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TESTIMONY ON SB 238

to the Honorable Members of the Senate Insurance, Commerce and Labor Committee

25 May 2010

Chairman Buehrer, Vice Chair Faber and Ranking Minority Member Schiavoni, thank you for the opportunity to testify in opposition to SB 238, which prohibits undocumented immigrants from receiving injury compensation from the Bureau of Workers' Compensation (BWC). My name is Florentina Staigers, and I am the Policy Director of the Ohio Latino Affairs Commission, which is responsible for 1) advising policymakers on issues affecting Latinos 2) connecting Latino communities across the state and 3) building the capacity of Latino and Latino-serving organizations.

The immigration system is broken and this bill is yet another attempt to deal with some of the effects of that broken system by deterring undocumented immigrants from seeking work in Ohio. However, not only will the legislation NOT solve the problem, but it will aggravate it further.

First of all, addressing the issue of illegal immigration within the context of workers' compensation is misguided because we have no idea how many undocumented immigrants have recovered compensation. Without this knowledge, it seems premature to propose a solution that would not only affect immigrants, but ALL claimants. A more sensible step, in light of the burden being placed on both the BWC and its claimants, might be to conduct a study regarding whether there actually is a problem. The Pew Hispanic Center estimates that only 1.1% of Ohio's workforce may be unauthorized. Thus, any cost-savings achieved by these measures might be infinitesimal, especially when weighed against the costs of implementing verification for each and every claimant. So while the benefit of the bill is not measurable, the burden is clear, which should prevent further action until more is known about the issue.

Secondly, the bill rewards unscrupulous employers by relieving them of accountability. Although anti-immigrant propaganda would have you believe that undocumented immigrants are "stealing jobs," it is the employers who are "giving" jobs to undocumented immigrants. This is despite the fact that they have an obligation under federal law, last enacted under the Immigration Reform and Immigrant Responsibility Act of 1996, to follow an employment verification process. (Pub.L. 104-208, Div. C, 110 Stat. 3009-546).



(*Sidenote:* The federal enforcement agency, Immigration and Customs Enforcement (ICE) is primarily responsible for the enforcement of employer verification. However, some states have enacted legislation that requires employers to use the federal e-verify system, where failure to do so results in civil or criminal penalties. Ohio currently has two such proposed measures, House Bill 184 and 227.)

Furthermore, a report by the National Council of La Raza found that many of these same employers threaten and abuse their workers, purposely misclassify workers in order to sidestep accountability, evade their legal responsibility to pay their workers, and fail to keep their work sites safe.

It is also important to note that BWC funds are mainly comprised of the employer's premiums. From these employer funds, compensation is paid. Thus, it would reward employers to relieve them of the responsibility to pay compensation from their own pockets for the injuries of those workers whom are doing their bidding, whom they have hired, and whom they have failed to discover are unauthorized to work.

Moreover, employers in hazardous industries will actually be incentivized to employ unauthorized workers because if they give a wink and nod to false social security numbers, they can employ undocumented immigrants without fear of increasing their BWC premiums. And since the standard of "knowingly" employing an unauthorized worker is such a difficult standard to meet that it often cannot be proven, the employers also have no fear of law suit. Therefore, the bill might result in an increase in demand for illegal immigrant labor.

So instead of solving an immigration problem, the bill not only completely ignores the biggest driving force behind immigration - the employers -, but it also rewards them for shirking their legal duties. The bill *might* decrease premium costs for some employers - although even that we are unsure of -- but just because we could cut costs by not enforcing safety regulations, does not mean that we should.

Finally, I ask that the honorable members of this committee turn your attention and efforts away from these piecemeal approaches to immigration on the state level and instead focus them on federal immigration reform. This bill does not offer a solution to frustrations, but instead targets those frustrations toward a vulnerable population.

Of course I understand that immigrants who come here illegally are not without legal culpability. But in light of the conditions in the lesser developed countries from which they come, nor is the misdemeanor they commit morally reprehensible. Our nation's legal system is founded on the notion that the punishment fit the crime. It is unjust to disallow a claim for a paraplegic who has been injured at work simply because of his immigration status and without regard to the employer who asked him to do that work. Accordingly, a bill that would reward that same employer - who failed his legal obligation to check the eligibility of that employee - with lower premiums is also unjust.

Since immigration is both a supply and demand phenomenon, the focus should not just be on one side of this equation, but both. Therefore, since the only real solution to the problem is within the scope of Congress, it would better serve the state legislators to appeal to their federal counterparts to fix the broken immigration system. Although the wait is frustrating, it does not justify the targeting of a population.

Submitted 25 May 2010
By Florentina Staigers

