Work and Wages

Testimony on HB 380 before the House Insurance Committee
Michael Shields

Good morning, Chairman Brinkman, Ranking Member Boccieri, and members of the Committee, my name is Michael Shields. I am a researcher with Policy Matters Ohio, a nonprofit, nonpartisan research institute whose mission is to create a more vibrant and equitable Ohio economy through public policy. Thank you for the opportunity to submit testimony on House Bill 380. I ask that you vote no on this dangerous bill, which would bar undocumented workers from Workers' Compensation protection in case of workplace injuries.

In 2015 alone, more than 200 Ohio workers were killed on the job, and almost 105,000 others were hurt or fell ill from exposure to workplace hazards. No family should ever lose a loved one at work. Workers Compensation laws are designed not only to ensure that injured workers get medical treatment and replace lost wages, but to create an incentive for employers to guard against preventable injuries before they happen.

Barring undocumented immigrants from coverage under Workers Compensation would give a competitive advantage to companies that break the law. That would put all workers employed by those firms at risk, shift the cost of the Workers' Comp system to law-abiding employers, and the cost of injury to these workers onto the taxpaying public and overstrained hospital emergency rooms. It would place well-meaning firms at risk of defending against lawsuits when the immigration status of a worker changes, and commit the state to defending against inevitable legal challenge.

Perverse incentives

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' comp insurance so that the highest costs are shouldered by the firms most likely to use the system.

If undocumented workers were barred from collecting workers comp, the incentives would shift. Unscrupulous businesses would hire more undocumented workers because those workers would come with fewer obligations and therefore lower cost. Since their overall risk of having to pay out a workers' comp claim would diminish, such employers could cut corners on workplace safety, exposing all their workers to greater risk of injury. And those firms would enjoy a cost advantage over legitimate businesses that play by the rules.

We have already seen cases of employers hiring undocumented workers and then, when the worker is hurt, turning them in to Immigration to avoid paying out a claim: The New Yorker documented such an incident in Ohio at Canton-based Case Farms. Barring undocumented immigrants from coverage would only embolden such practices and place already vulnerable workers at even greater risk – both undocumented workers and those who work with them.

Shifting the cost to taxpayers and hospitals

Barring undocumented immigrants from coverage under Workers Compensation shifts 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.

House Bill 380 would limit 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:

[O]ne 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

Ohio should not create incentives for firms to both hire undocumented immigrants and cut corners on workplace safety. We should not enact a measure that raises the risk of workplace injury to those workers, and to those who work with them. And we should not shift the costs of bad practices to good businesses that play by the rules, to taxpayers, and to hospitals.

I encourage members of the Committee to vote no on House Bill 380.

Thank you for this opportunity to testify. I will be glad to take any questions.