

# Injured workers have little recourse against rogue employers. A new bill could change that.

By **Katie Johnston** Globe Staff, Updated April 14, 2024, 4:56 p.m.



Workers injured on the job in construction and other high-risk industries are entitled to workers' compensation benefits, but some employers discourage them from applying. DAVID L. RYAN/GLOBE STAFF

The stories of workers hurt on the job and discouraged from reporting their injuries are constant, worker advocates say — and alarming.

A cleaner who developed a hernia after lifting heavy garbage cans said her boss threatened to call immigration authorities if she admitted it was caused by work.

A security guard who dislocated his shoulder during safety training was told the injury didn't qualify for workers' compensation benefits, and he never received any, despite being out of work for months.

A teacher who broke her leg after slipping on a wet floor said her employer attributed the injury to a preexisting hip condition, leading the insurance company to stop paying her benefits.

It's illegal for employers to prevent injured workers from filing workers' comp claims, but if they do, employees have little recourse beyond hiring a lawyer to file a civil claim to recover lost wages and attorneys' fees. This rarely happens, though, worker advocates note, because of the large undertaking that involves and the relatively small compensation that results.

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A [bill](#) being considered by the state Legislature would strengthen the existing law, proponents say, allowing the attorney general to enforce complaints of misconduct or retaliation and giving employees the ability to collect damages.

Currently, the law doesn't have any teeth, said Audrey Richardson, an employment attorney at Greater Boston Legal Services who is part of a coalition backing the bill.

"Workers have no avenue for holding employers accountable and for being compensated for the harms they've experienced," she said.

Workers' comp lawyers will generally only take cases involving injured workers who have been fired for filing claims, and those are difficult to prove, said Emily Spieler, a recently retired Northeastern University labor law professor specializing in workers' compensation.

"It's actually astonishing how few of these cases have ever been brought in Massachusetts," Spieler said.

Nationwide, less than 40 percent of workers eligible for workers' compensation benefits apply for them, according to the National Employment Law Project. Low-wage immigrant workers are even less likely to report injuries due in part to concerns that employers will retaliate against them.

Diego Low, director of the Metrowest Worker Center in Framingham, can recall only one instance in nearly 20 years of helping dozens of injured workers in which an employer was held accountable for trying to deny benefits. In 2022, a federal jury in Boston [ruled against a construction company](#) for trying to have a worker deported after he reported being seriously injured on the job, awarding the man \$650,000 in damages.

An injured worker whose employer has denied workers' comp benefits can file a claim and recover benefits, but the process can take months if the employer doesn't cooperate, delaying crucial medical care, Low said. And taking an employer to court isn't a viable option, he said. "Nobody does it."

One worker that Low is assisting fell four stories off a roof while carrying a bundle of shingles, breaking both arms and his jaw and fracturing his skull. Patricio, 29, who lives in Milford and asked not to be fully identified due to his ongoing workers' comp case,

spent six weeks in the hospital, and when he woke up after being unconscious for four days — unable to open his swollen eyes, his jaw wired shut — his boss offered him \$10,000 and a plane ticket back to Ecuador.

His cousin helped him contact a lawyer instead.

Patricio was eventually able to get workers' comp, but his boss was never held accountable for trying to send him back to Ecuador, and three years later, Patricio is still unable to work. Still, he knows accepting his boss's offer would have made the situation much worse.

“If I had been sent back to Ecuador, I would have been an invalid,” said Patricio in Spanish, with Low interpreting.

Another roofer in Milford was taken to the hospital in a van after falling off a roof and then instructed by his employer to lie about being at work, he said. Joel, who also asked not to be fully identified due to his ongoing workers' comp case, broke his right leg and needed four surgeries to mend it, including one to implant bone from his hip into his foot.

Joel's wife, who was still in South America at the time of the accident, left their two young children with family to come help him, and started working as a roofer herself to supplement the \$220 a week her husband was initially getting from workers comp. More than three years later, Joel still can't work, and his wife, who is eight months' pregnant, is planning to start roofing again after the baby is born.

Workers' comp benefits are available to workers regardless of their immigration status, Low said, but employers know undocumented workers are less likely to push back. “They use that to leverage people's silence,” he said. “We see people who were severely injured and still in need of surgery who got on planes and went home because they had been so intimidated over their status.”

Massachusetts employers are required to have workers' compensation insurance, but those who don't, or don't have the proper amount, may pressure workers not to say they were hurt on the job, Richardson said. Even if employers are properly insured, they may fear that a claim will drive up their rates, which it might, or that reporting an injury would open them up to scrutiny that could reveal other violations.

"They may not want people to see what's really going on," Spieler said.

The National Federation of Independent Business opposes changing workers' compensation law, noting that the current system works well and is relatively affordable for employers. The proposed bill would open up employers to more legal challenges and cost them money, said Massachusetts state director Christopher Carozzi.

"Even the threat of a lawsuit for a small business is a very costly proposition and something that can be painful for them to go through, even when they win," he said.

Felipe Araujo was 17 when he fell off a ladder and fractured his tailbone and pelvis while doing carpentry work in Nantucket. At the hospital, he found out later, his boss had said Araujo was injured at home. Araujo and his father, who worked for the same company and lived in employer-provided housing, are from Brazil and were undocumented at the time — and didn't realize Araujo was entitled to workers' comp benefits.

Doctors instructed Araujo to stay home and recover for six months. But because he wasn't getting paid and bills were piling up, Araujo went back to work early, still in pain.

Eventually, with help from the Brazilian Women's Group, Araujo got a lawyer and, two years after the accident, was awarded about \$12,000 in workers' comp benefits. He has no idea if the employer faced any repercussions.

Even if he had known he was entitled to benefits at the time, said Araujo, now a 24-year-old FedEx driver in Lowell applying for his green card, he would have been afraid to speak up, given the power his employer had over him.

“He was supposed to treat me like anybody else,” Araujo said in Portuguese, through an interpreter, “instead of treating me differently just because I wasn’t an American.”

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