

**Migrant Workers
and
Employment
Insurance**

**What You Should
Know**

The purpose of this booklet is to provide a practical guide for migrant workers who want to obtain Employment Insurance (EI).

Although migrant workers are excluded from some of the EI benefits that other workers in Canada are able to receive, we have included a discussion of all types of EI benefits in the hopes that one day all workers will be entitled to receive equal access to them.

Although designed to help workers individually, it is hoped that those who learn how to file for EI, through this guide, will one day help those who do not know how to do so.

Disclaimer:

Service Canada regularly changes the required number of eligible hours to

receive benefits. It will also periodically change the amount of benefits to be paid out, the amount of money a person can earn while on EI, etc...

This brochure is current as of June 2010. You should check with Service Canada on any item describing a specific amount of money or hours.

What is Employment Insurance?

Employment Insurance (EI) is a system to provide temporary financial assistance to workers who become unemployed through no fault of their own.

If you lose your job or become unable to work, Employment Insurance can cover part of your lost wages for a limited duration of time.

Although not all **types** of EI benefits are available to most migrant workers, some EI benefits are available to workers in Canada with valid **work permits**; including migrant workers who are part of the Seasonal Agricultural Workers Program or workers who came to Canada through a recruiter (for example, live-in caregivers or temporary foreign workers).

What is the History of Employment Insurance?

What was originally called Unemployment Insurance began in Canada in 1940. Workers who were experiencing the devastating effects of the Great Depression organized and decided to collectively demand that the government take responsibility for the high rates of unemployment. Because of workers organizing, the view of the government and the public shifted to see

unemployment as an involuntary social problem instead of personal failing.

Workers demanded a collective social safety net to take care of themselves and their families in times of need and the Unemployment Insurance system was born.

How does Employment Insurance work?

Both workers and employers pay into the EI system in Canada. You will know if you pay into the EI system because your employer deducts money from your pay each pay period. These deductions should be explicitly labelled on your pay stub as EI contributions.

Service Canada is the government department in charge of the EI system in Canada. When deductions are made from your pay cheque, the money goes to them.

Service Canada decides whether to allow someone to collect benefits after an application has been made, pays benefits if the claim has been allowed, and will follow your claim through from the beginning to the end of your entitlement period.

What EI benefits can migrant workers apply for?

There are different **types** of EI benefits:

- Regular benefits
- Sickness benefits
- Maternity/parental benefits
- Compassionate care benefits

Migrant workers can receive maternity/parental benefits and compassionate care benefits. Sickness benefits may be available to migrant workers in certain circumstances. Sadly, regular benefits are **generally not**

available to migrant workers, although there are special cases.

When applying for EI benefits of any type, you should check to see if you are entitled to the “Family Supplement.” Workers normally will receive 55% of their salary but can automatically receive up to 80% of their salary if one spouse is receiving the Canada Child Tax Benefit and their income is therefore below a certain level. Since migrant workers are denied access to the Canada Child Tax Benefit, you won’t automatically receive the Family Supplement.

When should I apply for EI benefits?

You should apply for EI as soon as you stop working, even if you do not yet have your Record of Employment [ROE]. If you wait more than four weeks to apply, you

may not be able to receive benefits for some of the weeks you are out of work.

What if my Employer won't give me my ROE?

Employers are required by law to provide this within 5 days of your last day of work. If they do not do this, you can contact Service Canada and ask them to help you to get this. You might need to show proof of your employment like paycheques or tax forms (T4s) if the employer has not yet provided you or Service Canada with your ROE.

If you are having trouble getting your ROE, there is a form, "Request for Record of Employment", that can be used to ask Service Canada to obtain your ROE on your behalf.

TYPES OF BENEFITS

What are Regular EI benefits?

Regular benefits are paid to unemployed workers who **lose their jobs** or who are **temporarily laid off work** through no fault of their own - for example, because of a shortage of work or seasonal layoff.

Migrant workers are generally **not** able to claim these benefits.

Workers who are eligible for EI Regular Benefits are entitled to **55% of the average insured earnings** up to a maximum of \$447 per week. The amount of weeks a worker can get depends on how many insured hours of work you have performed in the 52 weeks before you stop working (the more hours, the more weeks of benefits). Benefits stop when you are able to find employment or when you run out of your maximum amount of benefits.

The maximum number of weeks you can receive benefits is usually 52.

A BIT OF HISTORY. In 1967 the Canadian government introduced legislation that disqualified most farm workers in Canada from receiving Unemployment Insurance. Law makers created the rule of having to work with one employer for more than 16 weeks before getting EI. Because immigrant farm workers were recruited for many different farmers throughout the season, most workers could not meet this one employer-16 week qualification. A movement of farm workers who knew that this wasn't right slowly and steadily began to organize. In the 1980's the government again tried to further restrict UI from farm workers by trying to say they should work more hours with an employer than other Canadian workers.

By this time, thousands of farm workers had banded together under the banner of the Canadian Farmworkers Union. They held rallies, signed petitions and marched through downtown Vancouver to demand the end of discriminatory practices with UI. Through their actions, they forced the government to bow to public pressure and the government was forced to abandon its plans for the discriminatory legislation.

What reasons are now given for denying migrant workers Regular EI benefits?

To receive regular benefits you must be “available for work in Canada”.

Migrant workers whose **work permit limits them to one employer** are ordinarily considered unavailable for work, and are therefore denied benefits (although there may be exceptions, see below). To be eligible for EI, you must be “ready, willing and able” to work. If you are only legally able to work for one employer who no longer has work for you, the government will likely find you are not able (available) to work.

In addition, migrant workers **who return home or are repatriated** are also considered unavailable for work in Canada.

Despite paying into the system through deductions from each migrant worker's paycheque, this discriminatory rule means migrant workers are generally unable to apply for EI Regular Benefits.

Why should we have to pay into a system that we are denied access to? This is nonsense.

This is definitely nonsense. I feel like we're being scammed. We shouldn't have to pay that money.



You're right. Maybe we shouldn't have to pay. But I could really use Regular EI benefits when I go home. 55% of my earnings would go a long way in helping me and my family when I am out of work.

Yes it would. Can Canadian farm workers get EI?



Yes because like us, they are seasonally employed. They get EI benefits when it's off-season.

That makes me angry. Why should different rules apply to us because they tell us to go home at the end of the season? We are part of Canada as much as anyone else. We work hard just like other workers in the country. We should have the same rights and benefits.



Absolutely; these benefits belong to us.

Under What Circumstances Might I be Eligible for Regular EI Benefits?

There may be certain circumstances where a migrant worker is entitled to Regular EI Benefits:

1. If you have a work permit that allows you to work with any employer then you are considered available for work. However, you must stay in the country while you are looking for work.

2. A person whose work permit includes a restriction that only allows them to work for a specific employer is not normally considered available for work when work for that employer is no longer available. As a result, you may not be eligible for EI benefits. However, other factors should be considered in Service Canada's decision as well.
Service Canada must consider a statement of availability from the worker that explains how he or she is available for work. You should include this statement with your application for EI. It should state that once you find a new employer , you will contact Citizenship and Immigration Canada to change your work permit. The statement should also explain your job search (i.e. a recruiter or

handing out resumes, etc.). The decision maker will be looking for reasons that would make you unavailable to return to work. Workers who submit that they are available for work and looking for work must not have an expired work permit and they should remain in Canada. This strategy of arguing you are ready, willing and able (available) for work can be used to obtain EI both for permanent loss of employment and for short term layoffs (where you may return to work with the same employer).

What are my responsibilities if I receive Regular EI Benefits?

- You must complete a report every two weeks by phone, mail or internet (address at the back of the book)
- In the report you will:

- Report if you are currently in Canada
 - Confirm that you are ready, willing and able to work;
 - Confirm that you are looking for work
 - Report if you have received any money for work you have done
- You must inform Service Canada when you return to full-time work

IMPORTANT: While receiving EI Regular Benefits, you must report to Service Canada **every two weeks – even if you don't have any income to report.** This can be done by phone, internet or at a Service Canada office. If you don't, Service Canada can require you to pay back the benefits you received and will charge you a **penalty.** The penalty can be up to 3 times the benefits you received. The penalty can

also require you to work additional weeks to qualify for EI in the future. Even if you have no formal way of reporting, you should write a letter with your name and client number on it and mail it to Service Canada every two weeks. You should also keep a copy for yourself. It would be wise to do this even if you cannot get it translated to English.

Justice for Migrant Workers (J4MW) Demands for Change:

- Migrant workers must have equal access to Regular EI Benefits
- Migrant workers should not have to “be available for work in Canada”
- Migrant workers should not have to report to Service Canada every 2 weeks. Service Canada must recognize barriers migrant workers face because of lack of access to transportation, internet and potential language barriers.
- Service Canada must consider giving the “Family Supplement” even if workers do not receive the Canada Child Tax Benefit

SICKNESS BENEFITS:

What are sickness benefits?

Sick benefits are paid to workers who become sick, injured or are quarantined and cannot work for a period of time.

What happens if I am too sick to work?

Service Canada can pay up to 15 weeks of benefits while you recover and seek medical treatment. You must be able to show that you are unable to work because of your injury or illness AND that if you were not sick or injured you would otherwise be able to work in Canada.

Can migrant workers apply for sickness benefits?

Yes. If you stay in Canada, you can receive benefits. In some cases, if you are sick or injured and cannot work you will be sent home (repatriated) by your employer.

Sending you home because you are sick or

injured may not be legal. Canadian law suggests that you are allowed to stay in Canada until your work permit expires, however you can only work for the employer named on your work permit.

Because you must be available for work in Canada, you cannot apply for sick benefits from your home country. If you are too sick or injured to work and you stay in Canada you can apply for EI sick benefits.

For example, one migrant worker had appendicitis and stayed in Canada for medical treatment. He received sick benefits until he was well again and then he returned to work.

What if I'm sick or injured because of an accident at work?

If you are sick because of an accident or injury that happened at work, you should

tell your employer and doctor right away. The Workplace Safety and Insurance Board (WSIB) is in charge of workers who are injured at work. You can call the Industrial Accident Victims Group of Ontario (IAVGO) for information about filing a WSIB claim. Their contact information is listed at the back of this booklet.

You must tell Service Canada about any benefits you receive from the WSIB. You must also tell the WSIB about any benefits you are receiving from Service Canada.

You should apply for EI sick benefits even if you are receiving or applying for WSIB benefits. If you receive WSIB benefits for lost wages your EI claim will be set aside as long as you receive WSIB benefits. When WSIB benefits are over you can start to receive EI sickness benefits. The EI

claim can be set aside for up to two years while you receive WSIB.

Can I work while receiving sickness benefits?

Yes, but your earnings will be deducted from your benefits, dollar for dollar. You **must** tell Service Canada if you work while you are receiving EI benefits.

Can I leave the country while receiving sick benefits?

Not ordinarily. You can only continue to receive sick benefits from EI while you are out of the country if you need to travel to another country to receive medical treatment which is not readily or immediately available in Canada at an accredited hospital, medical clinic or similar facility.

What if I have private health insurance or sick leave credits with my employer?

Tell Service Canada. You must exhaust all your paid sick leave credits before you are eligible for EI sickness benefits. You must tell Service Canada if you have private health insurance, wage loss insurance or income from any other sources while you are sick. Your sick benefits will be reduced by the amount you are receiving from other sources. For example, if you are entitled to RBC health insurance while in Canada as being part of the farm worker program, you should tell Service Canada.

MATERNITY/PARENTAL BENEFITS

Pregnancy (“Maternity”) and parental benefits are paid by EI when a parent must leave work to deliver or care for a new child.

What are maternity benefits?

Pregnancy benefits (often called Maternity benefits) are paid to the birth mother of a child just before and / or after the birth.

When should I apply for maternity benefits?

Maternity benefits are paid for 15 weeks, after a two week waiting period. You can apply for maternity benefits as late as the date of the child's birth or the date of the adopted child's placement and as early as eight weeks before the due date. You have to prove the expected date of delivery or adoption of the child.

Can I work while receiving maternity benefits?

Yes, but your earnings will be deducted from your benefits dollar for dollar. You **must** tell Service Canada if you work while you are receiving EI benefits.

What are parental benefits?

Parental benefits are paid to workers who need time away from work to care for a newborn or adopted child. Many farm workers have applied for this benefit and received entitlement to it.

Parental benefits can be collected by either parent of the child or shared by both parents if both parents qualify. New parents may be entitled to up to 35 weeks of benefits combined.

There is a two week waiting period unless this was already served under Maternity Benefits.

If your child is hospitalized after birth, you may be able to extend the start date you receive benefits up to one year although the total weeks of benefits received will

remain the same. Call Service Canada right away if this happens.

In Justice for Migrant Workers' first trips, hundreds of migrant workers complained about how they paid into EI but received no benefits because they were not Canadian. Consuelo Rubio, a worker's rights advocate that worked at the Centre for Spanish Speaking People at the time, examined the Employment Insurance Act and noticed there was no residency restriction to obtain parental benefits. A worker familiar with Justice for Migrant Workers heard about this and was interested in knowing more about his rights to parental benefits. He asked Consuelo to file the application with him. Although they had to face many obstacles, he eventually won his case. His baby was really sick that year and the money he received saved his child's life. Since then, thousands of migrant workers have successfully received EI Parental Benefits totalling millions of dollars.

Do I have to stay in Canada to receive parental benefits?

No. You do **not** have to stay in Canada to receive parental benefits. You can receive benefits in your home country if you are with your child (you can only receive

benefits while the child is in your care). You must tell Service Canada if you are leaving the country and make sure they have any information needed to make sure your payment gets to you.

When should I apply for parental benefits?

You should apply within **one week after** your child is born or adopted. You cannot apply for parental benefits before your child is born. You can apply either before you leave Canada or while you are in your home country.

If your baby is born before you leave Canada, you should apply before you leave, the **same week** your baby is born. If the baby is due after you leave Canada, make sure to take the application papers with you. You should file the **same week** the baby is born. Benefits are usually

paid from the date your application package is posted.

What happens if I wait until I return to Canada to apply for parental benefits?

If you wait too long, you may be required to submit a late application. This is also called an “antedate” application. When submitting a late application, you must include an antedate form with your application. **This form requires you to give convincing reasons that explain why you were not able to file your application earlier.** Filing an antedate application can be difficult and you may want the assistance of a representative. If you are unsure whether you have missed the time to apply, you should contact Service Canada. You are also able to get an antedate form at most Service Canada locations.

Can I work while I am receiving parental benefits?

Yes. You can earn up to \$75/week or 40% of your benefits, whichever is higher, and still receive the full amount of your benefits. If you earn more, your additional earnings will be deducted from your benefits.

You must tell Service Canada if you work in Canada or your home country while you are receiving parental benefits.

What should I do when I return to Canada?

You must tell Service Canada as soon as you return to Canada and as soon as you return to work. If you return to work and continue to receive parental or maternity benefits, you will be required to pay back

all of the benefits you received after the date of your return to work.

Can I apply for both maternity and parental benefits?

Yes. A woman applying for maternity benefits can also apply for parental benefits. She can receive a maximum of 50 weeks of combined benefits (15 weeks of maternity + 35 weeks of parental benefits).

Do I need to fill out reports during maternity and/or parental benefits?

No, but you must fill out a form saying you will not be completing reports when you apply for benefits. Even if you do not complete reports, you **must** report income when you earn it.

COMPASSIONATE CARE BENEFITS:

What are compassionate care benefits?

Compassionate care benefits are paid to

workers in Canada who must take time away from work to care for a seriously ill family member who has a significant risk of death in the next 26 weeks. You can receive up to 6 weeks of benefits. You must notify Service Canada as soon as the ill family member dies or no longer requires care or support.

Can I combine Compassionate Care Benefits?

You can only receive benefits for as long as that family member continues to require support.

Unemployed persons already on EI can also apply for compassionate care benefits. This would allow your regular EI benefits to resume after the compassionate care benefits were exhausted. Combining compassionate care benefits with other EI benefits such as parental leave and/or regular benefits is permitted. The maximum length of time

allowed for any combination of EI benefits is 71 weeks.

Who counts as a family member?

You can receive compassionate care benefits to provide care for your family members or the family members of your husband/wife or common law partner, including your:

- child
- wife/husband (including Common Law)
- father/ mother
- brothers/sisters
- grandchildren
- son/daughter-in-law
- brother/ sister-in-law
- uncle /aunt
- nephew/niece

The spouses of the above family members are also considered family for the purposes of compassionate care benefits. Also, if there is a person who is “like family” to you, like a neighbour or close friend they may be considered family for

the purposes of these benefits.

Do I have to stay in Canada to collect compassionate care benefits?

No. You can leave Canada and go to the country where your sick family member is living. You must tell Service Canada before you leave.

Can I work while receiving compassionate care benefits?

Yes. You can continue to work part time while receiving compassionate care benefits, as long as you can show that your regular weekly earnings from work have **decreased by more than 40%**. You can earn \$75 per week or 40% of your weekly benefits (whichever is higher) without having your benefits reduced.

When should I apply?

Apply as soon as you stop working.

If you wait more than 4 weeks to apply after your last day of work you may not receive as many weeks of benefits as you would otherwise.

Splitting Compassionate Care Benefits

Family members working in Canada who are covered by EI can split the 6 weeks of benefits. For example, you could take 3 weeks and have your brother take 1 week and your sister takes 2 weeks. These could overlap or be taken one after another.

APPLYING FOR EI BENEFITS

How do I apply in Canada?

- You can apply in person at your local Service Canada Centre. To find the Service Canada centre near you, call 1-800-206-7218.
- You can also apply online at <http://www.servicecanada.gc.ca>

- To apply by mail, you must send a completed application form along with the required documents to Service Canada Centre (for address check back of brochure)

How do I apply from out of the country?

If you have returned home, you can apply for EI maternity, parental or compassionate care benefits online or by mail. All claims received from people residing outside of Canada are processed by the office in Kingston, Ontario.

If you have questions, you can call Service Canada at the following toll-free number: **1-877-486-1650** or write to the address provided at the back of the brochure.

When will I receive my benefits?

You must serve a two-week **waiting period** for all benefits. This means that during the first two weeks of your claim, you will not receive any benefits.

If you have submitted all the required information and you qualify for benefits, you can expect to receive your first payment approximately 4 to 6 weeks after your application is received.

How do I receive my payment?

Your payments will either be sent to you by mail or will be deposited to your bank account. To have your payments deposited to a bank account, you have to fill out a form and provide a blank cheque [marked “VOID”] to Service Canada.

What should I do if my application is late?

You can have your claim “antedated” which means that the claim can start before the date of the application under certain circumstances. Talk to Service Canada about this.

What should I do if my application is denied or if EI makes a decision I do not agree with?

You have the right to appeal any negative decision within **30 days**. It is important that you meet the time limit of **30 days to appeal**. See sample letter on next page.

Sample Letter

Worker's Name
Address

Date

Service Canada
Address that is on the letter of the
decision

Re: Social Insurance Number 123-456-789

I disagree with the decision in your letter
dated _____ and I request an appeal of
this decision.

Please write to me to tell me I have met the
time limit to appeal.

Yours truly,
[SIGNATAURE]
Worker's Name

You can contact your local community legal aid clinic if you need advice or if you think you may have missed the time limit. To find a clinic near you, you can look online at **legalaid.on.ca** or call **1-800-668-8258 toll-free**. Services are provided in over 120 languages.

What happens if I work while I am receiving EI and do not report my income to Service Canada?

If you work or receive income from any other sources while you are collecting EI benefits, you **must** tell Service Canada.

If you receive a decision that you failed to report income, you should immediately request an appeal of the decision. Contact Legal Aid Ontario **1-800-668-8258** to find a representative.

How can you get involved in bettering your working conditions?

- Join/work with organizations such as Justicia for Migrant Workers to demand change
- Talk to other workers about their concerns and experiences in Canada
- Talk to, and develop strategies with, family and community members in your local community
- Ask for support from the various Agricultural Workers Centres across Ontario (Simcoe, Bradford, Leamington, Virgil). These centres are for all workers!!!!
- Encourage workers to know their rights
- Encourage workers, their families and their friends to start worker groups to pressure both the

Canadian government and governments in other countries to provide rights for workers.

CHECKLIST:

What you need in order to apply for ANY EI benefits:

- ☑ Social Insurance Number (SIN)

- ☑ Proof of your immigration status and work permit for the time you are claiming (a photocopy will do)

- ☑ (only if you are applying in person) personal identification, e.g. your driver's licence, birth certificate, or passport

- ☑ bank information so that your benefits may be directly deposited into your account

- ☑ information about your most recent employment (hours of work, earnings and reasons for loss of work)
- ☑ Have paid into the EI system through EI identified deductions from your paycheque
- ☑ if you are applying late (after 4 weeks), you need an Antedate form explaining why you did not file on time

There are additional steps that may be needed depending on what type of benefit you are applying for, however the above conditions are universal to all benefit types.

ADDITIONAL INFORMATION YOU WILL NEED TO APPLY FOR VARIOUS EI BENEFITS:

EI Regular Benefits

- ☑ Record of Employment showing the

minimum required number of insurable hours (check with Service Canada to confirm the required number of hours in your region). Request a paper copy from all of your employers in Canada in the last 52 weeks for the year you are applying

- ☑ Have a work permit that has not expired
- ☑ Sign a statement declaring your availability for work in Canada.
- ☑ Remain in Canada

Sick Benefits

- ☑ Remain in Canada
- ☑ Get a Record of Employment that shows that you have worked **600 hours** with your employer(s) in the last 52 weeks. Request a paper copy from all of your

employers in Canada in the last 52 weeks for the year you are applying

- ☑ Get a **medical certificate** that explains **why** you are unable to work and **how long** you will be unable to work
- ☑ Pay any fees charged by your doctor for completing this certificate.

Maternity Benefits [For Women Only]

- ☑ Get a Record of Employment that show that you have worked **600 hours** with your Canadian employer in the **last 52 weeks**. Request a paper copy from all of your employers in Canada in the last 52 weeks for the year you are applying
- ☑ Provide proof of legal immigration status and a work permit if you are a migrant worker
- ☑ Sign a statement declaring the expected

- or actual date of birth or adoption
- ☑ Tell Service Canada if you leave the country
 - ☑ Report any income that you receive

Parental Benefits

- ☑ the SIN of the other parent if he or she has one
- ☑ a statement declaring the child's date of birth (or the birth certificate), or the date of placement if you are adopting
- ☑ Get a Record of Employment (ROE) showing that you have worked **600 hours** with your Canadian employer in the last **52 weeks**. Request a paper copy from all of your employers in Canada in the last 52 weeks for the year you are applying

*Note: If you are claiming parental benefits for a previous year (i.e. if your baby was born in 2002) your work permit and ROE must be from the same year. You must also fill out an antedate form and give convincing reasons why you did not apply on time (for example, did not know about EI Parental Benefits because you are a migrant worker in rural Ontario without much access to social infrastructure, don't speak English, don't have access to internet, and/or work during the hours that Service Canada is open.) You should make sure you state the reasons that apply to you.

Compassionate Leave

- provide care or support to an ill family member

- ☑ Get a Record of Employment that shows that you have worked **600 hours** with your Canadian employer in the last 52 weeks. Request a paper copy from all of your employers in Canada in the last 52 weeks for the year you are applying.

- ☑ submit an "Authorization to Release a Medical Certificate" completed and signed by your sick family member or their legal representative

- ☑ submit a “Medical certificate for Employment Insurance Compassionate Care Benefits” completed and signed by a doctor saying that the ill family member has a significant risk of death within the next 26 weeks and requires care or support.

Contact Numbers

Service Canada

299 Concession St.
P.O. Box 210
Kingston, ON K7L 5H5
1-877-486-1650 [toll free]

Centre for Spanish-Speaking People

2141 Jane Street, 2nd Floor
Toronto, ON M3M 1A2
416- 533-0680; 416-533-8545

Agricultural Workers Alliance

1-877-778-7565 [toll free in Canada]
1-877-344-3472 [calling from Jamaica]
01-800-681-1591 [calling from Mexico]

Legal Aid Ontario

1-800-668-8258 [toll free]

Industrial Accident Victims' Group of Ontario [IAVGO]:

416-924-6477
1-877-230-6311 [toll free]
1-866-521-8535 [toll free] [Spanish-speaking callers]

This booklet contains general information. It is not a substitute for getting legal advice for your particular situation.

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