

Increasing Access to Workers' Compensation Medical Benefits for Low-Income and Immigrant Workers

Research Report

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Summary of Findings

Injured workers in New Hampshire frequently have trouble accessing workers' compensation medical benefits. Problems may occur at any point in the claims process. Through our research, we have been able to document some of the most typical problems. They include:

- Worker lacks knowledge of workers' compensation system.
- Information is not available to workers in appropriate language.
- Worker fails to report injury to employer.
- Employer fails to process claim.
- Worker fails to inform medical provider that injury occurred at work.
- Medical provider fails to inquire about and/or to document cause of injury.
- Medical interpretation is not provided for immigrant workers.
- Employer-recommended physician provides inadequate care and/or diagnosis.
- Worker is unaware of right to choose own healthcare provider for workplace injury.
- Some workers' compensation insurance companies (referred to hereafter as "carriers") tend to reject claims at an unjustifiable rate.
- Worker fails to appeal denial of claim.
- Worker is unable to find legal assistance to appeal denial.
- Legal interpretation is not available for appeals for denied claims.
- Claim is damaged by questions about workers' immigration status.

Based on these problems, we have made the following recommendations for ways to help workers succeed with their claims:

Increased worker education on workers' compensation

- Provide more information in appropriate languages.
- Increase capacity of immigrant outreach workers to provide information and assistance in their own communities.

Healthcare providers

- Train healthcare providers to ask about and document whether a medical condition was caused at work.
- Make sure that medical interpretation is provided where appropriate and that medical interpreters understand the workers' compensation system.
- Encourage providers to care for injured workers while coverage disputes are pending.
- Provide a mechanism to pay for treatment for injured workers whose claims are denied or whose employers do not carry workers' compensation.

Attorneys and legal assistance organizations

- Encourage legal assistance groups to recognize that many workers' compensation cases are not fee-generating.
- Increase access to low-cost legal assistance for injured workers whose medical bills are denied.
- Train community advocates to assist with workers' compensation cases.

NH Department of Labor

- Provide legal interpreters for workers' compensation hearings, and to provide other foreign language services as appropriate.
- Assure that NH DOL policies do not discourage immigrant workers from pursuing their right to workers' compensation benefits.

Detailed Findings and Recommendations

Introduction

Almost 48,000 workplace injuries and illnesses¹ were reported to the NH Department of Labor in 2005. In general, medical expenses for work-related injuries should not be charged to health insurance. Under state law, workers' compensation insurance is required to pay 100% of medical expenses resulting from employees' workplace injuries.² Legally, workers' compensation should cover all categories of employees, including temporary, part-time, and both documented and undocumented immigrant workers. Injured employees are entitled to benefits, regardless of who or what caused the accident, with very few exceptions. All employers are legally required to carry workers' compensation insurance on all employees.

Nevertheless, the NH Coalition for Occupational Safety and Health (NH COSH) has received many reports of workers experiencing difficulty with workers' compensation medical benefits. If benefits are denied, they charge medical bills to their health insurance (an expense health insurance should not have to bear), rely on public funding, pay from their own funds, or go without treatment.

Workers' compensation medical benefits are a particular concern for immigrant and low-income workers. These workers tend to be more at risk for workplace injury and less informed about their rights. Furthermore, they are less likely to have health insurance to fill the gap if workers' compensation fails to pay.

In June 2006, NH COSH began planning how to help these workers. We began by consulting articles in the academic and popular press and interviewing workers' compensation attorneys, a physician, union leaders, and NH Department of Labor officials. Most important, by working with a group of immigrant activists and ESOL³ teachers, we interviewed 25 injured workers, most of them immigrants, about their experience with workers' compensation.⁴ (For detailed survey results, see Appendix E.)

Our initial research is now complete. This report describes what we have learned so far about reasons that workers fail to collect medical claims.

¹ Under the terminology of work, the difference between workplace injuries and illnesses is that work-related injuries are caused by single incidents (such as a fall from a roof) and work-related illnesses are caused by longer-term exposures, such as to repeated motions or toxic chemicals. For brevity, this report will use the term "injury" to indicate both injuries and illnesses.

² Workers' compensation also pays indemnity benefits, generally 60% of lost wages, to provide income support while the worker recovers. Our project, however, looks only at medical expenses paid by workers' compensation.

³ "ESOL" is an abbreviation for "English for Speakers of Other Languages", a term now preferred to "ESL" or "English as a Second Language."

⁴ Our original plan was to also interview a significant number of US-born workers. But because the community groups most able to conduct the interviews were those who primarily had contact with immigrant workers, we were unable to interview as many non-immigrant workers as anticipated.

How Medical Claims Fail

Problems may arise at many points in a workers' compensation claim.

Workers May Fail to File Claims

The typical case begins when a worker reports an injury to his or her supervisor. Problems can start here. If the worker fails to report the injury right away, the credibility of a claim is compromised, increasing the chances of denial. And some never workers never file a claim.

In a California study of immigrant workers⁵, only 63% of those injured at work reported it. The problem may not be as serious in New Hampshire, but it does occur. Union officials report that many workers avoid filing accident reports because they fear a negative reaction by the employer. Two of the immigrant workers we interviewed failed to report their injury to their employer and an additional worker delayed reporting because she did not know about workers' compensation.

Recommendation: Teach workers the importance of prompt reporting of workplace injuries.

Some Employers Fail to Accept All Claims

A local attorney reported that even though a worker may report an injury, there are many cases in which supervisors ignore the report and do not file a workers' compensation claim with the NH Department of Labor (NH DOL). This is illegal; employers are required to report even those claims they feel are unfounded. Two of the workers we interviewed reported that their claims were rejected and they were fired when they reported their injuries.

Recommendation:

- Teach workers about the legal obligation of employers to file workers' compensation claims with NH DOL.
- Inform workers that workers' compensation claims can be filed directly with the NH DOL when employer refuses to accept a claim.

Medical Records Fail to Note that Injury Was Work-related

Several experts pointed out that for a workers' compensation claim to be successful, doctors' notes must clearly reflect that the injury had a causal relationship to work. But injured workers do not always tell their medical providers how they got hurt. Sometimes, workers do not even know that their injuries are related to work, such as in cases of ergonomic injuries or exposure to toxic substances. If the worker does not say that he or she was hurt on the job, and if the provider does not inquire, the medical notes will fail to document the cause of injury and the claim is likely to be denied. This is especially likely to happen when workers have limited English language ability and medical interpretation is not provided.

⁵ M. Brown, A. Domenzain, N. Vittoria-Siegert, "Voices from the Margins: Immigrant Workers' Perceptions of Health and Safety in the Workplace," UCLA Labor Occupational Safety and Health Program, 2002, p. 1.

Recommendations:

- Teach workers the importance of informing medical providers about workplace causes of injury.
- Inform healthcare providers and intake staff about the importance of noting workplace causes of injury.
- Provide medical interpretation where appropriate. Inform medical interpreters about the workers' compensation system.

Workers May Be Unaware of Their Right to Choose Own Provider

In general, injured workers have the right to choose their own medical providers. Even when workers' compensation coverage is provided under a managed care plan, the worker has the right to select from a list of providers and to petition the NH DOL for permission to see a provider outside the plan.⁶ Injured workers also have a right to seek second opinions, paid by workers' compensation.

Yet our research showed that many workers are unaware of this right. Two attorneys confirmed that often workers are told to go to company-chosen medical providers, and that these providers have a tendency to send workers back to the job too early. The attorneys felt that in certain cases, physicians chosen by employers were reluctant to conclude that workers had been hurt on the job. Two injured workers told us they were directed by their employer to a particular doctor, and did not know they had any choice. In one case the doctor concluded the injury was not work-related. In the other case, the doctor ordered the worker back to full duty, which the worker was not able to do.

Recommendation:

- Teach workers about their right to choose their medical providers and to get second opinions.

Medical Providers May Delay or Deny Treatment Pending Carrier Approval

Two attorneys and a physician reported that some providers delay needed treatment until the carrier approves payment. In certain cases, lack of prompt treatment may reduce the long-run potential for recovery. Moreover, if the carrier never approves treatment, costs may be shifted to the worker's health insurance or the patient's own fund personal funds. Worse, the patient may never receive treatment if a source of payment cannot be found. This is particularly likely to occur for immigrant and low-income patients. Four of the workers we interviewed said that they had delayed or gone without treatment because of the inability to pay. We have spoken to a number of workers who had long-term disabilities as a result.

Some employers, in violation of New Hampshire law, do not carry workers' compensation coverage. In this case, the injured can try to recover directly from the employer. But in many cases this is unsuccessful, and the worker loses access to medical care. None of the workers we

⁶ Workers' compensation managed care plans are approved by the NH Department of Labor and are totally separate from other managed healthcare plans.

interviewed had this problem, but local labor leaders have documented that it is fairly common among small construction contractors.

Recommendations:

- Encourage providers to care for injured workers while coverage disputes are pending.
- Provide a mechanism to pay for treatment for injured workers whose claims are denied or whose employers do not carry workers' compensation.

Workers' Compensation Carriers Deny Valid Claims

Our research suggests that some workers' compensation carriers routinely reject far too many legitimate claims. Carriers vary in the aggressiveness with which they deny claims, but the practice is perhaps the biggest problem encountered by injured workers. Although carriers try to convince the public that a large percentage of workers' compensation claims are fraudulent, this is an exaggeration.⁷ It is our judgment that the majority of denied claims are legitimate. However, for this project, we did not focus on changing the behavior of workers' compensation carriers, as it appears to be deeply engrained. Instead, we look at ways for claimants and their advocates to respond to unjustified denials.

Injured Workers Fail to Appeal Denials

At least five of the workers interviewed reported that their claims had been denied. Two reported that their claims were denied right away. Two others received initial treatment at the time of injury, but were denied follow-up treatments. The attorneys and the physician we spoke to confirmed that carriers may put up barriers to medical care when conditions become chronic or expensive. As a result, the worker is left with a long-term disability making it difficult to return to the workforce. 15 of the workers interviewed reported that they were still having medical problems with their injury. Six said that as a result they were still out of work. One woman reported that "I was not operated on. I don't have any income now and I am behind in my mortgage."

Workers can appeal denials of medical bills to the NH Department of Labor (NH DOL). The first level of appeal is a hearing presided over by a NH DOL hearings officer. The hearings officer's decision may be appealed to the Compensation Appeals Board.⁸ According to the attorneys we interviewed, in general the NH DOL has a reputation of being even-handed, biased neither towards workers nor carriers. According to NH DOL's records, almost half of injured workers win their appeals.

But many workers never appeal their denials. Why? They may not be aware of the ability to appeal, or the substantial probability of success if they do so.

Another factor is that workers may have problems finding legal help with appeals. As confirmed by the attorneys we interviewed, it is especially difficult to find legal help for cases that do not

⁷ Center for Justice and Democracy, "Workers' Compensation: A Cautionary Tale," 2006, p. 17.

⁸ The NH Supreme Court offers a third level of appeal but most cases are not appealed to the Court.

involve a large amount of potential indemnity benefits.⁹ This is because the primary source of payment for attorneys is the 20% of retroactive indemnity (non-medical) benefits they collect on successful appeals at the Department of Labor.¹⁰

If the worker is not eligible for significant indemnity benefits, it may be difficult for attorneys to be compensated for appealing denials of medical bills. In theory, attorneys who win disputed medical benefits may bill the carrier for legal fees. In practice, it can be difficult to actually collect.¹¹ However, several of the experts we interviewed feel that it is not a good time to change the laws and administrative rules on collection of legal fees.

To compound the problem, most injured workers, even if low-income, are unable to obtain free legal assistance. Why? Even though it is difficult for attorneys to get paid for appealing denials of medical bills, workers' compensation cases are generally classified as "fee-generating." Therefore, legal assistance agencies do not currently offer free assistance in this area. The pro-bono section of the NH Bar Association handles a few workers' compensation cases, but the need is far greater.

Recommendations:

- Teach workers about their right to appeal denials of workers' compensation claims.
- Encourage legal assistance groups to recognize that many workers' compensation cases are not fee-generating. Increase access to pro-bono legal assistance to injured workers.
- Train community advocates to assist with workers' compensation cases.

Some NH Department of Labor Policies Reduce Immigrant Workers' Ability to Pursue Claims

In general, the NH Department of Labor (NH DOL) has a good reputation for being fair and even-handed in handling workers' compensation appeals. Workers whose employers fail to accept claims can file directly with the NH DOL. The NH DOL has stated a clear policy that immigrant and refugee workers, including undocumented claimants, are fully entitled to workers' compensation medical benefits.¹² In addition, the NH DOL has appointed a dispute resolution coordinator to mediate disputes between injured workers and carriers.

However, our research uncovered several issues related to the treatment of undocumented immigrants. We have discussed some of these issues in detail with the Endowment for Health

⁹ Indemnity benefits are payments to workers for lost wages. The general rate of compensation for lost wages in New Hampshire is 60%.

¹⁰ At the next level of appeal, the Compensation Appeals Board, winning attorneys for injured workers are awarded payment for time and charges.

¹¹ If medical bills are paid before the issue reaches a hearing, no fees are awarded. In addition, even if the appeal is successful, carriers may avoid paying legal fees by claiming that the dispute related not to the medical fee, but to the cause of the injury. Attorneys who win appeals related to causality are not eligible for hourly legal fees.

¹² Undocumented workers are also entitled to indemnity benefits while unable to work due to injury. The only limitation in coverage is that, according to NHDOL procedures, undocumented workers who are able to work part time cannot claim partial disability.

and the NH Commissioner of Labor. Of most concern at present is that the NH DOL does not furnish workers' compensation informational materials in foreign languages or provide legal interpretation for workers' compensation appeals hearings. This issue requires follow-up. As a recipient of federal funds, NH DOL appears to be required to provide such services for limited English proficiency (LEP) individuals.

Recommendations:

- Encourage NH DOL to comply with federal mandates to provide foreign language services to limited English proficiency (LEP) workers.

Workers' Lack Knowledge About Workers' Compensation

Our discussion to this point has focused on problems in specific stages of workers' compensation claims. There is also an overarching issue that workers mentioned repeatedly when we interviewed them. They reported that they lacked information about workers' compensation, and that this hurt them when they tried to obtain benefits.

15 of the 25 workers interviewed reported that at the time of their injury, they did not know that all of their medical bills were supposed to be paid by workers' compensation. At least five reported that as a result, they did not file claims. Delays in filing often prejudice the credibility of the claim and reduce the chances that benefits will be paid. These results are similar to those of a large Massachusetts study of community health center patients. In this study, 52% of foreign-born patients reported that they had never heard of workers compensation, compared to 42% of those born in Puerto Rico and 15% of those born in the U.S. mainland.¹³

When we asked workers what would have helped them get their medical bills paid, fourteen workers said that having more information about workers' compensation would have helped. Some sample comments:

- "I did not know how the system works and this is hurting my case now."
- "The help you can give is to teach us. We need to know workers' comp and who can help when there is a problem on the job. We also need someone to go with us."
- "The problem is that I didn't know my rights...and didn't know what to do, where to go, and no one around me knew what to do."

How to provide this information is an issue. When we asked workers where they go for advice, many responded that they turn to family members (12 responses) and friends (17 responses). Very few said that they turn to community leaders (3), community organizations (1), teachers (1), or healthcare providers (1).

¹³ "Occupational Health and Community Health Center (CHC) Patients," Occupational Health Surveillance Program, Massachusetts Department of Public Health, September 2006, p.5, Table 6, www.mass.gov/dph/ohsp .

Many workers mentioned that language and culture is crucial. Six reported that they had had trouble finding help in their own language. Sample comments:

- “I would have needed information in my own language and a place where I could go for advice in my own language. This is a very complicated process and we are all alone and don’t know where to go for help. We don’t know what steps to take.”
- “[It] would be better if someone from Africa is there, so that we can feel welcome.”

NH COSH’s experience confirms the value of giving workers assistance in their own language. One of our most successful efforts resulted from providing information about workers’ compensation to a talented outreach worker at the Latin American Center. She quickly became an experienced advocate for injured workers, and over the years has provided Spanish-language assistance to many injured workers.

But our experience also reveals that it is valuable to provide information to immigrants in adult education centers. This is despite the fact that only one of the workers interviewed said they would go to a teacher for advice. NH COSH has provided information on workers’ compensation for immigrants in ESOL classes throughout New Hampshire. Based on years of enthusiastic responses from students and teachers, we believe that this information has been valuable to many workers. Many immigrant students have told us, without prompting, that they intended to share the information with family and friends. Thus, contrary to survey results, our experience is that clear information provided by teachers is appreciated and shared through informal community networks. We believe the reason we have been successful is that we adjust our presentations to the English language ability of students, teach important vocabulary, and use teaching tools such as graphics and skits.

Recommendations:

- Increase worker awareness of workers’ compensation.
- Provide information in appropriate languages.
- Increase capacity of immigrant leaders to provide information and assistance in their own communities.
- Appoint bilingual staff or use telephone interpretation service at NH DOL.

Conclusion and Next Steps

We studied injured workers’ problems accessing workers’ compensation medical benefits, focusing primarily on immigrants and refugees. Our research showed that although many injured workers receive the benefits they are entitled to, others encounter problems. Difficulties may include workers’ limited knowledge of the system, immigrant workers’ limited English proficiency, employer obstruction, unjustified benefit denials by workers’ compensation carriers, incomplete medical notes, and limited availability of legal assistance. Helping injured workers requires addressing all of these issues.

During the project, we made concrete progress addressing some of these problems. We produced and distributed informational materials in a number of languages. We conducted community outreach to inform social service workers, teachers, and others about workers' compensation. We also continued our ongoing outreach program to ESOL students.

In the final months of this project, we talked with partner organizations about how to continue work on the issues documented. As a result, we have begun working with NH Legal Assistance and several community partners to advocate provision of legal interpretation and other language services for injured immigrant workers at the NH Department of Labor.

However, we were not successful in planning a system of low-cost legal services for injured workers with medical claims. We also have not begun to work with medical providers. We believe it is still a high priority to work in these areas, whether the work is done by NH COSH or another organization.

Appendix A



Workers' Compensation Basic Information

Medical and Disability Benefits for Injured Workers

If you are hurt or become ill because of your job, workers' compensation (or "workers' comp") pays your medical bills. It also pays 60% of your lost wages after you miss more than three days of work. Workers' compensation is a type of insurance that all employers MUST provide.

Workers' Comp Covers All Employees

It doesn't matter whose fault the injury was. All employees can get workers' comp, including part-time, temporary, and immigrant workers. Undocumented workers are eligible for most types of workers' comp.

Reporting Injuries

If you are hurt at work, tell your employer. Fill out an accident report (form 8aWCA) right away. You can get this form from the employer. Make sure to keep a copy for yourself. You have up to two years to report workplace injuries and illnesses, but it is best to report right away.

Seeing a Doctor

You have the right to choose your own doctor if you are hurt at work. You also have the right to get a second opinion. In most cases, you can choose any doctor.

For workers' compensation carriers with "managed care," you must choose from a list of doctors. However, if you are not happy with the doctors on the list, you can ask the Department of Labor to approve a doctor not on the list.

Make sure that you tell your doctor, hospital, and other health practitioner if your condition was work-related. They should send all bills to your employer, not to you.

If your injury or illness was caused by your work, make sure your doctor's report says this. Make sure that it accurately describes your condition. The doctor's report should also state whether you can return to your former duties and if there are any limits on what you can do. Give this information to your employer. The employer must obey the doctor's orders.

Returning to Work

Make sure to get a form (75WCA-1) from your doctor stating whether you can return to work, and if there are limitations on what you can do. Give a copy to your employer, but keep a copy for yourself. Your employer must abide by the doctor's instructions.

If Your Claim Is Denied

If the workers' comp insurance carrier denies your claim, don't give up. Some insurance companies deny claims at first in order to discourage you. You should consider appealing to the NH Department of Labor. Almost half of all injured workers who appeal to the Department win their appeals. You have up to 18 months to appeal.

Getting Legal Help

If you need the assistance of an attorney, find one who specializes in workers' compensation. You will not have to pay in advance. The attorney will be awarded 20% your unpaid disability benefits, if he or she wins the appeal. If you lose your appeal, you do not have to pay the attorney.

Help from the NH Department of Labor

For more information or assistance, call the New Hampshire Department of Labor at 271-3176. Ask for the Workers' Compensation Claims Department. Or go to the Department's website at <http://www.labor.state.nh.us/> .

Appendix B: Best Practices from Other States

Groups across the country have implemented a variety of promising practices to help injured workers. Some of the most promising are described below.

Assisting Injured Workers With Their Cases

New York Peer Assistance Program

The New York State AFL-CIO has pioneered a worker-to-worker assistance program. In a two-day training seminar, union members learn the basics of New York's workers' compensation system. They learn to help injured coworkers "navigate" the system. Trainees are given an easy-to-use reference manual. The New York Public Employees Federation is currently using this program to train nurses to assist injured coworkers. The course also has been taught in Spanish.

Chicago Worker Center Low Cost Legal Assistance

Volunteers at the Chicago Interfaith Worker Rights Center help workers file complaints with government agencies. In addition, the center holds legal clinics in which law students, supervised by experienced attorneys, meet with workers to consider possible legal action.

Massachusetts Survival Guide for Injured Workers

This handbook not only guides injured workers through the rules of the state's workers' compensation system, but also provides valuable information on tactics that carriers use to disqualify injured workers, additional sources of income assistance, and tips for psychological survival during prolonged periods of disability. It is available in English or Spanish and is published by the Western Massachusetts Coalition for Occupational Safety and Health. The Spanish version may be out-of-date.

Helping Physicians Recognize Occupational Injuries

Massachusetts Manual for Healthcare Providers

"Addressing Work-Related Injuries and Illnesses: A Guide for Primary Care Providers in Massachusetts" is published by the Massachusetts Coalition for Occupational Safety and Health (MassCOSH) in partnership with Greater Boston Physicians for Social Responsibility. The guide includes information on the providers' role establishing workplace causation. It also includes information on hazards faced by workers in common occupations, to assist physicians in recognizing work-related health problems.

Designing State Policy to Help Injured Workers

Massachusetts Trust Fund for Injured Workers

The Massachusetts Department of Industrial Accidents maintains a trust fund for workers whose employers do not carry workers' compensation.

Maine Policy on Inquiring about Immigration Status

In 2004 the Governor of Maine issued an executive order forbidding state employees, other than law enforcement personnel, to inquire about or disclose the immigration status of individuals

seeking state services. The reason for this policy was that such inquiry or disclosure would discourage individuals from applying for state services to which they should be entitled. Note that in general undocumented workers are entitled to workers' compensation.

Texas: State-Sponsored Counsel for Injured Workers

The Office of Injured Employee Counsel is a Texas state agency. It helps guide injured workers through the system, provides ombudsmen to assist workers at hearings, and provides public policy advocacy on behalf of injured workers

Massachusetts Foreign Language Publications

The Department of Industrial Accidents, the Massachusetts agency responsible for overseeing the workers' compensation system, publishes its handbook for injured workers in English, Spanish, Portuguese, Haitian Creole, Vietnamese, and Chinese.

Appendix C
Monetary Impact of Workers' Compensation Cost Shifting in New Hampshire – Initial Data Suggests a Significant Impact

Workers' compensation paid \$120 million in medical benefits in New Hampshire in 2004, the last year for which data were available. We began this report believing that a significant amount of additional medical expenses for workplace injuries were being shifted to other payers or not being paid at all. We wanted to learn more about the size of the problem. Estimates of the gap between the cost of treatment and the amount covered by workers' compensation vary widely. But all the sources we consulted— national statistics, state statistics, and the worker survey - indicate that failure to pay medical expenses of injured workers is a significant problem. It would be irresponsible for us to estimate the precise magnitude of cost shifting in New Hampshire. But we can see that the impact is almost certainly in the tens of millions of dollars, as explained below.

Appendix C provides a summary of studies done in other states or for the nation as a whole. Estimates of workplace injury expenses not picked up by workers' compensation range from 9% to 94%.

We interviewed 25 workers who had been injured on the job in New Hampshire within the last three years. Our sample size was not significant, but the survey did allow us to explore the experience of these workers. Six of the 25 people interviewed reported problems getting workers' compensation to pay medical expenses. At least one additional worker did not try to get medical benefits because he was unaware of the system. Of the six who had problems, two workers reported that health insurance paid their bills, one worker paid from personal funds, two obtained care through a community health clinic, and one said the bills were never paid. Four of these workers reported going without treatment at some point due to inability to pay.

In a 2006 pilot study, questions on workers' compensation were inserted in the New Hampshire Behavioral Risk Factor Surveillance System. 48 respondents, or 5.6% of those surveyed, indicated that they had been injured seriously enough to require medical services. Of these, only 52% reported that workers' compensation had paid for medical treatment. A larger survey would be required to reliably estimate the extent of the problem.

In short, both state and national data suggest a large amount of cost shifting from workers' compensation to other payers, such as health insurance and individual workers. We do not know the size of the problem with any precision. However, suppose that workers' compensation fails to pay just 25% of medical expenses for workplace injuries in New Hampshire. This figure seems very roughly reasonable based on the BRFSS study, combined with results from other states. (See Appendix C.) This would mean that almost \$40 million in medical expenses were shifted from workers' compensation to other payers in New Hampshire.¹⁴ While this estimate is quite rough, it suggests a significant impact.

¹⁴ Based on figures from Sengupta, Ishita, et al., "Workers' Compensation: Benefits, Coverage, and Costs, 2004." National Academy of Social Insurance, July 2006. This report stated that workers' compensation paid \$119,685,000 in medical expenses for injured New Hampshire workers in 2004.

Appendix D: How Large is the Problem of Cost-Shifting from Workers' Compensation? Evidence from Other States

Except in the case of dramatic disasters, such as the recent Sago mine accident that killed 12 miners, most occupational injuries occur individually. In many cases, workers disabled on the job must leave work. These workers tend to simply drop from the awareness of coworkers as they deal with the impact of their injuries. As a result, the public tends to view workplace injury as a collection of individual, disconnected misfortunes rather than as a societal problem.

Yet national data reveals that the incidence and costs of workplace injury are high. 5700 workplace fatalities and 4.2 million injuries occurred in the U.S. in 2005.¹⁵ As stated earlier, almost 48,000 injuries were reported in New Hampshire in 2005. This almost certainly understates the true number, since many injuries go unreported.

The medical costs place a significant burden on the healthcare system. According to J.P. Leigh et al., "The costs of occupational injuries are high, in sharp contrast to the limited public attention and societal resources devoted to their prevention and amelioration. Occupational injuries are an insufficiently appreciated contributor to the total burden of health care costs in the United States"

Even though required by law, workers' compensation fails to pay medical expenses in a large number of cases of occupational injury. Estimates of the shortfall are difficult to obtain. For this project, we have not been able to obtain a conclusive national study of the gap. Yet evidence strongly suggests that the shortfall is large.

There are at least two ways to get a sense of the size of the gap. First, we can compare the total cost of workplace injury to the amount of medical benefits actually paid by workers compensation. One scholar estimates the annual cost for the US at \$65 billion in 1997.¹⁶ By contrast, workers' compensation paid medical benefits of just \$16 billion that year.¹⁷ If these estimates are correct, workers' compensation failed to pay 80% of medical expenses for occupational injuries.

A second way to assess the gap is to estimate the percentage of workplace injuries for which medical benefits were not obtained. Studies show widely varying results, but in every case, the gap is significant. The best statewide study appears to be based on responses of 312 injured Washington State workers to the 2002 Behavioral Risk Factor Surveillance System (BRFSS) survey. The study surveyed a fairly representative sample of workers, from many industries and socio-economic groups. Of the 312 workers injured on the job, only 52% filed workers'

¹⁵ Many researchers believe that the official estimates of occupational injuries and illnesses vastly understate the actual incidence. Rosenman et al. suggest that official data misses two out of every three occupational injuries and illnesses. Rosenman et al., "How Much Work-Related Injury and Illness is Missed By the Current National Surveillance System?" *Journal of Occupational and Environmental Medicine*, Vol. 48, No. 4, April 2006, p. 357 – 365.

¹⁶ Leigh, JP et al., "Occupational injuries and illness in the United States: Estimates of costs, morbidity, and mortality," *Archives of Internal Medicine*, 157(14), July 28, 1997, p. 1557.

¹⁷ Mont, et al., "Workers' Compensation: Benefits, Coverage, and Costs, 1999 New Estimates and 1996-1998 Revisions," National Academy of Social Insurance 2001.

compensation claims.¹⁸ Interestingly, 52% is also the percentage of injured New Hampshire workers who reported that workers' compensation had not paid their medical expenses in a smaller 2006 BRFSS pilot study. (See Appendix B.) A 2005 study focused on hotel room cleaners in Las Vegas. 75% of workers reported work-related pain, but only 20% filed workers' compensation claims. The authors estimated that "69% of medical costs were shifted from employers to workers."¹⁹ In a Michigan study of 30,000 injured workers, between 9 and 45% failed to file for workers' compensation.²⁰ And a large study of fatal occupational diseases estimates that workers' compensation failed to pay 80% to 94% of medical costs for these cases.²¹

All of these estimates suggest that cost-shifting from workers' compensation is a significant issue. But because they vary so widely – from 9% to 94% - it is difficult to estimate the total size of the problem.

¹⁸ Fan, Z. Joyce, et. al., "Underreporting of Work-Related Injured or Illness to Workers' Compensation: Individual and Industry Factors," *Journal of Occupational and Environmental Medicine*, Vol. 48, No. 9, Sept. 2006, pp. 914-16.

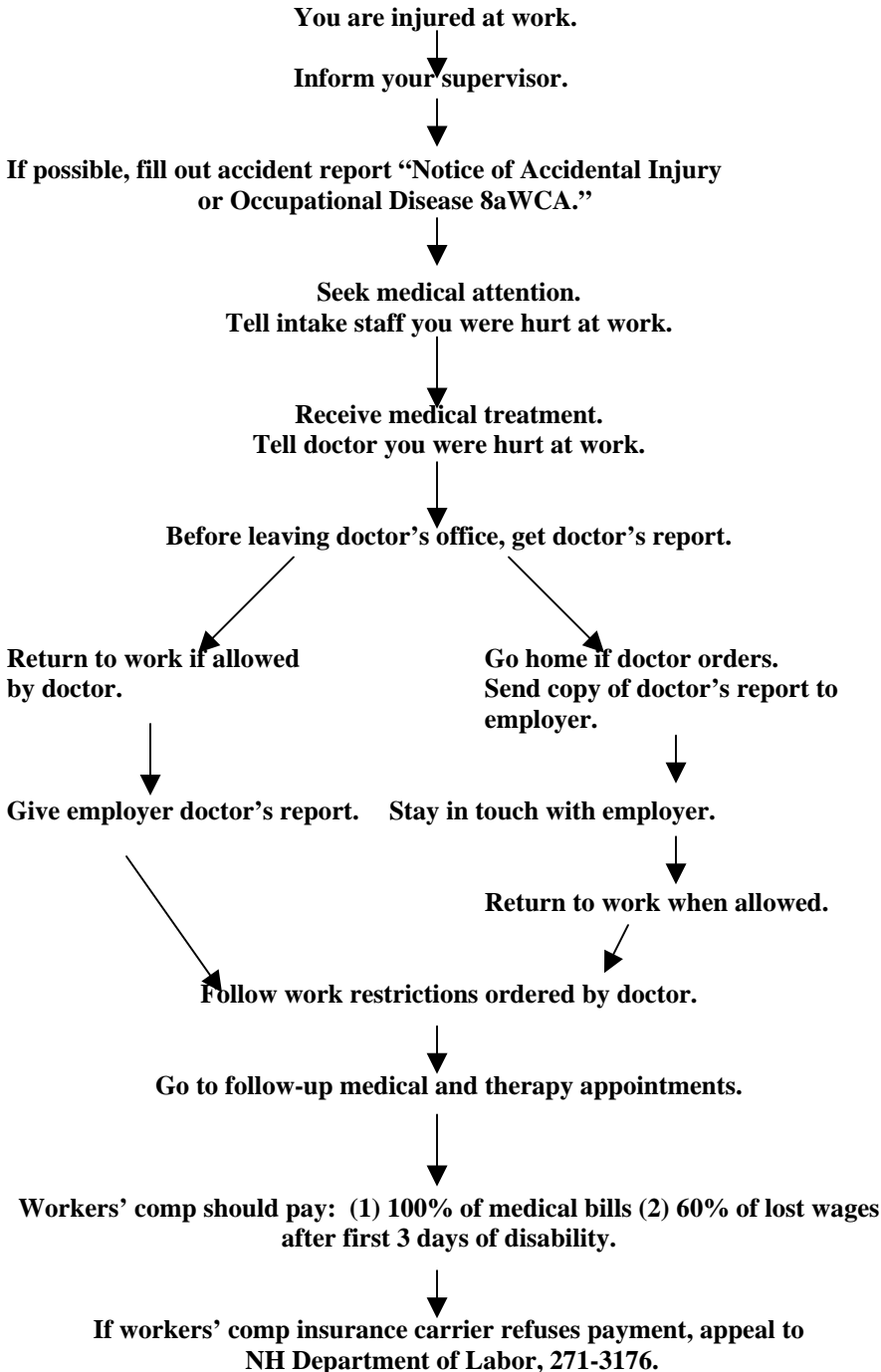
¹⁹ Scherzer, Teresa, et al., "Work-Related Pain and Injury and Barriers to Workers' Compensation Among Las Vegas Hotel Room Cleaners," *American Journal of Public Health*, March 2005, Vol. 95, No. 3, pp. 483-488.

²⁰ Biddle, J., et al, "What Percentage of Workers With Work- Related Illnesses Receive Workers' Compensation Benefits?" *Journal of Occupational and Environmental Medicine*, Vol. 40, No. 4, April 1998. (This study focused on claims for lost wages, rather than medical benefits, but suggests that a similar may exist with the latter.)

²¹ Leigh, J.P. and Robbins, J.A., "Occupational Disease and Workers' Compensation: Coverage, Costs, and Consequences," *The Millbank Quarterly*, Vol 82, No.4, 2004, p.709.

Appendix E:
Workplace Injuries and Workers' Compensation
Step-by-Step

If you are injured at work, workers' compensation should pay: (1) 100% of medical bills (2) 60% of lost wages after first 3 days of disability. Here are the steps in a workers' comp claim.



Notes

It doesn't matter who caused the injury.

If you develop a condition over a long period of time, for example work-related asthma, inform your supervisor when you become aware of it.

If you need urgent medical attention, fill out the report later, but as soon as possible.

You can choose your own doctor. But if your company has "managed care" workers' comp, you must choose from their list.

Doctor's report should say you were hurt at work and note all injuries. If the doctor forgets to put something in the report, remind him or her. Report should say if you can return to work and if there are limits on what you can do. Keep your own copy of all reports and letters from doctors and from workers' comp insurance company.

In most cases, the employer must keep your job for you for up to 18 months.

Employer must abide by doctor's work restrictions.

If you need a lawyer's help, find one with workers' comp experience. You do not have pay the lawyer from your own money.

Appendix F:
Increasing Access to Workers' Compensation Medical Benefits for Low-Income and Immigrant Workers Project
NH-COSH
INTERVIEW SUMMARY

BACKGROUND

INTERVIEWER: Before we get started talking about your injury, I would like to ask a few background questions. You do not have to answer any of these questions if you do not want to.

1. What is your age? *Mean age 39, Range 19 -60*

2. Were you born in the US? *2 yes; 23 no*

If no, where were you born?

Congo 5; Colombia 4; Somalia 4; Mexico 4; Dominican Republic 2; Rwanda 1; Sudan 1; Burundi 1; Uruguay 1

3. What is your primary language?

Spanish 12; French 3; Mai Mai 2; Kinyarwanda 2; Somali 2; English 1; Swahili 1; Anyuak 1; Kirundi 1

FOR NON-ENGLISH: Do you prefer to have an interpreter when you talk to doctors and business people? *Yes 10; No 14; 1 No answer*

4. How many years of education have you completed? *Average years of schooling 11.5*

Gender (Noted at close of interview) *15 men; 10 women*

ILLNESS/INJURY

INTERVIEWER: Thank you. Now let's talk about your illness or injury.

5. What was your injury or illness?

6. How did it happen?

1. Repetitive motion at work Tendonitis in both arms

2. I was filling the "clips" with the plastic pieces and all of a sudden I felt a pain like a cramp in the wrist that went up the arm. Diagnosed with tendonitis.

3. I was a housekeeper in a hotel and as I was turning a mattress over it fell on my arm injuring it. Tendonitis and torn cartilage

4. Lifting 48 lb. Bags continuously for 8 hr a day Shoulder - Tendonitis due to repetitive work

5. I was lifting a piece of granite with a suction cup. I was kneeling down and when I tried to lift the piece I felt my back crack. Injured a disk in my back.

6. I worked as a janitor cleaning a school. The mop I had to use was very heavy and required extreme movement of my wrists. I had 25 rooms plus 2 hallways. At first I worked part time for 1 mo. Then I started working full time for about 5 weeks covering for someone else. By the 3rd wk I already had bad symptoms but I went back to part time anyway. bilateral severe carpal tunnel syndrome

7. I work in assembly (electromechanical) Carpal tunnel syndrome both hands. Right hand is worse.

8. With electrical saw Cut a finger on the left hand

9. He was working with other people cutting (trimming) a tree, it was another person operating a shing (?) saw. The machine fell and he he tried to hold the branch to prevent it falling on the other person's head. He got in contact with the saw and cut his hand. Cut is hand (left) with a shing (?) saw

10. car accident Arm, back, neck, leg

11. When I was operating the machine Broke the tip of my ring finger

12. I fell and hurt my elbow.

13. Wounded while working machine. Broke finger

14. Working with machine for woods (woodworking?) Finger

15. 1 - I was cutting wood with machine, 2 - Making windows - shot my finger, 3- Wanted to put down the [nail] gun and it shot me. 1st - Broken finger, 2nd Nail gun in a finger, 3rd Nail gun in my foot (right)

16. I was locking the machine Broke finger

17. Something fell on my toe

18. Back pain while cleaning Back

19. Lifting boxes Back pain

20. I was closing the door (machine). Broke finger

21. Tried to fix plastic wrapper and burned right hand. Burn self trying to fix a machine at work.

22. Pulling a belt and the blade cut finger. Cut finger

23. I was lifting somebody. It is part of my job. Pain in lower back - Have gone for therapy

24. Cleaning - pushing cart in factory - fell - wood floor - not even - supervisor called her into office to report the accident - Big supervisor said don't report - told her to go to the hospital. Back - bruised.

25. Was putting material into a machine & machine cut fingers off. Company called ambulance and went to Elliot [Hospital]. Made appt. for 1 week. Friends told him not to answer questions. Manager came to house and showed pictures. Machine cut 2 fingers off.

7. How long ago did it happen? Average: 16 months

8. Where did you go for treatment? [Check all that apply.]

No treatment - 0

First aid - 1

Treatment at doctor's office - 15 (More than 1 visit 11)

Emergency room - 14

Hospitalization- 1

Physical therapy - 10

Other: surgery 3; injections 5; "Elliot Hospital" 2; clinic near work 1

9. Did you report the injury/illness to your employer?

23 yes; 1 no; 1 don't remember

10. Did you receive safety information or training at work before your injury/illness? 10 yes; 15 no

If yes, did you understand the information/training? 4 yes, 4 no, 2 no answer. Comments – 1 worker unable to follow safety rules due to pace of work; 1 reported protection was added to machine after the accident

11. How long were you out of work?

Did not miss work except for medical treatment - 4
1 – 3 days - 2
More than 3 days - 17
Don't remember - 2

12. Are you having medical problems with this illness/injury now?

15 yes; 10 no

13. Are you still out of work due to the injury or illness?

6 yes; 19 no

WORK WHEN INJURED/ILL

INTERVIEWER: I'd like to know a little more about the kind of work you were doing when you were injured/became ill.

14. What kind of business or organization did you work for when this happened?

<i>Factory/Manufacturing - 16</i>	<i>Cleaning service - 2</i>
<i>Construction - 2</i>	<i>Landscaping - 1</i>
<i>Food processing - 0</i>	<u>Other: Driver/courier 1; Medical corporation – 1</u>
<i>Farm work - 0</i>	<u>(1 person listed more than 1 type of employer)</u>
<i>Restaurant- 0</i>	
<i>Hotel or motel - 1</i>	
<i>Hospital or nursing home - 2</i>	

15. Were you working for a temporary employment agency at the time?

5 yes; 19 no; 1 don't know

16. Were you working as a subcontractor at the time?

24 no; 1 don't know

17. What was your job? [INTERVIEWER: Listen for answer and code in appropriate category.]

<i>Machine operation / assembly - 13</i>	<i>Clerical work - 0</i>
<i>Packing - 2</i>	<i>Cashier or sales - 0</i>
<i>Cook/Food handling/Dish washing - 0</i>	<i>Technical or professional - 0</i>
<i>Cleaning or housekeeping - 6</i>	<i>Supervisor or manager - 0</i>
<i>Construction work - 2</i>	<i>Other: 1 installer, polishing; 1 landscaping; 1 driver/courier</i>
<i>Caring for patients- 1</i>	

18. Were you working full time or part time? *24 FT; 1 PT; 0 seasonal*

19. Were you paid by cash or check?

25 were paid by check but 2 also received some cash payment

MEDICAL BILL PAYMENT

INTERVIEWER: I would now like to talk to you about how your medical bills were paid after you were injured/became ill.

20. Do you know what workers' compensation is? 10 yes; 15 no

(If "No," explain what workers' compensation is.)

21. How were your medical bills paid?

Workers' comp paid all - 13

Workers' comp paid some- 3

Health insurance - 2

Own money - 1

My employer paid, but they told me not to report that I was injured at work - 0

Bills were never paid - 1

Never got a bill - 4

Other: 2 community health clinic; 3 don't know

(Total for this question more than 25 because one workers' bills could be divided among several parties.)

22. At the time you were injured or became ill, did you know that all your medical bills were supposed to be paid for you by workers comp?

10 yes; 15 no

[IF YES] How did you know? (Who told you?) 1 doctor; 1 outreach worker; 1 relative; 1 friend

23. Did you try to get workers' compensation to pay your medical bills?

15 no; 10 yes

If no, why not?

- Did not try at first, tried later; I thought the hospital would take care of billing with insurance.*
- Because the owner took care of it.*
- The insurance called him to ask if he got any bills.*
- Did not have any problems getting workers' comp to pay his bills. They went to his house and did it all.*
- Never got bills.*
- I didn't know anything about workers' comp.*
- I didn't know.*
- It was paid in full by workers' comp.*
- Workers' comp paid all my bills.*
- Didn't know anything about it.*
- I didn't know about it and left the job. They said they didn't have a job for me.*

[IF YES] Did you have any problems getting workers' compensation to pay your medical bills?

11 no; 6 yes

[IF YES] What problems did you have? [INTERVIEWER: Specific information is very important here]

- WC stopped paying medical bills after initially paying.*

- *They initially denied the claim but Eva contacted the insurance company and they came to the Latin American Center to interview me. My supervisor had told them I did not get hurt at work but I was able to prove her wrong and they started paying my bills and salary.*
- *The company doctor said this was a pre-existing condition so the company refused to pay.*
- *Workers' comp denied my claim saying the injury has no relation to my job.*
- *I didn't get workers' comp and they fired me.*

HELP WITH WORKERS' COMP

24. Did anyone help you try to get workers' compensation to pay your medical bills?

17 no; 8 yes

[IF YES.] Who did you get help from?

Lawyer 5; Friend or family 3: Eva at Latin American Center; Safety manager at work

How did they help you?

- *(Friend) Give me advice. Calling the company.*
- *Contacted the insurance company. The attorney represented me in the settlement and took care of late payments by calling insurance on my behalf.*
- *[Lawyer] helping me now with my case. It is still in process. We requested a hearing at NH DOL.*
- *I am in the process of getting a lawyer to represent me.*
- *Gave me information on what to do.*

25. Did you try to get a lawyer to help you?

9 yes; 16 no

[IF YES.] Did you have trouble finding a lawyer to help?

1 yes; 6 no, 2 don't remember or no answer

26. Did you go to a hearing at the NH Department of Labor?

3 yes; 22 no

[IF YES] Did the Department of Labor decide in your favor?

1 yes; 2 no

27. [For non-English speakers] Did you have trouble finding help in your own language?

6 yes; 18 no

28. Did you delay or go without medical treatment for this injury or illness at any point because you could not pay for it?

4 yes; 21 no

29. If you missed work, did workers' compensation pay part of your salary?

13 yes; 7 no; 2 reported receiving compensation for part but not all lost time.

NEEDS

Sometimes injured workers need help getting workers' compensation to pay their bills. So we would like to ask a few questions about what would be the best way help workers like you. We can't offer the help now, but we would try to offer this program in about a year from now.

30. Where do you go to get advice for family legal or financial problems?

[INTERVIEWER: Read off the list if person is having trouble thinking of people. Check all that apply.]

Family members - 12

Friends - 17

Coworkers -2

Community leaders - 3

Teacher - 1

Community health center or doctor r- 1

Internet - 1

Lawyer- 1

Latin American Center- 1

No one -1

Asks questions of anyone he talks to because his family & friends don't have all the information he needs - 1

I help myself - 1

31. About how much money per hour did you earn at the job where you were injured?

13 \$5-10/hr ; 12 \$10-15/hr

32. [INTERVIEWER: If person had problems with workers' comp, ask this question] **When you think about your injury/illness, what do you think would have helped you to get your medical bills paid by workers compensation?** [INTERVIEWER: This question is very important for figuring out how the project can help in the future. Please encourage interviewee to think about what really would have helped. One way to do this is to ask: "Was there anything else that would have helped?" You should also try to connect the conversation back to the problems the person said he/she had with getting workers comp to pay and ask "what would have helped you when"]

- *More information about my rights before getting injured.*
- *Did not report injury on my own. Changed jobs w/ coworker for a few days, when lead person asked why I mentioned the pain and was taken to H.R. for a report. They had me take the drug test and sent me to the Dr. for treatment. Was put on light duty. Eventually had 1 surgery paid by WC. The insurance Dr. sent me to work full duty but I couldn't do it. My own Dr. said I could not work but the insurance cancelled my policy. I am in the process of appealing with the help of an attorney.*
- *In general, more information should be available to avoid delays in medical treatment or payment of salary. Need for interpreters.*
- *I did not have problems w/ the workers comp. My problem was at the hearing. The lady from the insurance lied to the officer and so did my supervisor. The attorney from the insurance, his 1st question was "are you legal?". Since that moment the attitude of the hearing officer was different; I felt he was against me. I appealed the decision and I'm waiting for another hearing for the settlement. The*

insurance offered me \$10,000 and I feel it is very little considering I'm injured for life but I have no choice but to accept it. There is a definite difference in the amount of settlements offered to Americans and foreigners. I would have like to know my rights before the accident.

- *I would have needed information in my own language and a place where I could go for advice in my own language. This is a very complicated process and we are all alone and don't know where to go for help. We don't know what steps to take.*
- *Information about workers comp. I did not know how the system works and this is hurting my case now. I went to my primary doctor initially and he referred me to the specialist who did the surgery. I filled[in] the injury report 3 or 4 days before the surgery but the surgeon asked for my health insurance in case they could not bill WC. There is no record of my injury happening at work in my doctor's report. I was not operated on. I don't have any income now and I am behind in my mortgage. [Per interviewer - she had surgery once paid for by her health insurance, but needs it again and cannot get it paid for.]*
- *He did not have any problems getting workers comp to pay for his medical bills but he feels that is unfair that he has suffered from such a loss of a finger on his hand and all he got paid is medical bills and some hours that he did not work because of his injury. But now he has a funny looking hand and he did not get any compensation for it.*
- *It would have helped if he got a lawyer since the beginning.*
- *At that moment I would like to know what's workers' comp, where to go to get help, to know my rights. What step to take, and what next. I don't remember but I think tht they didn't pay me 60% of my wages. I wish we had an office to help us with nothing but (?) information about injury on the job.*
- *We don't have enough help. When we come we don't know what to do, where to go to get help because we don't have enough knowledge and everything is new. We need somewhere to go and get help. Can be better if someone from Africa is there, so that we can feel welcome.*
- *I wish I know what's workers' comp, my rights, and know where to go to get help. We need people to help (lawyer, an office where we can go.)*
- *Need to know what to do when hurt on the job. Where to go, who to contact.*
- *The help you can give is to teach us. We need to know workers' comp and who can help when there is a problem on the job. We also need someone to go with us.*
- *Wish to know my rights and the laws of this country. Wish that [name of agency] help its client to know what to do when they have (can't read next word) problems or workers' comp.*
- *Everything was paid but I know that I didn't know much about workers' comp. The help we need is (?) teach us what is workers' comp, how to get it, and who can help. I hope that, as you said, in about 1 year you are going to help people. We would like to learn more about workers' comp and get more help if we are hurt on our jobs.*
- *Inform people about workers' comp and where to get help. I didn't get any problem but, I'd like to know my rights and know what to expect from my employer. Know more about workers' comp and where can I refer workers who get hurt on the job.*
- *The problem is that I didn't know my rights, workers' comp and didn't know what to do where to go and no one around me knew what to do. They fired me after my injury. Got another job after 6 months. We need people to help understand these laws. Help us to know our rights. We need to understand what to do. We need to understand the trainings they give us.*
- *We need to know our rights because if we knew we could keep our jobs. They know that we don't speak and don't understand so they do whatever they want. Hope that you are going to help.*

Interviews conducted Feb 1 through April 12, 2007, by Eva Castillo, Honoré Murenzi, Christine Powers, Jacqueline English, and Leticia Ortiz.