

## Work and Wages

### **Testimony on HB 80 before the Senate Insurance and Financial Institutions Committee**

Michael Shields

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Good morning, Chair Hackett, Vice Chair Hottinger, Ranking Member Craig and members of the Committee. My name is Michael Shields and I am a researcher at Policy Matters Ohio, a nonprofit, nonpartisan research organization with the mission of creating a more prosperous, equitable, sustainable and inclusive Ohio. Thank you for the opportunity to submit testimony on House Bill 80.

House Bill 80 is an opportunity to fund a vital oversight entity whose mission is to ensure the safety of all Ohio workers. Several changes made to the workers' compensation system in HB 80 as passed by the Ohio House would improve workplace safety and access to treatment for injured workers, but a provision that would require claimants to declare their immigration and work permit status would undermine these improvements, both for the undocumented workers it targets, and for other Ohio workers who work alongside them. That provision runs counter to the intent of the workers' compensation system, and creates new risk of injury for both undocumented workers and US citizens who work with them. I ask you to remove it.

An adequate workers' compensation system improves employee health outcomes by ensuring rapid treatment of workplace injuries, and provides a degree of financial safeguard to injured workers through partial replacement of lost wages. The funding mechanism, based on employers' number of staff and incidence of workplace injury, creates incentive to implement workplace safety measures that reduce the overall number of injuries. Changes to Ohio's workers' compensation system introduced by the House would expand treatment coverage for certain classes of workers: post-traumatic stress disorder (PTSD) treatment would be extended to first-responders who do not suffer a related physical injury, and new measures that use the Bureau of Workers' Compensation's investigative capacity to identify worker misclassification as independent contractors would reduce the number of workers who are wrongly denied coverage. Yet the new provision that would require claimants to declare their immigration status would exclude undocumented workers and altar the incentive structure that now encourages employers to maintain higher safety standards to one in which employers could instead benefit by targeting undocumented workers and cutting corners on safety.

Several times in recent legislative sessions, measures have been introduced that would hobble the Bureau of Workers' Compensation (BWC) in its mission by expressly 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. This latest measure is a backdoor attempt at the same outcome that has been rejected by the Ohio Senate numerous times before: to exclude undocumented workers from workplace safety protections.

The measure would require all workers' compensation claimants to state their citizenship status and legal status to work in the US. By design, it would present undocumented workers with an impossible choice: disclose their undocumented status and risk information sharing with ICE leading to possible deportation, or not, and be denied coverage and possibly prosecuted. Faced with this predicament, many undocumented workers would forego comp claims altogether. Research has already documented that workers – particularly low wage ones, frequently do not file claims even for serious workplace injuries out of fear of employer retaliation. This change would exacerbate that problem for a class of workers already among the state's most vulnerable to exploitation.

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.

That incentive breaks down if the very workers at high risk are excluded from coverage. Unscrupulous firms would be encouraged to instead add more undocumented workers, then cut corners on workplace safety, exposing all their workers to greater risk of injury. And those firms would enjoy a cost advantage over legitimate firms that play by the rules.

We have already seen cases of employers hiring undocumented workers and then, when the worker is hurt, turning them in to Immigration to avoid paying out a claim: The New Yorker documented such an incident in Ohio at Canton-based Case Farms, where 17-year-old Osiel Lopez lost his leg when he fell into the chicken processing machine he was cleaning. Excluding undocumented workers would only embolden such practices and place already vulnerable workers at even greater risk – both undocumented workers and those who work with them.

### **New bureaucratic red tape and costs**

The function of the Bureau of Workers' compensation is to ensure that workplace injuries are rapidly treated, and workers receive replacement of lost wages, while protecting employers against liability, and both parties from an adversarial court trial. Requiring the BWC to verify immigration status would add arbitrary new duties that the Bureau is poorly equipped to take on, and new costs. Employers are required to verify employee immigration status through the use of federal forms at the time of hire already. This change would add new administrative burdens to

the BWC, and undermine its mission, while rewarding those employers who shirked their requirement to verify workers' status in the first place.

### **Shifting the cost to taxpayers and hospitals**

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, 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.

### **Conclusion**

I urge the Committee to strike the provision in HB 80 requiring claimants to declare their immigration work authorization status, and pass the Bureau of Workers' Compensation budget bill without further consideration of any measure that would technically or practically bar anyone working in Ohio from coverage. Thank you.