

## Sequester Raises Treatment Questions for Undocumented Workers Under Florida's Workers' Comp System

By Geoffrey C. Curreri

With the prospects of immigration reform looming and the potential for the sequester to have an effect on the federal government's ability to provide related services, many employers in the U.S. are wondering how these developments might affect undocumented workers.

Florida may offer a unique window into this issue, including how individuals sustaining job-related injuries or illnesses are currently accommodated through the state's workers' compensation system. The state has a concentration of industries that tend to have a higher incidence of job-related injuries and the state's statutes and case law extends workers' compensation benefits to all workers. Notably, Florida Statute 440.02(15(a)) defines "Employee" as "any person who receives remuneration from an employer for the performance of work . . . while engaged in any employment . . . , whether lawfully or unlawfully, [emphasis added] and includes but is not limited to aliens and minors."

In addition, Florida case law supports all workers' entitlement to workers' compensation benefits. In *Gene's Harvesting v. Rodriguez*, 421 So.2d 701 (Fla. 1st DCA 1982), the fact that a worker's compensation claimant was illegally in the country did not preclude entitlement to benefits for a work-related injury.

In *Safeharbor Employer Services v. Velazquez*, 860 So. 2d 984 (Fla. 1st DCA 2003), the court held the United States Supreme Court decision in *Hoffman Plastic Compounds, Inc. v. NLRB*, holding pursuant to Immigration Reform and Control Act (IRCA) the National Labor Relations Board lacked authority to award back pay to an individual who had never been legally authorized to work in the United States, did not preempt

a state legislature's right to enact workers' compensation benefits for such workers, and thus the claimant's immigration status did not preclude him from receiving workers' compensation benefits.

Thus, in Florida, regardless of their immigration status, injured employees are entitled to workers' compensation treatment and benefits under the law.

That stated many employers want to know whether a person injured in Florida can obtain authorized medical care outside the state. The answer is yes. In *AMS Staff Leasing v. Arreola*, 976 So. 2d 612 (Fla. 1st DCA 2008), an undocumented worker illegally entered the U.S., obtained employment at which he was injured but then returned to Mexico after filing a workers' compensation claim. The First District Court of Appeal found no error in authorizing an orthopedic physician in Mexico to treat the claimant for his Florida work-related injury, even though the physician was not licensed to practice medicine in Florida or any other state in the U.S.

However, the logistics of having a physician outside the U.S. treat a Florida worker's compensation claimant can be a challenge for an employer or workers' compensation insurer. Obtaining reports, payment of bills, authorization of testing, physical therapy, and referrals: The list is extensive. Often, the employer or insurer would prefer to settle a claim once the claimant has returned to his or her native country rather than authorize treatment by a physician outside the U.S. 

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