

Canada's Open Work Permit for Vulnerable Workers Policy

Subjects: Law

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In June 2019, the Government of Canada implemented the Open work permit for vulnerable workers (OWP-V) policy, authorizing immigration officers to issue open work permits to migrant workers on employer-specific work permits if they demonstrate reasonable grounds to believe that they are experiencing abuse or are at risk of abuse in their workplace. Drawing on research conducted by a community organization on the impact of the policy, the policy's potential to remedy the problematic effects of the employer-specific work permit and whether it has been implemented efficiently are examined here. The research concludes that the OWP-V policy cannot be expected to counteract the high risk of abuse imposed on workers through the employer-specific work permit. Numerous barriers were identified that make it difficult for migrant workers to apply for the permit. The small number of OWP-V permits issued in proportion to the number of employers authorized to hire migrant workers makes it unlikely that the policy will significantly impact employers' propensity to comply with the program conditions.

Keywords: migrant workers ; labour mobility ; vulnerability ; employer-specific work permit

1. Introduction

The number of migrant workers admitted into Canada has expanded rapidly in recent years, with many sectors relying on them as a source of permanent labour supply (Lu 2020; Zhang et al. 2021; Foster 2012, p. 19; Falconer 2020). Workers coming through the “low-wage” stream are issued work permits that are systematically linked to a specific employer and occupation and require employer endorsement to be renewed. These work permits make it difficult to change jobs, producing a power imbalance that favours employers and results in workers having to remain in abuse situations (Regulations Amending the Immigration and Refugee Protection Regulations, SOR/2019-148). In 2019, in an attempt to temper the adverse effects of the employer-specific work permit, the federal government implemented the *Open work permit for vulnerable workers* policy (OWP-V), which provides immigration officers with the authority to issue an open work permit to a migrant worker with an employer-specific work permit who can demonstrate that they are experiencing abuse or are at risk of abuse by their employer.

The purpose of the OWP-V policy is to mitigate the conditions created by the employer-specific work permit. Employer-specific work permits have the effect of restricting workers' ability to freely change employers by requiring workers to obtain a new work permit for each new employer and prohibiting them from earning a livelihood while they wait for the new work permit to be delivered. The procedure is lengthy and fraught with uncertainty. Workers who quit or are fired may fail to find another employer—sponsor to access a new work permit in time (before the expiration of their resident status). Additionally, there is no guarantee that such an employer will be granted by the government the validation necessary to sponsor and employ the worker. Even when successful, it takes many months to complete, during which time workers have no choice but to work without authorization to support themselves while they wait for the new permit to be issued, which exposes them to further risks of abuse and labour trafficking (Beatson et al. 2017, p. 154). In this context, to avoid jeopardizing their precarious right to work in the country, migrant workers systematically endure abuse and refrain from quitting or taking any step that could result in being fired—such as reporting abusive employers (Hastie 2017, pp. 33–34) or participating in state inspections of their employers' practices (Regulations Amending the Immigration and Refugee Protection Regulations, SOR/2019-148). The OWP-V policy is supposed to address these problems by allowing workers who are experiencing abuse to maintain their right to earn a livelihood through the streamlined and rapid issuance (five business days for processing) of work authorization for any employer (subject to the general restrictions imposed on all work permits—Immigration and Refugee Protection Regulations, s 183).

Abuse, for the policy, is defined in section 196.2 of the Immigration and Refugee Protection Regulations and covers four types of abuse: physical, sexual, psychological, and financial. As such, the term “vulnerable” in the context of the OWP-V

policy refers to migrant workers who have experienced or are at risk of experiencing at least one of the four types of abuse listed in section 196.2. This is a misnomer to a certain extent. It implies that the vulnerability of the workers eligible for the permit arises from an experience with a specific employer rather than the employer-tying measures that place these workers at a high risk of abuse upon their arrival in Canada. By defining only workers that can provide sufficient evidence of abuse as vulnerable and deserving of protection, the policy disregards and obscures the state-imposed structural vulnerability of all employer-tied migrant workers in Canada.

To be eligible for an OWP-V permit, a worker must hold a valid employer-specific work permit or have applied for a renewal of their employer-specific work permit (implied status). Workers apply by filling out an online application and uploading a letter of explanation detailing the abuse and any supporting evidence. When assessing the application, officers can require that the worker attend an in-person or telephone interview with the immigration officer responsible for their application. The officer must have reasonable grounds to believe that the worker is experiencing or is at risk of experiencing abuse in the context of their employment in Canada.

The OWP-V permit is designed as a transitional measure. It is generally not renewable unless the worker meets the particular criteria established by the operational guidelines (to the best of researchers' knowledge, no renewal has ever been granted). To remain in Canada after its expiration, workers must find an employer with a valid Labour Market Impact Assessment (LMIA) and apply for another employer-specific work permit.

2. Canada's Open Work Permit for Vulnerable Workers Policy

Migrant workers admitted into Canada through the country's temporary labour migration programs are guaranteed the same protections and formal rights as Canadian workers. However, the research and literature have extensively documented how the legal structures of these programs produce conditions of "unfreedom" for workers, undermine their capacity to assert rights, and facilitate the mistreatment and abuse of these workers by employers and recruiters ([Hastie 2015](#); [Depatie-Pelletier 2018](#); [Strauss and McGrath 2017](#); [Faraday 2012](#); [Vosko et al. 2019](#); [Beatson et al. 2017](#); [Dumont-Robillard 2019](#)). The federal Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities has recognized the negative impact of employer-specific work permits on the physical and mental wellbeing of migrant workers and recommended that the federal government "take immediate steps to eliminate the requirement for an employer-specific work permit" ([Canada Parliament 2016, p. 31](#)). The federal government has acknowledged that the employer-specific work permit "can create some conditions under which risk of abuse could be higher" (Regulations Amending the Immigration and Refugee Protection Regulations, SOR/2019-148).

However, [Marsden \(2019\)](#) notes that while policy discourse for the last decade is "replete with the language of "rights" and "protection," for migrant workers", the federal government has failed to undertake reforms that would address the structural conditions that produce migrant workers' increased vulnerability to rights' violations and abuse (p. 155). Instead, the government has preferred an approach that focuses on rights and enforcement ([Marsden 2019, p. 161](#)). Enforcement and inspection powers were expanded in 2015, and immigration regulations were amended to require employers to comply with the applicable federal and provincial laws that regulate employment and recruitment, as well as make reasonable efforts to provide a workplace free of abuse ([Tucker et al. 2020, p. 8](#)). The 2018 federal budget saw increased funding for compliance and employer inspections ([Marsden 2019, pp. 154–55](#)). Measures intended to increase migrant workers' knowledge of their rights in Canada have been undertaken and resources allocated to a network of migrant worker support organizations ([Marsden 2019, p. 155](#)). The OWP-V policy was implemented in this context, as part of the "Government of Canada's ongoing commitment to migrant worker protection" (Regulations Amending the Immigration and Refugee Protection Regulations, SOR/2019-148).

The measures implemented by the government do reflect recommendations supported by migrant rights organizations and researchers ([Canadian Council for Refugees 2016](#); [Foster and Luciano 2020, pp. 50–52](#)). However, in the absence of reforms to the laws and policies that produce migrant worker "unfreedom", the literature is critical of the capacity of these measures to improve material conditions for workers. An evaluation of the federal inspection and enforcement system by [Tucker et al. \(2020\)](#) finds that the new system to protect migrant workers from rights violations is inefficient (p. 26). Federal investigators cannot independently determine whether a violation of the applicable protective employment laws has occurred but must rely on a finding of non-compliance by the federal/provincial/territorial authority responsible for the law's enforcement (*ibid.*, p. 14). No matter the non-compliance recognition process, the legal structures that discourage migrant workers from complaining in case of employer abuse have remained largely intact and the federal enforcement system is structurally dependent in part on worker testimony, the researchers conclude that the new system "does not increase the likelihood that violators will be detected" (*ibid.*). Regarding the measures designed to increase migrant workers' knowledge of their legal rights and support them in the exercise of these rights, [Hastie \(2017\)](#) presents

compelling arguments on why such measures are likely to have a limited impact when the structural conditions that prevent migrant workers from exercising or enforcing their rights remain in place. Similarly, Marsden (2019) contends that the approaches focused on legal rights education will be ineffective at delivering large-scale change if the immigration laws and policies that produce migrant workers' vulnerability remain unchallenged (pp. 173–74).

As far as this recent OWP-V policy is concerned, there does not seem to be any academic literature yet on the subject, but two community organizations felt compelled to analyze its impact on the ground (Migrant Worker Centre & The Law Foundation of British Columbia 2022; Association for the Rights of Household and Farm Workers 2021). However, parallels can be drawn between the OWP-V policy and the Temporary Resident Permit for Victims of Human Trafficking (VTIP TRP). Introduced in 2006, the VTIP TRP is supposed to “provide protection to vulnerable foreign nationals who are victims of human trafficking, by regularizing their status in Canada” (Brown 2007). The directives establishing the VTIP TRP allow an immigration officer to issue a short-term temporary residence permit if they determine that the applicant is a victim of trafficking, and the regularization of status is warranted. Studies on this policy have found many issues with the implementation of the VTIP TRP, issues that have the potential to be reproduced in the context of the OWP-V policy. Ricard-Guay and Hanley (2014) report that the application process was considered intrusive, fraught with uncertainty, and difficult to access in practice (pp. 81–83). Other shortcomings include inconsistency in decision-making, significant delays in processing, a discrepancy between how immigration officers and communities define and identify situations of trafficking, as well as a risk of deportation for survivors that come forward but are not issued a VTIP TRP (Canadian Council for Refugees 2013).

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