



Work and Wages

Testimony on HB 80 before the House Finance Committee

Michael Shields

Good morning, Chair Oelslager, Vice Chair Scherer, Ranking Member Cera and members of the Committee. My name is Michael Shields and I am a researcher at Policy Matters Ohio, a nonprofit, nonpartisan research organization with the mission of creating a more prosperous, equitable, sustainable and inclusive Ohio. Thank you for the opportunity to submit testimony on House Bill 80.

House Bill 80 is an opportunity to fund a vital oversight entity whose mission is to ensure the safety of all Ohio workers. Several times in recent legislative sessions, measures have been introduced that would hobble the Bureau of Workers' Compensation (BWC) in this mission by excluding undocumented workers, who face some of the worst exposure to workplace injury, from protection. Such proposals have appeared both as standalone bills and as amendments to the bill that funds the BWC. Today I urge the committee to pass HB 80 without consideration of any measure that would exclude any person working in Ohio from workers compensation coverage in the event of injury.

Barring any workers from workers compensation protection would put both them, and their coworkers, at greater risk of getting hurt at work. Excluding undocumented workers would create a perverse incentive for firms to hire undocumented workers over citizens, and cut corners on safety, knowing that their workers compensation premiums would be unaffected by worker injuries. Such a system would put businesses that follow the law at a competitive disadvantage against those who do not. It would leave taxpayers and hospital emergency services to cover the cost of injuries to excluded workers.

In 2017, nearly 117,000 Ohio workers were hurt or fell ill from exposure to workplace hazards; and 174 were killed on the job. No family should ever lose a loved one at work. Workers Compensation laws are designed not only to ensure injured workers get medical treatment and replace lost wages, but to create an incentive for employers to guard against preventable injuries before they happen.

Workers compensation balances worker, employer interests

Workers' Compensation covers medical expenses and replaces the lost wages of workers hurt on the job. The system was established as a compromise between workers and employers; employers keep insurance to protect workers, and workers in turn give up their right to sue. When a worker gets hurt, it is treated as a signal that the workplace is higher risk, and the employer's premium rises to reflect that. That mechanism creates an incentive for firms to maintain a safe workplace, and balances the cost of workers' compensation insurance so that the highest costs are shouldered by the firms most likely to use the system.

That incentive breaks down if the very workers at high risk are excluded from coverage. Unscrupulous firms would be encouraged to instead add more undocumented workers, then cut

corners on workplace safety, exposing all their workers to greater risk of injury. And those firms would enjoy a cost advantage over legitimate firms that play by the rules.

For instance, as the New Yorker documented, 17-year-old Osiel Lopez Perez lost his leg due to a malfunction in a chicken processing machine at Canton-based Case Farms in 2015 and was able to access workers compensation. Case Farms and its subcontractor had previously been cited by OSHA for other workplace safety violations; without workers compensation coverage for undocumented workers, Case Farms would have little incentive to make safety improvements and Osiel would have had no compensation for the loss of his leg.

Shifting the cost to taxpayers and hospitals

Barring undocumented immigrants from coverage under Workers' Compensation would shift the cost of workplace injuries to taxpayers and hospitals. When a person comes to the emergency room, the hospital must treat them. If the injured person is uninsured, taxpayers make up a portion of the bill, and hospitals lose out on the rest. A study by Northwestern University's Kellogg School found that Disproportionate Share Hospital payments - the federal offset to ER services for uninsured patients - cover only about a third of the costs.

Limited Access to Justice

When the Workers' Compensation system was established, it replaced direct firm liability and provided a mechanism to care and provide for those hurt on the job without the expense and delay of a lawsuit for either the worker or the company. In Ohio and all but one other state, employers are required to carry workers' compensation insurance, and in all states, those who do not can be sued by workers hurt on the job.

Previous attempts to carve out workers would have limited the right to sue to workers who could prove that their employers knew they were undocumented at the time of hire. That high bar means that most affected workers would be denied not only protections against the financial hardships caused by workplace injury, but also the right to have their case heard by the courts. Barring injured workers from legal redress flouts not only our core values, but Ohio's Constitution.

Ohio's Seventh District Appeals Court has already weighed in on this issue:

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.

Conclusion

I urge the Committee to pass the Bureau of Workers' Compensation budget bill, HB 80, without consideration of any measure that would bar anyone working in Ohio from coverage. Thank you.