



## California Case Study



# Golden State Workers Feeling The Squeeze

# About WorkCompCentral

Based in Camarillo, California, WorkCompCentral is the nation's only specialty media company producing daily news on the workers' compensation industry. With its own team of award-winning journalists located around the country, the niche outlet frequently breaks important news stories covering legal, medical, legislative/regulatory and business issues. The company also develops and maintains an extensive library of continuing educational content and can be reached at 805.484.0333 and via [www.workcompcentral.com](http://www.workcompcentral.com).

Published by WorkCompCentral, July 2016

Available for download at [www.workcompcentral.com](http://www.workcompcentral.com).

# California on Comp

WorkCompCentral is the nation's only specialty media company committed to informing workers and their employers about critical issues related to wage replacement for injured workers. Across states, wage replacement laws reflect distinct and arbitrary differences. We have documented the differences in wage replacement laws across the U.S. in a special report, "The Uncompensated Worker," available online at [www.workcompcentral.com](http://www.workcompcentral.com). This report is part of our ongoing series of state-specific cases that investigate the financial impact of work comp laws on injured individuals and their households during the recovery process.

## About the Author

Peter Rousmaniere specializes in workers compensation, and has served as a consultant in the field of work injury risk for over two decades. He is a regular columnist at WorkCompCentral, and has developed several special reports for this publication, including state specific cases in New York, Kentucky and Florida. He lives in Woodstock, Vermont and can be reached at: [pfr@rousmaniere.com](mailto:pfr@rousmaniere.com)



# Two Injured Workers, Two Income Levels. One Big (Bad) Surprise for Both

In many respects, Jose, an undocumented farmworker from Mexico, and Mike, a physical therapist at a mid-size home healthcare company, have little in common as part of California's vast labor force. But as this report on the state's wage replacement laws demonstrates, when it comes to take-home income after an injury, workers end up feeling the squeeze.



---

Jose's story is a composite of a typical worker in the California farming industry

---

---

Mike's story is based on a real-life work injury as recently told to a WorkCompCentral employee

---



# California on Comp

California has, by far, the largest workers compensation market in the country, with \$17.9 billion in insurance premium, even though it represents only 12% of the total population. Compare this to New York, a distant second with a \$5.2 billion work comp market. In percentages, California represents 29% of the country in premium dollars, injuries, medical treatments, and—equally costly—worker anxiety.

Now let's translate those numbers to people. Over the past ten years, more than 2 million people in California have experienced financial setbacks thanks to lost time on the job due to injuries. Given the number of people affected by this issue, it begs the question: How are injured workers on temporary disability faring in the Golden State? When WorkCompCentral presented this question to California's Department of Industrial Relations, we were shocked to learn that no study has ever been conducted to determine the financial impact of being on comp temporarily, despite the fact the state has been engaged in wrenching legislative reform battles since 2000.

In previous studies published by WorkCompCentral—"The Uncompensated Worker"—we looked at how the household finances of injured workers were impacted by four features of benefit laws:

- 1 the "basic deduction," that is, the initial calculation of percentage of average weekly wage
- 2 the waiting period before an injured worker starts receiving wage replacement income
- 3 the retrospective period beyond which point the waiting period is paid for
- 4 the final deduction of the weekly benefit cap

Because the industry assigns different levels of significance to these four features, no established ranking exists among states to compare and contrast their generosity of benefits for total temporary disability. In addition, a state ranking system has been undermined by the failure to weigh other key factors, such as the maximum duration for temporary benefits.

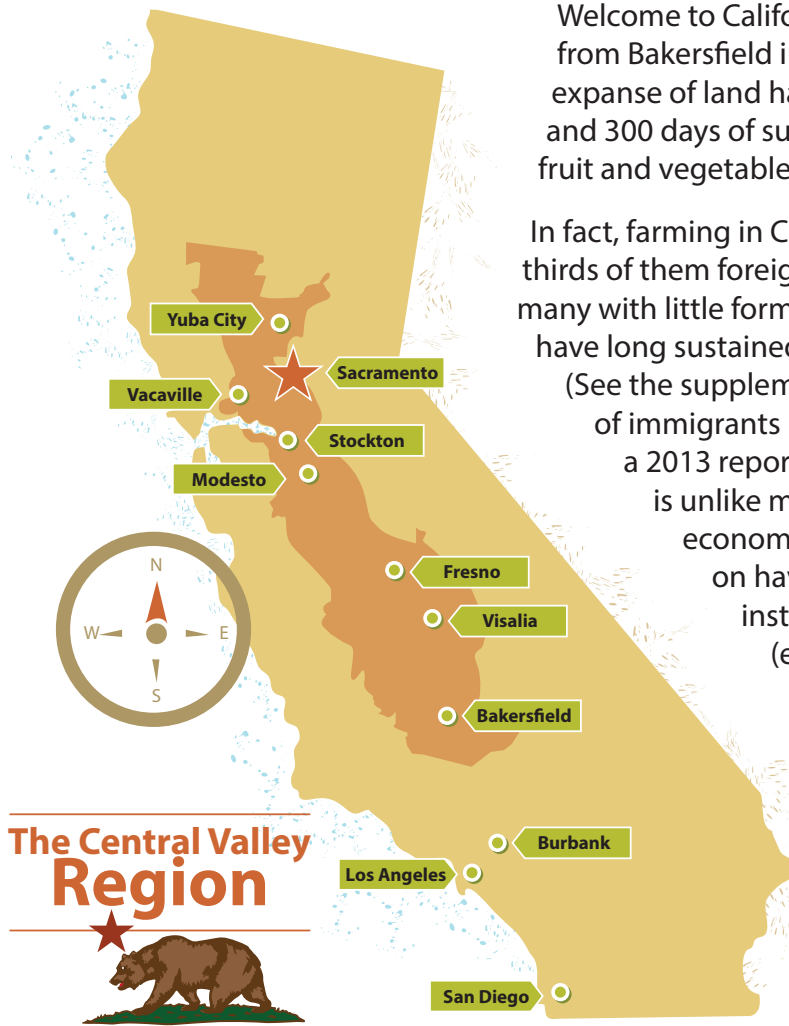
Despite these challenges, California's law does have one feature that would earn it a high ranking in terms of generosity—its waiting period for benefits is only three days. That is, an injured worker should start receiving wage replacement after three calendar days of disability (there being seven calendar days in the week). Among the ten largest states, only Illinois—arguably the most generous provider of work comp benefits in the country—is the only other state with such a short waiting period. The other ten largest states have seven-day waiting periods, and the retrospective period can be as long as 21 days. (For more comparisons, read our original report, "The Uncompensated Worker.") Because of California's short waiting period, this state-specific study does not include the financial impact of a very brief work disability.

---

*California's law does have one feature that would earn it a high ranking in terms of generosity—its waiting period for benefits is only three days.*

---

# California Farms and Foreign-born Workers



Welcome to California's 450-mile-long Central Valley, running from Bakersfield in the south to Sacramento in the north. This lush expanse of land has the right soil, right growing temperatures, and 300 days of sun a year to employ 40% of the nation's entire fruit and vegetable laborers, the majority of them foreign-born.

In fact, farming in California employs over 400,000 workers, two thirds of them foreign-born laborers. Waves of foreign-born workers, many with little formal education and questionable legal status, have long sustained the state's commercial farming industry.

(See the supplement at the end of this report on the history of immigrants in the state's commercial farms.) According to a 2013 report by the Migration Policy Institute, "Agriculture is unlike most other key sectors of the North American economy in that its comparative advantage has rested on having access to abundant low skilled labor instead of the accumulation of human capital (education and skills)."

While almost all sectors of the farming industry in California have seen a reduction in work injuries (see Table 1), worker safety still lags among the state's undocumented labor force. According to Len Welsh, Chief of Workplace Safety for California's State Compensation Insurance Fund, immigration reform—if it happens—will be the most important farm work safety advance in the next five to ten years. "When you have undocumented workers, the odds

of accidents go way up," he explained. "It's the tip of the iceberg of the massive underground economy in the state, and particularly present in agriculture."

In California, agricultural job wages have been around \$10 an hour, as compared to the average rate of \$15 to \$20 per hour in states within central and northeastern United States.

Table 1

Year	Incidence per 100, Private Sector	Total Private Sector	Agriculture
1996	3.4	326,000	17,500
2000	3.2	337,000	19,300
2005	2.7	289,000	9,900
2010	2.1	203,000	6,600
2014	2.1	215,000	12,000

Source: Bureau of Labor Statistics

# Meet Jose, an undocumented farmworker



Meet Jose, 32, who lives in Bakersfield, and is one of the 2.67 million undocumented immigrants in the Golden State, according to the Public Policy Institute of California. Jose successfully crossed the border from Mexico in 2004 on his third attempt. The United States Border Patrol had caught him during his two previous attempts. Like so many other undocumented residents of this country, he came to America to work for higher wages than he could earn in Mexico. In California, there are about 1.85 million foreign-born workers like Jose and they represent about one-tenth of the state's workforce, with 200,000 of these individuals working on farms.

In Bakersfield, where the principle farm product is the table grape, Jose found work in a packinghouse for \$10.43 an hour, the median rate for farmworkers in California. His monthly take-home pay was \$1,475, after income taxes. In addition to his work at the packinghouse, Jose had another job on Sundays that allowed him to bring home \$80, off the books. His combined wage and under-the-table cash income put him slightly above the 10th percentile of incomes in the state (see Table 2).



Table 2

## Annual wage income profile of California, 2004

10th Percentile	\$19,720
25th Percentile	\$24,910
Median	\$39,830
75th Percentile	\$69,190
90th Percentile	\$110,410

Source: Bureau of Labor Statistics, Occupational Employment Statistics



# An On-the-Job Hit, Literally and Financially

Jose is single and shares a small apartment with a co-worker. He manages to send about \$300 a month to his parents in Michoacán, Mexico.

In October 2015, on yet another sunny day ideal for grape growing, Jose left the lunch room at the packinghouse and headed back to his work station. When he passed one of the cooling rooms in the shipping department, a forklift raced through the door and struck him, knocking him to the concrete floor. Jose was unconscious when emergency medical services transported him to the local hospital. The doctors put a cast on his dominant arm, but his femur, hip, and right arm sustained severe fractures requiring orthopedic surgery. Metal plates and screws were installed to repair his femur and hip. The surgery was successful, however, Jose faced months of physical therapy before he would be able to return to work.








Jose stayed on workers compensation for six months before returning to work full duty. When he was on disability, his received-wage replacement for a month came to \$1,197—a \$277 or 19% reduction in his paycheck for the same time period. But his actual monthly loss was \$624, thanks to his inability to work his second job, which had brought in \$80 every Sunday. (Had this second job been on the books, his second income would have been included in the wage replacement calculation.)

Prior to Jose's accident, he and his co-worker/housemate (who also picked up \$80 in

cash from Sunday work), had been able to afford basic living expenses for two adults in Bakersfield. The Economic Policy Institute estimates that the basic living budget in Bakersfield for two adults is \$2,821, before taxes. It is important to note that the pair were only able to live in Bakersfield thanks to the additional income from their off-the-books jobs. The extra income also helped them save a combined total of \$882 a month.

After Jose's injury, the financial consequences were significant. He and his housemate could barely afford basic living expenses in their current location, and the co-worker had to chip in more to cover Jose's income deficit. In addition, Jose lost the ability to save any of his money, and could not afford to send money to his parents in Mexico.

## Here's a breakdown of the average budget for a two-person household in Bakersfield, CA

 HOUSING	\$623/month
 FOOD	\$496/month
 CHILD CARE	\$0/month
 TRANSPORTATION	\$614/month
 HEALTH CARE	\$546/month
 OTHER NECESSITIES	\$541/month
 TAXES	\$365/month
<b>Monthly Total</b>	<b>\$3,186</b>

**After six months on disability, Jose's lost take-home income totaled about \$3,600, or 16% of his annual take-home pay of about \$21,900.**



# Meet Mike, a physical therapist

Now meet Mike, 46, who works as a physical therapist at a home health agency based in Southern California. He lives in Burbank, is single (divorced) and lives with his two teenaged daughters. Most of his workday involves visiting clients' homes to help them with their recovery efforts by assisting them with physical therapy exercises. His employer, instead of paying a steady weekly or hourly wage, compensates him at a fixed-rate-per-home visit encounter.

Before being injured on the job, Mike managed an average of ten home visits per workday. He brought home \$2,700 every two weeks, after taxes, health insurance, and other employee deductions. His gross annual compensation hovered around \$100,000, just below the top 10% of incomes in the state (see Table 2). Mike was even earning a bit higher than the median among the 19,000 physical therapists in California. So, Mike is not your typical paycheck-to-paycheck worker. He made regular contributions to his 401K and was able to provide a comfortable life for himself and his daughters.

One day in mid-January, Mike drove to Bakersfield to meet his client Jose, who was recovering from injuries he had sustained when a forklift hit him at the packinghouse where he worked. Yes, this is the very same Jose whose story we just read! On previous visits to Jose's home, Mike had warily noticed several dogs on the premises that bared their teeth when he passed, but they were secured behind a gate...until now. During this visit one of the dogs escaped and attacked him, tearing a quarter-sized piece of flesh out of his right ankle.



# Dog Takes a Big Bite out of Compensation

Mike cleaned and dressed his wound, then finished his workday, seeing five more patients after leaving Jose's home. That evening, the pain from the bite caused severe burning. Two days later, his wound had become so infected that he could not bear weight on his foot, or wear a shoe due to the severe swelling. Three days after the incident, Mike went to a doctor who put him on a course of antibiotics and painkillers, then disabled him from work and driving.

Fast forward seven difficult weeks that included increasing pain, additional medications and painful wound care treatments.








Mike was released back to work part-time in early February and by the end of February he was approved to return to work full time. During those weeks of recovery, his personal finances were shredded. It took several more months before he could rebuild his patient load and reach his former target of ten visits per day to bring home \$2,700 every other week, the income standard that he and his family had become accustomed.

The workers comp insurer involved in Mike's case is one of the largest in the state. After his injury, the company's claims adjuster should have performed the routine task of figuring out his average weekly wage, the basic first step in computing a worker's wage replacement benefit. This adjuster was stumped, however, about how to compute an average weekly wage for someone like Mike, working at a piece rate.

Workers who are temporarily disabled in California are compensated at 67% of their average weekly wage, subject to a three-day waiting period, a 21-day retroactive period (after which the wait period is recouped), and a weekly benefit cap, set at \$1,120.67 for 2016. Because Mike was disabled for 47 calendar days, his total tax-free wage replacement should have been \$8,589 before the weekly benefit cap. With the cap, the insurer owed him \$7,524.

Four months later, thanks to the confused adjuster who failed to accurately compute Mike's wage replacement benefit at the start, Mike has only been compensated \$2,186 over three payments, plus the \$2,000 his employer advanced him. He has had to pay household expenses of at least \$4,815 a month, which is the basic monthly budget in Burbank for a single adult with two children, less taxes.

## Here's a breakdown of the average budget for a single adult and 2 children in Burbank, CA

 HOUSING	\$1398/month
 FOOD	\$584/month
 CHILD CARE	\$901/month
 TRANSPORTATION	\$454/month
 HEALTH CARE	\$520/month
 OTHER NECESSITIES	\$957/month
 TAXES	\$954/month
<b>Monthly Total</b>	<b>\$5,769</b>

To pay his bills, Mike had to withdraw \$5,000 from his 401K the first month of his recovery. If that money is not reimbursed, he will face additional penalties for early withdrawal.

Mike has retained a lawyer to fight for his lost wages.



# The benefit cap's impact on high wage earners

Table 3 uses 2014 data to show, for the ten most populous states, the ratio between the 75th percentile worker wage income in the state adjusted to workers compensation benefits and the weekly benefit cap. For example, in California, the 75th percentile wage income for all workers was \$69,190. (Mike's wages are closer to the 90th percentile.) Wage replacement in California, at 67% of wages, would have resulted in a sum 83% of (17% below) the state's weekly benefit cap at the time. Note how high-wage earners in Georgia and New York are particularly hard hit.

Table 3

	75 Percentile	WC benefits	Max benefit	WC / Cap
California	69,190	887	1,067	83%
Florida	50,470	647	1,042	62%
<b>Georgia</b>	<b>55,220</b>	<b>708</b>	<b>525</b>	<b>135%</b>
Illinois	62,120	797	1,362	59%
Michigan	57,570	700	820	85%
<b>New York</b>	<b>70,230</b>	<b>901</b>	<b>803</b>	<b>112%</b>
North Carolina	52,100	668	920	73%
Ohio	55,380	767	852	90%
Pennsylvania	57,140	733	951	77%
Texas	56,680	763	851	90%

Source: Bureau of Labor Statistics, state workers compensation agencies

## Hard Lessons Learned

America's workforce has fissured into an ever-larger divide between poorly paid workers with little formal education, and well-educated, well-paid professionals. The overlap in Jose's and Mike's stories reveals how work injuries can squeeze people on both ends of the labor spectrum. The stories of these two men suggest that California's benefits to the temporarily work disabled deserve to be ranked somewhere in the middle among the states.

For low-wage workers like Jose, who engage in the underground economy to meet basic living expenses, a work injury can translate to severe hardship in dollars lost, with little or no recourse to recoup lost wages or continue to save. Mike's story shows that improper or negligent claims handling can be seriously disruptive and damaging for more financially secure citizens, as well, and result in further expenses in litigation costs that could have been avoided. In addition, relatively high-wage earners are particularly vulnerable to the weekly benefit cap (see Table 3).





# Milestones: farmworker history in California

## Special Report Supplement

### Late 19th Century

Large numbers of farmworkers were Chinese, Japanese, and Filipino, but the Chinese Exclusion Act of 1882 induced farm owners to import Mexican workers.

### 1920s – 1930s

American agribusiness hired many Mexicans. Border control in its modern form was created in 1924. Many Mexicans were deported illegally. (California put forth a formal apology for this transgression in 2005.)

### 1942 – 1964

Bracero Guest Worker program launched, bringing in 5 million legally authorized workers. Attempts are still active to obtain illegally withheld wages.

### 1954

Operation Wetback. In response to concerns about illegal migration by Mexicans, this program deported over 3 million Mexicans, many living in California.

### 1960s – 1970s

United Farmworkers was organized, leading to 40% increase in farm worker wages.

### 1980s – 1990s

Over half of California farmworkers were undocumented. In 1986, Congress created a visa program (H2-A) for temporary workers; a small share of California's Hispanic farmworkers were enrolled.

### 2007

California farm owners and politicians draft AgJobs, a Congressional legislative package to give legal status to undocumented farmworkers. The proposal failed, as did a comprehensive immigration reform bill.

### 2010s

Farms experience a shortage of Mexican farmworkers, due to the improving Mexican economy, and more aggressive border surveillance.

### 2016

The country's 11 million undocumented residents become a significant factor in presidential race politics.

# Sources



## Demographic Data

The Bureau of Labor Statistics reports Occupational Employment and Wage Estimates under Occupational Employment Statistics for each state. Data from 2015 were used for Mike (physical therapist) 29-1123 and Jose (farmworker) 45-2092.

<http://www.bls.gov/oes/current/oesrcst.htm>



## Tax Computations

To find net take-home pay, a calculator at

<http://www.paycheckmanager.com>

[www.paycheckmanager.com](http://www.paycheckmanager.com) was used.



## Monthly Basic Budget

The Economic Policy Institute's Family Budget Calculator was used for Bakersfield, CA and Burbank, CA.

<http://www.epi.org/resources/budget/>

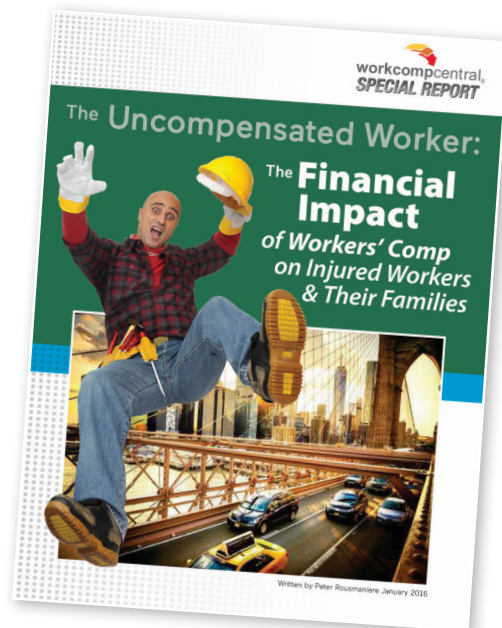


## American Community Survey, US Census Bureau

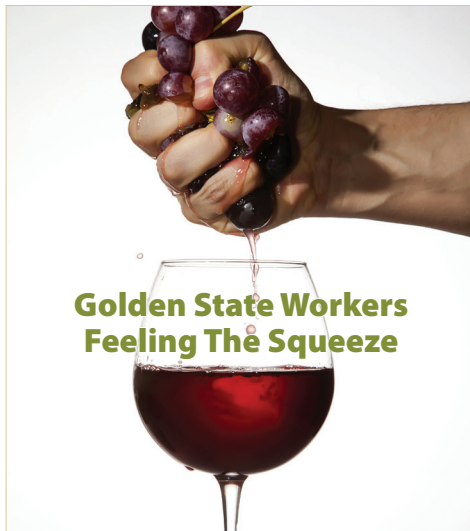
Data from the American Community Survey (ACS) was used in this report. This is an ongoing survey that helps local officials, community leaders and businesses better understand what is happening in their communities. It is considered the premier source for detailed information about the American workforce.

<https://www.census.gov/programs-surveys/acs>

For additional information  
on sources, see  
"The Uncompensated Worker"  
report, available at  
[www.WorkCompCentral.com](http://www.WorkCompCentral.com)



The data sources are described using California as an example.



**workcompcentral<sup>®</sup>**  
**READ. LEARN. CONNECT.**  
**805-484-0333**  
[www.workcompcentral.com](http://www.workcompcentral.com)