

Bulletin: Migrant Agricultural Workers challenge unjust denial of Employment Insurance benefits

On October 16, 2013, the Income Security Advocacy Centre and Niagara North Community Legal Assistance will be arguing before the Federal Court of Appeal in Toronto that over one hundred seasonal agricultural workers were wrongly denied Employment Insurance parental benefits. Their cases reflect the continuing erosion of Canada's social safety net.

The erosion of social insurance to protect against unemployment

Employment Insurance (EI) is a social insurance program. All workers and employers pay into the program with each paycheque. The fund that results gives workers the security of an income to fall back on if they become unemployed or take parental leave, which ensures broader economic and social stability for all.

But for most workers, that security is now gone. The current labour market increasingly supplies part-time and temporary jobs that do not permit workers to accumulate the hours they need to qualify for EI. As a result, only 40% of Canada's unemployed received EI benefits – a historical low. Recent changes to the program will only make the situation worse, with some categories of workers being forced to take any available job at reduced rates of pay. Seasonal workers will be particularly hard hit.

While access to EI has been gutted, the program itself has been generating healthy surpluses. Instead of investing that money in Canada's social safety net, the government has used the contributions made by workers and employers for other purposes. It is expected that this year's surplus will be as high as \$9.2 billion. Unemployed workers are being made to do without, while the program that's intended to protect us all brings in more money than it can use.

Excluding marginalized workers from EI – the case of Seasonal Agricultural Workers

Migrant workers such as seasonal agricultural workers can expect even less from EI than other Canadian workers.

The Seasonal Agricultural Workers Program (SAWP) was created in 1966. Since that time, workers from the Caribbean and Mexico have been coming to Canada to plant and harvest the food that Canadians need. Many seasonal agricultural workers have been working in Canada for decades, and spend more of their life in Canada than they do in their home countries. They are an essential part of Canada's work force. But the contracts they must sign result in them being unemployed for 4-6 months out of every year.

Like other Canadian workers, these workers make contributions to EI with every paycheque and they have paid tens of millions of dollars into the EI fund. However, because they are required to leave the country at the end of their work contract each year, they cannot qualify for most EI benefits. To qualify for regular EI benefits, workers generally have to be living in Canada during the period of their unemployment in order to be "ready and available" for work.

“Special benefits”, like maternal, parental and compassionate benefits, are the only exceptions. Parents caring for newborn children do not have to be in Canada to be eligible for EI parental benefits, as they are not expected to be “ready and available” for work. Seasonal agricultural workers who returned to their home countries at the end of their contracts and were caring for newborn children were eligible for parental benefits.

This was not known until around 2002 due to the numerous barriers that prevent these vulnerable workers from accessing EI: they work in rural and remote locations; they work long hours with difficult working and living conditions; they are under constant threat of deportation if they try to enforce their rights; many face language and literacy barriers. Most seasonal agricultural workers were not aware they qualified for parental benefits until allied groups like the Agricultural Workers’ Alliance (AWA), the United Food and Commercial Workers (UFCW), and Justicia for Migrant Workers (J4MW) began outreach efforts to help workers to apply.

Initially, the applications were granted, even when they were submitted late. But in 2008, EI began to deny most applications, stating that the workers applied “too late.” But there is no deadline for applying for EI, as long as a worker can show that they had a good reason for not applying earlier. Because of all the barriers they face, these workers can show that they could not have applied earlier.

Cruz De Jesus v. Canada

In 102 applications currently before the Federal Court of Appeal, seasonal agricultural workers are challenging the denial of their parental benefit applications. All of these workers made EI contributions – for over 15 years in some cases – and are otherwise entitled to the parental benefit. They have shown that they faced many barriers that prevented them from submitting their applications for benefits at the time their children were born. The cases will be heard on October 16 at 9:30 a.m. at 180 Queen Street West.

The recent clawback – shutting the door to EI for migrant workers

On December 9, 2012, the government of Canada changed the law to make it even harder for migrant workers to access EI special benefits. Now migrant workers can only access parental, maternity and compassionate benefits during the period covered by their work permit. In other words, they cannot access the parental benefit when they most need it: when they are unemployed and caring for a newborn child.

Canada is more and more reliant on the work of temporary migrant workers. In fact, more permits are now granted for temporary workers like these than for permanent immigrants. These workers are an essential part of the Canadian labour force. These workers deserve the same protections as any other workers in Canada. The continuing erosion of Canada’s social safety net threatens the economic and social security of us all.

ISAC and Niagara North Community Legal Assistance jointly represent all of the workers in *Cruz De Jesus v. Canada*. More information about the case can be found at ISAC’s website at <http://www.incomesecurity.org/challenges/index.html> or by contacting Jackie Esmonde at 416-597-5820 (extension 5153) or esmondja@lao.on.ca.