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Realities of Workers' Compensation Coverage for Agricultural Workers: Before, during, and into the Future of the COVID-19 Pandemic

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Workers' compensation coverage is inconsistent by location, industry subsector, and class of worker

Workers' compensation (WC) insurance is triggered in the event of an employee injury or illness at work. It can provide compensation for medical care, lost wages, rehabilitation, permanent injury, and/or survivors' benefits after a fatality. WC is administered on a state-by-state basis, with each state having individual and unique rules, usually guided by state statute. Employers purchase WC coverage, typically from an insurance carrier, fund, or captive; some large organizations self-insure; in other states, the WC is administered by the state itself. WC covers an estimated 144,407,000 jobs across the country and cost employers a collective \$100.2 billion.¹

The WC system is no-fault system; regardless of responsibility for the injury or illness, the employee will be compensated if the employer has coverage, and the employee cannot litigate against employer. WC is a vital protection for employees injured or sickened while working, especially for workers without paid time-off, sick leave, or personal health insurance. Moreover, WC claims data can be an important, unique, epidemiological tool because reports of injury or illness collected by WC insurers can represent establishments that may be small and/or exempt from Occupational Safety and Health Administration (OSHA) injury reporting.

Despite the positive aspects of WC, there is disparity between states' WC statutes and coverage, notably impacting some of the most vulnerable and

high-risk populations, and specifically the agricultural sector. Only 14 states require WC coverage for agricultural workers with limited exceptions; 21 states provide limited coverage to agricultural workers based on worker or employer characteristics; 15 states have no WC requirements for agricultural workers.² Agricultural operations could acquire and purchase WC coverage at any time, even if not mandated by their state, but most are not incentivized to do so. Broad exceptions leave out workers and family members on smaller agricultural operations, which make up >90% of all agricultural operations in the U.S., as well as migrant and seasonal workers. Conversely, for H-2A workers³ (i.e., temporary non-immigrant agricultural guest workers), WC coverage is required, regardless of state exemptions, for both H-2A and all other workers at the establishment.⁴

Workers' compensation system is complex and difficult to navigate

The WC system is unfamiliar to many, including some employers purchasing the coverage.⁵ Employees often do not know their rights and benefits under the system in the event of a workplace injury or illness; in some cases, information may even be kept from them. WC claims are underreported in many working populations, especially those most vulnerable in agriculture – youth, part-time, refugee, migrant, seasonal, and/or minority populations.^{6–10} Sadly, many employees who are aware of WC are still reluctant and do

not report work-related injuries or illness because they fear losing their jobs or retaliation due to the precarious nature of their employment or legal status.^{6–9} If injuries are reported, navigating the WC system can be confusing for employees, and is made more difficult for those with limited English proficiency. Some agricultural employees are exceedingly hard for WC insurers to contact and track for claims management and payment of benefits. This is especially problematic for migrant and seasonal workers, who may in a given year be employed by multiple farms, in multiple states, return to their country of origin after the season ends, or be without legal work authorization.

Coverage of COVID-19 claims by workers' compensation

In WC, key elements in distinguishing “work-relatedness” for coverage of injury or illness include determination of “arising out of” and “in the course and scope of” employment. If these elements are satisfied, it must additionally be determined if the work environment created an “increased risk” as compared to home or public places. The degree of community-based spread and exposure shortly after the onset of the COVID-19 pandemic made it difficult-to-impossible to discern the final element of an “increased risk” of COVID-19 exposure in most employment situations. Many COVID-19 WC claims have been consistently denied by WC insurance carriers for this reason. However, some classes of workers, mainly those with many exposures to sick people (e.g., nurses), could make more convincing arguments for their work environment creating an increased risk of infection. Additionally, about a dozen state legislatures passed temporary, “emergency” changes to WC statutes, naming specific jobs or professionals (e.g., healthcare workers, police, fire, emergency, and corrections) to have a “presumption” of work-relatedness for COVID-19 WC claims.¹¹ This meant their work environment was presumed to create the increased risk that caused their COVID-19 infection. When a COVID-19 illness was deemed work-related, employees could receive compensation for medical care, lost wages, and days they were ill or required to quarantine.

Meatpacking workers were essential during COVID-19: “increased risk” was debated, denied

Within the agrifood system, meatpacking facilities are usually covered by WC statutes, and not subject to exemptions like other sectors of agriculture. Early in the pandemic, meatpacking employees were faced with both government mandates to report to work and pressure from supervisors to continue to work, even if ill or when exposed, all before vaccinations were available.¹² High density work environments, crowded common areas, and cramped production lines which did not allow for social distancing or other protective measures.^{13,14} COVID-19 raged through meatpacking facilities at alarming rates, and many facilities represented their respective state’s earliest and largest (workplace) outbreaks, creating hot-spots across the country¹⁵ with affected workers often members of vulnerable populations. Meatpacking workers across the country reported a massive number of COVID-19-related WC claims, and reports indicate that many were denied, including all of over 900 claims at a Minnesota location.^{16–20} Sick workers were left with no compensation for medical care or lost time; some employees died and their families received no benefits. WC was potentially a source of protection for vulnerable workers at the start of the pandemic, however, meatpacking workers fell through the cracks.

COVID-19’s impact on agricultural workers’ compensation: less severe than expected, much left to be determined

Analysis of COVID-19 WC claims appear to indicate that the majority were less severe, less costly, and closed more quickly than non-COVID-19 WC claims. The reduction in normal working hours in many establishments also resulted in less WC claims from injuries like strains, slips, and falls, and motor vehicle accidents. While fewer claims and costs are generally good for employers and the insurance industry, it disrupts trends and forecasting abilities. The industry is still awaiting further development of long COVID-19 claims, impacts on employers’ experience modification factors, as well as overall insurance pricing trends.¹¹ Temporary emergency presumption laws will expire, and it is likely COVID-19 infections will

no longer be deemed work-related or covered, except in rare circumstances.

Recommendations and considerations for the future

A *primary focus* should always be on injury and illness prevention; even the most protective WC benefits cannot fully ease the burden of injury and illness for many workers. It is the responsibility of an employer to provide “a safe and healthy working environment,” which is recognized as a fundamental principle and right at work,²¹ regardless of any WC or OSHA (fewer than 10 employees) enforcement exemptions for agricultural or small businesses. WC insurers and their loss prevention teams can assist in these efforts and are especially valuable resources for smaller operations, often providing on-farm, multilingual, employee-focused services. Similarly, a call to end to the OSHA agricultural exemption would provide additional regulatory and enforcement resources for worker safety.

The COVID-19 virus quickly created community-based spread that was neither specific nor directly attributable to most agricultural work environments. However, many known animal, plant, and soil-related pathogens are specific and directly attributable to agricultural work environments and cause illness in agricultural workers. These workers could be the harbingers of the threat of future pandemics (e.g., avian and swine flu). Many illness claims coming from the same employer may signal outbreaks or clusters, and WC could play a role in early identification and control. WC claims adjusters working with agricultural establishments should have foundational training on agricultural-specific illnesses and the underlying vulnerabilities of the population. Efforts to educate workers on signs of illness, promote reporting, and engage knowledgeable medical providers will ensure these illness claims are accepted and employees receive prompt compensation and benefits.

There are many inconsistencies in WC coverage for agricultural workers, and COVID-19 exposed gaps even for workers that were seemingly protected. Mandatory, across-the-board coverage may be unrealistic, but other innovative approaches should be considered. Risk management outreach for small and/or exempt agricultural establishments could convince

some to voluntarily purchase coverage. WC can prevent litigation against employers in the event of an injury claim. For a controlled cost (premium), the employer manages their unknown potential legal risk, and WC helps injured employees with medical and lost wages, a win-win. WC affordability, when compared to health or other supplemental insurance, could be shown to be a better option. On a federal level, agricultural establishments that apply/use federal funding (e.g., USDA farm loans) could be required to purchase WC (like the H-2A program) and provide a safety plan before accessing federal funds. Agriculture might also need a WC model all of its own; a federal or state-level WC-style pool or consortium could be enacted to protect workers post-injury. If the approach encompassed health benefits, it would negate the requirement of work-relatedness or increased risk that was required for WC COVID-19 claims and provide greater protection for workers.

Academic institutions, legislators, and stakeholders, along with agriculture research centers, must expand the body of knowledge around WC coverage and its impact on agricultural economics and the broader food system. The industry and the entire food system is diversifying and evolving, while the demand for workers will continue to be a concern in the coming decade. Employers are encouraged to provide WC regardless of whether it is required. This could be part of a more comprehensive compensation package to promote the recruitment and retention of workers, instead of continuing to depend on vulnerable populations, including youth. COVID-19 highlighted the essential nature of those in the agrifood system to our economy and society. It is more relevant than ever to consider what happens when our agricultural workers are sick or injured. What protections are in place to care for them? And if they cannot work, who will?

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