

A Guide to Workers' Compensation for Clinicians Serving Agricultural Workers

Basic Overview of Workers' Compensation

Workers' compensation is a system of employer-provided insurance that offers benefits to employees who suffer a job-related injury or illness. In addition to the benefits to the worker or their family, the goals of workers' compensation are to return workers to the job, help mitigate hazards and assist with injury surveillance.

When a covered worker suffers a job-related injury or illness, workers' compensation may provide:

- Coverage for medical expenses and rehabilitation services
- Partial payment of lost wages for the time the worker is considered unemployable
- Lump-sum payment to workers suffering a permanent disability
- Burial costs and related services when a work-related injury or illness is fatal.
- Monetary support for surviving dependent family members in the event of a fatality, similar to life insurance.

In order to file a workers' compensation claim, employees generally must demonstrate that they:

- Suffered a work-related injury or an occupational illness;
- Notified their employer of the ailment within the specified time (which varies widely from state to state);
- Are an employee of the entity identified as the employer; and
- Followed the instructions of the clinician, such as when to return to work and any work restrictions.

In most cases, by accepting workers' compensation employees give up their right to sue employers for negligence.

State Laws: Variations in Agricultural Worker Coverage

Workers' compensation rules and standards vary by state. Only 12 states as well as the District of Columbia, the Virgin Islands and Puerto Rico require full workers' compensation coverage for agricultural workers. In all other states, coverage is either optional or limited.

Full Coverage Employers are required to cover agricultural workers to same extent as all other workers.	AZ, CA, CO, CT, HI, ID, MA, MT, NH, NJ, NM, OH, OR and WA
Limited Coverage Employers provide workers' compensation but limits coverage to certain classifications of agricultural employers or workers such as the number of full time workers employed. ¹	AK, FL, IL, IA, LA, ME, MD, MI, MN, NE, NC, NY, OK, PA, RI, SD, UT, VT, VA, WV and WI
Optional Coverage Allows agricultural employers to elect to provide workers' compensation coverage to their employees, though the coverage is not required by state law. In many of these states, workers' compensation is required for employers in other industries but optional for agriculture. ²	AL, AR, DE, GA, IN, KS, KY, MS, MO, NV, ND, SC, TN, TX and WY
Exclusions from coverage Three states – AL, ID and WY – explicitly exclude from coverage any worker without valid work authorization.	AL, ID and WY



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Foreign Workers on Temporary Work Visas

Employers who hire temporary foreign agricultural workers under the H-2A visa program are required to provide workers' compensation benefits to their employees, regardless of the applicable state law.³

Barriers to Workers' Compensation for Agricultural Workers

According to the 2011-2012 National Agricultural Workers Survey (NAWS), only 34% of agricultural workers have health insurance.⁴ For agricultural workers who do not have health insurance or cannot afford to pay for medical care, workers' compensation may be the only available option for obtaining treatment of job-related injuries or illnesses. 68% of NAWS respondents indicated that if they were injured on the job, their employer would provide workers' compensation.⁵ Without workers' compensation, many agricultural workers would either forgo needed medical care or their families would go into medical debt in order to secure it. Workers' compensation benefits may be the only way for some workers to receive specialty care or rehabilitative services that may be outside a health center's scope of work.

However, agricultural workers face numerous challenges in accessing workers' compensation benefits.

Lack of knowledge: Many agricultural workers are unaware that they may qualify for workers' compensation.

Fear of employer retaliation: Some agricultural workers may be reluctant to file workers' compensation claims, even when they are eligible for benefits, for fear of retaliation by their employer. While this practice is illegal, many workers would rather forego claims than risk losing their jobs.

"Light Duty": After an injury or illness, clinicians often recommend "light duty" to facilitate recovery at work. Most agricultural work, from picking and harvesting crops to packaging produce, involves heavy and strenuous labor and it may be difficult to find a job that qualifies as "light duty" on a farm. However, it is in the interest of the farm owner as well as the worker to return to work as quickly as possible as long as the worker can safely do his or her job. Farms benefit by having fewer days of lost work due to an injury.

Transnational issues: Agricultural workers who migrate between the U.S. and their home countries, including but not limited to H-2A workers, face additional challenges when accessing workers' compensation benefits.

- **Follow-up** – Medical care may be more difficult and expensive to access outside of the U.S. Many migrant agricultural workers come from rural areas where healthcare, especially specialized care that may be required for more serious and disabling injuries, may be hours or days away from home.
- **Qualifications of doctors** – There may be constraints on clinicians outside the U.S. obtaining workers' compensation reimbursement. Some states require foreign doctors to have certain qualifications in order to be eligible for reimbursement, which may disqualify doctors outside of the U.S. Those doctors who do meet U.S. criteria may be inaccessible to injured or ill agricultural workers, many of whom live in isolated rural areas.
- **Medical expenses** – Agricultural workers may not be able to afford continued medical care when they return to their home countries. Some insurers may presumptively deny reimbursement for out-of-country medical expenses, even if the claim is filed in the U.S. before the agricultural worker returns to his home country. For those insurers that do cover out-of-country medical expenses, doctors in home countries may be unfamiliar with filing U.S. workers' compensation claims.

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Benefits of Workers' Compensation to Health Centers

Workers' compensation provides additional revenue to the health center, especially for patients who have no other form of insurance and would otherwise pay the sliding fee discount. In addition, the guaranteed medical coverage encourages greater adherence to medical treatment, ensuring the patient a quicker and fuller recovery. In some states, such as Washington, physicians may be required by law to assist a worker in pursuing a workers' compensation claim if he or she is entitled to benefits.⁶

Strategies for minimizing workers' compensation system barriers

Addressing a Work-Related Injury – Step by Step

1) Assess if the injury or illness is work-related

During an agricultural worker's initial visit, clinicians should take a thorough patient history that includes occupational and environmental exposures and take all steps necessary to determine the nature, cause and extent of the injury or illness. This information is important not only for the purposes of diagnosis and treatment, but also for helping the patient to eventually qualify for and receive workers' compensation benefits.

When treating a patient with an occupational illness that may be related to chemical exposure, questions could include:

- Were you exposed to pesticides or other chemicals (by touching treated plants or through direct spray or drift) near the time you became ill?
- How soon after the exposure did your symptoms begin?
- Did any other workers in your area experience similar symptoms around that time?
- Have you ever experienced symptoms like this before? If so, under what circumstances?

When treating workers with ailments such as a back injury that develop over time, questions could include:

- How do you perform your job?
- How heavy are the bags of produce you lift?
- How many bags do you lift in an hour?
- How far do you have to carry bags of produce before emptying them in a bin?
- Do you have to reach over your head?
- How many times per hour do you repeat key tasks (e.g., carrying and emptying bags of produce)?

2) Determine if the worker is covered by workers' compensation

Farmworker Justice and the Migrant Clinicians Network have developed a list of each state's workers' compensation requirements as well as the process for handling workers' compensation claims, including the forms, deadlines, and other requirements. You can access it on the MCN (www.migrantclinician.org) or FJ (www.farmworkerjustice.org) website. It is also important to determine the extent to which an injured worker can choose his or her clinician. States vary widely on this issue.



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3) Build a strong foundation for a workers' compensation claim

Clinicians play a vital role in the recovery of wages and medical benefits through workers' compensation as they document the injury on behalf of the agricultural worker.

The clinician will need to attest that the illness or injury arose from work activities. Unlike making a medical diagnosis, which calls for 80-90% certainty, for purposes of workers' compensation, a clinician's opinion that an illness or injury is occupationally-related can be based on a conclusion that is probable or more likely than not. In other words, the clinician must be 51% certain that the injury or illness is caused by work. The clinician should note in the workers' medical chart that:

- the injury or illness was “more likely than not” due to the work,
- work was “most likely” the cause of the injury, or
- “but for the work” the patient would not be suffering from this injury or exposure

Even if the initial underlying injury is preexisting or not work-related, the acceleration or aggravation of that underlying injury due to employment may be compensable. When a combination of factors caused the illness or injury, workers' compensation will cover the condition if work activity was a significant contributing cause. In some cases, total disability benefits may be apportioned when there is sufficient evidence to ascertain the percentage of the worker's disability that is caused by non-work related activity.

If a clinician believes that an agricultural worker is suffering from a work-related ailment, and the worker is covered by workers' compensation, a report and a bill should be sent to the patient's employer or the employer's workers' compensation insurance provider. The medical report must show in detail the nature and extent of the injury and contain a full description of the treatment provided. Many states have rules as to how quickly this must be filed. When submitting a report the clinician should document the following:

- The nature and extent of the illness or injury.
- The connection of the ailment to work activity.
- The treatment provided and the patient's compliance with it.
- The date when the patient should be able to return to work.
- What work modifications, if any, are needed to enable the patient to resume employment.
- In the case of back or neck injuries, contributing or aggravating factors that occur as a result of a “specific traumatic incident.”
- Specific statements made by the worker.

Migrant health centers may consider partnering with occupational and environmental medicine (OEM) specialists in their area who are generally familiar and comfortable with the workers' compensation process. Most OEM specialists work in hospital-based clinics; clinicians may be able to find an OEM specialist willing to work with them by contacting their local hospital network. If workers need to be sent to the hospital-based clinic to see the OEM specialist, the health center may want to provide outreach workers for transportation and interpretation, which may be billable services.⁷



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4) Determine next steps for treatment

Clinicians should fully discuss all treatment options with patients to ensure that the worker is in agreement with the option selected and able to comply with the clinician's instructions (for example, whether the patient has access to transportation for follow-up appointments). These considerations are important because a patient's failure to comply with a clinician's instructions without reasonable justification could result in the termination of workers' compensation benefits.

Treatment considerations include:

- Degree of recovery, including on-going pain, range of motion, etc.
- Physical demands of the job. If light duty is available and appears appropriate, the clinician should specify the conditions under which such duty may be performed, e.g., amount of weight that can be lifted, number of hours that the worker can stand, and whether the work can be performed in a stooped position.

The clinician should advise the worker to return to the clinic if the injury prevents the performance of light duty. In such circumstances, the clinician can, after an examination, make a determination that temporary disability requires time off work. When handled in this manner, a worker should be able to receive workers' compensation benefits for the additional period of disability.

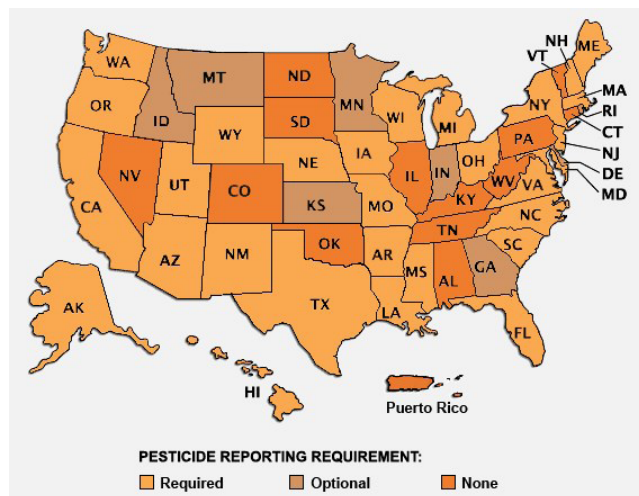
Resources

Providing Medical Services to Low-Wage Workers with Job Injuries <http://goo.gl/ktSHTP>

Developed by the Watsonville Law Center and the Labor Occupational Health Program at University of California, Berkeley, this guidebook provides community health centers with tools to develop a workers' compensation program in their clinics.

FJ and MCN Pesticide Reporting and Workers' Compensation Map <http://goo.gl/qouj9u>

FJ and MCN developed an interactive map that provides state-by-state information on pesticide reporting and workers' compensation requirements for agricultural workers.



Pesticide Reporting and Workers' Compensation Map

FJ and MCN Webinar: Caring for the Injured Worker – Effective Partnerships between Clinicians, Health Centers, and Lawyers <http://goo.gl/kUnYj7>

This webinar, featuring Edward Zuroweste, MD and Brent Probinsky, JD, explores how migrant clinicians can work collaboratively with legal advocates to help their patients secure workers' compensation benefits.

EPA's Recognition and Management of Pesticide Poisonings <http://goo.gl/lXSiBl>

The purpose of this manual is to provide clinicians with current consensus recommendations for treating patients with pesticide-related illnesses or injuries. The publication's 6th edition includes new pesticide products on the market and explores the potential association between low-level exposure to pesticides over time and chronic disease.

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Organizations

Association of Occupational and Environmental Clinics

www.aoec.org

The AOEC web site has links to educational resources, tools and training as well as a directory of clinics and clinicians nationwide that specialize in occupational and environmental health.

American College of Occupational and Environmental Medicine

www.acoem.org

ACOEM is a membership organization that promotes leadership in the health and safety of workers, workplaces and environments.

American Association of Occupational Health Nurses

www.aaohn.org

AAOHN is a membership association dedicated to advancing health, safety and productivity of domestic and global workforces by providing education, research, public policy and practice resources for occupational and environmental health nurses.

Legal Services

<http://grants.lsc.gov/rin/about-rin>

Search for a local legal services office that may be able to provide legal assistance to migrant workers with workplace injuries.

National Center for Medical-Legal Partnership

www.medical-legalpartnership.org

The National Center for Medical-Legal Partnership provides training and technical assistance to support the development and sustainability of medical-legal partnerships.

For more information, go to Farmworker Justice's website at www.farmworkerjustice.org or Migrant Clinicians Network's website at www.migrantclinician.org.



CONTACTS

Alexis Guild, MPP
Farmworker Justice
aguild@farmworkerjustice.org
(202) 293-5420 ext. 317

Amy Liebman, MPA, MA
Migrant Clinicians Network
aliebman@migrantclinician.org
(512) 579-4535

References

1. In North Carolina, for example, employers are not required to provide workers' compensation if they employ fewer than 10 full-time non-seasonal farm laborers N.C. Gen. Stat. Ann. § 97-13(b) 2011.
2. Alabama, for example, exempts employers of farm laborers from its state workers' compensation requirement Alabama Code 1975 § 25-5-50 (2009)
3. 20 CFR 655.122(e)
4. Farmworker Justice, *Farmworkers' Health Fact Sheet: Data from the National Agricultural Workers Survey* (Jan. 2015), available at http://farmworkerjustice.org/sites/default/files/NawsHealthFactSheet_FINAL.pdf
5. IBID
6. Washington State Law RCW 51.28.020
7. A list of resources to help locate OEM specialists can be found at the end of this guide. For an example of a partnership between a migrant health clinic and an OEM specialist, see Liebman A. Occupational Medicine Brings Healthcare Justice to the Front Lines. *Streamline*, volume 14, issue 4, page 1, July/August 2008.

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