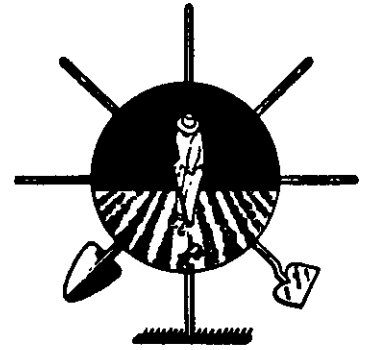


# FARMWORKER JUSTICE FUND, INC.

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## WORKERS COMPENSATION BENEFITS AVAILABLE TO FARMWORKERS

Workers compensation benefits are available to pay for medical expenses and to replace lost wages for injuries and illnesses which are work-related. Because these are state-run programs, the eligibility requirements, benefit levels and other rules differ from state to state.

### COVERAGE OF FARMWORKERS

Farmworkers need workers compensation benefits because agriculture is one of the three most dangerous occupations in the United States. Yet farmworkers are only covered by workers compensation programs to the same extent as other employees in 14 jurisdictions. They are: Arizona, California, Colorado, Connecticut, District of Columbia, Hawaii, Idaho, Massachusetts, Montana, New Hampshire, New Jersey, Ohio, Oregon, and the Virgin Islands. Idaho only extended workers compensation coverage to farmworkers in March, 1996, after a gruesome accident caused a farmworker to lose three of his limbs.

Fourteen states do not require any workers compensation coverage for farmworkers. They are: Alabama, Arkansas, Idaho, Indiana, Kansas, Kentucky, Mississippi, Nebraska, Nevada, New Mexico, North Dakota, Rhode Island, South Carolina, and Tennessee. Employers in these states may voluntarily provide workers compensation benefits, although few do.

The remaining jurisdictions provide less coverage to farmworkers than to other workers. Where there is partial coverage, some states, like Florida and Maryland, exempt small farms from the program and others, like Maine, exclude from benefits those who do not work all year round. Attached is a chart which describes the coverage of farmworkers in each state.

The Migrant and Seasonal Agricultural Worker Protection Act requires employers to disclose to their employees when they are covered by workers compensation insurance.

### WORKERS COMPENSATION AND WELFARE REFORM

The recent welfare reform legislation, which cuts back on many government benefits to immigrant farmworkers **DOES NOT AFFECT A FARMWORKER'S RIGHT TO WORKERS COMPENSATION COVERAGE.**

### BASIC REQUIREMENTS FOR ELIGIBILITY

To be eligible for workers compensation benefits, a worker must have an illness or injury which is work-related. The worker does not need to demonstrate, however, that his employer or co-workers were at fault. Notice to the employer and a claim for benefits must be filed within a short time after the illness or injury occurs. In some states, the employer can choose which medical provider treats the worker; in others, the worker may choose. When treating a worker who is seeking workers compensation benefits, the medical records should document that the illness or injury is work-related. Workers compensation claims are usually adjudicated by state agencies, often called Industrial Commissions. An employee or employer can appeal the decision of the Industrial Commission to a state court. The process is intended to be quicker and less costly than a regular court case. Nonetheless, workers often need lawyers to help them secure the benefits to which they are entitled.

#### BENEFITS PROVIDED

Workers compensation benefits cover the medical costs and lost wages resulting from an injury or illness which arises from employment. The coverage for medical treatment would include payment for the doctor, hospital, medication, physical therapy, etc.

Workers who must miss work for a period of time, while recuperating, may receive weekly benefits, to compensate for lost wages. These temporary benefits are usually paid at the rate of 2/3 of a worker's average weekly salary, which for farmworkers is quite low. Some states set minimum or maximum weekly wage levels for these benefits.

Workers also receive compensation for a permanent full or partial disability. (Compensation for disabilities is usually far less than a person would recover for a comparable injury in a court case for negligence.)

#### RETALIATION

Farmworkers often fear that they will be fired from their jobs or not hired in a subsequent year, if they file a workers compensation claim. All too often, their fear is real, even though retaliation against employees who file workers compensation claims is illegal. Workers who are fired or otherwise discriminated against because they have filed a workers compensation claim should be referred to an attorney for help.

#### WORK FOR THE EXTENSION OF BENEFITS TO ALL FARMWORKERS

In 1992, the U.S. Commission on Agricultural Workers urged the extension of workers compensation benefits to all farmworkers. More recently, the National Advisory Committee on Migrant Health has given its support to efforts to obtain workers compensation

benefits for farmworkers in all states. In states which exclude farmworkers or provide them with only partial coverage, an effort should be organized to extend full workers compensation benefits to all farmworkers employed in that state.

TABLE 3. COVERAGE OF AGRICULTURAL WORKERS

Agricultural workers are covered in varying degrees in 39 jurisdictions. Thirteen jurisdictions 1/ cover agricultural workers the same as all other employees, and 26 carry limitations that are not applicable to other covered employees as indicated in the following table.

Fourteen jurisdictions 2/, not listed in the table, permit agricultural employers to secure coverage voluntarily, even though no statutory provisions are prescribed.

1/ Arizona, California, Colorado, Connecticut, District of Columbia, Hawaii, Massachusetts, Montana, New Hampshire, New Jersey, Ohio, Oregon, and the Virgin Islands.

2/ Alabama, Arkansas, Idaho, Indiana, Kansas, Kentucky, Mississippi, Nebraska, Nevada, New Mexico, North Dakota, Rhode Island, South Carolina, and Tennessee.

STATES IN WHICH WORKERS' COMPENSATION LAWS APPLY TO FARMWORKERS (cont.)

State	Farmworkers Covered	Type of Coverage
Alaska	Agricultural employees, <u>except</u> those employed on a part-time basis.	Compulsory
Arizona	Agricultural workers are covered the same as all other employees.	Compulsory
California	Agricultural workers are covered the same as all other employees.	Compulsory
Colorado	Agricultural workers are covered the same as all other employees.	Compulsory
Connecticut	Agricultural workers are covered the same as all other employees.	Compulsory
Delaware	Agricultural employees whose employer carries insurance to provide coverage for such workers or their dependents.	Elective
District of Columbia	Agricultural workers are covered the same as all other employees.	Compulsory
Florida	Agricultural workers, <u>except</u> those performing agricultural labor on a farm in the employ of a bona fide farmer or association of farmers, employing less than 5 regular employees and less than 12 other employees at one time for seasonal employment in less than 30 days, provided such seasonal employment does not exceed 45 days in the same calendar year.	Compulsory
Georgia	Employees of the Department of Corrections who are engaged in farm and live-stock operations. Employers are permitted elective coverage for their farm laborers.	Compulsory
Hawaii	Agricultural workers are covered the same as all other employees.	Compulsory

STATES IN WHICH WORKERS' COMPENSATION LAWS APPLY TO FARMWORKERS (cont.)

State	Farmworkers Covered	Type of Coverage
Illinois	Agricultural workers employed by an individual employer for 400 or more aggregate man-days in any quarter during the preceding calendar year; exclusive of the employer's spouse and other members of his/her immediate family residing with him/her.	Compulsory
Iowa	Agricultural employees, other than excluded family members, whose employer's total cash wage payments during the preceding year amounts to at least \$2,500.	Compulsory
Louisiana	Exempts from coverage employees of private unincorporated farms, in connection with cultivating the soil or raising or harvesting any agricultural commodity, including livestock, when the employee's annual net earnings amount to \$1,000 or less, and the total net earnings of all employees on the farm do not exceed \$2,500.	Compulsory
Maine	Agricultural workers, <u>except</u> seasonal or casual. An employer of 4 or less farmworkers may alternatively secure the payment of compensation by obtaining an employer's liability insurance policy (total limit not less than \$25,000 and medical payment coverage of not less than \$1,000).	Compulsory
Maryland	Agricultural employees whose employer has 3 or more full-time employees or a yearly payroll for full-time employees of \$15,000. Office workers are exempt from coverage.	Compulsory
Massachusetts	Agricultural workers are covered the same as all other employees.	Compulsory
Michigan	Agricultural workers whose employers employ 3 or more regularly employed employees for at least 35 or more hours for 13 consecutive weeks during the previous 52 week period.	Compulsory

STATES IN WHICH WORKERS' COMPENSATION LAWS APPLY TO FARMWORKERS (cont.)

State	Farmworkers Covered	Type of Coverage
Minnesota	<p>Farm laborers who do not work for a "family farm". (Elective coverage is permitted for certain employees of family farms.) Defines "family farm" as any farm operation which pays less than \$8,000 in cash wages, exclusive of machine hire, to farm laborers for services rendered during the preceding calendar year. "Family farm" may also include farm operations with total liability insurance of \$300,000, and \$5,000 in medical payment coverage, if such farm pays less than the statewide average weekly wage.</p>	Compulsory
Missouri	<p>Farm laborers whose employer elects to accept the provisions of this Act by the purchase of a valid compensation insurance policy. Members and officers of a family farm corporation may be covered under a policy of workers' compensation insurance if approved by a resolution of the board of directors.</p>	Elective
Montana	<p>Agricultural workers are covered the same as all other employees.</p>	Compulsory
New Hampshire	<p>Agricultural workers are covered the same as all other employees.</p>	Compulsory
New Jersey	<p>Agricultural workers are covered the same as all other employees.</p>	Elective
New York	<p>Requires workers' compensation coverage of farm laborers for 12 months, from April 1, if the farmer's total cash wage remuneration paid to all farm laborers during the preceding calendar year amounts to \$1,200 or more; farmworkers supplied to a farmer by a farm labor contractor would be deemed to be employees of the farmer.</p>	Compulsory

STATES IN WHICH WORKERS' COMPENSATION LAWS APPLY TO FARMWORKERS (cont.)

State	Farmworkers Covered	Type of Coverage
North Carolina	Covers agricultural services if employer employs more than 10 full-time nonseasonal laborers.	Compulsory
Ohio	Agricultural workers are covered the same as all other employees.	Compulsory
Oklahoma	All workers employed in agriculture or horticulture by an employer who had a gross annual payroll, including money paid to independent contractors, in the preceding calendar year of \$100,000 or more.	Compulsory
Oregon	Agricultural workers are covered the same as all other employees.	Compulsory
Puerto Rico	No expressed provision exempting farmworkers; therefore, farmworkers are covered in same manner as other workers. Sharecroppers are specifically covered	Compulsory
Pennsylvania	All agricultural workers if the employer pays one agricultural worker wages of \$150 or more, or furnishes employment to one employee in agricultural labor for 20 or more days during a calendar year.	Compulsory
South Dakota	Workers engaged commercially in the operation of threshing machines, grain combines, corn shellers, corn huskers, shredders, silage cutters, and seed hullers for profit.	Compulsory



STATES IN WHICH WORKERS' COMPENSATION LAWS APPLY TO FARMWORKERS (cont.)

State	Farmworkers Covered	Type of Coverage
Texas	Farm or ranch laborers who are migrant workers, or who are seasonal workers (under certain conditions), or who are employed by an employer with a certain minimum gross annual payroll for the preceding year, <u>except</u> farm or ranch workers who are employees of an independent contractor.	Elective
Utah	All agricultural workers <u>except</u> those working for employers who employ 5 or fewer persons, other than immediate family members, for 40 hours or more per week per each employee for 13 consecutive weeks during any part of the preceding 12 months.	Compulsory
Vermont	All agricultural workers <u>except</u> those working for an employer whose aggregate payroll is less than \$2,000 in a calendar year.	Compulsory
Virgin Islands	Agricultural workers are covered the same as all other employees.	Compulsory
Virginia	Agricultural workers working for an employer who regularly has in service more than 2 full-time employees.	Compulsory
Washington	All agricultural employees <u>except</u> a child under 18 employed by the child's parents in agricultural activities on the family farm.	Compulsory
West Virginia	Employees of an employer who has 6 or more full-time workers in agricultural service.	Compulsory

STATES IN WHICH WORKERS' COMPENSATION LAWS APPLY TO FARMWORKERS (cont.)

State	Farmworkers Covered	Type of Coverage
Wisconsin	<p>Farmworkers working for an employer who becomes subject to the Act 10 days after he or she has employed 6 or more employees, whether in one or more locations for 20 or more days during the calendar year.</p>	Compulsory
Wyoming	<p>Workers engaged in power farming when one or more are employed for an average of 6 months each year. "Power farming" means work on a farm, livestock ranch, or poultry farm, which uses in connection with its operation any power-driven equipment, such as a pick-up truck, feed grinder, stacking machinery, tractor, mower, baler, or road grader.</p>	Elective