WORKERS' COMPENSATION AND THE AGRICULTURAL EXEMPTION: AN AMERICAN TRAGEDY FOR FARMERS AND INJURED FARMHANDS

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I. INTRODUCTION

Farming is a hazardous profession. "In 1995, 678 people died in accidents while involved in agricultural work in the United States, according to the federal Census of Fatal Occupational Injuries."[1] When viewing all occupational groupings, it is evident that farming is a dangerous occupation.[2] In fact, mining is the only occupation with more deaths per year than farming.[3]

What accounts for the substantial number of injuries and deaths attributed to farming? It appears that many agricultural injuries are directly due to overwork.[4] Many farmers and farmhands work twelve or more hours per day throughout the year.[5] Farmers and farmhands are also exposed to a variety of hazards on a daily

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1. Mary Klaus, *Accidents Pose Serious Threat to State's Farmers, Expert Says*, PATRIOT NEWS, Sept. 28, 1997, at D12.
2. *See id.*
3. *See id.*
4. *See id.*
5. *See id.*

basis, such as daily exposure to pesticides, herbicides, dust, and the sun.[6] Working with the livestock and their byproducts can also be dangerous.[7] Finally, agricultural workers are at a great risk for developing occupation related disabilities because of the daily occupational and environmental hazards they encounter.[8] Some of these occupation related disabilities are: auditory, orthopedic, physical, pulmonary, and visual disabilities, as well as various forms of cancer.[9]

This problem is further complicated because workers' compensation statutes do not cover many agricultural employees.[10] Unlike other professions, farmers "cannot pass on [the] increased costs" of agricultural accidents and injuries to consumers.[11] In a farm economy already strapped, farmers claim workers' compensation is cost-prohibitive and will destroy their businesses.[12] As a result, farm workers are forced to sue their employers for common law negligence to receive compensation for medical treatment and lost wages due to their work-related injuries, which often affords insufficient coverage.[13]

Contrary to common belief, in states mandating coverage, workers' compensation premiums are actually lower than less comprehensive general liability insurance premiums.[14] Furthermore, the goals of workers' compensation would seem to comport with the desires of farmers.[15] Workers' compensation benefits employers and employees by avoiding litigation, which is expensive and risky.[16] In addition, the remedies are certain and are defined by state statute.[17] Finally, workers' compensation disputes are handled through an administrative system, which is generally cheap and efficient.[18]

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6. *See id.*
7. *See id.*
8 *See id.*
9. *See id.*
10. *See* ALA. CODE § 25-5-50(a) (1992 & Supp. 1998); ALASKA STAT. § 23.30.230(a)(3) (Michie 1995 & Supp. 1998); DEL. CODE ANN. tit. 19, § 2307(b) (1995); GA. CODE ANN. § 114-101(2) (Harrison 1990 & Supp. 1996); IOWA CODE § 85.1 (1999); LA. REV. STAT. ANN. § 23:1045 (West 1998); MINN. STAT. ANN. § 176.041(b) (West 1993 & Supp. 1999); MISS. CODE ANN. § 71-3-5 (1999); MO. ANN. STAT. § 287.090(1) (1993 & Supp. 1999); NEB. REV. STAT. § 48-106(2) (1993); N.M. STAT. ANN. § 52-1-6(A) (Michie 1991); N.C. GEN. STAT. § 97-13 (1999); OHIO REV. CODE ANN. § 4121.01(2) (Anderson 1998); OKLA. STAT. ANN. tit. 85, § 2.2 (West 1992); R.I. GEN. LAWS § 28-29-5 (1995 & Supp. 1998); S.D. CODIFIED LAWS § 62-3-15(2) (Michie 1993 & Supp. 1999); TENN. CODE ANN. § 50-6-106(4) (1991 & Supp. 1998); TEX. LAB. CODE ANN. § 406.126 (West 1996).
11. Jerry Spangler, *Should Small Farms Insure Workers?*, DESERT NEWS, Feb. 24, 1997, at B1.
12. *See id.*
13. *See* Hawkins v. Kane, 582 N.W.2d 620, 628 (Neb. Ct. App. 1998).
14. *See* Steve Bard, *New Worker's Compensation Law Proves to be a 'Win-Win' Deal Premiums Stay in Line; Farm Workers Protected*, IDAHO STATESMAN, Aug. 31, 1997, at 1A.
15. *See* Joan T.A. Gabel & Nancy R. Mansfield, *Practicing in the Evolving Landscape of Workers' Compensation Law*, 14 LAB. LAW. 73, 75 (1998).
16. *See id.*
17. *See id.* at 74-75.
18. *See id.* at 75.

To avoid individual liability, farmers may be able to carry general liability insurance to cover liability in their businesses, which might provide coverage for work-related injuries. Unfortunately, coverage under general liability policies is often inadequate to cover basic medical expenses incurred when treating work-related injuries.[19] This approach to compensation is reactive rather than proactive. In contrast, workers' compensation provides coverage for medical expenses and lost wages without proof of fault.[20]

This note will explore ways in which injured farmhands may be compensated for work-related injuries, by examining common law and statutory remedies. Unfortunately neither system affords agricultural employees full recovery for injuries sustained in the workplace.[21] Common law approaches to farm-related injuries often leave injured workers without adequate coverage for medical treatment and lost wages.[22] While workers' compensation statutes afford most injured employees compensation for medical treatment and lost wages, these same compensation statutes have failed to help the injured agricultural worker.[23]

II. COMMON LAW APPROACHES

Personal injury actions can either be covered through workers' compensation or through negligence.[24] When workers' compensation is not available, the common law governs work-related injuries.[25] Unlike the safety and security afforded farmhands who work in states providing coverage under workers' compensation statutes, common law remedies are mixed at best.[26] At common law, injured workers must claim the negligence of their employers was the legal and proximate cause of their injuries.[27] In contrast, workers' compensation affords workers no-fault coverage.[28] Furthermore, at common law, employers can claim various defenses, including assumption of the risk, negligence of fellow employees, and contributory negligence, which can bar recovery.[29]

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19. *See* Norma Wagner, *Workers' Comp Exemption for Farmhands May Be Illegal*, SALT LAKE TRIB., Jan. 28, 1997, at A4 [hereinafter Wagner, *Workers' Comp Exemption*].
20. *See id.*
21. *See* discussion *infra* Parts II, III.
22. *See* discussion *infra* Part II.
23. *See* discussion *infra* Part III.
24. *See* Gabel & Mansfield, *supra* note 15, at 73-77.
25. *See* Hawkins v. Kane, 582 N.W.2d 620, 628 (Neb. Ct. App. 1998).
26. *See* Joan T.A. Gabel et al., *The New Relationship Between Injured Worker and Employer: An Opportunity for Restructuring the System*, 35 AM. BUS. L.J. 403, 403-04 (1998).
27. *See* Gabel & Mansfield, *supra* note 15, at 73-74.
28. *See* Kenneth M. Berman, *The Current State of Workers' Compensation Law and Practice*, *in* INSURANCE LAW: WHAT EVERY LAWYER AND BUSINESSPERSON NEEDS TO KNOW, at 327, 329 (PLI Litig. & Admin. Practice Course Handbook Series No. H-584, 1998).
29. *See* Gabel & Mansfield, *supra* note 15, at 73-74.

At common law, the applicable relationship is that of master and servant.[30] Although this relationship is based on principles of contract, employees injured while working must rely on tort law principles to recover for their injuries.[31]

In negligence actions, four elements must be proven: duty, breach, legal and proximate causation, and damages.[32] To recover under negligence, an employee must establish that the negligence of their employer caused their injury, within an employment relationship.[33] In addition, the level of proof is by a preponderance of the evidence.[34] In contrast, workers' compensation affords injured workers no-fault recovery.[35] Therefore, workers have a greater burden under traditional negligence theories, which can lead to undesirable results when the worker is left without a remedy.[36]

A. *The Employer's Duties*

Employers cannot attain absolute safety in the workplace.[37] Moreover, liability attaches for the consequences of negligent behavior, not for dangers in the workplace itself.[38] At common law, an employer owes several duties to his employees, the breach of which may give rise to liability under negligence.[39] An employer has a duty to provide a safe working environment.[40] In addition, an employer has a duty to provide safe tools and equipment for employees to use.[41]

An employer has a duty "to warn his employees of dangers not apparent which may arise in the course of the employment, which the employer knows or ought to know about, and which he has reason to believe the employee does not know and will not discover in time to protect himself."[42] This is the same duty that an employer owes to invitees.[43]

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30. *See* Smith v. Massey-Ferguson, Inc., 883 P.2d 1120, 1125 (Kan. 1994).
31. Ann D. Bray, Comment, *Does Old Wine Get Better with Age or Turn to Vinegar? Assumption of Risk in a Comparative Fault Era* — Andren v. White Rodgers, 18 WM. MITCHELL L. REV. 1141, 1143-46 (1992).
32. *See* Hawkins v. Kane, 582 N.W.2d 620, 628 (Neb. Ct. App. 1998).
33. *See id.*
34. *See id.* at 631.
35. *See* Bray, *supra* note 31, at 1145.
36. *See* Berman, *supra* note 28, at 329.
37. *See* Stevens v. Kasik, 267 N.W.2d 533, 536 (Neb. 1978).
38. *See id.*
39. *See Hawkins*, 582 N.W.2d at 628.
40. *See* Farmer v. Heard, 844 S.W.2d 425, 427 (Ky. Ct. App. 1992) (holding hazardous situation giving rise to injury result of claimant's own acts, rather than hazards attributable to the working environment). *See also* Smith v. Massey-Ferguson, Inc., 883 P.2d 1120, 1134 (Kan. 1994).
41. *See Farmer*, 844 S.W.2d at 427; *Smith*, 883 P.2d at 1134.
42. *Hawkins*, 582 N.W.2d at 628.
43. *See id.*

B. Causation

Courts do not require employers to foresee accidents that a reasonable and prudent person would not anticipate, or when the injury could not be reasonably anticipated.[44] In determining liability, courts examine the foreseeability of the harm to the employee.[45] Foreseeability is established by looking at what "the employer knows or ought to know about, and which he has reason to believe the employee does not know and will not discover in time to protect himself or herself."[46] In contrast, the employer is not charged with a duty to "foresee and guard against an accident which reasonable and prudent persons would not expect to happen, and where an injury to an employee could not reasonably have been anticipated."[47]

C. *Defenses*

In addition to meeting a high burden of proof, employees must defend against the harsh common law defenses: assumption of the risk and contributory negligence.[48] Both assumption of the risk and contributory negligence can cut off the ability of employees to recover.[49] For example, if the court finds that the employee was contributorily negligent or that he assumed the risk, the employee will be barred from recovering.[50]

Employees are deemed to assume the risk for their injuries when they are "fully aware of the danger involved," but yet continue with their actions in spite of the risk.[51] Likewise, an employee may be deemed contributorily negligent when "he fails to take due care to avoid defects and dangers which are so open and obvious that anyone in the exercise of ordinary care and prudence would discover them."[52]

The common law defenses may bar recovery, which is a harsh result for an injured farmhand because he will not be afforded necessary medical care or replacement wages until he recovers and is able to return to work.[53] The advantage of workers' compensation is that workers are afforded recovery, regardless of fault, when their injuries arise in the course of their employment.[54]

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44. *See id.*
45. *See id.*
46. *Id.*
47. *Id.*
48. *See* Gabel & Mansfield, *supra* note 15, at 74-75.
49. *See id.* at 74.
50. *See id.*
51. Benjamin v. Benjamin, 439 N.W.2d 527, 529 (N.D. 1989) (holding employee assumed the risk when he knew using a hammer to remove a bolt without eye protection was dangerous).
52. Stevens v. Kasik, 267 N.W.2d 533, 536 (Neb. 1978).
53. *See* Wagner, *Workers' Comp Exemption*, *supra* note 19, at A4.
54. *See id.*

D. *General Liability Insurance*

When an agricultural employee is injured in a farming accident, the employee can accrue enormous medical bills.[55] Often the liability insurance is insufficient to cover the exorbitant medical costs, and does not provide any coverage for living expenses while the employee is recovering.[56]

The case of Juan Arias Duenas provides an excellent illustration of this problem. In March of 1996, Juan Arias Duenas slipped onto a railroad track while loading bales of alfalfa.[57] The railroad car rolled over his body, and his arm and both legs were badly injured, later requiring amputation.[58] Approximately one year after the accident, Duenas had accrued nearly $500,000.00 in medical bills, and a physician projected that Duenas would never work again.[59] Because Utah did not mandate workers' compensation for farmhands at the time of his injury, Duenas has no means of supporting his children, whereas, if Duenas was covered, his medical expenses would be paid, and he would receive replacement wages for life.[60]

To recover under general liability insurance employees must prove fault on the part of employers, which is a great burden.[61] Workers' compensation relieves employees of this burden because it is not based on fault, providing recovery when the worker's injuries arise in the course of their employment.[62]

III. WORKERS' COMPENSATION

Workers' compensation developed in America as a means for remedying the inadequacies of common law remedies.[63] In the early 1900s, as industrialization and work-related injuries increased, state legislatures responded by creating social legislation.[64] The first state workers' compensation act was passed in Maryland, in 1902.[65] However the court struck this statute down as unconstitutional.[66] Other states passed similar statutes, but were subsequently struck down as due process violations.[67]

Legislatures responded to the actions of the courts by passing less comprehensive laws.[68] New York responded to the failure of the courts by adopting a

55. *See id.*
56. *See id.*
57. *See* Spangler, *supra* note 11, at B1.
58. *See id.*
59. *See id.*
60. *See id.*
61. *See id.*
62. *See* Berman, *supra* note 28, at 330.
63. *See id.* at 329.
64. *See* Gable & Mansfield, *supra* note 15, at 73.
65. *See* Gabel et al., *supra* note 26, at 406.
66. *See id.*
67. *See id.*
68. *See id.*

constitutional amendment providing for a compulsory statute in 1913.[69] Later the New York Legislature passed a compulsory workers' compensation statute, which the United States Supreme Court upheld as constitutional.[70] New York's lead in the development of workers' compensation spread throughout the country.[71] In fact, by 1920, nearly all states had enacted state-run no fault systems for ensuring benefits to injured workers.[72] Now all fifty states have workers' compensation statutes.[73]

Workers' compensation provides automatic benefits to injured employees whose injuries "arise out of and in the course of employment."[74] Such statutes seek to compensate injured workers and are not based on fault.[75] Covered injuries can be accidental or occupational.[76] Accidental injuries arise out of single occurrences, which cause injury, while occupational injuries arise out of exposure to hazards over a number of years.[77]

Coverage is afforded to employees who sustain both temporary and permanent work-related injuries.[78] Injured workers are entitled to coverage for medical treatment and lost wages.[79] While the wage replacement afforded workers varies from state to state, most states provide injured workers with one-half to two-thirds of their normal wages.[80]

Like other forms of insurance, premiums for workers' compensation are based on the number of claims an individual employer submits.[81] As a result, employers have economic incentives to ensure their work environments are safe.[82]

As a compromise to receiving fault-free coverage, employees give up the right to sue their employers in tort.[83] Therefore, employees cannot fully recover for their injuries and are barred from receiving compensatory and punitive damages.[84]

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69. *See* ARTHUR LARSON, WORKERS' COMPENSATION LAW: CASES, MATERIALS, AND TEXT § 5.20, at 23 (2d ed. 1992).
70. *See* Gabel et al., *supra* note 26, at 406.
71. *See id.*
72. *See* Martha T. McCluskey, *The Illusion of Efficiency in Workers' Compensation "Reform"*, 50 RUTGERS L. REV. 657, 669 (1998).
73. *See id.* at 669 & n.30.
74. Berman, *supra* note 28, at 330.
75. *See* Wagner, *Workers' Comp Exemption*, *supra* note 19, at A4.
76. *See* Berman, *supra* note 28, at 330.
77. *See id.*
78. *See id.*
79. *See id.* at 329.
80. *See id.* at 330.
81. *See* Deborah Gille, *Bankruptcy Law - Tenth Circuit Bankruptcy Appellate Panel Holds Workers Compensation Premiums Are Not Entitled to Fringe Benefits Priority Status - In re Southern Star Foods, Inc.*, 28 N.M. L. REV. 487, 496 (1998).
82. *See* Berman, *supra* note 28, at 336-37.
83. *See* McCluskey, *supra* note 72, at 670.
84. *See* Gabel & Mansfield, *supra* note 15, at 73.

As a result, recovery is limited to medical costs and lost wages.[85] Nevertheless, employees benefit because they do not have to prove their employers' negligence caused their work-related injuries.[86]

A. *Elements*

Under workers' compensation statutes, injured employees seeking compensation are called claimants, and are charged with the burden of establishing the necessary facts to uphold an award of compensation.[87] Part of this burden includes showing that the administrative agency has jurisdiction to hear an individual claim of entitlement.[88] In establishing the agency's jurisdiction over claims, claimants must prove their occupation is included within the statutory definition of employees.[89] For example, independent contractors are excluded from the definition of employees.[90] If the agency determines the worker is an independent contractor, the worker is often barred from recovering.[91] In several states, farm workers are excluded from the definition of employees, which bars injured farm workers from recovering under the statute.[92]

To determine whether an employer-employee relationship is present, the state body or agency generally examines several factors.[93] The right of the employer to control the work of the employee is often examined.[94] If the examiner determines the employer has direct control over the worker, an employer-employee relationship may be established.[95]

A second factor is the method of payment.[96] Under this factor, the agency looks to see whether the employee receives a regular salary, or payment when a project is completed.[97] If the employee receives a regular salary, he may be deemed to be an employee rather than an independent contractor.[98]

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85. *See* McCluskey, *supra* note 72, at 671.
86. *See* Gabel & Mansfield, *supra* note 15, at 73.
87. *See* Riley v. Taylor Orchards, 486 S.E.2d 617, 619 (Ga. Ct. App. 1997).
88. *See id.*
89. *See* Winglovitz v. Agway, Inc., 246 A.D.2d 684, 667 N.Y.S.2d 509, 509-10, 1998 Slip Op. 00031 (N.Y.A.D. 3 Dept. Jan. 08, 1998) (No. 77730).
90. *See id.* at 509.
91. *See id.* at 509-10.
92. *See* James R. Salisbury, Comment, *Constitutional Law—Workers Compensation: Equal Protection Challenge to the Agricultural Exemption and Use of Rational Basis Scrutiny in* Haney v. North Dakota Workers Compensation Bureau, 518 N.W.2d 195 (N.D. 1994), 71 N.D. L. REV. 781, 784 (1995).
93. *See Winglovitz*, 667 N.Y.S.2d at 509-10.
94. *See id.* at 510.
95. *See id.*
96. *See id.*
97. *See id.*
98. *See id.*

In addition, the agency may explore whether the employer or the employee provides the equipment used.[99] If the employer provides the tools and equipment the worker uses, then an employer-employee relationship may be established.[100]

A fourth factor is the right to discharge.[101] If the employer has the right to hire or fire the worker at any time, an employer-employee relationship may be established.[102]

The last factor is the nature of the position.[103] If the position involves work that is typically performed by an independent contractor, then an employer-employee relationship may not be established.[104] On the other hand, if employees of an employer typically do the work, then an employer-employee relationship may be established.[105]

Based on an analysis of these factors, agencies and courts are able to discern whether a worker is an independent contractor or an employee.[106] While no single factor is determinative, these factors often coexist in combination when the presence of an employer-employee relationship appears.[107]

In addition, an employee must prove his injury arose out of and in the course of his employment.[108] Normally, this requires the injury to occur on the premises of the employer, however, injuries off the premises can also be compensable if there is a sufficient tie to the employment.[109]

B. *Applicability to Farming*

In Utah alone, 22,000 to 33,000 individuals are involved in harvesting crops annually.[110] Given the dangers inherent to farming, significant numbers of workers are at risk of developing devastating injuries.

Traditionally, workers' compensation statutes have excluded agricultural employees from coverage because of the inherent dangers and special circumstances surrounding the practice of agriculture.[111] Many states exclude farm workers from

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99. *See id.*
100. *See id.*
101. *See id.*
102. *See id.*
103. *See id.*
104. *See id.* at 509-10.
105. *See id.* at 510
106. *See* Maurer v. Krueger, 363 N.W.2d 830, 831 (Minn. Ct. App. 1985) (holding no employer/employee relationship existed; only labor was exchanged).
107. *See, e.g., id.*; *Winglovitz*, 667 N.Y.S.2d at 510.
108. *See* Berman, *supra* note 28, at 330.
109. *See* Farmer v. Heard, 844 S.W.2d 425, 427 (Ky. Ct. App. 1992).
110. *See* Norma Wagner, *Farm Workers: A Net for Migrants Who Slip Through Insurance Cracks*, SALT LAKE TRIB., Jan. 24, 1997, at A1 [hereinafter Wagner, *Farm Workers*].
111. *See* Salisbury, *supra* note 92, at 784. S*ee also* Whitworth v. Melvin West/West Dairy, 798 P.2d 228, 231-32 (Okla. Ct. App. 1990) (holding statute intends to exclude agricultural

their workers' compensation statutes, forcing employers to choose between risking personal liability, purchasing general liability insurance, or electing workers' compensation coverage.[112] Too often employers choose the first two alternatives, which leave injured farmhands with inadequate coverage.[113]

Although both alternatives provide farmers with coverage for the injuries sustained by their employees, general liability policies often provide inadequate coverage.[114] The limits of general liability policies often are inadequate to cover the medical expenses incurred by injured farm workers.[115] A further limitation is that living expenses are not covered, which poses an extreme hardship on injured workers and their families.[116]

For example, in 1995, a migrant worker lost three limbs in a farming accident in southern Idaho.[117] The injured worker accumulated $750,000 in hospital bills.[118] Because Idaho in 1995 exempted agricultural workers from its workers' compensation statute, the injured worker had to personally sue his employer.[119] Unfortunately, the general liability policy his employer purchased did not provide adequate coverage for his medical bills.[120] Therefore, the injured worker was not afforded a full recovery for his injuries and lost earnings.[121]

1. *Explanations for Coverage Exemption*

Several theories explain why agricultural employees are excluded from workers' compensation coverage. The first theory is based on the premise that farm work is not inherently hazardous.[122] This theory does not appear to reflect the nature of farming because farming is one of the most dangerous occupations in the United States.[123]

An additional theory is that when workers' compensation statutes were first implemented by state legislature, an agricultural exemption was required to ensure passage.[124] While this might have been an adequate explanation when workers'

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workers from coverage absent a showing of requisite earnings); *but see* Wurst v. Friendshuh, 517 N.W.2d 53, 56 & n.1 (Minn. Ct. App. 1994) (holding farm laborer not an "independent contractor unless he is a commercial bailer or thresher").

112. *See* Salisbury, *supra* note 92, at 794.
113. *See id.* at 795.
114. *See* Wagner, *Workers' Comp Exemption*, *supra* note 19, at A4.
115. *See id.*
116. *See id.*
117. *See* Wagner, *Farm Workers*, *supra* note 110, at A1.
118. *See id.*
119. *See id.*
120. *See* Wagner, *Workers' Comp Exemption*, *supra* note 19, at A4.
121. *See* Wagner, *Farm Workers*, *supra* note 110, at A1.
122. *See* Salisbury, *supra* note 92, at 787 & n.43.
123. *See* Klaus, *supra* note 1, at D12.
124. *See* Salisbury, *supra* note 92, at 787.

compensation statutes first emerged, this no longer is the case.[125] In addition, workers' compensation statutes in place in states without agricultural exemptions are not in danger of being repealed.[126]

A third theory presumes that agricultural employers could not administer the requirements of the workers' compensation statutes.[127] This has not been the case in the states that have mandated coverage for agricultural employees.[128] Furthermore, there is no reason to believe workers' compensation insurance is more difficult to administer than general liability insurance.

A further theory states that farmers cannot pass on the cost of workers' compensation insurance to consumers of agricultural products.[129] In fact, in states mandating coverage for agricultural employees, farmers are not paying more for workers' compensation premiums than for general liability insurance.[130]

Although these four basic theories are plausible, they do not afford an adequate justification for denying agricultural employees coverage.[131] The harsh reality is that absent coverage, many injured workers are unable to support themselves and their families.[132] Consequently, injured agricultural employees are forced to either sue their employers under the common law, or to depend on the state-federal welfare system.[133]

2. *Types of Exemptions*

Agricultural exemptions to workers' compensation statutes come in two forms. The first type of exemption covers all agricultural employment.[134] The second

125. *See id.* at 787 & n.43.
126. *See id.*
127. *See id.* at 786.
128. *See* Bard, *supra* note 14, at 1A.
129. *See* Salisbury, *supra* note 92, at 786.
130. *See* Bard, *supra* note 14, at 1A.
131. *See id.*
132. *See* Wagner, *Workers' Comp Exemption, supra* note 19, at A4.
133. *See, e.g.*, Hawkins v. Kane, 582 N.W.2d 620, 628 (Neb. Ct. App. 1998).
134. *See* ALA. CODE § 25-5-50(a) (1992 & Supp. 1998); ARK. CODE ANN. § 11-9-102(11)(A)(iii) (Michie 1996 & Supp. 1999); DEL. CODE ANN. tit. 19, § 2307(b) (1995); GA. CODE ANN. § 114-101(2) (Harrison 1990 & Supp. 1996); 820 ILL. COMP. STAT. ANN. 305/3-19 (West 1993); IND. CODE ANN. § 22-3-2-9(a) (Michie 1997 & Supp. 1999); KAN. STAT. ANN. § 44-505(a)(1) (1993 & Supp. 1998); KY. REV. STAT. ANN. § 342.630(1) (Michie 1997); MISS. CODE ANN. § 71-3-5 (1999); MO. ANN. STAT. § 287.090(1) (West 1993 & Supp. 1999); NEB. REV. STAT. § 48-106(2) (1993); N.M. STAT. ANN. § 52-1-6(A) (Michie 1991); N.D. CENT. CODE § 65-01-02(22)(a) (1995 & Supp. 1999); R.I. GEN. LAWS § 28-29-5 (1995 & Supp. 1998); S.C. CODE ANN. § 42-1-360(5) (Law. Co-op.1985); S.D. CODIFIED LAWS § 62-3-15(2) (Michie 1993 & Supp. 1999); TENN. CODE ANN. § 50-6-106(3) (1991 & Supp. 1998); TEX. LAB. CODE ANN. § 406.126 (West 1996); VA. CODE ANN. § 65.2-101(g) (Michie 1995 & Supp. 1999); WYO. STAT. ANN. § 27-14-108(h)(i) (Michie 1999).

type is narrower, limited to special types of employment,[135] small employers with fewer than six employees,[136] and employers who pay out less than $100,000 in wages to employees annually.[137]

Although most states provide some exemption of agricultural employment,[138] states are slowly beginning to change.[139] Unfortunately, this change has not been voluntary.[140] Recently Legal Services Corporation brought a lawsuit against the state of Washington on behalf of injured farm workers.[141] As a result of this lawsuit, Washington was required to amend its Workers' Compensation Act to provide coverage for agricultural employees.[142]

Following this lawsuit, farmers have argued that the cost of purchasing workers' compensation insurance would force them out of business.[143] Thus far the farmers' fears appear unwarranted.[144] In states with mandatory coverage, the cost of workers' compensation premiums is comparable to the cost of general liability insurance.[145] One year after the state of Idaho mandated coverage for farm workers, the cost of workers' compensation premiums was actually lower than the cost of

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135. *See* ALASKA STAT. § 23.30.230(a)(3) (Michie 1995 & Supp. 1998); COLO. REV. STAT. ANN. § 8-40-302(3) (West 1999); FLA. STAT. ANN. § 440.02(15)(c) (West 1991 & Supp 1999); IOWA CODE § 85.1 (1999); KAN. STAT. ANN. § 44-505(a) (1993 & Supp. 1998); LA. REV. STAT. ANN. § 23:1045 (West 1999); ME. REV. STAT. ANN. tit. 39-A, § 401(1)(B) (West 1993 & Supp. 1998); MINN. STAT. ANN. § 176.041(b) (West 1993 & Supp. 1999); N.C. GEN. STAT. § 97-13 (1999); OHIO REV. CODE ANN. § 4121.01(2) (Anderson 1998); OKLA. STAT. ANN. tit. 85, § 2.2 (West 1992).

136. *See* FLA. STAT. ANN. § 440.02(15)(b)(2) (West 1991 & Supp. 1999) (three or fewer employees); ME. REV. STAT. ANN. tit. 39-A, § 401(1)(C) (West 1993 & Supp. 1998) (six or fewer employees); MD. CODE ANN., Labor & Employment § 9-210(b)(2)(i) (1991 & Supp. 1998) (less than three employees); S.C. CODE ANN. § 42-1-360(2) (Law. Co-op. 1985) (less than four employees); TENN. CODE ANN. § 50-6-106(4) (1991 & Supp. 1998) (less than five employees); VA. CODE ANN. § 65.2-101 (Michie 1995 & Supp. 1999); (two or less employees); W. VA. CODE ANN. § 23-2-1(b)(2) (Michie 1998) (five or fewer employees); WIS. STAT. ANN. § 102.04(1)(b) (West 1997 & Supp. 1998) (less than three employees).

137 *See* KAN. STAT. ANN. § 44-505(a) (1993 & Supp. 1998) (less than $20,000 in wages); MD. CODE ANN., Labor & Employment § 9-210(b)(2)(ii) (1991 & Supp. 1998) (less than $15,000 in wages for full-time employees); OKLA. STAT. ANN. tit. 85, § 2.1(3)(West 1992) (less than $100,000 in wages); S.C. CODE ANN. 42-1-360(2) (Law. Co-op 1985) (less than $3,000 in wages); UTAH CODE ANN. § 34A-2-103(5) (1997 & Supp. 1999) (less than $8,000 in wages); VT. STAT. ANN. tit. 21, § 601(14)(C) (1987 & Supp. 1998) (less than $2,000 in wages).

138. *See supra* notes 134-37.

139. *See* ARIZ. REV. STAT. ANN. § 23-901 (West 1995); CAL. LAB. CODE § 3351 (West 1989 & Supp. 1999); CONN. GEN. STAT. ANN. § 31-275 (West 1997); HAW. REV. STAT. § 386-1 (1993 & Supp. 1998); IDAHO CODE § 72-212 (1999); MICH. COMP. LAWS ANN. § 408.1002 (West 1999); MONT. CODE ANN. § 39-71-401 (1998); N.H. REV. STAT. ANN. § 281-A:2 (1999); N.J. STAT. ANN. § 34:15-36 (West 1988 & Supp. 1999); OR. REV. STAT. § 656.027 (1997); PA. STAT. ANN. tit. 77, § 22 (West 1992 & Supp. 1999); WASH REV. CODE ANN. § 51.08.070 (West 1990 & Supp. 1999).

140. *See* Wagner, *Workers' Comp Exemption*, *supra* note 19, at A4.

141. *See id.*

142. *See id.*

143. *See* Spangler, *supra* note 11, at B1.

144. *See id.*

145. *See* Wagner, *Farm Workers; supra* note 110, at A1.

premiums for general liability insurance from the previous year.[146] Moreover, workers' compensation insurance afforded injured worker better coverage, and the fault-free system resulted in fewer employee lawsuits.[147]

Workers' compensation statutes should be amended to afford coverage to injured agricultural workers. In addition, the exemptions for small family farms should be reduced to require more farmers to carry workers' compensation insurance. Although farmers have argued such an expansion of coverage will destroy their businesses, in the states that have passed such laws this has not turned out to be the case.[148]

3. *Constitutional Challenges*

The agricultural exemption has been attacked constitutionally under the North Dakota Constitution's equal protection guarantee.[149] Thus far, the exemption has survived constitutional scrutiny because the classification is not inherently suspect and the classification does not involve a fundamental right.[150] Therefore, the rational basis test is applied, which is a relaxed standard of review.[151] Courts find that there is a rational relationship between the governmental interests of providing no fault relief to workers employed in hazardous professions while avoiding adverse effects on the financial welfare of agricultural employers.[152]

IV. CONCLUSION

Workers' compensation provides certain and needed coverage for injured workers.[153] While the vast majority of occupations are covered by workers' compensation statutes, agricultural employers have traditionally been exempt from coverage.[154] This serves as a disservice to injured employees who receive inadequate coverage and employers who pay higher insurance rates for general liability insurance.

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146. *See* Bard, *supra* note 14, at 1A.
147. *See id.*
148. *See id.*
149. *See* Haney v. North Dakota Workers Compensation Bureau, 518 N.W.2d 195, 196 (N.D. 1994).
150. *See id.* at 197-98.
151. *See id.*
152. *See id.* at 202 (citing Collins v. Day, 604 N.E.2d 647, 649 (Ind. Ct. App. 1992)). *See, e.g.*, Ross v. Ross, 308 N.W.2d 50, 53 (Iowa 1981); Fitzpatrick v. Crestfield Farms, Inc., 582 S.W.2d 44, 46 (Ky. Ct. App. 1978); Eastway v. Eisenga, 362 N.W.2d 684, 689-90 (Mich. 1984); State ex rel. Hammond v. Hager, 503 P.2d 52, 56-57 (Mont. 1972); Otto v. Hahn, 306 N.W.2d 587, 591-92 (Neb. 1981); Cueto v. Stahmann Farms, Inc., 608 P.2d 535, 536-37 (N.M. Ct. App. 1980); Baskin v. State ex rel. Workers' Compensation Div., 722 P.2d 151, 155-57 (Wyo. 1986).
153. *See* discussion *supra* Part III.
154. *See* discussion *supra* Part IIIB.

In the states which do include farm workers within their workers' compensation statutes, family farmers have not been forced to chose between covering their workers and selling their farms. Rather, workers have been afforded greater coverage and the cost has been comparable to that of general liability insurance, which affords injured workers inadequate remedies. As a result, exemptions from workers' compensation coverage should be narrowed to afford greater coverage to those in need.