

The Need for Workers' Compensation Coverage for Farmworkers

H. Nolo Martinez, EdD

I STRONGLY SUPPORT the NC Latino Health Task Force 2003 recommendation to ensure that NC migrant and seasonal farmworkers be covered by the Workers' Compensation Program.

Current NC law exempts agriculture employers from providing worker's compensation insurance, unless the employer regularly employs 10 or more full-time year-round agricultural workers (Article 1, Workers' Compensation Act).

This is an equal rights issue for all NC workers. Introducing new legislation to amend farmworkers' eligibility for worker's compensation is the right thing to do. NC needs to be consistent and fair to all NC workers. If agriculture is one of North Carolina's most important industries, it is vital to defend basic rights of those who feed North Carolina and keep farmers in business.

In 1993, I initiated the NC AgrAbility Project, a state-wide project to assist farmers, farmworkers, and their families when they are affected by disabilities. AgrAbility enhanced the independent functioning of disabled and physically injured farmers in rural North Carolina. Most of these disabled farmers wanted to stay in agriculture. Giving them the tools and the assistive technology equipment to continue farming was giving life back to many that needed to be productive members of society. Many without the ability to walk, who were restricted to a wheelchair, received another chance to drive tractors and ATVs and to operate farming equipment with power lifts, hand controls, and other devices so they can get back and do what they love. We demonstrated that even with a disability, farmers could be productive and keep their land.

However, farmworkers without Workers' Compensation are without the basic benefit for a work-related injury or illness. They can only see that without that protection they are second-class workers in NC. It is ironic that most opposition to farm labor Workers' Compensation changes comes from an insurance organization. To keep NC agriculture healthy, every worker, farmer, and family member must receive the protection, training, and insurance available to other workers in NC.

Here are some of the main reasons to support the Latino Health 2003 recommendation to ensure Workers' Compensation coverage for NC farmworkers:

Current exemption undermines the intent of the Workers' Compensation Program.

The purpose of Workers' Compensation is to shift the cost of workplace injuries from employees, their families, and the public to the employers for whose profit the employees were working when injured. Workers' Compensation represents a social decision that the American worker who loses his or her income because of a work-connected injury should be regarded as an honorable veteran of the workforce and provided for in a way that maintains his or her dignity. Exempting farm employers devalues their employees as compared to other occupations.

Workers' Compensation for farmworkers is essential.

Agricultural workers comprise 3% of the nation's workforce, but have 14% of work-related deaths, making agriculture the nation's most hazardous occupation. Fewer than 25% of seasonal agricultural workers have health insurance or third party reimbursement of any kind. This is particularly important in that 75% of farmworker families live at or below poverty level, and a day's lost wages or a medical bill pose a significant economic hardship. To illustrate the limited resources of a farmworker family, consider that the average American family utilizes 10% of its wages to provide food to the household; for farmworker families, a comparable grocery basket would require more than half of their income. Medical providers pass on the cost of treating indigent farmworkers to their paying customers, so when uninsured workers end up in emergency rooms, taxpayers ultimately foot the bill for their treatment.

The exemption creates unfair business advantages for some farms.

Regardless of the total number of employees, federal law requires any farm with H2A workers (guest workers) to

The author is Director of Hispanic/Latino Affairs in the Office of the Governor, State of North Carolina. Address correspondence to 116 West Jones Street, Raleigh, NC 27603. Telephone: 919/733-5631; email: nolo.martinez@ncmail.net.

provide all employees Workers' Compensation insurance. Therefore, a farm without year-round employees, but with seasonal workers and one H2A worker, would have to provide insurance to *all* employees while an identical farm without H2A workers would be exempt.

Basing exemptions on payroll protects small farms.

Others states use better alternatives to shield smaller farms from the cost of Workers' Compensation insurance; for example, they may base exemptions on a payroll system.

The exemption was intended to shield smaller farms from the cost of Workers' Compensation insurance. Today, however, most NC farms do not need 10 full-time, year-round employees to operate efficiently, so the exemption excuses almost all from providing Workers' Compensation coverage. A more rational way to determine if a farm can afford worker's compensation insurance would be to base exemption on annual payroll. For example, a farmer with a \$100,000 payroll who has employees only during the harvest should be able to afford Workers' Compensation insurance.

States that use payroll to determine eligibility for Workers' Compensation: 11

Delaware, Iowa, Louisiana, Maryland, Minnesota, New York, Oklahoma, Pennsylvania, Texas, Utah, Vermont

States that cover agricultural employees the same as all other employees: 12

Arizona, California, Colorado, Connecticut, District of Columbia, Hawaii, Idaho, Massachusetts, Montana, New Hampshire, Ohio, Oregon

Other states with better plans than North Carolina's: 6
Florida, Michigan, Virginia, Washington, West Virginia, Wisconsin

States without compulsory compensation laws that apply to farmworkers: 19

Alabama, Arkansas, Delaware, Georgia, Indiana, Kansas, Kentucky, Mississippi, Missouri, North Dakota, Nebraska, Nevada, New Jersey, New Mexico, Rhode Island, South Carolina, Tennessee, Texas, Wyoming

The future of agriculture depends on the labor of many Latino families who select farm labor as their occupation and livelihood. Most children of NC farmers do not choose agriculture as their profession. It is time to recognize the value of farmworkers to NC agriculture.

It is only fair that workers injured on the job be provided medical care and compensation to help support their families. The rate of farm workers injured is higher than comparable rates for transportation, mine, and other industries. On-the-job fatalities in farm work are also higher than those in manufacturing and construction. North Carolina must assure coverage for on-the-job injuries to protect thousands of farmworkers.