

Submission to the Standing Committee on Finance and Economic
Affairs Review of Bill 79: *Working for Workers Act, 2023*

**By: Migrant Workers Alliance for Change, Workers' Action Centre and Parkdale
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Submission to the Standing Committee on Finance and Economic Affairs Review of Bill 79: Working for Workers Act, 2023

Our organisations work primarily with low wage and precarious workers and migrants. As such, our submissions will only address Schedule 1 of Bill 79 dealing with changes to the *Employment Protections for Foreign Nationals Act, 2009 (EPFNA)*.

1. Expand the scope of *EPFNA* so the *Act* applies to all migrant workers in Ontario

Minister McNaughton introduced the *Working for Workers Act, 2023*, saying that it would strengthen protections for foreign workers. Unfortunately, Bill 79, as currently drafted, will not benefit most migrant workers facing exorbitant recruitment fees and labour exploitation.

Minister McNaughton highlighted during his [press conference](#) on March 20, 2023 that the provisions of Bill 79, should they be passed, would have helped the 64 migrant workers found during so-called “Project Norte” in which police and the Canadian Border Services Agency raided properties on February 8, 2023. These migrants worked long gruelling hours for less than minimum wage and lived under inhumane conditions. Bill 79 would not have helped these workers. Further, the Minister projects that recruiters and employers of these workers would have been liable for up to \$6.4 million in fines had the Act been in place. This too, is not the case.

If passed, Bill 79 will increase existing penalties under the *Employment Protections for Foreign Nationals Act (EPFNA)* for employers and recruiters who withhold a foreign national’s passport or work permit. If convicted, individuals would be liable for a fine of up to \$500,000 and up to 12 months in prison. Corporations would be liable to a fine of up to \$1 million.

EPFNA only applies to foreign nationals who have valid work permits, or are in the process of applying for a work permit.¹ Many migrant workers fall outside of this narrow application.

For example, recruiters often bring migrant workers to Ontario on visitor permits. This was the case for the 64 migrant workers who were “rescued” under Project Norte. Because they came under visitor permits, the *EPFNA* does not apply to them. There are many migrants that fall out of status and immigration pathways that are vulnerable to illegal fees and labour exploitation that are not protected by *EPFNA*.

Similarly, *EPFNA* only applies to employers of a foreign national in an immigration or foreign temporary employee program. So again, *EPFNA* does not apply to the employers of the 64 migrant workers that were “rescued” from employers. These employers would not be liable to fines under *EPFNA* as the Minister was misleadingly claiming.

¹ *Employment Protection for Foreign Nationals Act*, s. 3.

The application of *EPFNA* should be expanded so that migrants who face illegal fees, seizure of their passports and exploitative work conditions can be protected.

Recommendation:

Strike the limits placed on the definition of a “foreign national” found in section 3(1) 1 and 3(1)2 that define a foreign national as being “pursuant to an immigration or foreign temporary employee program”.

2. Deter further violations of *EPFNA* by increasing the fines for other offences, not just passport seizures

Bill 79 only proposes to apply enhanced fines to employers and recruiters that withhold passports and work permits. The Bill fails to establish higher fines on illegal fees which are much more common practices than withholding passports. Indeed, the migrant workers that we supported who had worked under Project Norte employers did not have their passports withheld. Rather, they paid recruitment fees of \$3,000 each.

Our organisations work with hundreds of workers who have been charged illegal fees up to \$10,000. While illegal recruitment fees are expensive for minimum wage earners in Canada, they are even more so for workers coming from impoverished countries in the Global South. In many cases, recruiters want all or part of the fees up front. When you convert that fee into a workers’ home currency, the challenge is clear. These fees can represent between six months to two years’ earnings in a worker’s home currency. To pay these fees, entire families can go into debt. With families back home in debt, migrant workers are afraid to complain about exploitation by recruiters and employers.

Recommendation:

Amend Schedule 1 of Bill 79 to apply to all offences under *EPFNA*.

3. Implement the Recruiter Licensing Regime promised in the *Working for Workers Act, 2021*

Migrants must overcome the threats of deportation, burden of family debt, language barriers, and long hours of work in order to learn about their rights under *EPFNA* and the *Employment Standards Act*. Then they must navigate online English claims application forms. Migrant workers have to gather the evidence to prove that they were exploited. This is difficult to do as agents and employers do not issue receipts when they withhold passports or work permits. Workers are in constant fear of employer retaliation. It is little surprise that few workers come forward to make claims of withheld documents and illegal fees.

Even when workers do come forward and are successful in their claim under *EPFNA*, fines and penalties are effectively not levied against recruiters and employers found in violation of the Act.

Between 2009 and 2017, only two employers were given a fine of \$250 out of 35 employers found in violation of *EPFNA*.² Similarly, under the *ESA*, prosecutions of employers in violation of the Act went from 79 in 2017-18 to 12 in 2021-22.³

This is why we supported the licensing regime for recruiters of migrant workers and temporary help agencies in Bill 27: *Working for Workers Act, 2021*. The licensing regime requires recruiters to be licensed and for employers to use licensed recruiters. Recruiters who are found to have charged illegal fees would lose or be denied a license to operate. While this Act was passed in December, 2021, the new licensing provisions under section 74.1 of the *Employment Standards Act (ESA)* have yet to be brought into effect.

Finally, the as-yet instituted recruiter and temporary help agency licensing regime (section 74.1 of the *ESA*) says that the Director of Employment Standards shall refuse to issue a license if an applicant has not complied with *EPFNA*, including charging illegal recruitment fees. However, because *EPFNA* does not apply to undocumented migrant workers, a recruiter can still charge such workers exorbitant fees or take their passport without technically violating *EPFNA*. This means they would then not be barred from receiving a license to continue acting as a recruiter. That's a serious loophole and it undermines the licensing system, and underscores the importance of implementing our first recommendation: expanding the scope of *EPFNA*.

Recommendation:

Bring section 74.1 of the *ESA* (Licencing) into effect immediately.

(See our [previous submissions](#) on Bill 27, *Working for Workers Act, 2021*, which detail how the licensing regime should be strengthened to hold both employers and recruiters accountable.)

4. Increase the proactive enforcement of both *EPFNA* and the *ESA*

Given the significant barriers that migrant workers face, a complaints-based approach to minimum standards compliance cannot effectively address the systemic mistreatment and wage theft that we know workers face.

The common practice of charging illegal recruitment fees is due, in part, to how the *EPFNA* is enforced. The [Caregivers Action Centre](#) surveyed its members in 2014 and found that two-thirds of caregivers surveyed paid recruitment fees averaging \$3,275 – this was five years after *EPFNA* came into effect. In our experience, this is still the reality today. In the absence of strong proactive enforcement, workers can only recover illegal fees by making an individual complaint at the Ministry of Labour, Immigration, Training and Skills Development. Making successful complaints for illegal fees or seized passports (or under labour laws in general) is very difficult. Between 2009 and 2017, claims for illegal fees and withheld passports were denied in 24% of cases and migrant workers fell outside of the scope of *EPFNA* in 24% of cases.⁴

² Ministry of Labour Freedom of Information Request 2017-00644

³ Ministry of Labour, Immigration, Training and Skills Development 2022-1074

⁴ Ministry of Labour Freedom of Information Request 2017-00644

A more effective strategy of enforcement is through proactive inspections of recruiters and employers of migrant workers. Proactive inspections are supposed to be conducted by the Employment Standards Officer in a manner that protects the identities of individual workers that may have made a complaint. Unfortunately, under the current government, proactive inspections have declined from almost 3,000 in 2017 to 224 in 2021.⁵

Recommendation:

Commit to proactive inspections of recruitment agencies and employers of migrant workers. This will be made easier once the licensing regime is brought into effect as the Ministry will then have the names and locations of licenced recruiters.

5. Amplify the deterrent effect of the *EPFNA* changes proposed in *Bill 79* by publicising cases

We know from the hundreds of workers we speak to each month that potential violations of *EPFNA* and the *ESA* are not hard to find. However, the deterrence effect of the fines proposed in *Bill 79* will be negligible if the fines are not actually levied against anyone.

If the Ministry of Labour, Immigration, Training and Skills Development were to commit to actually using the punitive measures proposed in *Bill 79*, as well as publicizing anytime an *EPFNA* prosecution occurs, it would send a clear message to employers and recruiters that the mistreatment of migrant workers comes with serious negative consequences in this province.

The Ministry already publicizes prosecutions under the *Employment Standards Act*. Given that the *ESA* and *EPFNA* are complimentary pieces of legislation and part of the same minimum standards regime, prosecutions under *EPFNA* should also be published.

Recommendation:

Commit to actually use fines set out in *Bill 79* and publish the cases in which they are used.

⁵ Ministry of Labour, Immigration, Training and Skills Development 2022-1074