

Interested Party Testimony of Emily Brown, Attorney, Agricultural Worker and Immigrant Rights Program, Advocates for Basic Legal Equality, Inc. (ABLE), to the Ohio Senate Insurance and Financial Institutions Committee

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Mr. Chairman and members of the Senate Insurance and Financial Institutions Committee, my name is Emily Brown. I am an attorney with Advocates for Basic Legal Equality, or ABLE, a non-profit law firm that represents low-income individuals in civil cases, including agricultural workers statewide and other immigrants in thirty-two counties in western Ohio. ABLE's Agricultural Worker and Immigrant Rights Program focuses on employment, civil rights, and immigration cases.

ABLE is opposed to any amendment to HB 80 that would require the Bureau of Workers Compensation to inquire into workers' immigration and citizenship status because it discourages workers from filing claims, hurts Ohio businesses that play by the rules, and thrusts a state agency into the role of immigration enforcement—a role far outside the mission of the BWC.

1. The proposed amendment would have a chilling effect on workers who are entitled to workers compensation benefits, discouraging them from applying for benefits, and require the BWC to act as immigration enforcement agents.

There is an abundance of evidence that many low wage workers, regardless of immigration status, decline to apply for workers compensation because they fear retaliation from their employers. Some studies have shown that fewer than 40% of eligible low wage workers apply for compensation; the proposed amendment will worsen this problem.¹ Requiring workers to answer questions about immigration and citizenship status will have a chilling effect on undocumented workers who are currently entitled to receive these benefits when injured on the job because their employers have already contributed to the workers compensation system. No other state has a law equivalent to the amendment this committee is now considering. And no other state requires its Bureau of Workers Compensation to act as a de facto immigration enforcement agency, which is what this amendment would require. The amendment allows

¹ Shannon HS, Lowe GS. How many injured workers do not file claims for workers' compensation benefits? American Journal of Industrial Medicine 2002; 42:467-473.

workers to be prosecuted for fraud if they lie on the claim form, but the BWC is not well situated to determine whether workers are telling the truth on the claim form, and there is no national database that can easily identify whether a noncitizen is legally authorized to work. The BWC does not need an unfunded mandate requiring that it take on additional responsibilities to identify undocumented workers.

Additionally, this legislation may result in First Amendment challenges on the grounds that it violates workers' right to petition for workers compensation benefits (akin to a free speech violation), which is impermissible if it does not advance an important government interest. Because there is no evidence of any kind to suggest that undocumented immigrants are abusing the workers compensation system, this provision could violate the First Amendment.

The amendment could face legal challenges on the grounds that it is preempted by federal law, because it requires a state agency to make determinations about who is authorized to work legally in the United States—a role that is exclusively within the purview of the federal government.

2. The amendment would reward unscrupulous employers.

The passage of the proposed amendment to HB 80 would actually encourage unscrupulous employers to hire undocumented workers. Although most employers want to play by the rules, some employers will undoubtedly be incentivized to hire more undocumented workers if this bill is enacted, knowing that if their workers are ultimately injured on the job, they will be scared to apply for workers compensation when they face immigration status questions on the claim form. The unscrupulous employer will then benefit because it will have fewer workers compensation claims filed against it, and its premiums will go down. Furthermore, employers who knows that many or most of their workers will not apply for workers compensation, even if injured, have less incentive to ensure that the workplace is safe. This undercuts workplace safety for *all* workers, including U.S. citizens and lawful immigrant workers. Taxpayers will also be hurt by this bill, because emergency medical care and other public services that injured undocumented workers would receive if they do not get workers compensation will raise health care costs for all Ohioans.

3. Confusing drafting would make it difficult to determine which boxes should be checked on the claim form and which workers could be subject to prosecution for fraud.

We are also concerned with a number of possibly unintended legal and practical problems that could arise due to confusing or unclear language in the proposed amendment.

First, the terms “illegal alien” and “unauthorized alien,” as defined in the proposed amendment, are poorly defined and inconsistent with federal immigration law. Therefore, the amendment as drafted will likely lead to confusion about whether claimants should check the box that they are unauthorized. It makes little sense to open this can of worms, given that the sponsors of this bill have pointed to no evidence of abuse of the workers’ compensation system by undocumented workers.

Federal immigration law is exceedingly complex, and to broadly exclude “illegal aliens” and/or “unauthorized aliens” does not account for the many immigrant workers who may have entered the country without legal status or overstayed their visas but are currently authorized to work by U.S. Citizenship and Immigration Services (USCIS). These workers may be considered “deportable” under the amendment’s definition of “illegal” or “unauthorized” alien, but they have been granted deferred action and a valid work permit by USCIS. Examples of these kinds of workers include recipients of Deferred Action for Childhood Arrivals, known as DACA, or applicants for U visas which are granted to crime victims who have assisted law enforcement in the investigation or prosecution of crimes. Such workers may be defined as “unauthorized aliens” or “illegal aliens” under this amendment, but could be legally authorized to work by USCIS, and it is unclear how they would be expected to answer the questions on the claim form.

Additionally, the amendment requires the disclosure of a claimant’s alien registration number for the purpose of showing that a claimant is authorized to work, but an alien registration number in and of itself does not indicate whether an alien is authorized to work; many unauthorized aliens have alien registration numbers, which have nothing to do with work authorization.

Further, some noncitizens have work visas in which their visa is tied to work for a specific employer or a specific type of work. It is quite possible that such a worker could be legally authorized to work during the time they suffer the workplace injury and then fall out of

lawful status when they can no longer work due to the injury. Again, these workers do not easily fit in any of the boxes to be checked.

And finally, the proposed amendment requires “a claimant who is a dependent of an individual who was an employee and who died as a result of suffering an injury” to disclose the claimant’s immigration and citizenship status in addition to the deceased employee’s immigration and citizenship status. This makes no sense from a policy standpoint and unfairly targets employees’ family members.

All of these drafting issues show that this law will be difficult to enforce and requires the Bureau of Workers Compensation to interpret and enforce federal immigration law—an area that is far outside the agency’s core mission and area of expertise. Should the Bureau of Workers Compensation really be using employers’ and taxpayers’ resources to investigate workers compensation claimants for fraud when there is no evidence that undocumented workers are abusing the workers compensation system now?

I urge the committee to strip the amendment requiring that the BWC track workers compensation applicants’ immigration status because it chills free speech and harms workers, law-abiding businesses, and taxpayers in our state.

Respectfully submitted,

/Emily Brown/

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