

## ABQJournal Online » Workers' Comp For Farmers

Farm and ranch workers, previously excluded from workers' compensation benefits, are entitled to collect them, a state district judge has ruled.

The case challenged the constitutionality of the statute that kept roughly 10,000 workers from receiving benefits if they are injured on the job.

The decision by Second Judicial District Judge Valerie Huling that the statute was unconstitutional affects a group classified by the U.S. Agriculture Department as "the poorest of the working poor" – individuals the opinion describes as poorly educated and poorly paid, historically abused by employers, predominantly noncitizens and legally barred from organizing.

Huling concluded in a 19-page opinion that the state's statutory exclusion of farm and ranch laborers from workers' compensation violated the Equal Protection Clause of the New Mexico Constitution – and that correcting it would cost only 1 percent of the industry's annual profit.

"When an agricultural laborer is injured while working and not covered by workers' compensation," the opinion says, "it is likely that he or she will need to participate in taxpayer-funded public benefit programs. The agricultural industry is the only industry allowed to shift the burden of caring for its injured workers from the industry itself to the taxpayers ..."

Phil Sisneros, spokesman for the Attorney General's Office, which defended the statute, said in a statement, "We believe Judge Huling applied the correct standard of review, and we're analyzing the remainder of the opinion to determine whether an appeal is appropriate."

Huling's ruling came in a civil lawsuit filed in 2009 by three individual workers injured on the job – Joe Griego, Eloy Vigil and Ramon Molina – and advocacy groups Sin Fronteras Organizing Project and Help-New Mexico Inc. against the New Mexico Workers Compensation Administration and its director, Ned Fuller.

Plaintiff Griego, a Valencia County resident, was milking cows when he was attacked by a bull, pinned against a fence and rammed, suffering multiple broken ribs and fractured vertebrae, a dislocated shoulder and spinal injuries. Unable to work since then, his wife has had to support the family of five.

The parties went to court last fall before Huling in a non-jury trial, and they agreed on almost 400 facts beforehand.

Huling cites many of them in the opinion, making it a sort of compendium about New Mexico agriculture.

Among those she deemed relevant: Applying workers' compensation laws to farm and ranch hands will affect only 9 percent of the state's 20,000 farms, because only 1,973 of them have 3 or more workers. Those farms, however, employ about 83 percent of the state's farm and ranch laborers, defined as employees who work primarily harvesting crops or work directly with animals.

The defendants pointed out that agriculture brings money and jobs to the state and workers' compensation for farm and ranch hands will increase costs to the industry, which includes both very large operations and smaller businesses that may be burdened by providing insurance.

They also argue that the exclusion serves the legitimate governmental purposes of simplifying administration of the workers' comp system and protecting one of the most economically important industries in the state from additional overhead costs.

But Huling said the most significant question was whether excluding a category of individuals was arbitrary, and thus unconstitutional.

"The farm and ranch laborer exclusion distinguishes between workers who pick chile in the fields and those that pack it ... The onion shed worker is required to be covered by workers' compensation but the onion field worker is not.

"The distinction (in the law) between agricultural workers in the field and those in the shed is artificial and irrelevant, unrelated to the goal of lowering employer costs," she wrote.

In her discussion of the lack of political power by agricultural workers, Huling noted that the New Mexico Center on Law and Poverty, which represented the laborers in the lawsuit, faced retaliation itself after it began working to amend the law regarding exclusion of ranch and farm laborers. Agricultural industry lobbyists called them “liars” and presented incorrect information to lawmakers, she said. Ultimately, all state funding to the center was eliminated because of the retaliation, the opinion says.

Gail Evans, legal director for the Center on Law and Poverty, said the ruling is “a step toward ending discrimination in our farms, ranches and dairies. Now we can enjoy our green chile with a clearer conscience.”

Because it affects large agribusinesses, it will not hurt our small farmers and ranchers, she said.

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