

A Guide to Workers' Compensation for Maine Clinicians Serving Farmworkers

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I. INTRODUCTION

This guide is designed to provide Maine health professionals serving farmworkers with an introduction to the workers' compensation law in that state. Using a question and answer format, it: 1) offers a brief description of the workers' compensation system; 2) explains the key role that the clinician can play in these cases; 3) provides a timeline of critical deadlines; and, 4) includes copies of important forms.

II. BACKGROUND AND OVERVIEW OF WORKERS' COMPENSATION

What is workers' compensation?

Workers' compensation is a system of employer-provided insurance that offers benefits to employees who suffer a job-related injury or illness. These benefits:

- cover needed care and rehabilitation services, including medical treatment, surgery, physical therapy, hospitalization, laboratory tests, and medications;
- provide partial payment of wages for the time period when temporarily-disabled employees cannot work;
- pay workers who suffer a permanent disability; and,
- cover burial costs and provide monetary support for surviving dependent family members when the work-related injury or illness is fatal.

Why should clinicians learn about workers' compensation?

It is worth taking the time to become familiar with Maine's workers' compensation law for several reasons. First, farmworkers need these benefits. Without them, many farmworkers with a job-related injury or illness would forego needed treatment or their families would go into debt in order to secure it for them. Farmworker families would also be destitute while the injured worker is out of work. Second, taking on workers' compensation cases can provide an additional income stream for a health center.

Are agricultural workers covered by workers' compensation?

Employers of seven or more year-round agricultural workers must provide these employees with workers' compensation. Foreign workers, brought to the US on temporary "H-2A" visas, also must be covered by workers compensation insurance. By contrast, employers of seasonal or casual agricultural workers are required to secure liability insurance, rather than workers' compensation coverage. Nonetheless, growers can always voluntarily choose to purchase workers' compensation policies and in Maine, many do.

Under Maine law, employers of seasonal or casual agricultural workers must obtain an employers' liability insurance policy of \$25,000, or more with at least \$1,000 in medical payment coverage. In addition, employers of six or fewer full-time agricultural laborers must maintain employers' liability insurance of at least \$100,000, (multiplied by the number of agricultural workers employed) which includes at least \$1,000 in medical payment coverage.¹ As such, migrant and seasonal farmworkers whose employer has a liability policy, rather than workers' compensation, will have to prove that their employer or a supervisor acted negligently in causing the workers' injury or illness, in order to receive benefits.

Year round employees, H-2A workers or agricultural workers voluntarily covered by their employers' workers compensation policy, in contrast, are covered by workers' compensation insurance and need not prove fault. The remainder of this guide focuses on those workers who are covered by the workers' compensation system.

Are undocumented farmworkers covered by workers' compensation?

Workers who are otherwise covered by workers' compensation, will not be excluded from benefits based on having an unlawful immigration status.

What must an injured worker prove in order to secure workers' compensation benefits?

Typically, employees must show that they:

- suffered a work-related injury or an occupational illness;
- notified the employer of the ailment within 90 days of its occurrence or of learning of it;
- are an employee of the entity identified as the employer;
- have followed all the health care providers' instructions, including when to return to work and any work restrictions; and,
- have a specified level of disability, after achieving maximum medical improvement.

What is the degree of proof required?

The worker must prove all elements of the claim by a preponderance of the evidence.² This requires that at least 51% of the proof favors the employee.

¹ The Maine Bureau of Insurance, AN EMPLOYERS' GUIDE TO WORKERS' COMPENSATION INSURANCE IN MAINE, available at <http://www.maine.gov/pfr/insurance/consumer/workcomp.htm>.

² Bryant v. Masters Mach. Co., Me., 444 A.2d 329 (1982).

III. THE ROLE OF THE HEALTH CARE PROVIDER

Who chooses the health care provider?

For the first ten (10) days of treatment, the employer can select the health care provider for the employee. Such a health care provider must be authorized to practice in Maine.³ Ten (10) days after treatment has begun, the employee may choose a different health care provider by giving the employer the name of the new health professional and stating an intention to switch. The employer can file an objection to the employee's choice. In such circumstances, the issue will be settled by mediation.

What initial steps should a health care provider take when handling a patient seeking workers' compensation?

During the first visit, the health care professional should provide all necessary treatment. A health professional who believes that the patient is suffering from a work-related ailment should also complete a Practitioner's Report State of Maine Workers' Compensation Board, Office of Medical/Rehabilitation Services (Form M-1) within seven (7) days of the initial examination. This Report must be sent to the patient's employer and to the employer's insurer. In response, the provider will be notified as to whether the employer or insurer has authorized initial treatment.

How quickly should the employer notify the insurer of the employee's illness or injury?

Within seven (7) days of receiving employee notification or learning of the employee's illness or injury, the employer must notify the Maine Workers Compensation Board. To do so, the employer should file the Employer's First Report of Occupational Injury or Disease Form WCB-1 (1/02). This form must be sent to the Maine Workers' Compensation Board (27 State House Station, Augusta ME 04333-0027), the employee and the insurance carrier (and the employer should retain a copy).

What other responsibilities do health professionals have when treating patients with workers' compensation claims?

Health care providers should take a thorough patient history that includes occupational and environmental exposures, and secure all appropriate tests to determine the nature, cause and extent of the injury or illness. With the approval of the insurance carrier, all necessary treatment should be provided. When needed, appropriate referrals should be made for specialized care. To facilitate approval of the claim and the treatment plan, the health professional will need to submit a detailed report(s) to the employer or insurer, documenting: (i) the nature and full extent of the illness or injury; (ii) its causal connection to work activity; (iii) the treatment provided and the patient's compliance with it; (iv) when the patient can return to work; and, (v) what work modifications, if any, are needed to enable the patient to resume previous employment.

³ Maine Revised Statutes Title 39-A § 206(1).

Why is it important to consult the patient in formulating a treatment plan?

Health providers should fully discuss treatment options with patients to ensure that the patient is in agreement with the treatment option selected and able to comply with the provider's instructions. (For example, does the patient have access to transportation for follow-up appointments?). These considerations are important because a patient's failure to comply with a clinician's instructions could result in the termination of workers' compensation benefits. On the other hand, a dissatisfied patient has a right to secure a second opinion paid for by workers' compensation insurance.

How can a health professional assist a worker in proving that the injury or illness is related to work activity?

While clinicians do not usually concern themselves with the cause of an ailment, in the workers' compensation context, showing a work-related cause is a critical element of the claim. In a report submitted to the employer and insurer, the health professional should state facts, inferences and conclusions that support the worker's contention that the ailment is due to work activity. It is helpful to obtain from the worker information concerning:

- tasks performed on the job, including amount of weight lifted or carried;
- the work environment such as equipment used and chemical exposures experienced; as well as,
- how the injury or illness occurred or developed.

The patient's statements should be incorporated into the clinician's report. For example, when treating an injured patient, the health professional should ask:

- Did the incident occur on the employer's premises?
- Did it occur during working hours?
- What work related activity were you engaged in at the time of the incident?
- Had you ever experienced this type of injury before? If so, how did it occur?

When treating a patient with an occupational illness, questions could include:

- Were you exposed to pesticides or other chemicals (by touching treated plants or through direct spray or drift) on the day you became ill?
- How soon after the exposure did your symptoms begin?
- Did any other workers in your area experience similar symptoms that day?
- Have you ever experienced symptoms like this before? If so, under what circumstances?

When treating workers with ailments that develop over time, such as back injuries, questions could include:

- How do you perform your job?
- How heavy are the bags of produce you lift?
- How many bags do you lift in an hour?
- How far do you have to carry bags of produce before emptying them in a bin?

- Do you have to reach over your head in performing your work?
- How many times per hour do you repeat key tasks (e.g., carrying and emptying bags of produce)?

Can an illness or injury be covered by workers' compensation when work activity is not the sole cause of the condition?

When a combination of factors caused the illness or injury, workers' compensation will cover the condition if work activity was a major contributing cause.

Why does the health professional's report often play an important role in supporting a farmworker's claim for workers' compensation benefits?

The health professional's report often provides critical evidence on several elements of the claim (i.e., the nature and extent of the illness or injury, its work-related cause, the employee's compliance with the clinician's instructions, the date the worker can return to work, and any work restrictions). The more the report rests on objective findings and test results and is internally consistent, the stronger it will be. Keep in mind that the opposing party will carefully review the report to identify any unsupported assertions or inconsistencies. The health professional's report is especially important in many farmworker cases because co-workers are frequently reluctant to provide corroborating testimony for fear of losing their jobs (even though such retaliation is unlawful).

When should a clinician recommend "light duty" to facilitate a quick return to work?

To limit costs for temporary disability, an employer may put pressure on the clinician to direct an early return to work. Similarly, a worker may request a clinician's recommendation of light duty due to economic need or fear of losing the job. But light duty should only be recommended if it is available and the patient would be able to accomplish such tasks without jeopardizing recovery or experiencing undue pain. Keep in mind that a worker's failure to comply with a clinician's direction to return to work or her inability to perform the work with the restrictions imposed by the clinician may lead to a termination of benefits.

To avoid common pitfalls, a clinician should consult the patient to determine the degree of recovery, including on-going pain, range of motion, etc. In addition, the clinician should inquire into the physical demands of the job and ascertain whether any light duty jobs exist at that establishment. If light duty is available and appears appropriate, the clinician should specify the conditions under which such duty may be performed, e.g., amount of weight that can be lifted, number of hours that the worker can stand, whether work can be performed in a stooped position, etc.

Finally, the clinician should advise the worker to return to the clinic if injury prevents her from performing light duty. In such circumstances, the clinician, after an examination, can make a determination that temporary disability requires time off of work. When handled in this manner,

a worker should be able to receive workers' compensation benefits for the additional period of disability.

Does the employee need to prove fault or lack of contributory fault in order to secure workers' compensation benefits?

Workers' compensation is generally a no-fault system. There are, however, a limited number of exceptions to this rule. For example, an employee may be denied benefits if illegal drug or alcohol use were a contributing cause of the injury.

What are the primary obstacles that keep workers from filing workers' compensation claims?

The most frequently cited obstacle is fear of employer retaliation.⁴ Although such retaliation is illegal, many workers are unwilling to risk job loss for the uncertain prospect of obtaining financial compensation in the future. Other obstacles include lack of knowledge of the availability of benefits, inability to navigate the workers' compensation system (especially for low literacy or limited English proficient workers), pressure from co-workers, and undocumented status.

Does a worker need legal assistance to obtain workers' compensation benefits?

A recent report⁷ found that low-wage immigrant workers were much more likely to secure needed benefits when they had legal assistance in handling their claims. In any case involving significant costs, the health professional should consider recommending that the worker retain a lawyer to pursue the claim. Local legal services agencies, whose services are free of charge (e.g., Pine Tree Legal Assistance Inc. 61 Main Street, Room 41, Bangor ME, 207-942-0673 or 1-800-879-7463, www.ptla.org), or the Lawyer Referral Service affiliated with the Maine State Bar Association (http://www.mainebar.org/lawyer_need.asp; 1-800-860-1460) can provide referrals.

How do disputed claims get resolved in the workers' compensation system?

When a dispute arises (e.g., concerning the rejection of a claim or a denial of all benefits sought), the parties may request a hearing before Maine Workers' Compensation Board. Appeals from the Board go to state court.

What steps may migrant health centers need to take prior to accepting workers' compensation cases?

⁴ Lashuay N, Harrison R. *Barriers to Occupational Health Services for Low-wage Workers in California: A Report to the Commission on Health and Safety and Workers' Compensation, California Department of Industrial Relations*. April 2006.

A recent study found that many health centers already screen patients for work-related injuries, but do not take on workers' compensation cases.⁷ Some clinicians were reluctant to take on such cases because:

- the paperwork is too burdensome,
- the system is too complex,
- they need additional training in occupational medicine.

Consequently, to prepare for accepting workers' compensation cases, health centers may consider taking the following steps:

- securing additional training for clinical staff in occupational medicine as well as obtaining consultant services from a board-certified occupational medicine specialist who has handled many workers' compensation cases;
- providing staff an orientation to Maine's workers' compensation law and their roles in assisting patients in pursuing claims for benefits;
- setting up billing protocols so that for workers' compensation patients, billing would be based on specific services provided, rather than on a per visit basis;
- scheduling longer visits for workers' compensation patients; and
- adjusting clinician productivity requirements to take into account the time that must be spent completing necessary reports.

IV. IMPORTANT DEADLINES

1. The worker must notify the employer promptly of a work-related injury or illness.
2. The employer must report the injury or illness to the Maine Workers' Compensation Board within 7 days after the employer receives notice or has knowledge of the injury or disease. Maine Revised Statutes Title 39-A § 303.
3. A health professional who believes that the patient is suffering from a work-related ailment should also complete a Physician's First Report Form within seven (7) days of the initial examination. This Report must be sent to the patient's employer and to the employer's insurer

Key Forms

The following forms are attached:

1. Employer's First Report of Occupational Injury or Disease – Form WCB-1
2. Practitioner's Report State of Maine Workers' Compensation Board, Office of Medical/Rehabilitation Services - Form M-1
3. Petition to Determine Extent of Permanent Impairment – Form WCB-180
4. Petition for Review of Incapacity – Form WCB-120

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EMPLOYER'S FIRST REPORT OF OCCUPATIONAL INJURY OR DISEASE

1. WCB FILE NUMBER (if known):

1a. OSHA 300 CASE NUMBER (if applicable):

REASON FOR REPORT (check all that apply)

- 2a. LOST TIME - ONE OR MORE DAYS 2b. WAS EMPLOYEE PAID FOR 1/2 DAY OR MORE ON DAY OF INJURY? YES NO
3. LOST EARNINGS BUT NO LOST TIME 4. MEDICAL/HEALTH CARE 5. FATALITY DATE OF DEATH: / / /
MM DD YYYY
- 6a. OCCUPATIONAL DISEASE 6b. DATE OF LAST EXPOSURE: / / / 6c. DATE OF DIAGNOSIS AS OCCUPATIONALLY RELATED: / / /
MM DD YYYY
- 7a. CORRECT PRIOR REPORT 7b. DATE OF CORRECTION: / / / 7c. DATE CORRECTION SENT TO WCB: / / /
MM DD YYYY

EMPLOYER

8. STATE EMPLOYER UNEMPLOYMENT INSURANCE ACCOUNT NUMBER (UIAN):
9. FEDERAL EMPLOYER IDENTIFICATION NUMBER (FEIN):
10. EMPLOYER NAME:
11. STREET/P.O. BOX MAILING ADDRESS:
12. CITY:
13. STATE:
14. ZIP:
15. TELEPHONE NUMBER:
()
16. PRIMARY BUSINESS PERFORMED BY EMPLOYER WHERE INJURY OCCURRED:
17. EMPLOYER LOCATION IF DIFFERENT FROM MAILING ADDRESS:
18. DID INJURY OR EXPOSURE OCCUR ON EMPLOYER'S PREMISES? YES NO
IF NO, THEN GIVE NAME AND PHYSICAL ADDRESS OF THE EMPLOYER WHERE THE EMPLOYEE WAS INJURED OR EXPOSED:

(check one) **INSURER** **THIRD PARTY ADMINISTRATOR (TPA)** **SELF-ADMINISTERED EMPLOYER**

19. INSURANCE/TPA COMPANY NAME:
20. POLICY NUMBER:
21. INSURER FILE NUMBER:
22. STREET/P.O. BOX MAILING ADDRESS:
23. CITY:
24. STATE:
25. ZIP:
26. TELEPHONE NUMBER:
()

EMPLOYEE

27. LAST NAME:
28. FIRST NAME:
29. MI:
30. TELEPHONE NUMBER:
()
31. SOCIAL SECURITY NUMBER:
32. GENDER:
 MALE FEMALE
33. STREET/P.O. BOX MAILING ADDRESS:
34. CITY:
35. STATE:
36. ZIP:
37. DATE OF BIRTH:
 / / /
MM DD YYYY
38. OCCUPATION/JOB TITLE:
39. DATE OF HIRE:
 / / /
MM DD YYYY
40. WEEKLY WAGE AT TIME OF INJURY:
\$
41. DOES EMPLOYEE WORK FOR ANOTHER EMPLOYER?
 YES NO IF YES, GIVE NAME AND ADDRESS:

CLAIM INFORMATION

42. DATE OF INJURY OR ILLNESS:
 / / /
MM DD YYYY
43. DATE OF INCAPACITY:
 / / /
MM DD YYYY
44. TIME EMPLOYEE BEGAN WORK (e.g. 7:30 a.m.):
45. DATE EMPLOYER NOTIFIED INSURER/TPA:
 / / /
MM DD YYYY
- DATE EMPLOYER NOTIFIED:
 / / /
MM DD YYYY
46. TIME OF INJURY (e.g. 1:10 p.m.):
47. HAS EMPLOYEE RETURNED TO WORK? YES NO
IF YES, GIVE DATE: / / /
MM DD YYYY
48. SPECIFIC INJURY OR ILLNESS
(e.g. second degree burn or toxic hepatitis):
49. BODY PART(S) AFFECTED (e.g. lower right forearm):
50. ALL EQUIPMENT, MATERIALS, OR CHEMICALS EMPLOYEE WAS USING WHEN THE EVENT OCCURRED (e.g. acetylene torch, metal plate):

51. SPECIFY ACTIVITY THE EMPLOYEE WAS ENGAGED IN WHEN THE EVENT OCCURRED (e.g. cutting metal plate for flooring):
52. HOW INJURY OR ILLNESS OCCURRED. DESCRIBE THE SEQUENCE OF EVENTS AND INCLUDE ANY OBJECTS OR SUBSTANCES THAT DIRECTLY INJURED OR MADE THE EMPLOYEE ILL. (e.g. worker stepped back to inspect work and slipped on some scrap metal. As worker fell, worker brushed against hot metal.):
53. HOSPITALIZED OVERNIGHT AS INPATIENT?
 YES NO
54. WAS THE EMPLOYEE TREATED IN AN EMERGENCY ROOM?
 YES NO
55. HEALTH CARE PROVIDER NAME:
56. MAILING ADDRESS:
57. TELEPHONE NUMBER:
()
- WAS ACTIVITY PART OF NORMAL JOB DUTIES? YES NO

PREPARER INFORMATION

58. PREPARER NAME AND TITLE (TYPE OF PRINT):
59. TELEPHONE NUMBER:
()
60. DATE SENT TO WCB:
 / / /
MM DD YYYY

REASON FOR REPORT CIRCLE ONE INITIAL PROGRESS FINAL	M-1 PRACTITIONER'S REPORT STATE OF MAINE WORKERS' COMPENSATION BOARD Office of Medical/Rehabilitation Services	TYPE OF PRACTITIONER CIRCLE ONE MD DO DC LIST OTHER _____
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EMPLOYEE

EMPLOYER NAME:	EMPLOYEE LAST NAME:	FIRST NAME:	M.I.:
EMPLOYER MAILING ADDRESS & PHONE #:	ADDRESS - NUMBER AND STREET:		
INSURER NAME:	CITY:	STATE:	ZIP: HOME PHONE:
INSURER MAILING ADDRESS:	DATE OF INJURY:	SSN:	
PATIENT'S COMPLAINTS:			

PRACTITIONER

ICD-9 CODE: _____

IN MY OPINION, THIS PROBLEM IS WORK RELATED NOT WORK RELATED IS NOT YET IDENTIFIED AS TO CAUSE
 HAVE DIAGNOSTIC TESTS BEEN PERFORMED? YES NO RESULTS: _____

DATE OF THIS EXAMINATION : ___ / ___ / ___ IS TREATMENT TO CONTINUE? YES NO

DATE PATIENT TO BE SEEN AGAIN: ___ / ___ / ___ ESTIMATED LENGTH OF TREATMENT? _____

TREATMENT PLAN: _____

LIST ANY MEDICATION PRESCRIBED FOR THIS DIAGNOSIS/CONDITION THAT WOULD PREVENT YOUR PATIENT FROM
 DRIVING AND/OR WORKING SAFELY: _____

IF UNABLE TO WORK, ADVISE ESTIMATED DATE OF RETURN : ___ / ___ / ___ P.I. RATING : ___ / ___ / ___

WORK CAPACITY: REGULAR DUTY MODIFIED DUTY _____ NO WORK CAPACITY

RESTRICTIONS	DESCRIBE:
YES/NO	

IS PERMANENT IMPAIRMENT EXPECTED? YES NO

HAS MMI BEEN REACHED? YES NO

SIGNATURE OF PRACTITIONER

PRINT NAME AND ADDRESS

TELEPHONE #: _____

NARRATIVES ATTACHED? YES NO

WCB M-1 (6/99) DISTRIBUTION: PRACTITIONER (1) EMPLOYEE (2) EMPLOYER (3) INSURANCE COMPANY (4)

