

**OPPONENT TESTIMONY OF MICHAEL R. SMALZ, ON BEHALF OF THE CENTRAL OHIO WORKER CENTER,
ON HOUSE BILL 380,
TO HOUSE INSURANCE COMMITTEE**

Chairman Brinkman, Vice Chair Henne, Ranking Minority Member Boccieri, and Committee Members:

My name is Michael Smalz. I am testifying on behalf of the Central Ohio Worker Center (COWC) in opposition to House Bill 380 (HB 380). I am an attorney and a member of the Board of Directors of the Worker Center. The Worker Center is a nonprofit organization that educates, organizes, and advocates for low-wage and immigrant workers in Central Ohio. We strongly oppose HB 380 because it would undermine workplace health and safety, provide financial incentives for unscrupulous employers to hire undocumented workers so they can cut corners on health and safety measures, and unfairly disadvantage law-abiding employers.

Workers' compensation is an insurance system that works best when all employees are covered. Workers' compensation benefits serve a dual purpose: (1) they protect workers by ensuring that injured workers have access to medical care and financial relief; (2) and further ensure that employers are protected from tort liability while protecting the state, taxpayers, healthcare providers, and the community from having to pick up the cost of caring for indigent injured workers. Excluding undocumented workers upsets that balance.

Denial of coverage to undocumented workers would encourage unscrupulous employers to hire undocumented workers and then use their immigration status as a legal shield to escape responsibility for on-the-job injuries. That would give employers who cheat an unfair financial advantage over employers who play by the rules and implement appropriate health and safety measures. Economists have characterized such perverse financial incentives as creating "moral hazard." Moral hazard occurs when someone has a financial incentive to engage in unduly risky behavior because they know that it is protected against those risks and/or another party would incur those costs.

This bill is a classic example of creating moral hazard. Indeed, an Ohio Court of Appeals has explicitly recognized the social harm and perverse financial incentives that would result from the exclusion of undocumented workers from coverage under workers' compensation. As the Seventh District Court of Appeals cogently observed:

"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 cannot 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 72 (2004).

The enactment of HB 380 would make it easier for unscrupulous employers to take advantage of undocumented workers. The infamous example of Case Farms, as recently reported in the *New Yorker*, illustrates the unfairness of this legislation. Case Farms took advantage of undocumented workers only to fire them when they protested unsafe working conditions or when they were seriously injured. Giving companies like Case Farms immunity from paying for workers’ compensation for injuries suffered by their workers makes no sense as a matter of public policy.

HB 380 also gives employers immunity from liability from damages suffered by reason of personal injury or occupational disease sustained in the course of employment, except for intentional torts. The Legislative Service Commission noted in its Analysis that this provision raises constitutional questions. In any case, giving employers immunity for grossly negligent or even recklessly dangerous conduct that causes injury to their employees greatly devalues workplace health and safety.

Finally, it is noteworthy that no other state completely bars undocumented workers from receiving workers’ compensation benefits. On the contrary, almost every state either explicitly or implicitly includes undocumented workers in their workers’ compensation system. Only one state – Wyoming – excludes undocumented workers from workers’ compensation benefits here. However, even Wyoming only excludes such workers if they are both unauthorized work and the employer failed to follow the I-9 verification process, and Wyoming does not restrict undocumented workers’ ability to sue their employers for negligence. Moreover, other states that have considered legislation similar to HB 380 – including Colorado, Georgia, Montana, South Carolina, and Virginia – have rejected or failed to enact such legislation.

The most recent statistics reveal that over 120,000 workers in the State of Ohio suffered a serious job-related injury or illness requiring medical treatment and/or days away from work or restricted duty. Workers’ compensation provides an incentive for employers to continue to strive to prevent these injuries by providing a safe workplace. This bill would rip that incentive away from unscrupulous employers – and the number of work-related injuries will rise in Ohio as a result.

In summary, the Central Ohio Worker Center urges this Committee to reject HB 380 because it undermines workplace health and safety, is unfair to injured workers, rewards law-violating employers and punishes law-abiding employers, and may be in part unconstitutional.

Thank you. I would be happy to answer any questions.