Government of Canada Gouvernement du Canada Canada

Employment and Social Development Canada

Agreement for the Employment in Canada of Seasonal Agricultural Workers from Mexico - 2013

WHEREAS the Government of Canada and the Government of the United Mexican States are desirous that employment of a seasonal nature be arranged for Mexican Agricultural Workers in Canada where Canada determines that such workers are needed to satisfy the requirements of the Canadian agricultural labour market; and,

WHEREAS the Government of Canada and the Government of the United Mexican States have signed a Memorandum of Understanding to give effect to this joint desire; and,

WHEREAS the Government of Canada and the Government of the United Mexican States agree that an Agreement for the Employment in Canada of seasonal agricultural workers from Mexico be signed by each participating employer and worker; and,

WHEREAS the Government of Canada and the Government of the United Mexican States agree that an agent for the Government of the United Mexican States known as the "GOVERNMENT AGENT" shall be stationed in Canada to assist in the administration of the program;

THEREFORE, the following agreement for the employment in Canada of seasonal agricultural workers from Mexico is made in duplicate this __________________ day of ___________________________________ 2013.

I Scope and Period of Employment

The EMPLOYER agrees to:

Employ the WORKER(S) assigned to him by the Government of the United Mexican States under the Seasonal Agricultural Workers Program and to accept the terms and conditions hereunder as forming part of the employment Agreement between himself and such referred WORKER(S). The number of WORKERS to be employed shall be as set out in the attached clearance order.

The PARTIES agree as follows:

1. a. subject to compliance with the terms and the conditions found in this agreement, the EMPLOYER agrees to hire the WORKER(S) as a _________________________ for a term of employment of not less than 240 hours in a term of six (6) weeks or less, nor longer than eight (8) months with the expected completion of the period of employment to be the ____________day of ___________________, 2013.
   b. the EMPLOYER needs to respect the duration of the employment agreement signed with the WORKER(S) and their return to the country of origin by no later than December 15th with the exception of extraordinary circumstances (e.g. medical emergencies).
2. The normal working day is eight (8) hours, but the EMPLOYER may request of the WORKER and the WORKER may agree to extend his\her hours when the urgency of the situation requires it, and where the conditions of employment involves a unit of pay, and such requests shall be in accordance with the customs of the district and the spirit of this program, giving the same rights to Mexican workers as given to Canadian workers. The urgent working day should not be more than twelve (12) hours daily.
3. For each six consecutive days of work, the WORKER will be entitled to one (1) day of rest, but where the urgency to finish farm work cannot be delayed, the EMPLOYER may request the WORKER’s consent to postpone that day until a mutually agreeable date.

4. To give the WORKER a trial period of fourteen (14) actual working days from the date of his arrival at the place of employment. The EMPLOYER shall not discharge the WORKER except for sufficient cause or refusal to work during that trial period.
5. The EMPLOYER shall provide the WORKER, and where requested, the GOVERNMENT AGENT with a copy of rules of conduct, safety discipline and care and maintenance of property as the WORKER may be required to observe.

II Lodging, Meals and Rest Periods

The EMPLOYER agrees to:

1. Provide suitable accommodation to the WORKER, without cost. Such accommodation must meet with the annual approval of the appropriate government authority responsible for health and living conditions in the province/territory where the WORKER is employed. In the absence of such authority, accommodation must meet with the approval of the GOVERNMENT AGENT.
2. Provide reasonable and proper meals for the WORKER and, where the WORKER prepares his own meals, to furnish cooking utensils, fuel, and facilities without cost to the WORKER and to provide a minimum of thirty (30) minutes for meal breaks.
3. Provide the WORKER with at least two (2) rest periods of ten (10) minutes duration, one such period to be held mid morning and the other mid afternoon, paid or not paid, in accordance with provincial/territorial labour legislation.

III Payment of Wages

The EMPLOYER agrees:

1. To allow HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA (HRSDC)/SERVICE CANADA or its designate access to all information and records necessary to ensure contract compliance.
2. That a recognition payment of $4.00 per week to a maximum of $128.00 will be paid to WORKERS with five (5) or more consecutive years of employment with the same EMPLOYER, and ONLY where no provincial/territorial vacation pay is applicable. Said recognition payment is payable to eligible WORKERS at the completion of the contract.
3. To pay the WORKER at his place of employment weekly wages in lawful money of Canada at a rate equal to the following, whichever is the greatest:
    a. the minimum wage for WORKERS provided by law in the province in which the WORKER is employed;
    b. the rate determined annually by HRSDC to be the prevailing wage rate for the type of agricultural work being carried out by the WORKER in the province in which the work will be done; or
    c. the rate being paid by the EMPLOYER to his Canadian workers performing the same type of agricultural work;
4. That the average minimum work week shall be forty (40) hours; and
    a. that, if circumstances prevent fulfilment of Section III, clause 4, the average weekly income paid to the WORKER over the period of employment is as set out in Section III, clause 4 at the hourly minimum rate; and
    b. that where, for any reason whatsoever, no actual work is possible, the WORKER, shall receive an advance with a receipt signed by the WORKER to cover personal expenses, the EMPLOYER shall be entitled to deduct said advance from the WORKER'S pay prior to the departure of the WORKER.

    The GOVERNMENT AGENT and both PARTIES agree:

5. That in the event the EMPLOYER is unable to locate the WORKER because of the absence or death of the WORKER, the EMPLOYER shall pay any monies owing to the WORKER to the GOVERNMENT AGENT. This money shall be held in trust by the GOVERNMENT AGENT for the benefit of the WORKER. The GOVERNMENT AGENT shall take any or all steps necessary to

locate and pay the money to the WORKER or, in the case of death of the WORKER, the WORKER'S lawful heirs.

IV Deductions of Wages

The WORKER agrees that the EMPLOYER:

1. Shall recover the cost of non-occupational medical coverage by way of regular payroll deduction at a premium rate of $0.94 per day per WORKER.
2. May deduct from the WORKER'S wages a sum not to exceed $6.50 per day for the cost of meals provided to the WORKER.
3. May deduct from the WORKER wages in an amount to reflect utility costs in relation to the employment of the WORKER in the provinces of Alberta, Saskatchewan*, Manitoba, Ontario, New Brunswick and Prince Edward Island only. The amount of the deduction is to be $2.16 Canadian dollars per working day and to be adjusted annually on a year over year basis beginning January 1, by a percentage consistent with variation in SAWP wages as per Section III, clause 3 of the agreement. A working day for the purpose of this deduction is to be such that a WORKER completes a minimum of four (4) hours of work in a given day. Said deductions withheld under this provision are to be made for the current pay period only.

   * In Saskatchewan, workers employed by greenhouses and nurseries are exempted from this deduction

4. Will make deductions from the wages payable to the WORKER only for the following:

   a. those employer deductions required to be made under law;
   b. all other deductions as required pursuant to this agreement.

V Insurance for Occupational & Non-occupational Injury, Disease and Death

The EMPLOYER agrees to:

1. Comply with all laws, regulations and by-laws respecting conditions set by competent authority and, in addition, in the absence of any laws providing for payment of compensation to WORKERS for personal injuries received or disease contracted as a result of the employment, shall obtain insurance acceptable to the GOVERNMENT AGENT providing such compensation to the WORKER;
2. Report to the GOVERNMENT AGENT within forty-eight (48) hours all injuries sustained by the WORKER which require medical attention.

   The WORKER agrees that:

3. The EMPLOYER shall remit in advance directly to the insurance company engaged by the Government of Mexico the total amount of insurance premium calculated for the stay period in Canada. Such amount will be recovered by the EMPLOYER with the deduction made to the WORKER'S wages according to Section IV, clause 1. In the case where the WORKER leaves Canada before the employment agreement has expired, the EMPLOYER will be entitled to recover any unused portion of the insurance premium from the insurance company;
4. He will report to the EMPLOYER and the GOVERNMENT AGENT, within forty-eight (48) hours, all injuries sustained which require medical attention.
5. The coverage for insurance shall include:

   a. the expenses for non-occupational medical insurance which include accident, sickness, hospitalization and death benefits;
   b. any other expenses that might be looked upon under the agreement between the Government of Mexico and the insurance company to be of benefit to the WORKER.

6. If the WORKER dies during the period of employment, the EMPLOYER shall notify the GOVERNMENT AGENT and upon receipt of instructions from the GOVERNMENT AGENT, either:

  a. provide suitable burial; or
  b. remit to the GOVERNMENT AGENT a sum of money which shall represent the costs that the EMPLOYER would have incurred under Section V, clause 6 a), in order that such monies be applied towards the costs undertaken by the Government of Mexico in having the WORKER returned to his relatives in Mexico.

VI Maintenance of Work Records and Statement of Earnings

The EMPLOYER agrees to:

1. Maintain and forward to the GOVERNMENT AGENT proper and accurate attendance and pay records.
2. Provide to the worker a clear statement of earnings and deductions with each pay.

VII TRAVEL AND RECEPTION ARRANGEMENTS

The EMPLOYER agrees to:

1. Pay to the travel agent the cost of two-way air transportation of the WORKER for travel from Mexico City to Canada by the most economical means.
2. Make arrangements:

   a. to meet or have his agent meet and transport the WORKER from his point of arrival in Canada to his place of employment and, upon termination of his employment to transport the WORKER to his place of departure from Canada; and
   b. to inform and obtain the consent of the GOVERNMENT AGENT to the transportation arrangements required in Section VII, clause 2 a).

   The WORKER agrees to:

3. Pay to the EMPLOYER costs related to air travel and the work permit processing fee as follows:

   a. Costs related to travel will be deducted by way of regular payroll deductions at a rate of ten (10) percent of the WORKER'S gross pay from the first day of full employment. The amount deducted for travel is not to exceed $589.00.
   b. A cost of $150 for the work permit processing fee. This amount will be deducted during the first six (6) weeks of work through weekly proportional deduction.

   The aggregate payment to the EMPLOYER for travel and the work permit processing fee is not to be less than $150.00 or greater than $739.00.

   Where a federal/provincial/territorial agreement on the selection of foreign workers exists with associated cost recovery fees, the cost of such provincial/territorial fees will be reimbursed to the EMPLOYER from the WORKER’S final vacation pay cheque.

   The contracting PARTIES agree:

4. In the event that at the time of departure a named worker is unavailable to travel the EMPLOYER agrees, unless otherwise stipulated in writing on the request form, to accept a substitute WORKER.

VIII Obligations of the Employer

The EMPLOYER agrees:

1. That the WORKER shall not be moved to another area of employment or transferred or loaned to another EMPLOYER without the consent of the WORKER and the prior approval in writing of HRSDC/SERVICE CANADA and the GOVERNMENT AGENT.

   The EMPLOYER agrees and acknowledges:

2. That the WORKERS approved under the Seasonal Agricultural Workers Program are authorized by their work permit only to perform agricultural labour for the EMPLOYER to whom they are assigned. Any person who knowingly induces or aids a foreign worker, without the authorization of HRSDC/SERVICE CANADA, to perform work for another person or to perform non-agricultural work, is liable on conviction to a penalty up to $50,000 or two (2) years imprisonment or both. Immigration and Refugee Protection Act S 124(1)(C) and 125.

   The EMPLOYER agrees:

3. That WORKERS handling chemicals and/or pesticides have been provided with protective clothing at no cost to the WORKER, received appropriate formal or informal training and supervision where required by law.

   The EMPLOYER agrees:

4. That according to the approved guidelines in the province/territory where the worker is employed the EMPLOYER shall take the WORKER to obtain health coverage according to provincial/territorial regulations.

   The EMPLOYER agrees and recognizes:

5. To be responsible for arranging transportation to a hospital or clinic, whenever the worker needs medical attention. The Consulate will work in partnership with the employer to ensure proper medical attention is provided to the worker in a timely fashion.

IX Obligations of the Worker

The WORKER agrees:

1. To work and reside at the place of employment or at such other place as the EMPLOYER, with the approval of the GOVERNMENT AGENT, may require.
2. To work at all times during the term of employment under the supervision and direction of the EMPLOYER and to perform the duties of the agricultural work requested of him in a workmanlike manner.
3. To obey and comply with all rules set down by the EMPLOYER relating to the safety, discipline, and the care and maintenance of property.
4. That he:

   a. shall maintain living quarters furnished to him by the EMPLOYER or his agent in the same state of cleanliness in which he received them; and
   b. realizes that the EMPLOYER may, with the approval of the GOVERNMENT AGENT, deduct from his wagesthe cost to the EMPLOYER to maintain the quarters in the appropriate state of cleanliness.

5. To return promptly to Mexico upon completion of his\her authorized work period.
6. To submit/file his tax return. For that purpose, the GOVERNMENT AGENT shall provide information on the adequate options to meet this obligation.

X Premature Repatriation

1. Following completion of the trial period of employment by the WORKER, the EMPLOYER, after consultation with the GOVERNMENT AGENT, shall be entitled for non-compliance, refusal to work, or any other sufficient reason, to terminate the WORKER'S employment hereunder and so cause the WORKER to be repatriated. The cost of such repatriation shall be paid as follows:

   a. if the WORKER was requested by name by the EMPLOYER, the full cost of repatriation shall be paid by the EMPLOYER;
   b. if the WORKER was selected by the Government of Mexico and 50% or more of the term of the contract has been completed, the full cost of returning the WORKER will be the

responsibility of the WORKER;

c. if the WORKER was selected by the Government of Mexico and less than 50% of the term of the contract has been completed, the cost of the north-bound and south-bound flight will be the responsibility of the WORKER. In the event of insolvency of the WORKER, the Government of Mexico, through the GOVERNMENT AGENT will reimburse the EMPLOYER for the unpaid amount less any amounts collected under Section VII, section 3.

2. If it is the opinion of the GOVERNMENT AGENT that personal and/or domestic circumstances of the WORKER in the home country warrant, the WORKER shall be repatriated with full cost of the repatriation paid by the WORKER.
3. If the WORKER has to be repatriated due to medical reasons, which are verified by a Canadian doctor, the EMPLOYER shall pay reasonable transportation and subsistence expenses. The EMPLOYER cannot continue recovering the costs incurred through the cheques issued to the WORKERS by the insurance companies. The Government of Mexico will pay the full cost of repatriation when it is necessary due to a physical or medical condition, which was present prior to the WORKER'S departure from Mexico.
4. That if it is determined by the GOVERNMENT AGENT, after consultation with HRSDC/SERVICE CANADA that the EMPLOYER has not satisfied his obligations under this agreement, the agreement will be rescinded by the GOVERNMENT AGENT on behalf of the WORKER, and if alternative agricultural employment cannot be arranged through HRSDC/SERVICE CANADA for the WORKER in that area of Canada, the EMPLOYER shall be responsible for the full costs of repatriation of WORKER to Mexico City, Mexico; and if the term of employment as specified in Section I, clause 1, is not completed and employment is terminated under Section X, clause 4., the WORKER shall receive from the EMPLOYER a payment to ensure that the total wages paid to the WORKER is not less than that which the WORKER would have received if the minimum period of employment had been completed.

XI Transfer of Workers

1. The transfer of WORKERS does not require that the foreign WORKER seek a new work permit as long as the WORKER still holds a valid work permit. For a WORKER transfer to take place, the RECEIVING EMPLOYER must be a SAWP EMPLOYER who has a valid positive LMO. Further, the WORKER must consent to the transfer, and written approval from HRSDC/SERVICE CANADA and the GOVERNEMENT in Canada must be sought in advance of the transfer taking place.

   The PARTIES agree as follows:

2. In the case of a TRANSFERRED WORKER, the term of employment shall consist of a cumulative term of not less than 240 hours.
3. The RECEIVING EMPLOYER shall be provided by the SENDING EMPLOYER at the time of transfer an accurate record of earnings and deductions to the date of transfer, noting that the record needs to clearly state what, if any, deductions can still be recovered from the WORKER.
4. An EMPLOYER shall, upon requesting the transfer of a WORKER, give a trial period of seven (7) actual working days from the date of his arrival at the place of employment. Effective the eight (8th) working day, such a WORKER shall be deemed to be a "NAMED WORKER" and Section X, clause 1 a) will apply.
5. If a transferred WORKER is not suitable to perform the duties assigned by the receiving EMPLOYER within the seven (7) days trial period, the EMPLOYER shall return the WORKER to the previous EMPLOYER and that EMPLOYER will be responsible for the repatriation cost of the WORKER.
6. In the case of a TRANSFERRED WORKER, the second EMPLOYER may continue to make deductions in expenses associated with the program, starting from the aggregate amount deducted by the first EMPLOYER, without exceeding the amounts indicated in Section VII, clause 3.
7. In the case of a TRANSFERRED WORKER the receiving EMPLOYER agrees to pay the travel agent in advance the cost of one-way air transportation of the worker between Canada and Mexico by the most economical means as expressed in the Memorandum of Understanding.

XII Miscellaneous

1. In the event of fire, the EMPLOYER'S responsibility for the WORKER'S personal clothing shall be limited to l/3 its replacement cost to a maximum of $150.00. The government of Mexico shall bear responsibility for the remaining cost of the replacement of the WORKER'S clothing.
2. The WORKER agrees that any personal information held by the Federal Government of Canada and the Government of the Province/Territory in which the work is performed may be released to HRSDC/SERVICE CANADA, to Citizenship & Immigration Canada to the GOVERNMENT AGENT, to the Foreign Agricultural Resource Management Service, in the case of Quebec, to the Fondation des entreprises en recrutement de main-d'oeuvre agricole étrangère and to the Insurance Company designated by the GOVERNMENT AGENT, so as to facilitate the operation of the Foreign Seasonal Agricultural Workers Program

   The consent of the WORKER to the release of information includes, but is not restricted to:

   a. information held under the Employment Insurance Act, (including the worker's Social Insurance Number);
   b. any health, social service or accident compensation related information held by the government of the province/territory in which the work is performed, including any unique alpha-numerical identifier used by any province/territory;
   c. Medical and health information and records which may be released to Citizenship & Immigration Canada as well as the Insurance Company designated by the GOVERNMENT AGENT.

3. That the agreement shall be governed by the laws of Canada and of the province/Territory in which the worker is employed. French, English and Spanish versions of this contract have equal force.
4. This contract may be executed in any number of counterparts, in the language of the signatory's choice, with the same effect as if all the PARTIES signed the same document. All counterparts shall be construed together, and shall constitute one and the same contract.
5. The PARTIES agree that no term or condition of this agreement shall be superseded, suspended, modified or otherwise amended, in any way, without the express written permission of the competent Canadian and Mexican authorities, as well as the EMPLOYER and his WORKER.
6. Upon request of the WORKER, the GOVERNMENT AGENT agrees to assist the WORKER and the EMPLOYER with the completion of the necessary parental benefit forms.

Upon request of the WORKER, the GOVERNMENT AGENT agrees to assist the WORKER and the EMPLOYER with the completion of the necessary parental benefit forms.

DATE:__________________

EMPLOYEE'S SIGNATURE :__________________

NAME OF EMPLOYEE: __________________

EMPLOYER'S SIGNATURE : ________________________

WITNESS : ____

NAME OF EMPLOYER: ____

ADDRESS : ____

CORPORATE NAME : ____________________________________

TELEPHONE:_______________ FAX: ____________________

PLACE OF EMPLOYMENT OF WORKER IF DIFFERENT FROM ABOVE :

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GOVERNMENT AGENT'S SIGNATURE : ______________________________

WITNESS: _______________________

To enhance readability, the masculine gender is used to refer to both men and women.

Date modified: 2013-05-16