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November 22, 2011

Senator Mark Jansen, Chairperson
Reforms, Restructuring and Reinventing Committee
28th District
P.O. Box 30036
Lansing, MI 48909

RE: Written Comments Regarding HB 50002 Workers Compensation Reform
Agema Immigration Amendment

Dear Senator Jansen and Members of Committee:

On behalf of the American Immigration Lawyers Association Chapter of Michigan as well as the many tens of thousands of immigrant workers both documented and undocumented of the State of Michigan, we strongly urge you to oppose the inclusion of the amendment added at the 11th hour by Representative Agema in the House Version HB 50002 to both exclude workers without employment authorization from any workers' compensation benefits as well as to encourage insurance carriers to report workers to federal authorities.

Not only is this amendment basically unrelated to the rest of the proposed bill, it is mean spirited, cruel, and serves no economic nor rational business purpose. The Agema Amendment ignores that in 2003 the Michigan Court of Appeals after a remand from the Michigan Supreme Court in the cases of *Sanchez v Eagle Alloy* specifically ruled that immigrant workers without employment authorization cannot receive wage loss benefits for the period that they do not have employment authorization, even if they may have had employment authorization at the time of their initial injury. Thus the current State of Michigan law with which many of us may disagree

with, already takes into account the immigration employment status of workers in denying them wage loss benefits.

As explained in the attached materials from the National Employment Law Project from 2011, which recently undertook a national wide study, in almost all states who have recently considered this issue, they have decided not to exclude undocumented and unauthorized workers from workers compensation coverage. This amendment would only serve as a further incentive to unscrupulous employers to increase further the employment of unauthorized workers and not only would the injured worker not receive wage loss benefits but medical coverage through workers compensation insurance would not pay for their medical costs thus further shifting this burden onto to the public through emergency Medicaid and unpaid medical bills.

As the rest of the purposed house bill 50002 does nothing to change the current state of the law regarding immigrant workers. There is no reason to make it more harsh expanding the exclusion to medical benefits. If there was at one time a fear that undocumented workers were likely to intentionally cause the accidents in order to receive wage loss benefits which has never been proven to be the case, even if it were to be true, this issue has been taken into account by the *Eagle Alloy* case.

The additional portion of the Agema Amendment related to insurance carriers reporting workers to federal authorities also is extremely problematic. It will only lead to more discrimination against immigrants or people who appear to be immigrants but may be citizens or legal immigrants as well as conflicting with federal law which forbids retaliation against persons even if undocumented for making otherwise lawful claims such as injury claims.

In summary the Committee is urged to use common sense and to keep out this amendment which serves no legal purpose, and again as explained in the detailed fact sheets

from the National Employment Law Project as bad public policy serves and no health nor economic benefits.

Yours truly,

Richard Kessler
On behalf of the American Immigration Law Association

Attachment: National Employment Law Project Fact Sheet
January, 2011, 3 pages