



# MIGRANT HEALTH Newsline

News and Information from the *National Center for Farmworker Health* since 1984

## Improving Farmworker Access To Workers Compensation Benefits

By Shelley Davis, Co-Executive Director, Farmworker Justice Fund, Inc.

**A**griculture is one of the three most hazardous occupations in the nation. Typically, farmworkers who suffer a job-related illness or injury also lose their source of income and have no health insurance to cover medical bills. When the system works as intended, workers compensation benefits can meet both those needs, providing replacement wages and paying for necessary medical treatment.

Health providers play a pivotal role in the workers compensation process. Before benefits will be awarded, a health professional must certify, to a reasonable medical certainty, that an injury or illness is work-related. The clinician also determines the course of treatment and the timing and conditions of the return to work. To assist farmworkers in securing the benefits to which they are entitled, health professionals need to understand how the workers compensation system functions. This article provides an overview of workers compensation and suggests some basic do's and don'ts. But remember, the rules in each state are different and you will need to learn your own state's requirements.

Health centers which learn to navigate this system will find that workers compensation benefits can be an additional income stream for the clinic. In almost all states, workers compensation benefits are awarded without regard to the employee's immigration status.

Some health professionals are reluctant to assist with workers compensation claims for fear of becoming embroiled in litigation. This fear is largely unfounded because only a small percentage of these cases end up in court.

### How Workers Compensation Schemes Function

Workers compensation is a system of employer-provided insurance which is available at no cost to the employee. When workers suffer a job-related injury or illness, they can turn to workers compensation to provide cash benefits to replace some of their lost

wages; medical benefits to cover physician, surgical and hospital-related expenses; disability benefits to provide cash for life or extended time periods; and death benefits covering burial costs and, in some states, cash to a surviving spouse or dependent children. Fault is not at issue in the workers compensation scheme.

In order to secure workers compensation benefits, typically a worker must show that: (1) s/he is an employee of the entity identified as the employer; (2) s/he has suffered an accidental injury or contracted an occupational illness; (3) the injury or illness occurred in the course of the employment; (4) the employee has followed the doctor's instructions; and (5) s/he has returned to work when able to do so.

While clinicians don't usually concern themselves with the cause of an injury or illness, in the workers compensation context, the cause of an ailment is a key issue. The worker's statements as to how, where and when the incident occurred can be helpful in identifying the cause and can be included in the clinician's report, to show that the injury is job-related. In most states, work activities need not be the sole cause of the injury as long as they are a major or a substantial contributing cause.

Benefits will terminate when the health care provider states that the worker is fit to return to work. Consequently, this determination must be made carefully, taking into account the real conditions on the job. For example, if a doctor states that the employee can return to perform light duty, benefits will terminate when "light duty" is offered. However, if there is no "light duty" on the farm and the worker ends up quitting or gets fired because he can't do the work offered, the clinician's "light duty" order did the patient a disservice.

In order to secure benefits, an employee generally must prove the fact of the injury or

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illness, its disabling effects and its work-related cause to a reasonable degree of medical certainty based on objective medical findings. Some states require proof of these elements by a preponderance of the evidence (which means “more likely than not.”)

Workers compensation systems have short, mandatory deadlines. Each state has different requirements for notifying the employer and filing the claim for benefits. A worker generally must notify his/her employer of the accident or injury immediately after it occurs or within a short time of its occurrence (i.e., 30-90 days). Where compensation is sought for an illness, notice must be given shortly after the diagnosis is made.

Generally, the employee (or his representative) must complete a form and file it with the workers compensation board or the insurance carrier. The form is usually a simple “first report” form. In some states, however, the first report form is filed by the employer or treating physician. A claim for benefits generally must be filed within 1-2 years of the date on which the injury or illness began.

Disputed claims may go through three or four levels of review. Initially, contested claims are discussed at an informal conference convened by the state workers compensation board. If a party is not satisfied with the result, s/he can request a hearing before an adjudicator of the workers compensation system. Appeals from that hearing may be taken to the state’s workers compensation board or may move directly to a court. After the administrative review process is complete, a dissatisfied party is always entitled to review by a court.

### **Challenges**

Unfortunately, not all agricultural workers are

covered by workers compensation. In 12 states, the District of Columbia, Puerto Rico and the Virgin Islands, farmworkers are covered by workers compensation to the same extent as other workers. These jurisdictions are: Arizona, California, Colorado, Connecticut, District of Columbia, Hawaii, Idaho, Massachusetts, Montana, New Hampshire, New Jersey, Ohio, Oregon, Puerto Rico and the Virgin Islands. In 13 states, coverage of farmworkers is not required by state law. Employers may still voluntarily choose to offer workers compensation insurance. These states are: Alabama, Arkansas, Indiana, Kansas, Kentucky, Mississippi, Nebraska, Nevada, New Mexico, North Dakota, Rhode Island, South Carolina, and Tennessee. The remaining jurisdictions provide partial coverage to agricultural employees. In some states this coverage encompasses most of the farmworkers, in others it excludes the majority of the workers. In Florida and Maryland, for example, only small farms are exempt from the program. By contrast, in Maine anyone who does not work year round (which by definition means all migrant and seasonal workers) is excluded from benefits. Under federal law, however, all H-2A workers must be covered by workers compensation insurance.

The fact that each state has its own workers compensation rules makes obtaining benefits a daunting task for migrant workers. For migrant workers, who often lack familiarity with U.S. law, speak Spanish, and work in many different states, learning the rules applicable to the state where the injury occurred can be difficult.

Lack of English proficiency can present a serious obstacle in states where neither the claims forms nor the notices are available in Spanish. In August 2001, a public forum of farmworkers under NAFTA’s Labor Side

**The fact that each state has its own workers compensation rules makes obtaining benefits a daunting task for migrant workers.**

### **Some Do’s and Don’ts**

- Remember, it is critical to provide information on the events or activities which led to the injury or illness to show that it is work-related. Work activities must be a major or substantial contributing factor.
- Determine the conditions under which the worker could return to work. Don’t allow return to “light duty” if none is available.
- Specify limitations such as the amount of weight which can be lifted, the length of time a worker can stand, etc.
- Refer clients to a lawyer if they are having difficulty securing approval of the claim or adequate benefits. Contact your local migrant legal services or the Workplace Injury Litigation Group (an association of workers compensation lawyers) to get referrals. Their telephone number is (202) 898-0303.
- Learn the basic requirements in your state; get the correct forms, know where to send them.
- Complete all required medical reports and provide information to a reasonable medical certainty.
- Keep workers off work as long as is necessary
- Resist the employer’s efforts to accompany the patient during examination/treatment





Kick Off The New Year With A Fresh Start:

# Building Staff Capacity Through Knowledge, Tools & Strategies

By Alicia Gonzales, NCFH Leadership Development and Training Center Manager

Employees are an organization's greatest asset and greatest investment.

## Would you like to:

- Enhance your work place environment
- Strengthen your health centers infrastructure
- Minimize institutional barriers for farmworkers' access to health care
- Increase your health center's capacity to provide culturally and linguistically competent health care services to farmworkers
- Exercise your leadership potential
- Maximize quality of care provided to the farmworker population

Then the Leadership Development and Training Center may just have the answer for you!

Build your organizational capacity and better serve your farmworker patients by investing in your staff, and motivating them for the New Year by providing them with new knowledge, tools, and strategies. The network of community and migrant health centers needs strong and active leaders. Whether you want to learn new skills, apply new techniques or gain new knowledge, all of these things are vital to increasing a health center's capacity, productivity and customer satisfaction.

The National Center for Farmworker Health (NCFH), has implemented a Leadership Development and Training Center designed to address your training needs. The goal of the

Leadership Development and Training Center is to increase the knowledge, skills and leadership abilities of current and future MHC staff and board members. NCFH is committed to strengthening the network of providers of care to the farmworker population nationwide by offering a multi-disciplinary training center that offers training in the areas of: Health Center Management, Health Center Governance and orientation and training for new health center employees, or for those who may need a refresher course. Here is a list of just a few trainings that could enhance your workplace:

## **BACK TO THE BASICS: An orientation tool for health center employees**

- Strategic Planning*
- Situational Leadership*
- Group Facilitation and Team Practice*
- Motivation in the Workplace*
- Enhancing Communication Skills*
- Cultural Diversity in the Workplace*
- Board Member Training*

For more information regarding these training programs or other offerings, please contact Alicia Gonzales, Leadership Development and Training Center Manager at 512-312-5469 or [gonzales@ncfh.org](mailto:gonzales@ncfh.org). These trainings can be done on-site, at conferences, or on a regional basis. Services are available on a fee-for-service basis. ■

## **Improving Farmworker Access To Workers Compensation Benefits**

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Agreement was held in Yakima Washington. The purpose of the forum was to hear farmworker complaints regarding their inability to secure workers comp benefits due to the lack of Spanish speaking staff and the absence of Spanish-language notices and forms.

Farmworkers may not even know that their employer provides workers comp coverage, even when they do. In a survey of California farmworkers two-thirds of the workers thought that they didn't have workers compensation coverage even though, by law, all California workers must be covered. (Villarejo et al. 2000).

Finally, some workers are afraid to file a claim for benefits fearing that it will cost them their jobs. State law prohibits such retaliation, but retaliation cases are hard to prove; and even if successful, may take years

to litigate. Consequently, workers have to weigh the risk of losing a job against the potential benefits they may receive.

## **Conclusion**

Farmworkers need workers compensation benefits when they are injured and they can't secure them without the help of a health care provider. Help your patients secure the benefits to which they are entitled. Become an advocate in states which do not require coverage of agricultural workers. Make the case to the state legislature that farmworkers, who perform an invaluable service, deserve these benefits. ■

## **References**

Villarejo D, Lighthall D, Williams III D, Souter A, Mines RK, Bade B, Samuels S, McCurdy SA (200) Suffering in Silence: A Report on the Health of California's Agricultural Workers.

## Research Spotlight

Women reported less frequent use, with one exception. Once we factor in sex work, their drug use becomes “heavy.”

# Women in Agricultural Labor Who Engage in Substance Use

By Keith V. Bletzer, Ph.D., MPH, Adjunct Faculty/Medical Anthropologist, Arizona State University

“It smelled [the bath] so bad, like something burning,”

Micaela’s words came in a rush, before she explained,

“First he hid it. I asked him, cause he had track marks (piquetes).

Later, he did it in front of me.”

**A**s we sat in her kitchen, she was describing drug use by her first husband, who prepared and injected in their bathroom. I was outside my research home-base in another state, having been referred to this trailer park by a friend who works in migrant services. My plan was to do a few non-user interviews to allow people to get to know me, then expand my sample to include substance users. Micaela was one of my first interviews in the study and the second in this trailer park. She started the interview with a story of border crossing at age 15, a trek of eight days with food and water found en route. Like many men and women, she came to earn money. Orphaned as a teenager, she had crossed the border with 14 men. On this side, the *coyote* was caught, but the group escaped. To my standard question for those who tell border-crossing stories of what happened to their companions, she named several men in nearby towns. It was evident from her story and knowledge of their whereabouts they treated her with respect. She maintained contact and shared in news of their successes in this country.

Reviewing her transcript and noting places where I asked for clarification, I recognized that disclosure of her husband’s drug use lacked narrative structure. She had not resolved those past events through narrative telling, unlike the mastery she demonstrated in the border crossing story or description of her current marriage and pre-school son. These parts of her life, including a night shift at the local poultry plant, were testimony to her fortitude. She deserved the pride permeating her border-crossing story, and she merited respect of the men with whom she had kept pace for eight days. But she had not cycled-through that phase of her life when her spouse sought to procure her into prostitution to support his drug habit, and she fled, never to return. Her brush with risk

was brief. She renewed her sense of self in another state through marriage to a man who rarely drank and worked in the same poultry plant.

Micaela was not alone in difficulties, or successes, among the non-users I interviewed in that trailer park. All but one non-user were women. Each had an encounter where they almost “joined” a risk activity voluntarily, by trickery, or through coercion. Their stories differed in life outcomes more than the background of poverty each shared with female substance users from other states in my study,<sup>1</sup> all of whom also performed agricultural work.

Compared to 101 men in my study, 18 female users approximate the small number of women of all ethnic backgrounds in agriculture. These 18 women used a total of 16 different substances (excludes non-users). Similar to mean age of onset for men (13.5 years), the women’s mean age at first use ever was 13.4 years. Common substances were similar to those of the men, but in reverse order. Female users self-reported lifetime use of crack-cocaine (third choice among men), all but one reported marijuana, and all but two reported alcohol use (first choice among men). Women reported less frequent use, with one exception. Once we factor in sex work, their drug use becomes “heavy.” For a study in another farming community, where I sampled commercial sex workers,<sup>2</sup> rather than farmworkers who use/used drugs, I found that 29 percent had performed farm labor (four were current farmworkers, supplementing low wages with sex work). For the larger study described here, 17 of 18 women (94%) engage/engaged in sex work. This is the greater risk for female farmworkers who initiate drugs, who are compelled to supplement low earnings by sex work, or, conversely, women who seek to augment farm labor employment through com-

mercial sex work with increased risk of heavy drug use. Several years ago, María Elena Lucas (*Forged Under the Sun*),<sup>3</sup> a long-time advocate and former farm laborer, noted that women in agriculture were at risk for sex work, owing to low wages.

High-risk participation in drug use and sex work differs from another type of drug use among women in agriculture. This second type I call “sheltered use,” since these women are in stable relationships with men who earn good money, or they live with families that provide necessities (food, shelter). They have little need to engage in sex work. Sometimes, spouses, cousins or siblings provide substances, or may initiate them into use. At times, women may “lift” (*levantar*) secretly from a household stash. In my study, several women had been sheltered users, before turning to high-risk activities. Marijuana and cocaine were drugs of choice for sheltered users, versus crack-cocaine and alcohol for high-risk women in agriculture.

A third category exists. A few women were

performing agricultural labor as a buffer to risk activity. These women “once” were sex workers and heavy users. They were current farm laborers, typically working with a boyfriend, as a means to cease or reduce risk activities.

Scenarios of risk for women in agriculture amplify those of men, given expectations for women generated by gender differences that presuppose little need to work or use substances, but once compromised in drug use, greater pressure to engage in sex work. The picture is not pretty, but it is a story that must be told. For women like Micaela, family socialization taught her behavior that precluded engagement in risk activities of agricultural settings. As she explained, her parents, while alive, raised three older brothers and herself “quite strict” (*nos traían bien cortitas*). For prevention of substance use among women in agriculture, then, we must consider the strategic importance of family, along with school and social environment. ■

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#### NOTES

1. Funding for field research from the Wenner-Gren Foundation for Anthropological Research (New York, NY), and funding for the transcription of field tapes from a Faculty Grant-in-Aid, Arizona State University (Tempe, AZ).
2. Keith V. Bletzer, “Risk and danger among women-who-prostitute in areas where farmworkers predominate,” *Medical Anthropology Quarterly*, June 2003, Vol. 17, No. 2, Pp. 251-278.
3. María Elena Lucas, 1993, *Forged Under the Sun: The Life of María Elena Lucas (Forjada bajo el sol)*. Edited by Fran Leeper Buss. Ann Arbor: University of Michigan Press.



### America's Voice for Farmworker Health — A Free Phone Call Away.

Information on Health Services for Farmworkers

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## Resource Highlights

# Season's Greetings

## Gifts for the Holidays

Need a stocking stuffer idea or a memorable gift for a coworker?

**D**uring the months of November and December 2003, the NCFH Resource Center will be offering discounts on many of its promotional products just in time for the holidays! All items listed will be shipped free of charge, and all the proceeds for sales of the artwork will go to the Call for Health Program, a nationwide, toll-free, bilingual, health information and referral service program for farmworkers and their families.

To place your holiday order or view other Resource Center materials, please visit the NCFH website at [www.ncfh.org](http://www.ncfh.org), and go to the Resource Center link on the home page. If you have any questions about any Resource Center items, or about the holiday promotional sale, please contact Josh Shepherd at (512) 326-9643 or at [shepherd@ncfh.org](mailto:shepherd@ncfh.org)



Item #	Item Name	Price
5117	Coffee Mug	\$5.00
3	2004 Migrant Calander	\$8.00
5748	Migrant Health Keychain	\$7.00
5678	Brent Brooks: Moment of Wonder (cassette)	\$4.00
5677	Brent Brooks: Moment of Wonder (CD)	\$8.00
4266	Boxed Notecards, Migrant Women (8/pkg)	\$8.00
5763	Commemorative Artwork Greeting Cards, 10/package	\$10.00
<b>Artwork</b>		
36	"First Day at School", poster	\$20
4581	"Justice for All", poster	\$20
4268	"La Reunion", poster	\$20
4016	"Time Honored Work", poster	\$20
5750	"De La Tierra", poster	\$40
5675	"Harvest of Hope", poster	\$40
4899	"Seguimos Adelante, poster	\$40
5718	"Seeking Justice", poster	\$40

*Happy Holidays from the NCFH Resource Center!*

# Stories From Call for Health

The following case is provided by the Call for Health Program in an effort to share with *Migrant Health Newslines* Readers actual stories of farmworkers who have sought, or are currently seeking, help through the program. The Call for Health Program receives assistance through generous donations from both individuals and organizations across the country. Its continued success depends greatly on those individuals who read these stories and decide to make a difference. If you would like to learn more about the program, or to provide a contribution please call (512)312-2700 or visit our website at [www.ncfh.org](http://www.ncfh.org).

## Eduardo's Story

By Andrea Kauffold

Eduardo is a 30 year old farmworker who has worked in the east coast stream for the last five years. In September of 2002, he was tested for tuberculosis at the local migrant health center (MHC) and the PPD test (tuberculosis skin test) was positive. His examination was also notable for a lump behind one of his ears. The MHC referred him to the local health department for treatment, but he was informed that they would be unable to start treatment until a biopsy was conducted on the mass behind his ear. At the time, Eduardo did not have any money for the biopsy, and the harvesting season was over, so he migrated back to his home base state, receiving no treatment for either condition.

In January of 2003, *Call for Health* received a call from Eduardo. He had visited a MHC seeking treatment for tuberculosis, but was informed again that his treatment could not begin until a biopsy was performed on the mass behind his ear. *Call for Health* contacted a local chapter of a specialty clinic and was able to negotiate and get Eduardo scheduled for a biopsy. *Call for Health* worked in collaboration with the local MHC, which provided Eduardo with transportation to the appointment and translation services. The biopsy results were positive for cancer of the parotid gland (a salivary gland.) A couple of weeks later, Eduardo had the tumor excised and was cancer free. Two weeks after the surgery, he was back at work picking oranges, and had started his treatment for tuberculosis.

*Call for Health* has since received several calls from east coast migrant farmworkers that have been referred to *Call for Health* by Eduardo. Like Eduardo, they are challenged by the administrative maze of our health care

system and the added difficulties presented by being monolingual Spanish and unfamiliar with the local community. Eduardo understood the implications of testing positive for tuberculosis and knew he required treatment, but was facing multiple barriers, that he alone could not resolve. Our health care system is not set up to accommodate migrant populations and it is a constant challenge to find health care and follow-up services. *Call for Health* tries to ease the burden by serving as a catalyst in bringing together various resources.

*Editors Note: Call For Health is a national program that provides farmworker families in need of healthcare with immediate, free information about health care services available in their area. The program is accessed via a toll-free number staffed by bilingual information specialists. The program seeks accessible, appropriate and affordable sources of health care for farmworker callers. Through a growing national network of providers, Call For Health has established negotiated patient care rates for healthcare services specifically for farmworkers. In cases where affordable or pro-bono help cannot be found, the Call For Health program provides financial assistance in conjunction with the referral service. For this reason, the Call For Health program has set up The Gift of Health donation that provides you with the opportunity to select a healthcare service as a gift for a farmworker. If you or your organization would like to give "the gift of health" to a farmworker this holiday season, please send your donation to: Call For Health Program, National Center for Farmworker Health, Inc., 1770 FM 967, Buda, Texas 78610. All donations are tax deductible.*

## Calendar

### November 19–20, 2003

**Health Center Financial & Operations Management Level III (Advanced) Seminar** will be held at the Albuquerque Marriott Pyramid North Hotel in Albuquerque, NM. For seminar and registration information please visit NACHC's web site at [www.nachc.com](http://www.nachc.com).

### Jan. 30 – Feb. 1, 2004

**The 13th Annual Western Migrant Stream Forum** will be held at the Renaissance Madison Hotel in Seattle, WA. For Forum updates and application forms visit [www.nwrpca.org](http://www.nwrpca.org) or contact Anne Powell at 206-783-3004, ext 16 or via e-mail at [apowell@nwrpca.org](mailto:apowell@nwrpca.org).

### February 18–20, 2004

18th National Conference of Chronic Disease Prevention and Control – Investing in Health: The Dollars and Sense of Prevention will be held at the Marriott Wardman Park Hotel in Washington, D.C. For more information and the complete conference program please visit [www.cdc.gov/nccdphp/conferenc](http://www.cdc.gov/nccdphp/conferenc)

### March 23 – 27, 2004

2004 Annual Policy & Issues Forum will be held at the Hilton Washington Hotel & Towers in Washington, D.C. For more information please visit NACHC's web site at [www.nachc.com](http://www.nachc.com).

### April 29 – May 1, 2004

2004 National Farmworker Health Conference will be held at the Marriott Biscayne Bay Hotel & Marina in Miami, FL. For more information please visit NACHC's web site at [www.nachc.com](http://www.nachc.com).

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## Did You Know?



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"The Gatekeeper" is a true-to-life drama depicting the current civil unrest occurring at the U.S./Mexico Borders. Adam Fields, a U.S. Border Patrol Agent, is vigilant about keeping the flood of undocumented immigrants at bay. He indulges his racist beliefs by moonlighting with an extreme right wing organization. Without support or approval from the U.S. Border Patrol, Adam goes undercover to expose and publicize the criminal nature of Mexicans illegally pursuing freedom in America.

His plan goes terribly wrong and Adam ends up trapped within a well organized crystal-meth drug ring in Central California. Unable to reveal his true identity without certain death, he must continue his undercover role as a Mexican immigrant. Forced to live and work amongst the people he has so vehemently hated, Adam starts to see the true nature of the people he has tried to distance himself from. Realizing they are searching for personal freedom and a sense of "home" just as he is, Adam begins to acknowledge his own Mexican American heritage while trying to master a plan of liberty for all. "The Gatekeeper" explores the universal truth that -humanity knows no borders.

Showings are nationwide, for a current listing, visit [www.gatekeeperfilm.com](http://www.gatekeeperfilm.com).



**Special screening to take place at the 13th Annual Midwest Farmworker Stream Forum, November 7. Director, John Carlos Frey, will be present for questions following the film. For more information, contact Lisa E. Hughes at 512-312-2700.**