

SEIU SUBMISSION ON THE IMPLEMENTATION OF THE TEMPORARY FOREIGN WORKER PROTECTION ACT



October 2019

Dear Minister Bains,

SEIU Local 2 is writing to provide submissions on the implementation of the Temporary Foreign Worker Protection Act ("TFWPA"). Firstly, I would like to thank the government for passing this legislation as it represents an important step in protecting some of the most vulnerable British Columbians.

SEIU has experience with temporary foreign workers through our Justice for Janitors campaign. SEIU's Justice for Janitors is a movement of workers that has successfully organized to improve wages, benefits and job security for thousands of janitors across Canada. The janitorial industry is driven by short term contracts where companies compete to displace one another by cutting costs. This competitive bidding structure has put workers, most of whom are women and newcomers to Canada, in highly precarious positions. Part of the precariousness of this industry is the widespread use of the Temporary Foreign Worker Program by contract service providers, which is being used to gain a competitive edge over their competition. The Justice for Janitors campaign seeks to address these insecurities by organizing and empowering janitors so they can fight to raise standards in the janitorial industry.

SEIU, through our organizing campaign, has recent experience with temporary foreign workers that have been mistreated at the hands of their employer. In our current campaign with a large national janitorial contractor, we are encountering workers on Labour Market Impact Assessment (LMIA) work permits. These closed work permits place workers in a vulnerable position where they are very dependent on their specific employer for the continuing ability to work and live in Canada. One worker we recently encountered reported being forced to work many hours of unpaid overtime, multiple

incidents of verbal abuse and at least one threat of physical harm, and frequent threats of having his LMIA revoked and subsequently having to leave Canada. This worker reported obtaining employment with his employer through a consultancy agency that is affiliated with his employer. He reported paying \$15,000 cash for what appears to be the right to work for his employer. He was provided no accounting for what his \$15,000 was for. This worker reported that he understood that his payment and subsequent work with this janitorial contractor was his only way to eventually gain permanent residency status in Canada. The conduct of the consultancy agency is contrary to section 10 of the Employment Standards Act and sections 20 and 21 of the TFWPA (not yet in force).

Through helping this worker navigate the immigration system and the complaint process through the Employment Standards Branch, it has become clear to SEIU that temporary foreign workers face many obstacles in reporting and escaping illegal and abusive work situations. The vast majority of temporary foreign workers have limited English skills, limited knowledge of their rights and have an incredible amount of fear of not being forced to leave Canada if they lose their job. For this reason, the process and method for making a complaint under section 33 of the TFWPA should be made as accessible and barrier-free as possible. Further, if a complainant requests to remain confidential (section 34), they should remain confidential in every instance where it is possible to do so.

Our overriding submission is that the sections relating to prohibited practices and enforcement be implemented as soon as possible and that the penalties be strict for individuals and companies that violate the TFWPA. We submit that sections 10 to 15, 20, and 21 be implemented in the very near future. We also submit that both the fines

(and potential prison terms) stipulated in section 80 and 81 be applied much closer to maximum stipulated in most cases.

Importantly we also submit, that the sections relating to the issuance and renewal of licences for individual recruiters (6 and 7) and the issuance and renewal of certificates for employers that recruit temporary foreign workers (12 and 13) be implemented such that there are significant consequences for contravening the TFWPA. We submit that where an individual or employer has been shown to contravene any part of the TFWPA, their licence or registration should be cancelled or refused to be issued for a lengthy period. Where an individual or employer has been shown to commit an offence under the TFWPA (particularly under section 20 and 21), we submit that the penalty should be a lifetime/indefinite refusal of the granting of a licence or certificate. We submit that strict penalties are appropriate given the difficulty temporary foreign workers face in coming forward, due to their vulnerable position, and proving their claims against recruiters and employers. One can fairly assume that one proven offence under the TFWPA most likely means that the recruiter or employer in question has committed multiple unreported offences.

Finally, we have some procedural concerns regarding section 37 which states that the director is not required to hold an oral hearing for any complaint against an individual or company. If an individual or company, has knowingly violated the TFWPA it is unlikely that they will have possession of or voluntarily produce incriminating documents through requests, nor will they voluntarily disclose their violations through informal questioning. A determination of credibility under oath through direct and cross examination at an oral hearing may be the only way in many cases to effectively assess whether a violation occurred.

Sincerely,



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