



**UNINTENDED CONSEQUENCES: LIMITING WORKERS' COMPENSATION BENEFITS FOR UNDOCUMENTED WORKERS EXPOSES WORKERS TO GREATER RISKS OF INJURY, BUSINESS TO GREATER COSTS**

*U.S. immigration laws prohibit employment of workers who do not have legal permission to work. Yet federal labor, health, and safety protections are—at least, in theory—supposed to be afforded to workers without regard to their legal status. Our data show that employers have hired a significant number of undocumented workers, but many of them are not complying with workplace regulations.<sup>1</sup>*

In 2006, legislation was introduced (and rejected) in several states (AZ, CO, MD, NJ, SC) that would have excluded injured undocumented workers from coverage under worker's compensation. In 2007, bills in at least three states, Arizona, South Carolina and Tennessee took this approach again. In the 2008 legislature, bills are pending in Mississippi, New Jersey, South Carolina and Virginia. If passed, such laws would be out of step with what the vast majority of states have determined to be the best policy for dealing with the costs of workplace injuries. If enacted, such laws would provide perverse incentives for unscrupulous employers to seek out undocumented workers and cut corners of health and safety measures.

**States Should Not Provide Financial Incentives to Ignore Safety and Health.** As the following table shows, Latino workers, including both immigrant and non-immigrants, suffer fatal workplace injuries at an alarmingly higher rate than other workers in the U.S. workforce.

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<sup>1</sup> Laurel E. Fletcher, Phuong Pham, Eric Stover, Patrick Vinck; Int'l Human Rights Law Clinic, Boalt Hall School of Law, Univ. of Cal., Berkeley; Human Rights Center, University of Cal., Berkeley; Payson Center for Int'l Dev. and Tech. Transfer, Tulane Univ.; "Rebuilding After Katrina: A Population-Based Study of Labor and Human Rights in New Orleans," June 2006, at 3.

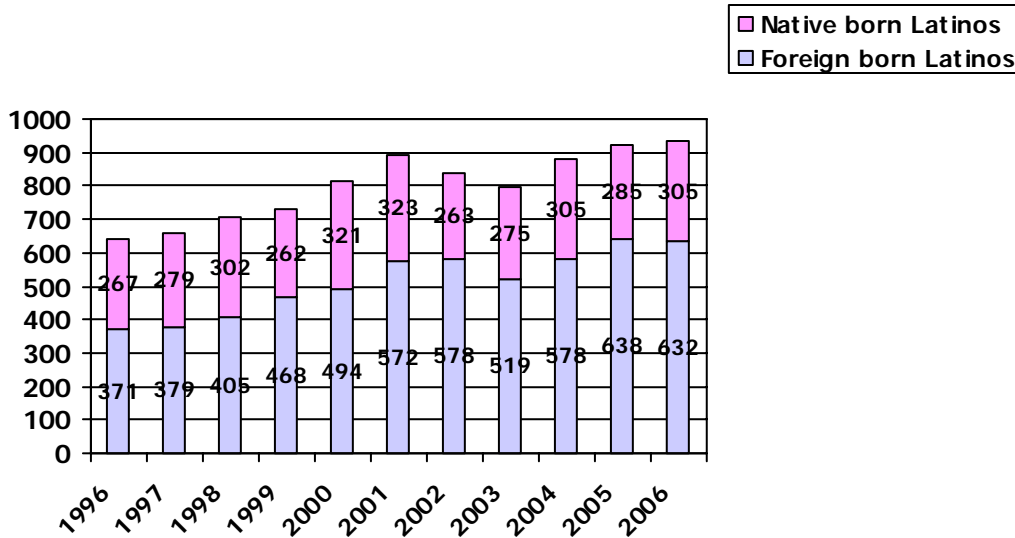
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A state that excluded undocumented workers from worker’s compensation coverage would be out of step with the vast majority of states.

Almost all states either explicitly or implicitly include undocumented workers in their statutes. Undocumented workers are explicitly excluded from workers’ compensation coverage by statute in only one state, Wyoming, and then only if they are both unauthorized to work and their employer failed to follow the I-9 process. Courts in at least a dozen states have upheld undocumented workers’ rights to workers’ compensation.

**Worker’s compensation is a system that works best if all workers are covered.**

Workers’ compensation schemes represent a compromise way of ensuring that workers have access to relief from the costs of industrial accidents, that employers are protected from the costs associated with liability in tort and that states are not left bearing the burden of caring for indigent injured workers. Excluding undocumented workers from coverage topples this balance.

**When the costs of industrial accidents are disproportionately left to the low-wage workers who suffer injuries, the system does not work.**

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Employers who cut corners on safety and rely on workers' fear of retaliation to avoid liability see a financial advantage to breaking the law. Law-abiding employers, workers and tax-payers pay the price.

**Relieving employers of undocumented immigrants from all liability under the labor and employment laws creates an incentive for employers to seek out and exploit undocumented immigrants.**

If unscrupulous employers are permitted to seek out undocumented workers and then use their immigration status as a shield to escape full responsibility for on-the-job injuries, they will have an unfair advantage over other employers. States should not create financial incentive to ignore health and safety laws.

**Employers who are not required to provide workers' compensation to some of their workforce will expose their entire workforce to more risks of injury.**

Each year in the United States over 5,700 workers are killed on the job, and 4.3 million others become ill or injured. Yet at current staffing levels, it would take Federal OSHA 117 years to inspect the workplaces under its jurisdiction. Employers who expose undocumented workers to risks of injuries on the job also expose their co-workers to such risks.

### **Real problems, real solutions**

In a recent accident in Rhode Island, Guatemalan immigrant Leonardo Cos Elias, lost his leg, buttock and half of one hip after becoming trapped in a machine. At the time, his employer's safety record included 125 injuries between 2000 and 2006, in a factory that currently employs 225 workers. Between 2000 and 2006, the company paid about \$29,000 in fines to OSHA for serious violations. At the same time, it received a publicly funded grant of \$20,000 for worker training. Karen Lee Ziner, *OSHA has fined Lincoln Company Multiple Times*, PROVIDENCE RHODE ISLAND JOURNAL, February 17, 2008, at [http://www.projo.com/news/content/PCL\\_SAFETY\\_02-17-08\\_CE90V7G\\_v18.32c8074.html](http://www.projo.com/news/content/PCL_SAFETY_02-17-08_CE90V7G_v18.32c8074.html)

Employers who violate health and safety laws face little risk of prosecution and little exposure to penalties. Penalties for serious violations of the Occupational Safety and Health Act, those that pose a substantial probability of death or serious physical harm, carry an average penalty of only \$883.

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