

Guide to Labor and Employment Laws for Migrant Workers

in North America



Commission for Labor Cooperation

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This guide was prepared by a team led by Tequila Brooks, Labor Law Advisor, and comprising María Dolores Cox, Publications and Research Assistant, Eva Salvetti, Office and Research Assistant, and a number of research and writing assistants: Chris Debicki, Monique Gudger, Hossein Niroomand, Carolina Sevilla, and Allen Venable. Marcelle Saint-Arnaud, then Research Documentation Coordinator, and then Research Assistant María Elizabeth Díaz provided research support and designed the Trinational Migrant Worker Web Resources Database. Assata McCreary-Peterson, Marc John Walker, Rene Robert and Clementina Vargas provided editing and research support. Rosario Monroy, Executive Assistant, provided administrative and logistical support for the guide. The staffs of the Canadian, Mexican and U.S. National Administrative Offices and officials in the labor ministries provided useful comments and suggestions on the text.

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For additional copies, contact the Secretariat of the Commission for Labor Cooperation at:
1211 Connecticut Ave. N.W.
Suite 200
Washington, D.C. 20036
USA
e-mail: migrants@naalc.org
website: www.naalc.org

This binder is also available in French and Spanish.

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Preface

The Commission for Labor Cooperation is an international organization created by Canada, Mexico, and the United States under the North American Agreement on Labor Cooperation (NAALC). Along with an agreement on environmental cooperation, the NAALC is one of two supplementary or “side” agreements to the North American Free Trade Agreement (NAFTA). The NAFTA and the two side agreements came into force on January 1, 1994. The NAALC is the first international labor agreement linked to a trade treaty. It creates an international discipline on enforcement of domestic labor law, a major innovation in international labor affairs.

The Agreement provided for the establishment of a distinct organizational structure for implementation. It created the Commission for Labor Cooperation, headed by a Council of Ministers made up of the cabinet-level minister or secretary responsible for labor matters in each nation, and an international Secretariat to support the Council. The NAALC also provided that each government establish a National Administrative Office (NAO) within its department or ministry of labor to receive communications from the public in that country, to provide information, and to facilitate participation under the Agreement.

In 1998, three public communications were submitted to the Mexican NAO. All three communications (designated Mexican NAO 9801, 9802, and 9803) dealt with the labor rights of migrant workers in the United States and the effective enforcement of those rights. Among the issues of concern were the freedom of association, the right to collective bargaining, the enforcement of occupational health and safety laws and minimum employment standards, the prevention of racial discrimination in employment, and equal protection of migrant workers.

On May 18, 2000, the U.S. Secretary of Labor and the Mexican Secretary of Labor and Social Welfare entered into a ministerial agreement regarding the three public communications. The Canadian Minister of Labour signed the agreement on July 6, 2000.

The present guide was prepared by the Secretariat as part of the action plan included in the ministerial agreement. Other elements of the action plan included government-to-government meetings of U.S. and Mexican government officials to discuss the issues arising in the three public communications, public outreach sessions in the United States to educate migrant workers about their rights in the workplace, and public forums regarding agricultural workers’ issues organized by the U.S. NAO in Yakima, Washington, and Augusta, Maine.

Introduction

Migrant workers are one of the threads that hold together the tapestry we call North America. Shuttling back and forth across the real and virtual borders of Canada, Mexico, and the United States and beyond, migrant workers can be found in almost every sector of the North American economy. Migrant workers pick the tomatoes for our salads, sew the clothes that keep us warm in the winter and cool in the summer, chop sugar cane so we can sweeten our coffee, drive the taxis that rush pregnant women to the hospital, program the cell phone networks that allow us to call our loved ones, clean our offices, build our homes, and transport our goods from one place to another — to name just a few examples.

More than most other groups of workers, migrant workers need accurate, accessible information about their rights and responsibilities in the workplace. This is especially the case when a worker is from a country that has different laws and agencies, speaks a different language, and does not know where to start.

The *Guide to Labor and Employment Laws for Migrant Workers in North America* is the first comprehensive clear-language guide to labor and employment laws in North America. It is designed as a tool to meet migrant workers' need for accurate and accessible information about their rights and responsibilities in the workplace and where to go to enforce their rights. It is designed to be versatile, practical, and, above all, useful to migrant workers and to the people who work directly with them on a day-to-day basis.

Written in a question-and-answer style, the guide answers questions about almost every aspect of the workplace relationship in Canada, Mexico, and the United States. The subjects covered include:

- collective labor relations
- freedom from forced labor
- rules for working youths
- minimum wages and hours of work
- compensation during periods of unemployment
- protection from workplace discrimination and right to equal pay for equal work
- rights of pregnant workers
- rules regarding workplace safety
- rules regarding pesticide use
- compensation for on-the-job injuries
- retirement and other pension programs
- disability and health care

In addition to addressing questions about these basic areas of the workplace relationship, the guide has a number of additional features.

Its primary purpose is to inform migrant workers from foreign countries whether they are covered by a particular area of labor and employment law, or eligible for particular public benefits, based on their visa status.

A second feature is the special attention the guide pays to migrant farm workers. Although the guide is designed to be used by migrant workers in a variety of occupations, it highlights some issues encountered especially by migrant farm workers. For the United States, there is information about the Migrant and Seasonal Agricultural Worker Protection Act. For all three countries, there is information about the workplace rights of farm workers in international visa programs (in Canada, the Commonwealth Caribbean and Mexican Seasonal Agricultural Worker Program; in Mexico, the program for Guatemalan temporary farm workers in Chiapas; in the United States, the H-2A farm worker visa and the H-2B non-skilled worker visa).

The guide also contains practical advice on some important issues, like how to avoid pesticide poisoning or what pregnant workers should do to avoid dehydration while working in a field.

The *Guide to Labor and Employment Laws for Migrant Workers in North America* is versatile. It comes in three different formats, to serve the needs of migrant workers and the people and organizations who provide services to migrant workers:

- A series of 42 single-topic brochures that can be distributed to workers who need information on a particular subject;
- three single-country books, each containing all of the information in the brochures that apply to that country, plus an index of the questions asked and answered, for handy reference on a bus or in the field; and
- a Tri-national Migrant Worker Resources Binder, with all of the information mentioned above on labor and employment rights in Canada, Mexico, and the United States, as well as a state-by-state and province-by-province directory of the state and federal government offices that deal with various aspects of the workplace relationship.

The guide is available both on paper and on the Internet. The Internet version has a companion product, a searchable North American Migrant Worker Web Sources Database. This database is a compilation of Web sites that contain information for and about migrant workers in Canada, Mexico, the United States, and the rest of the world.

The *Guide to Labor and Employment Laws for Migrant Workers in North America* cannot solve all the problems migrant workers face on a day-to-day basis. It cannot by itself stop mistreatment of migrant workers. It is not a guide on how to litigate a case on behalf of a migrant worker. But it can shed some light on the basics of what a migrant worker must do and where he or she can go to obtain help with a workplace issue, which is, after all, the first step in solving problems.