

# FROM THE GROUND UP

a publication of *STUDENT ACTION WITH FARMWORKERS*

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## *It's All About Workers' Compensation*

### **What is Workers' Compensation?**

**BY HELEN DICKEN**  
OMBUDSMAN, NC INDUSTRIAL  
COMMISSION

Workers' Compensation (WC) is a benefit to employees in the event that an injury by accident occurs during the course of employment. Benefits are also available to employees who become ill with an occupational disease. In cases where the injuries are fatal, there is a provision for compensation to the next of kin.

#### **Are all businesses in NC required to carry WC insurance?**

In North Carolina, businesses who employ 3 or more on a regular basis are required to purchase WC insurance as specified by the Workers' Compensation Act. Agricultural employers who employ 10 or more workers (or any H-2A workers) are required to carry WC insurance. However, businesses that use radiation or have the presence of radiation in their premises are required to carry insurance even if they employ less than 3. Domestic employees are exempt. The employer pays the premium based on the employee payroll.

#### **What are the WC benefits in NC?**

WC covers medical expenses and lost wages due to the injury or occupational disease. The employee is entitled to Temporary Total Disability at 66 2/3% of their average weekly wages following a 7-day waiting period. The waiting period begins from the first day of disability. They are calendar days and they do not have to be consecutive. Any day that the employee does not earn a full day's wages are counted as one day. If disability continues for 21 days or more, the employee will receive

SEE WORKERS' COMP, PAGE 3



*Farm work is one of the most dangerous occupations in the U.S.; farmworkers experience many injuries working alongside farm machinery. Photo courtesy of Chris Johnson.*

### **NCOSH Provides Information about Workers' Compensation**

**BY KAMILAH EXUM**  
NCOSH INTERN

NCOSH, North Carolina Occupational Safety and Health Project, is a non-profit organization that, among other things, fights for workers' compensation rights for all North Carolina workers. Although agricultural workers contribute \$46 billion annually to the state revenue and are an invaluable component of the workforce, most are not covered by workers' compensation. Because a large portion of NCOSH's work focuses on workers' compensation, it is only able to provide agricultural workers with information rather than its full array of services.

When an injured worker contacts NCOSH to discuss workers' compensation, NCOSH will explain the law, help gather evidence for workers' compensation claims, and assist in filing claims.

SEE NCOSH, PAGE 3

#### **Also in this Issue...**

Deadly Mistakes.....	2
Workers' Compensation Resources.....	3
Personal Testimonies.....	4
Workers' Compensation Nationwide.....	5
Thanks to our Donors.....	6

**SAF** is a 501(c)(3) non-profit organization whose mission is to bring students and farmworkers together to learn about each other's lives, share resources and skills, improve conditions for farmworkers, and build diverse coalitions working for social change.

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**Action Alerts**

Send an email with the word "subscribe" to <farmworkers-request@duke.edu> to receive SAF's weekly Action Alerts about legislation affecting farmworkers, organizing campaign updates, job opportunities, and campus events.

**For more information or to submit articles, contact:**

Student Action with Farmworkers  
1317 W. Pettigrew Street  
Durham, NC 27705  
919-660-3652; 919-681-7600 (fax)  
<http://cds.aas.duke.edu/saf/>  
mwiggins@duke.edu

**From the Ground Up Editor:**  
Kimberly LaCarol Jones

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**Deadly Mistakes**

BY REGINA LUGINBUHL

DIRECTOR, AGRICULTURAL SAFETY & HEALTH DIVISION, NC DEPARTMENT OF LABOR

**When/Where:** In Columbus County, NC on August 24, 2000.

**What Happened:** Seven farmworkers were pulling tobacco leaves and placing them on field trailers for transport to tobacco barns. Work had begun at or about 7:30 a.m. that morning and after an hour lunch break at or about noon, work resumed. Ambient air temperature during the day reached a high of about 88 degrees Fahrenheit with a heat stress potential of 105 degrees Fahrenheit. Workers and the employer agreed that adequate drinking water was available in the field, located within one-quarter mile of the temporary labor campsite.

After the lunch break and as the afternoon progressed, the owner/operator of the tobacco field urged the workers to increase their speed so that the seasonal tobacco harvest work could be completed that day. That afternoon, at approximately 3 p.m., two workers notified the grower that a co-worker was ill, unable to speak or to stand without help. The grower approached the three workers and determined that the worker was indeed ill and incoherent. The grower then ordered two workers to place the ill worker on a trailer used to haul the tobacco leaves. The two workers placed the ill worker on the trailer, and the grower driving the tractor pulling the trailer with the workers on it, took the workers to the temporary labor camp - a mobile home.

The grower/employer then left the workers, including the worker who drove the tractor with the trailers to the tobacco barns, located approximately one-half mile from the labor campsite. The grower/employer stated that after he arrived at the tobacco barns and delivered the tobacco field trailers to the barn, he got into his pick-up truck and returned to check on the ill worker, approximately 30 minutes later. At this point, the ill worker was vomiting and barely conscious. The grower then called 911

emergency number to obtain needed medical service. Emergency service arrived promptly. The local EMT log showed that the call was received at 4:05 p.m., and help was en route by 4:14 p.m. and arrived at the scene at 4:30 p.m. The worker was then transported to a nearby hospital.

The attending physician stated that the farmworker had an internal core body temperature of 107.9 degrees Fahrenheit upon arrival at the hospital. The physician stated that the worker had probably been building toward heat exhaustion over several days of hard work and inadequate hydration. The hospital staff did all that was medically possible, but the worker died 36 hours later of heat exhaustion.

**Fatal Facts:** Onset of heat stroke symptoms began at approximately 3 p.m., but emergency first aid contact was not made until approximately 4:10 p.m.

Appropriate first aid measures were not taken during the time intervening.

**Finding:** The coroner who conducted the autopsy determined that the worker died of heat exhaustion brought on by work during extreme heat stress condition. Inspectors issued two citations to the grower as a result of the fatality. A citation was issued for failure to provide adequate and timely first aid to the victim of heat stress and heat stroke. A second citation was issued regarding the failure to report the work-related fatality. Citations were also issued for unregistered and uninspected migrant housing. The grower paid the full penalty of \$4,025.

*Editor's note: If all farmworkers were eligible for workers' compensation, this worker's family could have been compensated for his death.*

## NCOSH

CONTINUED FROM PAGE 1

State laws require employers of agricultural workers to provide compensation only when they have more than ten full time non-seasonal laborers. Most farmworkers do not fall within this category making NCOSH's advocacy role for them one of safety education.

NCOSH maintains factsheets about health and safety issues and organizes trainings in English and Spanish to accommodate the growing number of Latino workers in the state. As the face of North Carolina workers change, NCOSH remains committed to building empowerment of Latino workers through a variety of measures, one of which is ASTLANC.

ASTLANC, the Association of Latino Workers of NC, provides information to Latino workers about issues they may face in the workplace, including workers' compensation and wage and hour complaint processes. ASTLANC further seeks to organize workers to empower them in the workplace.

NCOSH's involvement with union organization is key to its goal of maintaining safe and healthy workplaces. Through organizing, agricultural workers will be better able to ask that their safety and health be made a priority and to demand changes in the state's workers' compensation law.



## Workers' Compensation Resources

Alliance of American Insurers (AAI)

Department of Commerce

NC Governor's Council for Hispanic/  
Latino Affairs  
[www.minorityaffairs.state.nc.us](http://www.minorityaffairs.state.nc.us)

International Association of Industrial  
Accident Boards and Commissions

Legal Services of NC, Farmworker Unit  
[www.lsn.org](http://www.lsn.org)  
919-856-2180

NC Department of Labor

NC Industrial Commission  
[www.comp.state.nc.us/ncicalt.htm](http://www.comp.state.nc.us/ncicalt.htm)  
1-800-688-8349

NC Occupational Safety & Health Project  
919-286-9249

Region 4 Office of OWCP

US Department of Labor

[http://www.ptla.org/farmworker/  
fwn00victoriesforfarmworkerseng.htm](http://www.ptla.org/farmworker/fwn00victoriesforfarmworkerseng.htm)

National Center for Farmworker Health

## Workers' Comp

CONTINUED FROM PAGE 1

compensation for the first 7 days counted as the waiting period. There is a maximum weekly benefit, which varies, from year to year based on the date of injury. For example, the maximum weekly benefit for injuries occurring after January 1, 2001 is \$620. Mileage reimbursement is also a benefit if it is 20 miles or more round trip.



*Farmworkers suffer high incidences of heat stress, dermatitis, pesticide related illnesses, cuts, and bruises due to the nature of their work. Photos courtesy of Chris Johnson.*

