

Unintended Consequences of Limiting Workers' Comp Benefits for Undocumented Workers: Greater Risk of Injury for Workers; Higher Costs for Businesses, Taxpayers, Consumers

Ohio has introduced legislation to deny workers' compensation medical and other benefits to undocumented workers who are seriously injured on the job. The bill would also limit undocumented workers' access to the courts for injuries suffered on the job. Over the past several years, legislation has been introduced in several states, including Colorado, Georgia, Maryland, Montana, New Jersey, South Carolina, and Virginia, to deny workers' compensation to unauthorized workers. These laws were never enacted. Legislators understood that such exclusions are out of step with both longstanding practice and the best policy for preventing on-the-job injuries and dealing with the costs of workplace injuries. Such laws would provide perverse incentives for unscrupulous employers to seek out undocumented workers so they can cut corners on health and safety measures, and unfairly undercut law-abiding employers who play by the rules.

States should not provide financial incentives to ignore safety and health.

Latino workers, including both immigrants and non-immigrants, [suffer fatal workplace injuries](#) at an alarmingly higher rate than other workers in the U.S. workforce. While we know that there is no way to track workplace illness and injury data for undocumented immigrants, we know that the [latest statistics](#) show that 934 immigrant workers were killed on the job in 2015. No matter what their immigration status, all workers must be covered under workers' compensation laws.

A state that excludes undocumented workers from workers' 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 31 states where the issue has reached a court or board, these bodies 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. However, Wyoming does not restrict undocumented workers' access to the courts.

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

When workers' compensation laws were passed more than 100 years ago, they were a compromise. Workers gave up their right to sue their employer for a work-related injury or illness, and in exchange, their employer would purchase insurance to cover medical care and lost wages. Workers' compensation laws represent a compromise way of ensuring that workers have access to medical care and relief from the costs of work-related injuries and disease. They also ensure that employers are protected from the costs associated with liability in tort and that 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 work-related injuries and disease 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 taxpayers pay the price.

Relieving employers of undocumented immigrants from 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 states were to deny coverage to undocumented workers, they would encourage unscrupulous employers to hire undocumented workers and then use their immigration status as a shield to escape full responsibility for on-the-job injuries. That would give employers who cheat an unfair advantage over employers who play by the rules. States should not create financial incentives to ignore health and safety laws.

In fact, the Ohio [appeals court](#) expressed the same concerns:

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.

A recent article in the [New Yorker](#) chronicled how Case Farms, a poultry company in Ohio, took advantage of undocumented workers only to fire them when they protested unsafe work conditions or when they were seriously injured. The legislation pending in Ohio will give companies like Case Farms immunity from paying for workers' compensation for injuries suffered by their undocumented workers.

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

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

Employers who are not required to provide workers' compensation to some of their workforce will expose their entire workforce to more risks of injury.

Each year in the United States, more than 4,800 workers are killed on the job, and almost three million others become ill or injured. Employers who expose undocumented workers to risks of injuries on the job also expose their co-workers to such risks.

Work related injuries and illnesses are preventable—they are preventable when companies following common-sense safety requirements. If employers do not have to provide workers' compensation to some of their workers, they will cut corners on safety for all their workers. If this Ohio bill passes, it will reduce the incentive for companies to assume responsibility to provide safe conditions—and serious injuries among all Ohio workers will increase.