workers may borrow money (sometimes with loans arranged through the recruiter) or agree to cover the fees through wage reductions. As such, workers become tied to both the recruiter and the employer.

Furthermore, recruiters often charge very high fees for other services, such as obtaining an extension of a work permit, transportation, housing, and document translation or interpretation services.

Know your rights

- The recruitment agency does not have the right to directly charge you any fees to be placed in a job. **It is illegal for recruiters to charge prospective foreign workers for work placement under several provincial laws.**
- Your employer does not have the right to ask you to reimburse fees that the employer has paid to the recruitment agency.

False information

Recruitment agencies may also give false information about working in Canada. Common abusive practices include:

- Advertising for jobs that never existed, no longer exist when the worker arrives, or exist for only a short time before the worker is laid off.
- Exaggerating the amount a worker can expect to earn in Canada
- Providing incorrect information about the worker's opportunities to obtain permanent resident status once in Canada, possibilities of family reunification in Canada, workplace standards and rights, language training, or other training or upgrading opportunities.
- Providing translations of contracts that are inconsistent with the original English or French versions in describing work and other details of employment
- Recruiting workers for jobs involving unacceptable hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind

Know your rights:

- You should be informed, as far as possible in your own language, of the nature of the position offered and the applicable terms and conditions of employment.

Discrimination in recruitment

You have the right to equitable access to employment

- Recruiters should **not** draw up or publish vacancy notices or offers of employment in ways that directly or indirectly result in discrimination

Other abusive practices

It is unlawful for a recruitment agency to confiscate your passport and/or work permit.

Know your rights:

You have the right to privacy and to your own information.

- The Criminal Code outlaws the withholding or destroying of identity, immigration, or

travel documents to facilitate trafficking in persons, and carries a maximum penalty of five years' imprisonment.

What can I do if my rights have been violated?

Within Canada, if a recruiter provides false, incorrect or misleading advice regarding Canadian immigration law, or if a recruiter charges a fee to represent or advise you in an immigration matter (such as obtaining an extension on a work permit), the recruiter could be referred to the Canadian Society of Immigration Consultants, if the recruiter is a member of that organization. All those who are not (which might be expected to be the vast majority) could be reported to the appropriate provincial law society for practicing law or providing legal services without a license.

There is no set of standard rules governing recruiters across the country, because regulation of recruitment agencies is a provincial matter. Some provinces, such as Alberta or Manitoba, have laws where employment agencies (which include recruiters) must be licensed and cannot charge a fee from a person for finding them employment. However Quebec does not have any specific laws regulating recruitment agencies.

If you think you may have been a victim of an abusive practice, contact the Immigrant Workers Center.

WHAT ARE YOUR SOCIAL RIGHTS?

Health Insurance

What is it?

The Régie de l'assurance maladie du Québec (RAMQ) provides coverage for 'necessary services' administered either by a general practitioner or medical specialist.

Among the services covered are examinations, consultations, diagnostic procedures, therapeutic procedure, psychiatric treatments, surgery, radiology, and anaesthesia.

Who is eligible?

Temporary Foreign Workers are eligible for health insurance benefits if their work permit specifies that they will be working in Quebec for at least six months. Please note that workers are subject to a three-month waiting period following their registration with the RAMQ. During this time, it is your employer's responsibility to provide private health insurance coverage.

How to apply?

There are three steps involved in applying for health insurance benefits:

1) Registration Form

Applicants must complete a RAMQ registration form, which can be obtained by calling the Régie or requesting it at one of its offices.

2) Supporting Documents

Temporary Foreign Workers must include certain documents with their applications, including:

- The original version of your work permit, specifying your place of employment and your employer's name
- A proof of residence in Quebec

3) Providing a Photo

To obtain a health insurance card, applicants must submit a photo and signature. According to the RAMQ, photos must meet the following criteria:

- Colour photo against a white background, taken in the past 6 months (dated on the back with a date stamp);

- Front view, from the shoulders up (head uncovered);
- 43 mm x 54 mm (1 11/16 inches x 2 1/8 inches).

What to do if you are refused?

If you wish to contest a decision from the RAMQ, you can file for an administrative review within six months of receiving the decision.

To do so, you must first complete an “Application for Review” form, which can be downloaded from the RAMQ’s website. Be sure to include all original documents and to elaborate on the facts you want to contest. You can either mail the application in or visit a RAMQ office. The IWC can accompany you through this process.

Employment Insurance

What is it?

According to Service Canada, Employment Insurance (EI) aims to provide temporary financial assistance to those who are unemployed. In addition, workers may benefit from EI if they are pregnant, caring for a newborn or newly adopted child, attending to a gravely ill family member or recovering from an illness. Depending on your circumstances, there are several types of EI benefits:

- Regular Benefits:
 - Provide support to workers who lose their jobs due to work shortages, seasonal layoffs or mass layoffs.
- Maternity and Paternity Benefits
 - Available to workers who are pregnant, caring for a newborn, or in the process of adopting a child
- Sickness Benefits
 - Provides support to those unable to work due to illness or injury
- Compassionate Care Benefits
 - Available to workers who are caring for a very ill family member, who faces a significant risk of death.

The basic rate for calculating EI benefits is 55% of your weekly income. In 2012, the maximum amount of insurable earnings was set at \$45,900, for a maximum weekly payment of \$485.

Who is eligible?

- Like their Canadian counterparts, Temporary Foreign Workers contribute to the Employment Insurance system. As such, they may be eligible for EI Regular benefits if they have lost their job through no fault of their own and have worked the required number of insurable hours.
- If it is your first job, you must have accumulated 910 hours of work before applying for EI. Otherwise, applicants must have worked between 420 and 700 hours, depending on their place of residence and the unemployment rate in their region. In addition, applicants must be available to work and actively seeking employment.

How to apply?

Applications for Employment Insurance (EI) benefits may be completed online (at <http://www.servicecanada.gc.ca/eng/ei/application/employmentinsurance.shtml>) or submitted at your local Service Canada Center. It is advisable to apply for benefits as soon as possible after you stop working.

When filing an EI claim, quite a bit of information and supporting documents are required. The most important include:

- Your social insurance number
- Proof of your immigration status and your work permit
- Your Record of Employment (RoE)
- A list of all your employers in the last 52 months, the dates of employment and the reasons you stopped working for them.

What to do if you are refused?

If you are refused Employment Insurance benefits, it is possible appeal the decision through the Board of Referees. To file an appeal, applicants must notify their local Service Canada Center in writing within 30 days of receiving the decision. A standard appeal form can be downloaded and printed from the Service website.

The IWC can help you make this appeal.

Quebec Pension Plan

What is it?

The Quebec Pension Plan (QPP) is a public insurance system that aims to provide those who have worked in Quebec with a basic level of financial support in case of:

- 1) **retirement**
- 2) **disability or**
- 3) **death.**

Who is eligible?

- Temporary Foreign Workers contribute to the QPP pension fund like other Quebec-based workers and are entitled to receive a retirement pension under the QPP if they have contributed to it for a period of at least one year.
- Workers become eligible to receive the pension at age 65, but may also receive it between the ages of 60-64 if they have stopped working or if their salaries have been reduced by at least 20% in anticipation of their retirement.
- Pension amounts are calculated based on your income. Workers can expect to receive up to 25% of their monthly earnings, with a maximum monthly payment fixed at \$986,67 in 2012.
- Payment conditions also depend on the age at which you begin receiving your pension. You will receive a lower amount if you claim your pension before you turn 65. A retroactive amount of up to 60 months can be claimed if your payments begin after your 65th birthday.
- Please note that it is possible to claim your QPP benefits even if you no longer live in Quebec. If you worked elsewhere in Canada, the Régie des Rentes du Quebec will take into consideration your contributions to the Canada Pension Plan when calculating the amount of your pension.

How to apply?

- Applications may be filed online at:
http://www.rrq.gouv.qc.ca/en/services/services_en_ligne/regime_rentes_quebec/Pages/rente_retraite.aspx.
- Application forms may also be downloaded from the Régie des Rentes du Quebec's website and mailed in to them.

What to do if you are refused?

If you are dissatisfied with a decision rendered by the Régie des Rentes du Quebec regarding pension benefits, you can apply for an administrative review. In such instances, workers may file a request for a review up to 90 days following the decision. To apply, workers may download and submit an Application for Review form, or simply draft a letter to the Régie des Rentes du Quebec to explain their reasons for seeking a review. Here, the Régie stipulates that the worker's social insurance number and client number must be clearly marked on the application. Claims may then be mailed in.

If the Régie has failed to render a decision on your review within 90, a complaint can also be filed with the Administrative Tribunal of Quebec (TAQ) without waiting for the Régie's decision. Again, the IWC can help you with this process.

Quebec Parental Insurance Program

What is it?

The Quebec Parental Insurance Program pays benefits and provides income replacement to all workers taking maternity, paternity, or parental leave. It aims to support new parents, in reconciling work and family responsibilities.

Established in January 2006, the QPIP replaced the benefits previously accorded to Quebec-based parents under the federal Employment Insurance Scheme.

There are three types of benefits available under the program:

- Maternity Benefits
 - 18 weeks of benefits available at 70% of salary
 - Mothers are entitled to parental benefits as well.
- Paternity Benefits
 - 5 weeks of benefits available to the father (or non-birth mother) at 70% of salary.
 - Fathers can also be entitled to parental benefits.
- Parental Benefits
 - Between 7 weeks (at 70% of salary) and 25 weeks (at 55% of salary) that can be taken by one of the two parents, or shared between them

You can visit this site for more information on benefits, including a benefit calculator:

http://www.rqap.gouv.qc.ca/index_en.asp

Who is eligible?

Workers must meet the following criteria in order to be eligible for the QPIP:

- Be a resident of Quebec at the start of the benefit period (so it's important to apply before you leave Quebec)
- Have paid QPIP premiums
- Be the parent of a child born or adopted after January 1, 2006
- Have either stopped working or experienced a reduction of at least 40% in your salary
- Have earned at least \$2,000 in insurable income during the qualifying period, regardless of the number of hours worked

How to apply?

Before you begin the application process, please note that:

- Each parent needs to fill out an application form

- Supporting documents (record of employment, social insurance number, etc) must be submitted. More information available at:
http://www.rqap.gouv.qc.ca/travailleur_salarie/demarche/renseignements_en.asp
- You can file your application the day you stop working, or as of the day when your normal wages are reduced by 40% due to your upcoming parental leave.
- Delaying your application after your income ends may result in your losing some benefits.

There are two ways to apply for QPIP benefits:

- 1) Online services section of the QPIP website (located at:
http://www.rqap.gouv.qc.ca/services_en_ligne/faire_demande_prestations_en.asp)
. Please note that when your application is filed, you will automatically receive a confirmation number
- 2) Contacting the Centre de Services à la Clientele at 1 888 610-7727. Once your application is completed, they will mail you a copy to sign and return to them.

What to do if you are refused?

Decisions about your application for QPIP benefits may be contested by filing an application for review. There are two ways to file an application for review:

- 1) Through the Online Services section of the QPIP website
- 2) By downloading an application form and returning by mail.

Family Benefits and Services

Programs for Spouses

- Not only are spouses of temporary foreign workers permitted to travel to accompany them to Canada, but they also may benefit from several programs and services:
 - Spouses and dependent children of temporary foreign workers are eligible for health insurance coverage under the RAMQ
 - Spouses of some (“high skilled”) temporary foreign workers may also obtain work permits. The application for the permit may be filed at the same time as the temporary foreign worker’s application
 - They may also enrol in part-time studies. To do so, they must obtain a CAQ- or Quebec Acceptance Certificate- as well as a study permit from the federal government.

- According to the MICC website, spouses of temporary foreign workers may also attend French classes reserved specially for them.

Access to Education

- The children of temporary foreign workers are entitled to attend classes in the kindergarten, primary, and secondary school system for free.
- In addition, temporary foreign workers may choose the language of instruction for their children.

In order to register children for classes at the kindergarten, primary or secondary level, the parents simply contact their neighbourhood school. They will be asked to provide a birth certificate, proof of the parent's TFW status and a proof of address (ex. utility bill).

What to do if you are refused?

If you can produce the documents above, it is very rare to be refused. But if a local school refuses you, you can go directly to the School Board or contact the IWC for help.

STAYING IN QUEBEC PERMANENTLY

For workers with high skill classification (O, A, B), Quebec and Canada provides a fast track to permanent residency. For workers whose jobs are classified as lower skill, it is much more difficult. There are 3 main ways that TFWs can remain in Quebec (or Canada) permanently:

- The Quebec Experience Class
- The Canadian Experience Class
- The regular Skilled Worker Class

What are the benefits of permanent residency?

- You can receive all the social benefits that citizens receive
- You have the opportunity to live, work, or study anywhere in Canada
- You may apply for Canadian citizenship
- You may have the opportunity to sponsor your parents

The following information was found online at:

<http://www.immigration-quebec.gouv.qc.ca>

<http://www.cic.gc.ca> (Citizenship and Immigration Canada)

A questionnaire to determine the best option for immigration may be found here:

<http://www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/temporary-workers/stay-quebec/application-csq/self-assessment-questionnaire.html>.

Quebec Experience Program

Step 1: Check your eligibility for the Quebec Experience Programme:

- (applies to occupations O, A, B: Occupations which usually require college education or apprenticeship training, for example: construction, technician)

At the time of submitting your application, you must:

- be at least 18 years old
- be present in Québec as a temporary worker and hold legal status as a temporary resident

- hold a job (managerial, professional or technical level - skill level higher than “C” - min. 30 hours per week) eligible under the PEQ and have held one or more jobs of the same nature for at least 12 of the past 24 months
- have an intermediate level knowledge of oral French
- be able to provide for yourself and your spouse and/or your dependent children for a minimum of three months.

Step 2: Applying for a Certificat de Sélection du Québec (CSQ) under the Quebec experience program (Programme de l’expérience québécoise, PEQ)

- You may submit an application under the PEQ once you have completed at least 12 months of full-time *skilled* work. The 12 months of work must have been within the last 24 months (but may be with one or several employers). You may have periods of not working in between your 12 months of work (it does not need to be 12 continual months).
- When you submit your application, you must currently be employed as a full-time skilled worker in Quebec.
- Application forms available at: <http://www.immigration-quebec.gouv.qc.ca/en/forms/search-title/dcs-workers-peq.html>
- Fees for application range from \$750 and above (depending on number of children and spouse)

The PEQ does not use a system of points (like the regular selection program). Therefore, if you meet the requirements of a PEQ and have obtained a CSQ you will receive permanent residency.

Step 3: Applying for Permanent Residence with a CSQ

Once you have received your CSQ from Immigration Quebec (MICC), you must take the final step of applying to Citizenship and Immigration Canada (CIC) to have your Permanent Residency approved by Canada. Canada is responsible for medical and security checks. Nevertheless, you have to resubmit many of the same documents you had to give for the PEQ:

<http://www.cic.gc.ca/english/information/applications/skilled.asp>

It is very rare for someone to be refused by CIC if they have been given a CSQ by Quebec, but it takes some time before getting an answer.

What about the Canadian Experience Class (CEC)?

Applications for Permanent Residence under the Canadian Experience Class can be submitted by temporary foreign workers who do not speak French or who do not intend to reside in Quebec.

All applicants must have:

- Temporary resident status during their period of work experience and/or any period of full-time study or training in Canada.
- Work experience in occupations that meet the minimum requirements for workers with Skill Type 0, or Skill Level A or B of the National Occupation Classification (NOC), (managerial, professional, skilled trade or technical occupation.)
- Must have the qualifying work and study experience needed at the time the application is made
- Knowledge of English or French (speaking, reading, listening and writing),
- Not engaged in work or attended school without authorization.
- Not remained in Canada after the time authorized to do so has expired.
- Not been found inadmissible to Canada due to health or security.
- Have 24 months of work experience within the last 36 months

How do I apply for CEC?

- Submit language test results from a designated testing agency
English- IELTS: International English Language Testing System (General Training test only)
French- TEF: Test d'évaluation de français
A list of designated testing agencies can be found at:
www.cic.gc.ca/english/immigrate/cec/language-testing.asp
- Gather the necessary documents which can be found in the Document Checklist
- Complete and submit your application
- Pay fees, fill out the application forms and mail your completed package
- You and your family members, whether accompanying you or not, must undergo and pass a medical examination in order to come to Canada.
- More information, a guide to filling out applications, and required forms and document list found at: <http://www.cic.gc.ca/english/information/applications/cec.asp>

Federal Skilled Worker immigration program

These programs can be an option for TFWs who:

- o Aren't eligible for Quebec or Canadian Experience programmes because they hold supposedly "low-skill" jobs (NOC C,D)
- o But have language skills, college or university education and/or have professional work experience in their countries of origin

Both Quebec and Canada select immigrants by giving points for the following criteria:

- training and education (college or above)
- work experience
- age
- knowledge of French or English
- family relationship with a Canadian citizen or permanent resident
- financial independence
- adaptability
- the characteristics of your spouse (if accompanying you)

It is to your advantage to apply to Quebec if you speak French and intend to live in Quebec. It is also helpful to have family or ties in Quebec:

<http://www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/permanent-workers/index.html>

If you don't speak French, especially if you plan to leave Quebec, it can be to your advantage to apply directly to Citizenship and Immigration Canada:

<http://www.cic.gc.ca/english/immigrate/skilled/index.asp>

or, if you have a skilled trade: <http://www.cic.gc.ca/english/immigrate/trades/index.asp>

Alternative routes to Permanent Residency

TFWs may sometimes fall into other situations that might make them eligible for these programs:

Family Sponsorship

If you have a spouse who is a Canadian Citizen or Permanent Resident – and you are married or have lived together for a minimum of one year – your spouse can sponsor you for immigration:

<http://www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/sponsors-sponsored/index.html>

Refugee Claims

If you fear returning to your country of origin because of persecution based on factors such as your race, religion, gender, sexual orientation, political beliefs or membership in a particular social group, you can apply for refugee status. The system has recently been reformed and it is a difficult but not impossible process:

<http://www.cic.gc.ca/english/refugees/index.asp>

If you have questions about your immigration options, you can always consult the IWC.

CONCLUSION: DEFENDING THE RIGHTS OF TFW WORKERS

Although the TFWP was originally created to address short term labour shortages in specific occupations, the use of temporary foreign workers is increasing dramatically in Canada both in terms of numbers of workers and the sectors they are working in. Between 2007—2011 29% of net new jobs were filled by temporary foreign workers.⁴

Unfortunately, the TFWP operates more like a 'guest worker' program, too often leading to exploitation of workers.⁵ There are many documented cases of TFWs being subjected to discriminatory practices:

- forced to pay high fees to recruitment agencies
- having their passport held by their employer
- forced to work under dangerous and/or illegal conditions
- forced to work in a different job than contracted
- unpaid overtime,
- unjust dismissal,
- lack of access to settlement and social services in all but one province in Canada

In Québec, the Commission des Droits de la Personne et Droits de la Jeunesse/the Quebec Commission for Human Rights and Youth Rights recently issued a scathing report⁶ on the TFWP, denouncing the many ways that the program allows for the violation of workers' rights.

Further, a review of the TFWP by the Auditor General of Canada in 2009⁷ pointed to serious concerns with the lack of monitoring of employers and the vulnerability of workers. In particular, it noted that there existed no mechanism to impose sanctions upon employers who failed to respect workplace rights or uphold their responsibilities under the program.

Clearly, neither the federal or provincial governments are going far enough to protect TFWs Canada's lack of political will in establishing and enforcing just conditions for the recruitment

⁴ Jim Stanford (May 9, 2012) *Temporary foreign workers and the labour market* at <http://rabble.ca/columnists/2012/05/temporary-foreign-workers-and-labour-market#.UFfoORx1Rwc>

⁵ CLC 2011, p. 23.

⁶ http://www.cdpcj.qc.ca/publications/Documents/Opinion_migrant_workers_summary.pdf

⁷ http://www.oag-bvg.gc.ca/internet/docs/parl_oag_200911_02_e.pdf

and integration of TFWs is reflected in that Canada has failed to ratify every major convention of the International Labour Organization on migrant workers.

A better future

The Immigrant Workers' Centre advocates for changes to the TFWP [or the replacement of the program with an immigration mechanism?] to ensure that workers who come from other countries to work in Canada are treated fairly and justly, and have a path to permanent residency. The IWC demands that:

- All temporary foreign workers (TFWs) have the basic right to unionize.
- All workers may be able to file with CSST, CNT and all other labour rights processes, regardless of status, and without fear of retaliation.
- Recruitment agencies do not charge TFWs fees relating to airfare, job placement, or the employer's processing fees.
- Wage parity be granted for TFWs both within and among workplaces.
- That on-call hours be recognized for TFWs that live on their employer's premises (ex. LCP workers).
- Access to Economic Immigration and the Quebec Experience Class for all occupational skill levels.
- Access to immigrant settlement services, including French classes, for all TFWs.

Get involved!

The Immigrant Workers' Centre is organizing with Temporary Foreign Workers and other Canadian workers to fight for immigration and labour rights. If you're interested, get in touch!

The Temporary Foreign Workers Association...

Founded on November 23rd, 2013

IMMIGRANT WORKERS CENTER

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