

The erosion of worker safety

By Peter Rousmaniere | January 4, 2006

MASSACHUSETTS' DISTINGUISHED promise of worker safety is fraying. More of our workers work unsafely. When they sustain a serious work injury they are less able to access the protections of our four-generations-old workers' compensation system.

It has become easier for employers to cut corners on their legal obligations. If Congress succeeds in criminalizing undocumented worker status, it will become even easier.

In Massachusetts as elsewhere, employers are outsourcing cleanup, construction, and other risky work to small firms. An increasing share of the bottom quarter of the workforce is undocumented. Most of those workers are undereducated; many do not speak English; all fear deportation.

State regulators and insurers have not been up to the task of stemming abuses at the small level.

As a result, the state is replete with employers who do not purchase workers' compensation insurance or who steer their workers from workers' compensation benefits.

This problem is greater than experts in work safety and workers' compensation realize.

Roughly one fifth of all in-state jobs designed for less than a high school degree are filled by undocumented workers. In some sectors this percentage is over 50 percent. Sometimes the entire workforce is off the books. Sometimes the employer creates a two-tiered personnel system: Some are paid in cash.

Workers' compensation is an insider's club, only for workers with good social and legal networks. To the injured undocumented worker the system is a gated community.

An injured undocumented worker is more likely to be treated by a doctor who does not know the workers' compensation system and safety rules. As a result, many work injuries are not admitted into the workers' compensation system of medical and lost wage benefits.

Thousands of unrelated daily setbacks of these workers congeal into streams of misleading information for regulators and insurers. State and federal statisticians are waking up to the reality that work safety statistics are corrupted. Even so, Massachusetts researchers estimate that Hispanic surnamed workers (including Brazilians) are more likely to die from work, be hospitalized from work injuries, and be injured.

Massachusetts has been riding the crest of extraordinary growth in immigrant workers, many of whom do not have valid immigration papers. University of Massachusetts at Lowell, Northeastern University, and activist groups such as the Allston-based Brazilian Immigrant Center have monitored the immigrant workforce and its challenges.

Regardless of our individual views about the merits of so many such workers in the United States, we can all concur that if an undocumented worker sustains an injury while performing a real job for an employer, she or he should obtain the protections of the workers' compensation system. A Massachusetts Supreme Court decision has said so. But there are many miles between the Supreme Court and a particular individual's story.

Let's call him Carlos. His is a true story.

He works at one of the Boston area's leading restaurants. His hand accidentally dips into a pot of boiling water. The employer induces him to complete his shift, and then arranges for him to go to an emergency room.

The employer tells Carlos to say, however far-fetched, that the injury happened at home. The hospital records the injury as not work related, and funds the treatment out of its free-care account.

On the next business day, the worker is laid off. He has no informal network of friends and family to advise him. Eventually, a community outreach center tells Carlos his rights: Hire an attorney. In cases like this, attorneys often discover that the employer has been cheating the insurer out of some premium.

Who is being abused? The worker. The misled doctor. The insurer. The state regulatory agencies that enforce safety and workers' compensation laws.

The state should create without delay a computer database of employers and their workers' compensation coverage. There is a standard term for this evidence: a "certificate of insurance." If an employer is not listed, it is suspect.

Launch a gubernatorial task force to tackle the problem, as Illinois did.

Engage doctors to report suspicious cases, such as California requires.

Train community activists on what to look for and how to report cases of abuse. They want the laws enforced as much as do insurers.

Increase penalties for repeated safety violations and workers' compensation insurance fraud by employers.

Massachusetts can no longer afford a third-world work safety system hiding in plain sight.

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