UNINTENDED CONSEQUENCES: LIMITING WORKERS' COMPENSATION BENEFITS FOR UNDOCUMENTED WORKERS EXPOSES WORKERS TO GREATER RISKS OF INJURY, BUSINESS TO GREATER COSTS

U.S. immigration laws prohibit employment of workers who do not have legal permission to work. Yet federal labor, health, and safety protections are—at least, in theory—supposed to be afforded to workers without regard to their legal status. Our data show that employers have hired a significant number of undocumented workers, but many of them are not complying with workplace regulations.[1]

For the past several years, legislation has been unsuccessfully promoted in several states, including Colorado, Georgia, Maryland, Montana, Ohio, New Jersey, South Carolina and Virginia, that would deny workers' compensation to unauthorized workers. If passed, such laws would be out of step with both long-standing practice and the best policy for dealing with the costs of workplace injuries. Such laws would provide perverse incentives for unscrupulous employers to seek out undocumented workers and cut corners on health and safety measures, and expose law-abiding employers to huge risks of liability.

States Should Not Provide Employers With Financial Incentives to Ignore Safety and Health.

Latino workers, including both immigrant and non-immigrants, suffer fatal workplace injuries at an alarmingly higher rate than other workers in the U.S. workforce.[2] No matter what their immigration status, all workers must be covered under workers' compensation laws.

A state that excluded undocumented workers from worker's compensation coverage would be out of step with the vast majority of states.

Almost all states either explicitly or implicitly include undocumented workers in their workers' compensation statutes. In the past eight years, in every case where the issue has reached a

[1] Laurel E. Fletcher, Phuong Pham, Eric Stover, Patrick Vinck; Int'l Human Rights Law Clinic, Boalt Hall School of Law, Univ. of Cal., Berkeley; Human Rights Center, University of Cal., Berkeley; Payson Center for Int'l Dev. and Tech. Transfer, Tulane Univ.; "Rebuilding After Katrina: A Population-Based Study of Labor and Human Rights in New Orleans," June 2006, at 3.

[2] Each state's experience with fatal injuries for Latino and immigrant workers is reported yearly. To see those rates for your state and compare over time, see the AFL-CIO's report, Death on the Job.

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court or board, the adjudicative bodies in 19 states have held that immigration status does not affect general eligibility for workers' compensation coverage. Undocumented workers are explicitly excluded from workers' compensation coverage by statute in only one state, Wyoming, and then only if they are both unauthorized to work and their employer failed to follow the I-9 process.

Worker's compensation is an insurance system that works best if all workers are covered.

Workers' compensation schemes represent a compromise way of ensuring that workers have access to relief from the costs of industrial accidents, employers are protected from the costs associated with liability in tort, and states are not left bearing the burden of caring for indigent injured workers. Excluding undocumented workers from coverage topples this balance.

When the costs of industrial accidents are disproportionately left to the low-wage workers who suffer injuries, the system does not work.

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 tax-payers pay the price.

Relieving employers of undocumented immigrants from all liability under the labor and employment laws gives unscrupulous employers a free pass and creates an incentive for all employers to seek out and exploit undocumented immigrants.

If unscrupulous employers are permitted to seek out undocumented workers and then use their immigration status as a shield to escape full responsibility for on-the-job injuries, they will have an unfair advantage over other employers. States should not create financial incentives for employers to ignore health and safety laws and provide a competitive advantage to those who do so.

Removing workers' compensation coverage for unauthorized immigrants may expose employers to far greater liability for workplace injuries.

Coverage under workers' compensation laws means workers give up the right to sue their employer, usually for far greater amounts of money, for on-the-job injuries. Removing that

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insurance coverage may expose employers to worker lawsuits claiming ALL damages suffered in a workplace accident, rather than the more modest workers' compensation costs.

Removing workers' compensation coverage for undocumented workers represents a windfall to insurance companies.

State proposals that disqualify some workers from compensation coverage would allow insurance companies to collect premiums from employers without having to pay the costs associated with workplace injuries. Covered employers would pay their premiums to the company, but the company is relieved from paying benefits to workers who are not authorized to work.

Exempting some employers and insurers from paying workers' compensation to some of their workforce will expose their entire workforce to more risks of injury.

Each year in the United States over 5,700 workers are killed on the job, and 4.3 million others become ill or injured. Yet a major study recently found that workers are reluctant to pursue compensation claims due to fear of retaliation. Measures that deny coverage to one group of workers will necessarily create a further chilling effect for all workers, in turn increasing the risk of uncompensated injuries.

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