AGRICULTURAL EMPLOYMENT LAW AND POLICY

A Study of the Impact of Modern Social and Labor Relations Legislation on Agricultural Employment

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WORKERS'COMPENSATION IN AGRICULTURE

Workers' compensation laws represent the judgment of the states that there should be mandatory medical coverage and income protection for employees who are injured on the job. Coverage for employment-related illness and disease has also become a reality. State statutes require employers to carry private insurance designed to pay claims up to limits established by statute, qualify as self-insured, or, in the case of a few jurisdictions, contribute to a state fund which exists to pay claims. The cost of the coverage or the amount of the contribution to the state fund is tied to the number of persons employed, the type of work involved, and the record of past employment-related injuries for the particular operation. As has been the case with most other social legislation, agriculture has traditionally been exempted from coverage. While agricultural exemptions are no longer universal, they persist in varying degrees in many jurisdictions.

Historical Development

Some 50 to 60 years ago claims under newly adopted state workers' compensation schemes began to replace negligence suits as the remedy for many workmen injured on the job.1/ The negligence system had proven to be unsatisfactory since it was always necessary to deal with the issue of fault and that frequently necessitated expensive and time-consuming litigation.2/ Further, neither employer nor employee could be certain as to the financial impact of an on-the-job accident if one occurred. The employee was not typically in a position to insure himself against extensive medical costs and loss of income. To recover against the employer involved establishing negligence on the part of the employer. If the employee-plaintiff in such a negligence suit failed to sustain the burden of proof,3/ or if the employer-defendant successfully defended on a contributory negligence,4/ assumption of risk,5/ fellow servant,6/ or pure accident theory,7/ there was no recovery. The employer was in a better position, however, because through a program of liability insurance, he could protect himself from financial ruin.

The advent of workers' compensation gave covered workers the assurance that financial aid would be forthcoming for job-related injuries regardless of who was at fault, unless the injury was self-inflicted or certain other exceptional circumstances existed. While this did not eliminate all litigation, the chances for recovery by the employee were vastly increased although limited in amount by the schedules contained in the statutes. Disputes could arise, however, over whether the accident was job related, whether the injury resulted in temporary, permanent-partial, or total disability and over the percentage of permanent-partial disability.

Some states were very slow to add occupational illness and disease coverage and this was termed a "shocking breach of responsibility."8/ A January 1, 1979 study, prepared by the Alliance of American Insurers, indicates that all states and the District of Columbia currently provide covered workers with "full coverage" for work-related illness and disease.9/ Such claims are often hotly contested with the insurance carrier or the state fund taking the position that the worker's medical problem did not originate or was not aggrevated by on-the-job conditions.

Dollar limits on loss of income benefits are set by statute, and the schedules vary from state to state. Worker's compensation statutes cover medical bills without limits in 44 states. Upper limits on coverage would defeat the objectives of the legislation.10/ The income protection payment schedules have been inadequate in many jurisdictions and, because of inflation, have become inadequate in others with authorized benefits far below the level which would be required to meet minimum living expenses for a disabled worker and his family.11/ In some of the state schemes, the income maintenance objectives are defeated for some workers by labeling a particular disability as permanent and then cutting off benefits after a set period,15 years for example.12/

Worker's compensation coverage has never been universal. As of 1972 the National Commission on

State Workmen's Compensation Laws reported that the combined coverage of all state schemes and the federal program designed to protect persons in the employ of the federal government and in maritime work was only about 85% of the work force.13/ Fifteen states reportedly covered less than 70 percent of their hired labor force.14/ In a number of states, some employees still come under coverage only if the employer, at his option, makes an election under local law. This situation persists in certain states where numerical, dollar, or occupational exemptions apply, leaving employees of an employer with a small number of workers, a small payroll, or a certain type of business, outside of the compulsory coverage provisions.15/

When workers' compensation laws were first enacted, agricultural workers were almost universally excluded.16/ It was argued that compensation benefits would be impractical to administer because of the seasonal nature of farm work and the great number of small farming operations employing one or a very few workers.17/ It was also assumed that the cost of coverage would be too much of a burden on farmers and that they would have difficulty in passing on the added expense to the consuming public.18/ It was also argued that agricultural work was relatively safe and that there was no need for the kind of compensation scheme designed for factory, construction, and other hazardous industries.19/ Other arguments advanced to justify the exclusion are summarized as follows: "The farm was considered by lawmakers to be a relatively safe employment, a family business, and a place where, if an accident occurred, familial responsibility would insure the injured's welfare. At the time of the initial workmen's compensation statutes, this view of the safety of the farm and the nuclear farm family was substantially correct. Further, insurance carriers have argued that the cost of writing and servicing farms is too high to prove profitable. Finally, state legislatures have long been composed in large part of persons, principally farmers and rural lawyers, who would have an interest in not covering farm workers."20/

Change came gradually, and by 1946 six states covered agricultural workers on substantially the same basis as other workers.21/ By 1966, the number had risen to 10 and in 1972 it stood at 17.22/

In July of 1972, the Report of The National Commission on State Workmen's Compensation Laws was issued, the result of a comprehensive study ordered by the Congress.23/ Finding that only about one-third of the states were covering farmworkers on essentially the same basis as other workers,24/ the Commission recommended a two-stage approach to coverage of farmworkers:

> As of July 1, 1973, coverage should be extended to agricultural employees whose employer's annual payroll exceeds $1,000. By July 1, 1975, coverage should be extended to farmworkers on the same basis as all other employees.25/

Other recommendations were:

> We recommend that workmen's compensation be compulsory rather than elective.26/
> We recommend that employers not be exempted from workmen's compensation because of the number of their employees.27/

A January 1, 1979 report by the Alliance of American Insurers indicated that compliance with the July 1, 1973 and the July 1, 1975 deadlines had not been as extensive as hoped.28/ As of January 1, 1979, only 11 states were in compliance with the July 1, 1975 standard, with five additional states in compliance only with the July 1, 1973 standard.29/ The rest of the states and the District of Columbia were in compliance with neither of the recommended standards.30/ Some of the noncomplying states provide limited farmworker coverage and in some cases that coverage is essentially equivalent to that provided other workers. In the latter instances, the failure to meet the July 1, 1973 standard and the July 1, 1975 standard results from the continued use of thresholds, with employers with fewer than a certain number of employees or with a payroll over $1,000 but under some other set figure being exempt from the law or in a position to provide workers' compensation coverage only on an elective basis. The January 1, 1979 study indicates that in 19 states there is still a total exclusion of coverage for agricultural workers.31/

Current Status of the Law

Workers' compensation schemes are almost totally a phenomena of state law, the only exceptions being certain federal programs designed to cover persons in the employ of the federal government and certain maritime workers.32/ The state laws vary significantly. However, some general observations may be made about the ways certain groups of states treat farmworkers under current workers' compensation statutes.33/

According to the January 1, 1979 report by The Alliance of American Insurers, the states that provide full coverage for agricultural workers and that have no dollar or numerical thresholds are Arizona,

California, Colorado, Connecticut, Hawaii, Massachusetts, Michigan, Montana, New Hampshire, New Jersey, and Ohio.34/ The states that provide full coverage except for the $1,000 threshold requirement are Alaska, Iowa, Oregon, Pennsylvania, and Vermont.35/

States not in compliance with the "essential standards" fall into three main groupings: (1) states that have no mandatory coverage for agricultural employees, (2) states that have modified the blanket exclusion but continue to exclude from mandatory coverage those agricultural workers whose employer pays more than $1,000 but less than some higher dollar amount for hired labor in a set period of time, usually the preceding calendar year, and (3) states that have modified the blanket exclusion but continue to exclude from mandatory coverage employees of farmers using less than a certain number of hired workers during a stated period of time. In many of the states that fall into these three categories, the employer may voluntarily elect to bring his employees under coverage by securing the necessary compensation policy or by making the appropriate contribution to the state fund. Such an election insulates the employer from common law tort liability and leaves the compensation claim as the sole employee remedy, except in certain extreme cases such as the commission of an intentional tort by the employer.

New York and Minnesota provide interesting examples of jurisdictions using dollar thresholds other than the $1,000 threshold that was recommended for implementation by July 1, 1973.

In New York, farm laborers are covered only if they work on a farm where, during the preceding April 1 to April 1 period, the farm employer paid more than $1,200 in cash remuneration to farm laborers.36/ The wages of a spouse and minor children of the farmer are not counted unless they are under an express contract for hire.37/ Where the New York farmer employer has not met the $1,200 test, he may elect to bring his employees under coverage.38/

The Minnesota law also uses a dollar threshold, but because it attempts to deal directly with the family farm corporation, it is a more complex scheme than New York's. The Minnesota statute exempts several classes of agricultural employees: (1) persons employed by "family farms" which by statute are any farm operations paying or obligated to pay less than $8,000 cash wages to farm laborers in the preceding calendar year.39/ (The spouse, parent, or child of a farmer and the executive officer of a statutory family farm corporation plus his spouse, parent, or child employed by such corporation are not farm laborers for the $8,000 test);40/ (2) partners and the spouse, parent, or child of partners of a farm operation;41/ (3) executive officers of statutory family farm corporation and the spouse, parent, or child of said officer employed by such corporations; (4) executive officers of certain closely held corporations and the spouse, parent, or child of said officers employed by such corporations;42/ (5) farmers or members of farm families exchanging work with a farm employer or statutory family farm corporation in the same community;43/ and (6) casual employees.44/ Coverage is elective as to the owner or partner in a farm, including officers of a "family farm corporation" and their employed immediate relatives. It is also elective as to farm laborers, other than farmers in the same community exchanging work with the farmer-employer, who are not otherwise covered by the act.45/

Wisconsin, Florida, and Illinois provide examples of jurisdictions where farmworkers are treated differently than employees in other industries on the basis of numerical formulas.

In Wisconsin, compulsory coverage is extended to farmworkers who are employed by a farmer who, in a 20-day period during the calendar year, employs six or more employees.46/ Coverage becomes mandatory 10 days after the last day of such 20-day period. In other industries, a standard of three or more employees or a wage payroll of $500 or more in any calendar quarter is the test used.47/

Florida's coverage is extended to an employee working for an employer having three or more employees.48/ However, coverage is compulsory in farm employment only if the farmer employs five or more regular employees or 12 or more employees for seasonal labor completed in less that 30 days.49/

The Illinois threshold is of particular interest since it resembles the threshold requirement of the Fair Labor Standards Act. The exemption applies for agricultural enterprises employing less than 500 man-days of agricultural labor per quarter, exclusive of man hours supplied by family employees.50/

The threshold requirements, however phrased, have added to the general complexity of the law governing employment in agriculture. Many of the threshold-type statutes have provided complicated interpretation problems, particularly for farm employers who have incorporated.

Recent Developments

There is increasing support that universal coverage from day one of employment for all workers should be an immediate goal of this society. If the states do not move with great speed to correct existing inequities, the workers' compensation area, like many others, will likely become the subject of sweeping federal legislation.

Senators Harrison A. Williams, Jr. and Jacob Javits have been ardent supporters of such federal legislation and have introduced several bills in recent years. In his remarks introducing the National Worker's Compensation Standards Act of 1979, Senator Williams stated:

> The deficiences of our workers' compensation laws are a national tragedy. We cannot let this tragedy continue. This bill is not a rich man's bill. It is not a bill which will provide benefits that will make disabled workers wealthy. It only provides elementary justice and equity for the maimed and diseased workers of our Nation. It is a bill which our Nation can and must afford.51/

Arguing on behalf of an earlier version of the proposed act, Senator Javits noted the National Commission recommendation that by July 1, 1975 farmworkers be covered on the same basis as all other employees. He characterized the failure of 35 states to provide this coverage as "nothing less than outrageous."52/

The proposed National Workers' Compensation Standards Act of 1979 would provide certain basic standards to be introduced into the law, most growing out of the National Commission "essential recommendations" of 1972.53/ Where a state has a scheme which meets these standards, the secretary would so certify and the matter of administration would be left entirely to the state. If the state is deficient in certain respects, the bill would not provide for a federal take-over. However, the proposed legislation would place on the employer the obligation to individually provide supplemental compensation so that the compensation payments to the employee would be equivalent to the federally established minimums.54/ Many issues covered by local law would still be governed by that law, such as determining whether the injury or illness was work related, but the claim for supplemental compensation would be filed with the Benefits Review Board of the U.S. Department of Labor after state remedies had been exhausted. Employers would be required, if the law of the state did not measure up to the proposed federal standards, to carry insurance to provide the supplemental payments, qualify as a self-insurer, or make the election, if available under state law, to bring coverage to the federal minimum standards. Should an employer fail to make such provision, the employer would be exposed to personal liability for the supplemental payments, although not to any common law remedy as in tort. Each contract of insurance for comprehensive personal liability, such as a homeowner's policy, tenant's policy and presumably a farm and ranch liability policy would be presumed, by virtue of the provisions of the proposed federal law, to provide supplemental coverage under the workers' compensation scheme of the federal act, unless the employer had secured payment in another manner. Thus, what is a general liability policy could in effect, become in addition, a compensation policy.

The proposed National Workers' Compensation Standards Act of 1979 partially excludes agricultural employees by eliminating them from the definition of "employee":55/

> Sec. 3(5)(c)"any individual employed as an agricultural laborer by any employer who did not during any calendar quarter during the preceeding calendar year employ more than thirty workdays of agricultural labor. For the purposes of this subsection, "workday" means any day during which an employee performs any agricultural labor for not less than one hour. The person who operates a farm shall be deemed to be the "employer" of agricultural workers employed on that farm for the purposes of this Act, except where another person within the definition of "employer" in subsection (3) of this section has agreed in writing with the operator to accept workers' compensation responsibility and has informed the Secretary of his intention to accept such responsibility when applying for a registration certificate under the Farm Labor Contractor Registration Act of 1963, as amended;..."

In the 95th Congress, 2nd Session, an earlier version of the bill provided that the term "employee "employee did not include:56/

> Sec. 3(5)(b) "any individual employed as an agricultural laborer or in domestic service in or around a private home by any employer who during the current or preceding calendar quarter did not employ one or more individuals as agricultural or domestic on at least fifteen days:..."

The bill that Senator Javits introduced in the 94th Congress, 1st Session would have provided full coverage for all agricultural workers.57/ The term "employee," as it appeared in that proposed legislation at Sec. 3(5), had no exemption or exclusion for agricultural workers. The same verbiage was contained in an earlier bill introduced in the 93rd Congress, 1st Session.58/

Recommendations and Conclusions

States that have failed to eliminate exclusions which deprive some or all farmworkers of workers' compensation coverage should move with dispatch to delete such exclusions from the law. If the states fail in this and in other workers' compensation reforms, federal legislation should be enacted with the requirement of full coverage for all agricultural workers. Given the potential administrative burden of the federal scheme as currently proposed, the most desirable development would be for all noncomplying states to move quickly to bring their statutes up to the "essential standards" adopted by the National Commission.

Although various justifications have been posed for the various exclusions, upon close examination most of those justifications are based on unwarranted assumptions. Following are evaluations of several commonly relied upon assumptions.

(1) Would a law providing full coverage for all agricultural workers be impractical to administer? The Report of The National Commission on State Workmen's Compensation Law noted that the spector of administrative problems has hindered reform: "(t)he predominance of part-time help on farms, their geographic dispersion, and the fact that migrant workers may work for many different employers during the course of a year present difficulties in reporting, rating, medical care, rehabilitation, and auditing."59/ However, an important study of the Indiana law, with some national scope indicated that exclusions and thresholds cannot be justified on the basis of administrative complexity.60/ The study further indicated that none of the states with complete coverage "has anywhere reported administrative problems traceable to a lack of recordkeeping ability on the part of farm and ranch employers."61/ Indeed, if Ohio and other states with significant migrant farmworker populations can administer a law that provides full coverage from day one of employment, it is difficult to give much credence to continued speculation about administrative difficulties. The success that has been experienced in this area, as well as in the administration of the Social Security laws, can be traced in part to the fortunate advent of the computer.62/ From the standpoint of the individual farmer the recordkeeping required under a full coverage scheme is notably less complex than that required for federal and state income tax purposes.63/ Indeed, in those states that have partial exclusions, the elimination of thresholds should make the recordkeeping simpler for the smaller farm employer who currently should keep meticulous records geared to advising when he has passed over the arbitrary line and must bring himself into compliance by obtaining coverage, self-insured status, or state fund protection. The fact is that the present system in some states poses unnecessary administrative problems.

(2) How many farmers are fully informed with respect to thresholds and actually purchase coverage when required? Schramm's estimates indicate that there is widespread noncompliance with compulsory statutes where thresholds and formulas are involved.64/ For the lawyer, insurance man, or other specialist, such provisions may be relatively simple to find and interpret, but for the farmer who is faced with an increasing array of statutory and regulatory material in the farm employment area alone, the technicalities of some workers' compensation statutes can be unmanageable. On the other hand, it is exceedingly simple to inform the farm community that when a person is hired for farm production work, even for a single day, a call to the local office of the bureau, if a state fund is involved, or to a private insurance carrier, in other jurisdictions, is required.

(3) Will the cost of coverage be too much of a burden on farmers, particularly small operators, and will they have difficulty in passing on the added expense to the consuming public? The Indiana study looked into this issue and concluded that the cost of such coverage would be insignificant and that it is capable of being passed on quite readily. The estimate for Indiana was that the cost of production would be increased by only 15 cents per $100 of production.65/ At a time when agriculture was much less stable and prone to periodic economic depressions, there may have been some basis for

The economic burden argument, although there are those who doubt that it was ever valid.66/ But as the Indiana study points out, "(f)or any industry operating in a private enterprise setting, the full costs of producing output are, and must be built into the structure of long-run normal prices as these are determined by the market process."67/ There are still "bad-years" for agriculture. However, policy decisions in an area such as workers' compensation should not be made on the basis of such short-term considerations. As the Indiana study concludes: "The ability to weather such a "bad-year" from season to season depends overwhelmingly...on the general financial strength of the producer and on his or her access to adequate credit."68/ Thus, an individual relatively insignificant increase in cost of production is virtually irrelevant to economic survival and over time will be passed on.69/

The Indiana study also comes down hard on the so-called "last straw" argument which, if used in this setting, is that another addition to the cost of production, the cost of workers' compensation coverage, will be the thing that finally drives many farmers under. The study points out that the selection of the "last straw" for the marginal operator is a totally arbitrary and artificial decision.70/ Anything can be hit on as that "last straw," for example, increased gasoline prices, higher real estate taxes, increases in the price of fertilizer, or whatever one wishes to select. The real problem when a farmer does go under is not a single item, but an overall inability to run an economically viable farm operation in today's competitive setting. To argue that certain farmworkers ought to be denied workers' compensation coverage as part of an effort to salvage the marginal farmer is to advocate bad public policy.

When economic arguments are made, it should also be remembered that farmers who have not been required to carry workers' compensation coverage in the past, unless totally ignorant of possible personal exposure, carried special riders on farm and ranch liability policies to cover liability resulting from negligent acts causing injury to an employee. An extra premium is normally collected for such a rider and this cost will be eliminated when the workers come under workers' compensation. Thus, the cost of compensation coverage is not a totally new and added expense.

(4) Is agriculture going to move from the state if compensation coverage is made mandatory for all farm employees? The National Commission on State Workmen's Compensation Laws concluded that interstate differences in workmen's compensation costs for the average employer rarely exceed 1 percent of payroll. It was suggested that no rational employer would move his business to avoid costs of this magnitude.71/

(5) Is employment in agriculture relatively safe and is a compensation scheme designed for manufacturing, construction, and other hazardous occupations needed? It is doubtful that farm employment has ever been relatively safe and it is certainly not the case at present. In 1922, the U.S. Commissioner of Labor made the following remarks:

> "...That the old agriculture was an exceptionally nonhazardous industry is not believed by many who remember when the meadows were cut by gangs of haymakers with scythes, when grain was reaped with cradles and sickles, and threshed with flails; who remember the accidents from runaway teams of horses, from wood chopping, corn cutting with a corn knife, the hog killing, the horse breaking and training and the etceteras that only old men recall. The fact probably is that modern farming is less hazardous than the old. Very little conclusive evidence exists today as to the extent of this hazard."72/

It is unlikely that farming is less hazardous today than in earlier times, and the more accurate assertion is that it has probably always been extremely hazardous and is likely to remain that way. The Indiana report notes that national statistics first emerged in 1937 and indicated for agriculture 4,500 fatalities, 13,500 permanent injuries, and 252,000 temporary injuries.73/ These were figures for the total farm population and included nonwork-related accidents, however, only mining and quarrying, construction, transportation, and public utilities had higher rates of mortality.74/ The Indiana study asserts that from 1937 to 1975 agriculture was the only industry for which the mortality and injury rates increased.75/ More detailed figures from recent years (see the section on occupational safety and health) demonstrate convincingly that agriculture is not an unusually safe type of employment, but rather one of the more hazardous. Given this reality, arguments that workers' compensation coverage is not needed have to be disregarded. Also, since there is no evidence that work on a small farm is safer than work on a large farm, there is no basis for arguing that farm employers with just a few workers or a small payroll ought to be excluded.

One of the penetrating comments in the Indiana study is that one reason for the increasing injury and accident rate in agricultural employment may be the widespread absence of workers' compensation

coverage. The argument is that one purpose of worker's compensation legislation is to promote the prevention of occupational accidents and diseases through economic incentive. Firms with the lowest injury rates pay the lowest premiums to carriers and the lowest assessments to state funds.76/ The incentive effect of workers' compensation laws should be permitted to have its full impact in agriculture.

Since the traditional justifications for the exclusion of farm employees from coverage are of doubtful validity, there ought to be no further delay in bringing all such employees under coverage. Different treatment for farm employees, given the absence of rational justification, is, as Senator Javits indicated, "nothing less than outrageous."77/ Further, exclusions and thresholds may well fall if attacked in the courts on equal protection grounds under state and federal constitutional provisions. This was the fate of the exclusionary system in Michigan where the court found that difference in treatment between agricultural and nonagricultural employment to be without rational basis.78/ As one commentator has indicated, "This decision portends possible attacks upon the agricultural provisions of other states and, perhaps, upon exclusions other than this one. Such attacks may prompt states to comply with the Commission's recommendations."79/

In light of all of these factors, it is difficult to justify the proposed partial exclusion of agricultural workers in the bill now pending in the Congress.80/ The traditional justifications for exclusions simply do not stand under current scrutiny. Protection is needed as much by the employee who would be excluded, as by those who would not. The proposed exclusion will discourage states with exclusions and thresholds from totally eliminating them. The proposed exclusion would insert into the law a new threshold which is not consistent with other threshold requirements of federal and state farm labor law, thus inviting further confusion and creating undue complexity. It will be as easy to teach employers to obtain coverage in all employment situations, as to teach the proposed 30-workday recordkeeping requirement. It is hoped that the days are long past when political compromise on this sort of issue is required to insure the passage of the entire reform package.81/

Notes to Chapter 7

1. See Report of the National Commission on State Workmen's Compensation Laws 25 (1972) (hereinafter cited as 1972 National Commission Report.

2. Ib.

3. The employee would be prevented from recovering if he failed to introduce evidence sufficient to sustain a finding of negligence on the part of the employer.

4. If the employer could show that the employee contributed to the cause of the accident in any degree, either through an imprudential act or derelection in failing to take the proper precautions for his safety, the employee will be precluded from recovery; see Larson, note 16, infra at §§4.30-4.50.

5. This affirmative defense prevents a plaintiff from recovery where the employee has knowledge, either actual or constructive, of the risks to be encountered and consents to take the chance of danger; see Larson, note 16, infra at §§4.30-4.50.

6. Under this theory, the employee was prevented from recovering from the employer if the accident was caused totally or partially by the negligence of a coworker; see Larson, note 16, infra at §§4.30-4.50.

7. Recovery was not permitted if the accident was the result of pure happenstance with neither employer or employee having been negligent; see Larson, note 16, infra at §§4.30-4.50.

8. See A. Larson, "Basic Concepts and Objectives of Workmen's Compensation", Supplemental Studies for the National Commission on State Workmen's Compensation Laws 31, 35 (1973).

9. See National Commission Essential Recommendations Status of State Compliance: January 1, 1979 (hereinafter Status of State Compliance). This is a state-by-state report prepared by the Alliance of American Insurers.

10. See Larson, "Basic Concepts", supra note 8, at 35; in four states limits on medical payments apply only as to silicosis and related diseases.

11. See 1972 National Commission Rep. supra note 1, at 18, 19; Larson, "Basic Concepts", supra note 8 at 35.

12. See Larson, "Basic Concepts", supra note 8, at 35.

13. See 1972 National Commission Rep., supra note 1, at 15.

14. Ib.

15. Id. at 17.

16. A. Larson, The Law of Workmen's Compensation §58.10 (1973 Supp. 1976): see 2 W. Schneider, Workmen's Compensation §§629-78 (perm. ed. 1942, Supp. 1958, Supp. 1962, Supp. 1966, Supp. 1970, Supp. 1973) (State-by-state--except Hawaii--discussion of farm laborer's treatment under state worker's compensation laws.) See generally E. Blair, Reference Guide to Workmen's Compensation §4.04 (1974, Supp. 1975); S. Horovitz, Injury and Death Under Workmen's Compensation Laws (1944) at 214-27; A. Larson, supra, §§53-53.40; W. Schneider, supra §§626, 628-78; Davis, "Workmen's Compensation - Excluded Employment," 16 Drake L. Rev. (1966) at 68, 81-82.

17. See A. Larson, Law of Workmen's Compensation, supra note 16, §53.20 Administrative problems are generally greater when dealing with farmworkers because of the predominance of part-time help on farms, their geographical dispersion, and the fact that migrant workers may work for many different employers during the course of the year.

18. See Id.; W. Schneider, supra note 16, §628, at 615; but see S. Horovitz, supra note 16, at 215.

19. See Griffing, Walker, Weitzman & Youtie, A Social and Economic Analysis of the Exclusion of Farm Workers from Coverage Under the Indiana Workmen's Compensation Act of 1929, (1977) at 1-17 (hereinafter cited as Social and Economic Analysis).

20. See Schramm," Workmen's Compensation and Farm Workers in the United States", Supplemental Studies for the National Commission on State Workmen's Compensation Laws (1973) at 137-138

21. See 1972 National Commission Rep. supra note 1, at 46

22. Ib.

23. See 1972 National Commission Rep., supra note 1.

24. See 1972 National Commission Rep., supra note 1, at 17.

25. 1972 National Commission Rep., supra note 1, Recommendation R2.4 at 17.

26. 1972 National Commission Rep., supra note 1, Recommendation R2.1 at 17.

27. 1972 National Commission Rep., supra note 1, Recommendation R2.2 at 17.

28. See Status of State Compliance supra note 9.

29. Ib.

30. Ib.

31. Ib.

32. See 5 U.S.C. §3582 (1976); 5 U.S.C. §8101 (1976); 14 U.S.C. §760 (1976); 42 U.S.C. §§1701-1706, 1711-1717 (1976).

33. Unless otherwise noted, information is currently only to 1-1-1979.

34. See Status of State Compliance, supra note 9; Michigan is included in this listing, not because the state statute has been suitably amended, but because the exemption has been rendered inoperative by court decision as discussed in note 79, infra and accompanying text.

35. See Status of State Compliance, supra note 9.

36. See New York Workmen's Comp. Law §§2(4), 3(1) Group 14-b (McKinney 1974).

37. New York Workmen's Comp. Law §2(4) (McKinney 1974).

38. New York Workmen's Comp. Law §§3 Group 18, 212 (McKinney 1974).

39. Minn. Stat. Ann. §176.041, subd. 1; Minn. Stat. Ann. 176.011, subd 11a, as amended Laws 1980 Ch. 556, Sec. 12.

40. Minn. Stat. Ann. §176.011, subd. 11a, as amended Laws 1980 Ch. 556, Sec. 12.

41. Minn. Stat. Ann. §176.041, subd. 1, Minn. Stat. Ann. §500.24.

42. Minn. Stat. Ann. §176.041, subd. 1, Minn. Stat. Ann. §176.012.

43. Minn. Stat. Ann. §176.041, subd. 1; Minn Stat. Ann. §500.24.

44. Minn. Stat. Ann. §176.041, subd. 1,

45. See CCH Workmen's Comp. L. Rep. ¶6027(2).

46. Wis. Stat. Ann. §102.04-3(c) (1971).

47. Wis. Stat. Ann. §102.04-1 & 2 (1971).

48. Florida Stat. §440.02-2 (1973).

49. Ib. The Florida Workmen's Compensation Law was repealed effective July 1, 1979 by L. 1978, Ch. 78-300; new legislation was designed to replace it and enacted as L. 1979, Ch. 79-40.

50. See CCH Workmen's Comp. L. Rep. ¶6017(2).

51. See 1 CCH Special, Workmen's Comp. L. Rep. 56 (No. 23 Part 2, 1979).

52. See 1 CCH Special, Workmen's Comp. L. Rep. 48. (No. 89 Part 2, 1976).

53. S. 420, 96th Congress, 1st. Sess. (1979); 420 Amendments, 96th Congress, 1st. Sess. (1979). See, 1972 National Commission Rep., supra note 1.

54. Plus costs and expenses of litigation and attorneys' fees.

55. S. 420, 96th Congress, 1st. Sess. (1979); S. 420 Amendments, 96th Congress, 1st. Sess. (1979).

56. S. 3060, 95th Congress, 2nd Session (1978).

57. S. 2018, 94th Congress, 1st. Session (1975).

58. S. 2008, 93rd Congress, 1st. Session (1973).

59. 1972 National Commission Rep. supra note 1, at 46.

60. See Social and Economic Analysis, supra note 19, at 18.

61. See Social and Economic Analysis, supra note 19, at 20.

62. See A. Larson, "Basic Concepts," supra note 8, at 38

63. See Social and Economic Analysis, supra note 19, at 21.

64. See Schramm, "Workmen's Compensation and Farm Workers," supra note 20, at 141.

65. See Social and Economic Analysis, supra note 19, at 28.

66. See Social and Economic Analysis, supra note 19, at 24-5.

67. Ib.

68. See Social and Economic Analysis, supra note 19, at 25.

69. See Social and Economic Analysis, supra note 19, at 25, 28.

70. See Social and Economic Analysis, supra note 19, at 31-2.

71. See 1972 National Commission Rep., supra note 1, at 25.

72. U.S. Bureau of Labor Statistics, Proceedings of the Ninth Annual Meeting of the Int'l Ass'n of Indus. Accident Bds. and Comm'ns, Bull. No. 333 (1932) at 302.

73. See Social and Economic Analysis, supra note 19, at 5.

74. Ib.

75. See Social and Economic Analysis, supra note 19, at 8.

76. See Social and Economic Analysis, supra note 19, at 15-16.

77. See Note 52, supra.

78. Gallegos v. Glaser Crandell Co., 388 Mich. 654, 202 N.W. 2d 786 (1972); The constitutionality of worker's compensation laws was established in this country in New York Cent. R. R. v. White, 243 U.S. 188, 37 S.Ct. 247, 61 L. Ed. 667 (1916), which upheld the New York statute against numerous constitutional challenges. The White court specifically noted that the exclusion of farm laborers was not an "arbitrary classification" and denied a challenge based on the equal protection clause. Id. at 208.

79. "Developments in Workers' Compensation Law." 53 J. Urban L. 755, 775 (1976).

80. S. 420, 96th Congress, 1st. Sess. (1979); S. 420 Amendments, 96th Congress, 1st. Sess. (1979).

81. Farmworkers were not excluded from the initial compensation laws in Great Britain, Germany, or Italy. S. Horovitz, supra, note 15 §628, at 615. This lends additional support to the strength of the theory that the original exclusion of farmworkers was a political compromise necessary to get needed political support for the passage of the compensation law from the rural areas since the United States copies the acts of Great Britain and Germany in other respects.