

A Guide to Workers' Compensation for Healthcare Providers Serving Farmworkers

by Farmworker Justice

Basic overview of workers' compensation

Workers' compensation is a system of employer-provided insurance that offers benefits to employees who suffer a job-related injury or illness. In most cases, by accepting workers' compensation the employee gives up his or her right to sue the employer for negligence. When a covered worker suffers a job-related injury or illness, workers' compensation may provide:

- Coverage for medical expenses and rehabilitation services including medical treatment both immediate and long-term, surgery, hospitalization, nursing, medications, physical therapy, medical and surgical supplies, sick travel, laboratory tests, and any other treatment that may be reasonably required.
- Partial payment of lost wages for the time the worker is considered unemployable – amount may vary depending on a number of factors but is generally somewhere between two-thirds and three-fourths of lost income.
- Lump-sum payment to workers suffering a permanent disability
- Burial costs and related services when a work-related injury or illness is fatal. Also monetary support for surviving dependent family members, similar to life insurance.

In order to file a workers' compensation claim, employees generally must demonstrate that they:

- Suffered a work-related injury or an occupational illness;
- Notified their employer of the ailment within the specified time (which varies widely from state to state);
- Are an employee of the entity identified as the employer; and
- Followed the instructions of the healthcare provider, such as when to return to work and any work restrictions.

State laws

Workers' compensation rules and standards vary by state. Only 12 states as well as the District of Columbia, the Virgin Islands and Puerto Rico require full workers' compensation coverage for farmworkers. In all other states, coverage is either optional or limited.

Full Coverage: Requires employers to cover seasonal and migrant agricultural workers to same extent as all other workers.

- States with full coverage – AZ, CA, CO, CT, HI, ID, MA, MT, NH, OH, OR and WA

Limited Coverage: Requires agricultural employers to provide workers' compensation but limits coverage to certain groups of farmworkers. These states provide exceptions to coverage either based on the number of hired employees or annual wages. In North Carolina, for example, employers are not required to provide workers' compensation if they employ fewer than 10 full-time non-seasonal farm laborers.¹

- States with limited coverage – AK, FL, IL, IA, LA, ME, MD, MI, MN, NE, NC, OK, PA, RI, SD, UT, VT, VA, WV and WI

Optional Coverage: Allows agricultural employers to elect to provide workers' compensation coverage to their employees, though the coverage is not required by state law. In many of these states, workers' compensation is required for employers in other industries but optional for agriculture. Alabama, for example, exempts employers of farm laborers from its state workers' compensation requirement.²

- States with optional coverage – AL, AR, DE, GA, IN, KS, KY, MS, MO, NV, NJ, NM, ND, SC, TN, TX and WY

Undocumented workers

In 31 states and the District of Columbia, undocumented workers are covered by workers' compensation. These states explicitly include language addressing coverage for undocumented workers or the courts deemed that the laws include undocumented workers. However, workers' compensation coverage in these states may differ for undocumented workers. For example, in Michigan and Pennsylvania, courts have ruled that undocumented employees are eligible for medical benefits but not replacement wages.

- States that provide workers' compensation to undocumented workers – AZ, CA, CO, CT, FL, IL, KS, KY, LA, MD, MA, MI, MN, MT, NE, NV, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, TN, TX, UT, VA and WI

The others states not listed either do not address or completely exclude undocumented workers. In Vermont, there is nothing in the statute or case law that either includes or excludes undocumented workers.³ But in Alabama, the definition for employees specifically includes “aliens...who are legally permitted to work.”⁴

Only three states exclude undocumented workers from workers' compensation – AL, ID and WY.

¹ N.C. Gen. Stat. Ann. § 97-13(b) 2011

² Alabama Code 1975 § 25-5-50 (2009)

³ Farmworker Justice, <http://farmworkerjustice.org/content/workers-compensation>

⁴ Alabama Code 1975 § 25-5-50 (2009)

Foreign Workers on Temporary Work Visas

Employers who hire temporary foreign agricultural workers under the H-2A visa program are required to provide workers' compensation benefits to their employees, regardless of the applicable state law.⁵

Barriers to Workers' Compensation for Farmworkers

According to the 2007-2009 National Agricultural Workers Survey (NAWS), only 35% of farmworkers have health insurance.⁶ For farmworkers who do not have health insurance or cannot afford to pay for medical care, workers' compensation may be the only available option for obtaining much-needed treatment. Without these benefits, many farmworkers with a job-related injury or illness would either forgo needed medical care or their families would go into medical debt in order to secure it. Workers' compensation benefits may be the only way for some workers to receive specialty care or rehabilitative services that may be outside a health center's scope of work.

However, farmworkers face numerous challenges in accessing workers' compensation benefits.

Lack of knowledge: Workers' compensation is complicated and confusing. Many farmworkers are unaware that they may qualify for workers' compensation.

Fear of employer retaliation: Some farmworkers may be reluctant to file workers' compensation claims, even when they are eligible for benefits, for fear of retaliation by their employer. While this practice is illegal, many workers would rather forego claims than risk losing their jobs.

"Light Duty": After an injury or illness, medical providers often recommend "light duty" to facilitate recovery at work. However, there may be no job that qualifies as "light duty" on a farm. Most agricultural work, from picking and harvesting crops to packaging produce, involves heavy and strenuous labor. A farmworker who returns to work after an injury or illness may be exposed to the same hazards that caused the injury or illness in the first place.

Transnational issues: Farmworkers that migrate between the U.S. and their home countries, including but not limited to H-2A workers, face additional challenges when accessing workers' compensation benefits.

- *Follow-up* – Medical care may be more difficult and expensive to access outside of the U.S. Many migrant farmworkers come from rural areas where healthcare, especially specialized care that may be required for more serious and disabling injuries, may be hours or days away from home.
- *Qualifications of doctors* – Workers' compensation reimbursement may not be valid for providers outside of the U.S. Some states require doctors to have certain qualifications in

⁵ 20 CFR 655.122(e)

⁶ U.S. Dept. of Labor, NAWS 2007-2009

order to be eligible for reimbursement, which may disqualify doctors outside of the U.S. Those doctors who do meet U.S. criteria may be inaccessible to injured or ill farmworkers, many of whom live in isolated rural areas.

- *Medical expenses* – Farmworkers may not be able to afford continued medical care back in their home countries. Some insurers may presumptively deny reimbursement for out-of-country medical expenses, even if the claim is filed in the U.S. before the farmworker returns to his home country. For those insurers that do cover out-of-country medical expenses, doctors in these countries may be unfamiliar with filing U.S. workers' compensation claims.

Issues of Concern for Health Centers

Workers' compensation provides additional revenue to the health center, especially for patients who have no other form of insurance and would otherwise pay the sliding fee discount. In addition, the guaranteed medical coverage encourages greater adherence to medical treatment, ensuring the patient a quicker and fuller recovery. In some states, such as Washington, physicians may be required by law to assist a worker in pursuing a workers' compensation claim if he or she is entitled to benefits.⁷

Healthcare providers may also encounter numerous challenges when filing workers' compensation claims:

Lack of Information about workers' compensation: The patchwork of state laws means that health care providers and health center administrators often lack accurate information about workers' compensation coverage in their state. Further, providers don't necessarily understand their role within the workers' compensation filing process. Providers may not ask the right questions and/or administrators may not file the claim within the approved time period.

Perceived burden of paperwork: Workers' compensation is often seen as an administrative burden. Despite the reimbursement benefits, especially for workers who have no other form of insurance, filing claims is perceived as a cumbersome and lengthy process.

Language/cultural competency: Farmworkers are reluctant to report workplace injuries and illnesses. A farmworker may not disclose his occupation unless asked by the provider.

Patient follow-up: The migratory nature of agricultural work makes continuity of care difficult. Injured farmworkers may return to their home countries instead of staying in the U.S. Others may not choose to receive follow-up treatment for their injury or illness due to fear of employer retaliation or loss of wages.

⁷ Washington State Law RCW 51.28.020

Addressing a work-related injury – Step by Step

1) Assess if the injury or illness is work-related

During a farmworker's initial visit, healthcare providers should take a thorough patient history that includes occupational and environmental exposures and take all steps necessary to determine the nature, cause and extent of the injury or illness. This information is important not only for the purposes of diagnosis and treatment, but also for helping the patient to eventually qualify for and receive benefits through workers' compensation insurance.

When treating a patient with an occupational illness that may be related to chemical exposure, questions could include:

- Were you exposed to pesticides or other chemicals (by touching treated plants or through direct spray or drift) on the day you became ill?
- How soon after the exposure did your symptoms begin?
- Did any other workers in your area experience similar symptoms that day?
- Have you ever experienced symptoms like this before? If so, under what circumstances?

When treating workers with ailments such as a back injury that develop over time, questions could include:

- How do you perform your job?
- How heavy are the bags of produce you lift?
- How many bags do you lift in an hour?
- How far do you have to carry bags of produce before emptying them in a bin?
- Do you have to reach over your head?
- How many times per hour do you repeat key tasks (e.g., carrying and emptying bags of produce)?

2) Determine if the worker is covered by workers' compensation

Farmworker Justice has a list of each state's workers' compensation requirements as well as the process for handling workers' compensation claims, including the forms, deadlines, and other requirements. You can access it at ... (*need to upload workers' comp excel spreadsheet*). It is also important to determine the extent to which an injured worker can choose his or her healthcare provider. States vary widely on this issue. In some states, mid-level providers are not permitted to file workers' compensation claims. Other states, such as Pennsylvania, have a designated list of physicians who can treat workers' compensation patients, to which migrant health centers may have difficulty being added. Yet another variation is Maine's policy, which allows the employer to designate the provider for the first 10 days, after which the injured worker has free choice.

3) Build a strong foundation for a workers' compensation claim

Clinicians play a vital role in the recovery of wages and medical benefits through workers' compensation as they document the injury on behalf of the farmworker. In order to file a workers' compensation claim, employees generally must demonstrate that they:

- Suffered a work-related injury or an occupational illness;
- Notified their employer of the ailment within the specified time (which varies widely from state to state);
- Are an employee of the entity identified as the employer; and
- Followed the instructions of the healthcare provider, such as when to return to work and any work restrictions.

If a healthcare professional believes that a farmworker is suffering from a work-related ailment, and the worker is covered by workers' compensation, a report and a bill should be sent to the patient's employer or the employer's workers' compensation insurance provider. The medical report must show in detail the nature and extent of the injury and contain a full description of the treatment provided. Many states have rules as to how quickly this must be filed. When submitting a report the health care provider should document the following:

- The nature and extent of the illness or injury.
- The connection of the ailment to work activity.
- The treatment provided and the patient's compliance with it.
- The date when the patient should be able to return to work.
- What work modifications, if any, are needed to enable the patient to resume employment.
- In the case of back or neck injuries, contributing or aggravating factors that occur as a result of a "specific traumatic incident."
- Specific statements made by the worker.

In order to support a workers' compensation claim, the worker will need a health professional to attest, to a reasonable medical certainty, that the illness or injury arose from work activities. Unlike diagnosing the illness or injury itself, which calls for 80-90% certainty, for purposes of workers' compensation, a clinician's opinion that an illness or injury is occupationally-related can be based on a conclusion that is probable or more likely than not, i.e. one that is supported by 51% of the evidence. While this is not an extremely high burden to satisfy, the worker must be able to demonstrate:

- That through the job the worker has been exposed to a greater risk of suffering than the general public, and

- That the job was a significant reason the worker has suffered the ailment.

Even if the initial underlying injury is preexisting or not work-related, the acceleration or aggravation of that underlying injury due to employment may be compensable. When a combination of factors caused the illness or injury, workers' compensation will cover the condition if work activity was a significant contributing cause. In some cases, total disability benefits may be apportioned when there is sufficient evidence to ascertain the percentage of the worker's disability that is caused by non-work related activity.

Migrant health centers may consider partnering with occupational and environmental medicine (OEM) specialists in their area who are generally familiar and comfortable with the workers' compensation process. Most OEM specialists work in hospital-based clinics; clinicians may be able to find an OEM provider willing to work with them by contacting their local hospital network. If workers need to be sent to the hospital-based clinic to see the OEM specialist, the health center may want to provide outreach workers for transportation and interpretation, which may be billable services.⁸

4) Determine next steps for treatment

Clinicians should fully discuss all treatment options with patients to ensure that the worker is in agreement with the option selected and able to comply with the provider's instructions (for example, whether the patient has access to transportation for follow-up appointments). These considerations are important because a patient's failure to comply with a clinician's instructions without reasonable justification could result in the termination of workers' compensation benefits.

Treatment considerations include:

- Degree of recovery, including on-going pain, range of motion, etc.
- Physical demands of the job. If light duty is available and appears appropriate, the clinician should specify the conditions under which such duty may be performed, e.g., amount of weight that can be lifted, number of hours that the worker can stand, and whether the work can be performed in a stooped position.

The clinician should advise the worker to return to the clinic if the injury prevents the performance of light duty. In such circumstances, the clinician can, after an examination, make a determination that temporary disability requires time off work. When handled in this manner, a worker should be able to receive workers' compensation benefits for the additional period of

⁸ A list of resources to help locate OEM specialists can be found at the end of this guide. For an example of a partnership between a migrant health clinic and an OEM specialist, see Liebman A. Occupational Medicine Brings Healthcare Justice to the Front Lines. *Streamline*, volume 14, issue 4, page 1, July/August 2008.

disability.

Resources

The following organizations can be a resource for individuals and organizations seeking more information on occupational medicine, workers' compensation and migrant workers.

American Association of Occupational Health Nurses

www.aaohn.org

AAOHN is a membership association dedicated to advancing health, safety and productivity of domestic and global workforces by providing education, research, public policy and practice resources for occupational and environmental health nurses.

American College of Occupational and Environmental Medicine

www.acoem.org

ACOEM is a membership organization that promotes leadership in the health and safety of workers, workplaces and environments.

Association of Occupational and Environmental Clinics

www.aoec.org

The AOEC web site has links to educational resources, tools and training as well as a directory of clinics and providers nationwide that specialize in occupational and environmental health.

Farmworker Justice

www.farmworkerjustice.org

Farmworker Justice has many resources for migrant healthcare providers including state guides to workers' compensation in California, Maine, Michigan, Puerto Rico, North Carolina and Tennessee.

Legal Services

<http://grants.lsc.gov/rin/about-rin>

Search for a local legal services office that may be able to provide legal assistance to migrant workers with workplace injuries.

Migrant Clinicians Network

www.migrantclinician.org

MCN has various environmental and occupational health screening tools that are appropriate for the primary care setting.

Western Center for Agricultural Health and Safety

<http://migranthealth.ucdavis.edu>

The Occupational Health and Safety Resource Center contains Spanish educational materials, data sources, and links to bilingual informational websites on occupational health and safety issues related to agricultural work.