



June 5, 2019

House Finance Committee

Re: House Bill 80 Bureau of Workers' Compensation Budget
CC: Members of the House Finance Committee,

Dear members of the House Finance Committee,

Advocates for Basic Legal Equality, the ACLU of Ohio, The Ohio AFL-CIO, The Catholic Conference, the Central Ohio Worker Center, The Cincinnati Interfaith Workers Center, HOLA Ohio, Cleveland Jobs With Justice, the Ohio Association for Justice, The Ohio Poverty Law Center and Policy Matters Ohio write today to express our support of the passage of the Bureau of Workers' Compensation bill, House Bill 80, without amendments that exclude any workers from coverage.

House Bill 80 is an opportunity to fund a vital oversight entity whose mission is to ensure the safety of all Ohio workers. Several times in recent legislative sessions, measures have been introduced that would hobble the Bureau of Workers' Compensation (BWC) in this mission by excluding undocumented workers, who face some of the worst exposure to workplace injury, from protection. Such proposals have appeared both as standalone bills and as amendments to the bill that funds the BWC. Today we urge the committee to pass HB 80 without consideration of any measure that would exclude any person working in Ohio from workers' compensation coverage in the event of injury.

Barring any workers from workers' compensation protection would put both them, and their coworkers, at greater risk of getting hurt at work. Excluding undocumented workers would create a perverse incentive for firms to hire undocumented workers over citizens, and cut corners on safety, knowing that their workers' compensation premiums would be unaffected by worker injuries. Such a system would put businesses that follow the law at a competitive disadvantage against those who do not. It would leave taxpayers and hospital emergency services to cover the cost of injuries to excluded workers.

In 2017, nearly 117,000 Ohio workers were hurt or fell ill from exposure to workplace hazards; and 174 were killed on the job. No family should ever lose a loved one at work. Workers' Compensation laws are designed not only to ensure injured workers get medical treatment and replace lost wages, but to create an incentive for employers to guard against preventable injuries before they happen.

Workers' compensation balances worker, employer interests

Workers' Compensation covers medical expenses and replaces the lost wages of workers hurt on the job. The system was established as a compromise between workers and employers; employers keep insurance to protect workers, and workers in turn give up their right to sue. When a worker gets hurt, it is treated as a signal that the workplace is higher risk, and the employer's premium rises to reflect that. That mechanism creates an incentive for firms to maintain a safe workplace, and balances the cost of workers' compensation insurance so that the highest costs are shouldered by the firms most likely to use the system. Work-related injuries and illnesses are preventable—when companies follow common-sense safety requirements.

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That incentive breaks down if the very workers at high risk are excluded from coverage. Employers who cut corners on safety and rely on workers' fear of retaliation to avoid liability see a financial advantage to breaking the law. Law-abiding employers, workers, and taxpayers pay the price. For instance, as the New Yorker documented, 17-year-old Osiel Lopez Perez lost his leg due to a malfunction in a chicken processing machine at Canton-based Case Farms in 2015 and was able to access workers compensation. Case Farms and its subcontractor had previously been cited by OSHA for other workplace safety violations; without workers compensation coverage for undocumented workers, Case Farms would have little incentive to make safety improvements and Osiel would have had no compensation for the loss of his leg.

Good businesses would bear the cost for bad actors

Workers' compensation is an insurance system designed to provide injured workers quick access to treatment. It does not assign fault or punish employers. Employers pay premiums based on the number of employees, the industry, and the employer's history of claims filed. This means that employers are already paying for their workers' coverage. Stripping some workers of coverage would leave them to turn to the courts to seek remedies in suits against their employers. Earlier proposals to exclude undocumented workers have included high bars to winning such a suit, which raise concerns about access to justice, yet such policies would leave courts as the only remaining avenue of recourse. This would force employers to appear in court to defend themselves at their own expense when a worker was hired in good faith and has outdated paperwork – even after the employer has paid its workers' compensation premiums all along. Removing insurance coverage may expose employers to worker lawsuits claiming ALL damages suffered in a work-related injury, rather than the more modest workers' compensation costs.

Workers compensation prevents a flood of litigation by giving employers fixed, knowable, and limited liability for an employee's injury. These known, manageable costs help businesses grow by enabling them to responsibly plan for the future. Excluding undocumented workers from workers' compensation would abet unscrupulous operations in flouting the law as a business practice, but it would expose legitimate businesses acting in good faith to new risks and costs.

Ohio farms depend on migrant workers

Ohio's agriculture industry, the state's largest, relies on immigrant workers due to the seasonal nature of the work. Ohio's 75,000 farms contribute \$105 billion to Ohio's economy annually. The U.S. Department of Labor's last National Agricultural Worker Study found that more than 80% of migrant farmworkers in the U.S. are immigrants and more than 50% of migrant farmworkers lack valid immigration status. Agricultural employers in Ohio who depend on hand-harvest labor hire migrant farmworkers for short crop seasons. Cucumber season in northwest Ohio lasts just six to seven weeks; fresh market tomatoes last eight. Other Ohio farm communities including those in Huron County and the Hartsville area of Stark County also depend on migrant farmworkers to staff slightly longer seasons. Short crop seasons mean that agricultural work demands migrant workers by design. This is why many growers, including the American Farm Bureau Federation, have called for comprehensive immigration reform that would include a path to legalization for unauthorized, experienced agricultural workers. There is pending legislation in the U.S. House of Representatives and the Senate, the Agricultural Worker Program Act of 2017, that would do just that.

Taxpayers and hospitals would pick up the tab

Barring undocumented immigrants from coverage under Workers' Compensation would shift the cost of workplace injuries to taxpayers and hospitals. When a person comes to the emergency room, the hospital must treat them. If the injured person is uninsured, taxpayers make up a portion of the bill,

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and hospitals lose out on the rest. A study by Northwestern University's Kellogg School found that Disproportionate Share Hospital payments – the federal offset to ER services for uninsured patients – cover only about a third of the costs.

Limited Access to Justice

When the Workers' Compensation system was established, it replaced direct firm liability and provided a mechanism to care and provide for those hurt on the job without the expense and delay of a lawsuit for either the worker or the company. In Ohio and all but one other state, employers are required to carry workers' compensation insurance, and in all states, those who do not can be sued by workers hurt on the job.

Previous attempts to carve out workers would have limited the right to sue to workers who could prove that their employers knew they were undocumented at the time of hire. That high bar means that most affected workers would be denied not only protections against the financial hardships caused by workplace injury, but also the right to have their case heard by the courts. Barring injured workers from legal redress defies not only our core values, but Ohio's Constitution.

Ohio's Seventh District Court of Appeals has already weighed in on this issue:

Furthermore, one of the purposes of the workers' compensation system is to promote a safe and injury free work environment. *Blankenship v. Cincinnati Milacron Chemicals, Inc.* (1982), 69 Ohio St.2d 608, 615, 23 O.O.3d 504, 433 N.E.2d 572. Employers try to ensure safe workplaces, in part because if an employee is injured at their place of work, the employer bears the cost. However, if illegal aliens were exempt from collecting workers' compensation, underhanded employers might be prone to hire illegal aliens. If illegal aliens were injured, the employer would not lose any money because the aliens could not collect workers' compensation. Therefore, the employer may become lax in workplace safety, knowing it would suffer no consequences if its employees were injured at work.

Rajeh V. Steel City Corp., 157 Ohio App.3d 722, 813 N.E.2d 697, 2004 -Ohio- 3211.

Conclusion

We urge you to pass HB 80 to fund the essential Bureau of Workers Compensation, without consideration of any amendments that would bar anyone working in Ohio from coverage.

Sincerely,

Advocates for Basic Legal Equality
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The Ohio AFL-CIO
The Catholic Conference
The Central Ohio Worker Center
The Cincinnati Interfaith Workers Center
HOLA Ohio
Cleveland Jobs With Justice,
The Ohio Association for Justice
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