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# On-the-Job Injuries and Workers' Compensation Eligibility among Day Laborers in Residential Worksites in California

**RESEARCH BRIEF** | UCLA-LOSH April 2017



# Research Brief

UCLA-LOSH | April 2017

## On-the-Job Injuries and Workers' Compensation Eligibility among Day Laborers in Residential Worksites in California

### Overview and Key Findings

The day labor workforce serves as an important resource in many metropolitan areas, providing valuable services to homeowners and residential contractors. The variety of tasks day laborers perform in residential settings—construction, renovation, moving, landscaping—contribute to the safety, security, and beautification of residential properties and surrounding communities. Workers themselves often take pride in these contributions.

As with other work environments, residential worksites can pose the potential for serious injury to workers. In some rare instances, dangerous day labor assignments have led to worker deaths.<sup>1</sup> Yet, the information nature of most day labor work means that injuries largely go unreported and remain hidden from official public view.

This research brief summarizes findings from recent efforts by the UCLA Labor Occupational Safety and Health Program (UCLA-LOSH) and the National Day Laborer Organizing Network (NDLON) to document the experiences of residential day laborers in California. Interviews with 64 day laborers who were injured while working in residential worksites in the past five years show that:

- **Day laborers encounter a wide range of hazards in residential work settings.** Respondents report heavy lifting, working from heights, exposure to dust or fumes, outdoor heat, repetitive motions, and dangerous equipment and machinery among the many hazards they commonly face.
- **The injuries that day laborers sustain at residential worksites can be serious in nature.** Respondents most often described musculoskeletal injuries—crippling pain in the back, arms, legs, neck, or shoulders—followed by cuts/lacerations and broken bones. Three-quarters of respondents lost work time as a result of their injuries, and 70% sought medical attention.
- **Injuries sustained at residential worksites result in substantial costs to workers and their families.** One-third of respondents said they had to pay their own medical bills. Half of respondents spent \$55 or more on medical bills; the most a respondent in our sample spent was \$15,000. Many respondents also lost work days as a result of injury, and 82% were never paid for lost work time. Half of respondents lost 7 days or more from work; the most work time lost was 3 years.

In addition, this research sought to assess eligibility for workers' compensation among day laborers who are injured in residential settings. California is one among a number of states that requires homeowners to compensate injured workers if certain worktime and earnings thresholds have been met. Specifically, day laborers in California are eligible for compensation if they have worked 52 hours or more for the homeowner-employer in the 90 days preceding injury *and* have earned \$100 or more in wages. (Day laborers who are hired by contractors for residential work assignments are automatically eligible for injury compensation through the

contractor-employer.) Yet, many homeowners and workers may be unaware of these legal requirements, confused by the eligibility thresholds, and/or unclear about the rights of workers with undocumented immigration status. Some employers may also actively deny benefits to injured employees. As a result, our research found that:

- **Few workers who are injured in residential settings benefit from workers' compensation resources.** We estimate that one-third of respondents who were employed by homeowners at the time of injury were likely eligible for workers' compensation; an additional 26% were eligible through contractor-employers. However, only 5% indicated that workers' compensation paid for medical bills or lost work time.

These findings indicate a need for policies and programs to both prevent debilitating injuries to workers in residential settings and to promote greater access to compensation. One promising measure now under consideration in the California legislature is Assembly Bill 206, which aims to remove the 52-hour worktime threshold for workers' compensation eligibility among residential employees and clarify that workers' compensation rights extend to those with undocumented immigration status. Our data indicate that AB206 would have a marked impact: **We estimate that under AB206 an additional 34% of workers that we interviewed would be legally eligible for workers' compensation.** The proposed legislation is an important step in both simplifying eligibility criteria in California and extending a valuable resource to reach more workers in need.

### Who Comprises the Day Labor Workforce in California?

Each day, an estimated 40,000 individuals seek day labor work at street corners, curbsides, and hiring centers in communities throughout California.<sup>2</sup> The vast majority of these individuals are undocumented male migrants from Mexico and other parts of Latin America.<sup>3</sup> California accounts for about one-third of the nation's day labor population, a ratio similar to the state's share of the total immigrant population.<sup>2</sup>

Day labor is characterized by temporary and informal work arrangements, with payments typically provided in cash.<sup>3</sup> While estimates do not exist to describe the population of employers relying on the day labor workforce, surveys with workers indicate that many day labor assignments are with homeowners or contractors providing services in residential settings.<sup>4,5</sup> Common tasks include construction, renovation, moving, landscaping, and property maintenance, tasks that are often high risk in nature.<sup>4-7</sup> Studies have indicated that as many as one in five day laborers experience serious work-related injuries each year.<sup>4,8</sup> Yet, few detailed studies exist on the nature and impact of these injuries.

### Are Residential Day Laborers Eligible for Workers' Compensation?

In the United States, workers' compensation insurance programs originated in the early twentieth century as a resource for workers who suffer debilitating injuries and illnesses on the job. Under these state-based programs, employers are responsible for providing compensation for needed medical care and lost work time; in exchange for access to these resources, employees forfeit their rights to sue employers under tort law. The insurance-based model in theory establishes financial incentives for employers to prevent workplace injuries—employers with fewer workers' compensation claims enjoy lower insurance premiums and fewer deductible payments.

This traditional workers' compensation model has been extended to residential work settings in large part by broadening the definition of "employer" and "employee" to include homeowners and those they hire. Twenty-

six states now have legal provisions that extend workers' compensation coverage to "residential employees," which can include day laborers. Many of these states have established specific worktime or earnings thresholds or other criteria that these workers must meet before being eligible for benefits. (See Appendix for a summary of states with workers' compensation provisions for residential employees.)

The California Labor Code includes within its definition of "employee" those "employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling" (California Labor Code §3351(d)). Homeowners' insurance policies in California are required to include workers' compensation coverage (California Insurance Code §11590). But California is currently the only state where workers hired by homeowners must meet *both* worktime and earnings thresholds for workers' compensation eligibility. Homeowner-employers are only responsible for providing compensation when an employee has worked 52 hours or more in the 90 days immediately preceding the injury *and* has earned \$100 or more in wages. Employees that do not meet both criteria are exempt ((California Labor Code §3352(h)).

Day laborers who are hired by contractors to work in residential settings are automatically eligible for workers' compensation through the contractor-employer. In this case, no worktime or earnings thresholds apply.

Despite these provisions, the rate of workers' compensation access among day laborers injured in residential work settings is presumed to be well below the rate of injury,<sup>9,10</sup> raising a number of questions: To what extent do the worktime and earnings thresholds for workers' compensation eligibility in California impact injured workers? What other factors contribute to this discrepancy? How can access to workers' compensation resources be expanded for these workers in need? These questions laid the foundation for this research initiative.

### Residential Day Laborers and Workers' Compensation Eligibility in California

**Day laborers hired by homeowners in California** are eligible for workers' compensation from their homeowner-employer if:

- a) They have worked 52 hours or more in the 90 days immediately preceding the injury; *and*
- b) They have earned \$100 or more in wages in the 90 days immediately preceding the injury.

Workers who have not reached these worktime and earnings thresholds at the time of injury are exempt.

**Day laborers hired by residential contractors in California** are eligible for workers' compensation from their contractor-employer regardless of hours worked or amount earned. Even workers hired under the table or through other informal arrangements are legally eligible. (The definition of "employee" in the California Labor Code refers to any person "in the service of an employer *under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed*" (California Labor Code §3351) (emphasis added)).

### How Did We Conduct our Research?

In 2016, the UCLA Labor Occupational Safety and Health Program (UCLA-LOSH) and the National Day Laborer Organizing Network (NDLON) set out to document the experiences of day laborers who are injured in California, and to assess discrepancies between workers' compensation eligibility and rates of access. This brief summarizes

some of our findings to date. We also consider the implications for proposed California legislation that aims to expand workers' compensation eligibility for day laborers and other residential employees.

UCLA-LOSH and NDLOM developed an interview tool for day laborers in California who had experienced one or more serious work-related injuries. The tool included 36 closed- and open-ended questions regarding the hazards typically encountered on day labor assignments and details regarding the respondent's most recent injury experience. Questions were included to determine the respondent's potential eligibility for formal compensation under state law, regardless of whether compensation was received. The questionnaire also captured demographic and work characteristics of each respondent.

Three bilingual interviewers were hired to interview workers. Respondents were recruited through NDLOM-affiliated day labor hiring centers in Southern and Northern California; interviewers also approached day laborers waiting for work at street corners and curbsides. Individuals were eligible to participate if they have experienced at least one serious work-related injury while working as a day laborer in California in the previous five years. (We define a serious work-related injury as one requiring medical attention, whether or not the individual received medical care.) Interviews were conducted in both Spanish and English, and respondents received a \$15 gift card for their participation. The interviewers transferred all responses into an electronic spreadsheet for subsequent summary and analysis.

A total of 106 interviews have been completed under this research project. The majority of respondents were Latino men with a mean age of 47 years. Two thirds were from Mexico. Ninety-seven percent spoke Spanish as their primary language, and three quarters rated their English language abilities as average or poor. Over 60% had more than 5 years of experience as a day laborer, and 36% had more than 10 years of experience. Respondents most commonly reported finding day labor jobs through hiring centers.

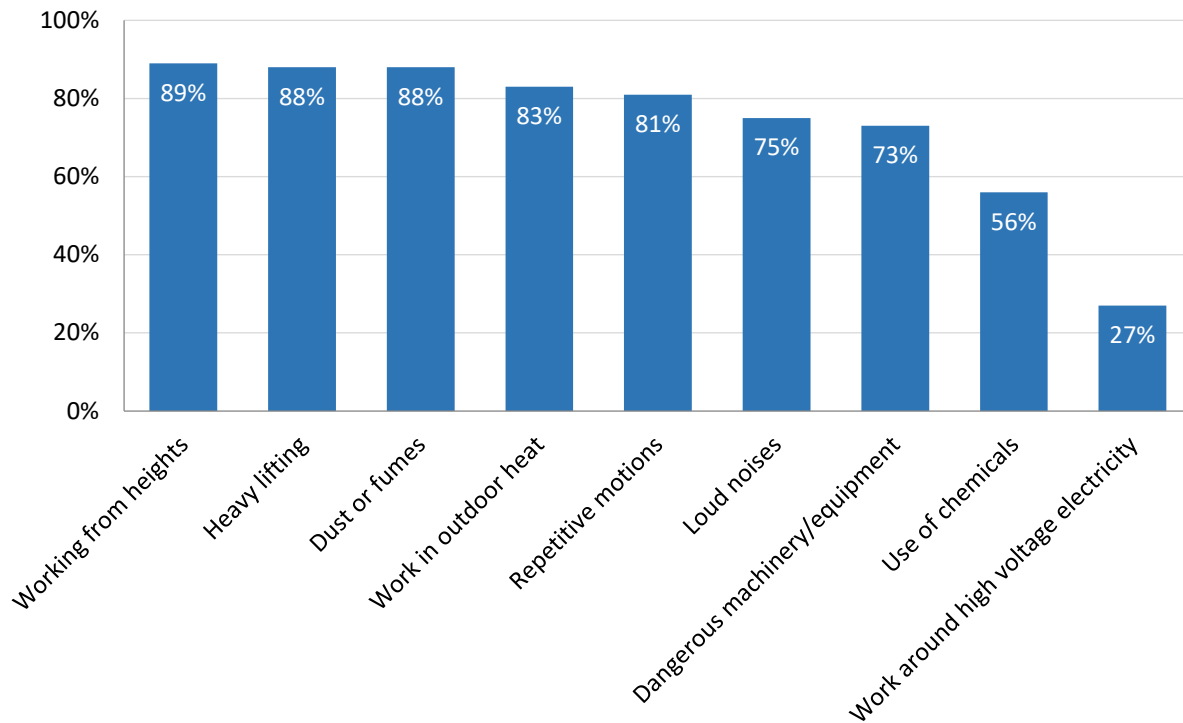
**This policy brief summarizes findings from interview with 64 day laborers (60%) who indicated that their most recent injuries had occurred while working at residential worksites, employed by either homeowners or residential contractors.** (The remaining 40% of respondents indicated they were injured while working as day laborers at construction or agricultural sites, warehouses, or other work settings. We plan to conduct additional analysis with these data in the coming months.)

### Hazards in Residential Work Settings

The day laborers we interviewed shared information about the kinds of hazards typically found while working in residential settings (see Figure 1). Respondents most often cited heavy lifting, working from heights, exposure to dust or fumes, outdoor heat, repetitive motions, dangerous equipment and machinery, and loud noise. Less commonly reported hazards included use of chemicals and work around high voltage electricity.

The frequency with which respondents reported encountering these hazards suggests that residential settings often pose similar hazard profiles as more traditional construction or agricultural worksites. Adding to these hazards, **fully 62% of respondents indicated that they had experienced pressure from employers to work in dangerous conditions.**

FIGURE 1: Hazards Encountered at Residential Worksites



Many respondents provided additional comments on the most dangerous tasks they had been asked to perform as day laborers:

*The most dangerous work involves working on roofs and up on trees without safety equipment.*

*Use of dangerous equipment without protection.*

*Gardening under extreme heat.*

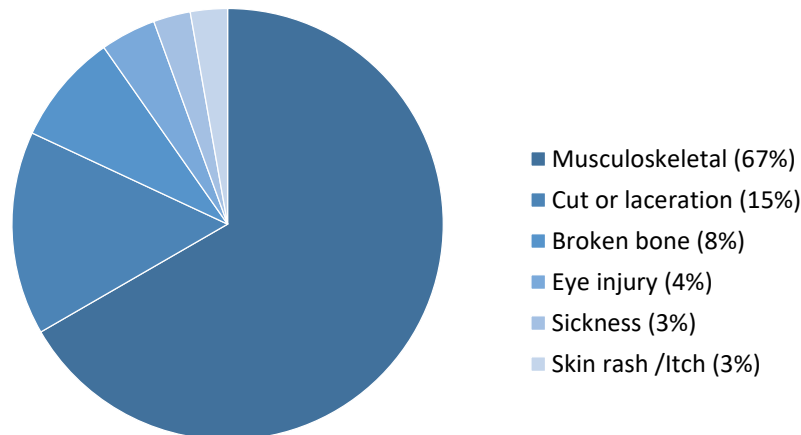
*Being lifted on the fork of a tractor to prune trees.*

*Cleaning a basement with dangerous chemicals and without adequate safety equipment.*

## Injuries at Residential Worksites

The injuries that respondents described as resulting from work in residential settings were often serious in nature (see Figure 2). Seventy-five percent of respondents sustained musculoskeletal injuries—crippling pain in the back, arms, legs, neck, or shoulders. An additional 17% suffered cuts or lacerations, and 9% sustained broken bones. Other less-common injuries included damage to eyes, skin rashes, and sickness. Three-quarters of respondents lost work time as a result of their injuries, and 70% sought medical attention.

FIGURE 2: Nature of Most Recent Injury



Respondents also shared stories about the injuries they experienced. These accounts provide a valuable window into the nature of work in residential settings that can lead to harm for these workers:

*I was painting on a ladder that was about 7 feet high, and the ladder slipped because it was not in good condition. As the ladder fell, I jumped to avoid getting injured more seriously. I ended up twisting my ankle.*

*I was pouring cement and a piece of iron metal fell in my eye. I nearly lost my eye.*

*I was lifting heavy objects, picking up branches and tree trunks. They told me to work fast and I picked up a very big tree trunk and my back cracked. It started to hurt the next day.*

*I was lifting heavy items and going up stairs when I hurt a ligament in my knee. I now have chronic pain in my knee, especially when it's cold.*

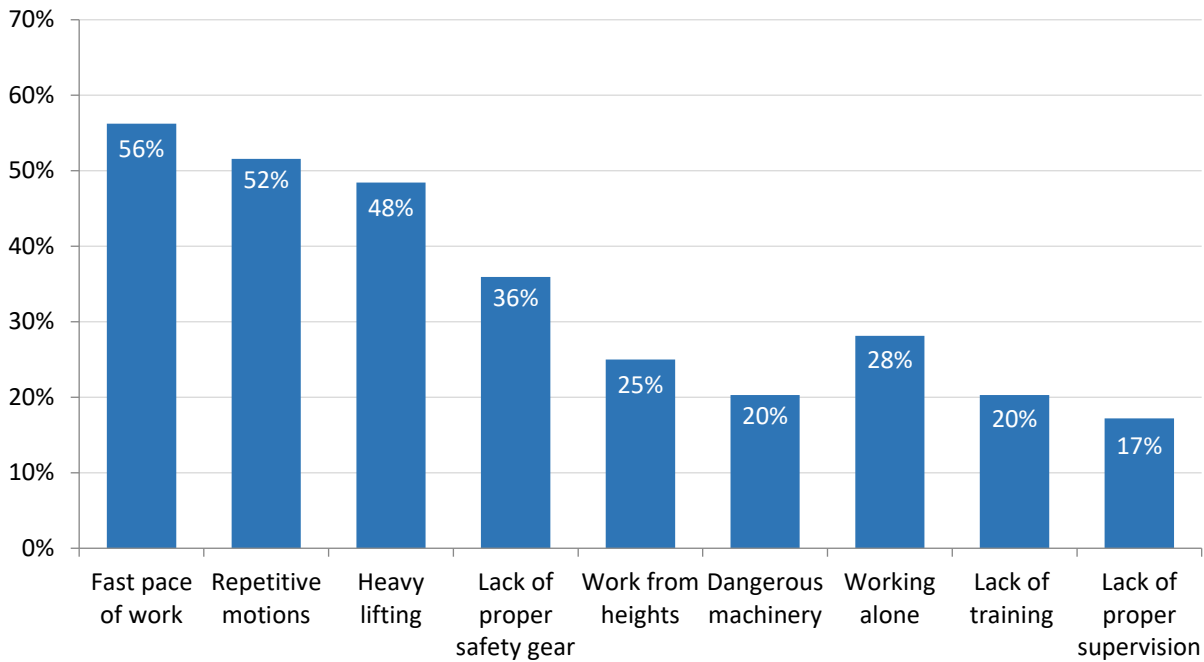
*I was demolishing a house and removing nails from a height of 10 feet. I was on top of a piece of wood, slipped, and fell on my side. I hurt my sciatic nerve, five vertebrae, and deviated three discs.*

*I was removing a roof when it suddenly fell in. I was on top of the roof and the wood fell down. I waited 40-60 minutes, but I couldn't handle the pain and no one wanted to call an ambulance.*

*I was helping a contractor fix the roof of a house. I was using the skill-saw to cut pieces of wood, but wasn't using the guard on the skill-saw. When I was cutting into the wood it ricocheted and cut my hand.*

When asked what factors they believed contributed to the injury, respondents most commonly cited fast pace of work, along with repetitive motions and heavy lifting (see Figure 3). Over one-third believed lack of proper safety gear played a role. About one-quarter pointed to working alone and working from heights as contributors.

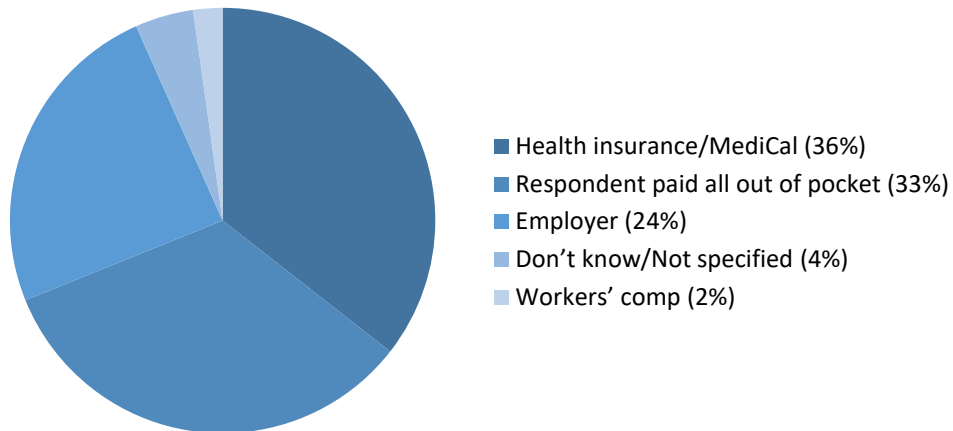
FIGURE 3: Factors Contributing to Most Recent Injury



### The Cost of Injuries to Workers and their Families

Our research has found that the injuries day laborers experience in residential settings result in substantial costs to themselves and their families. Among respondents who sought medical care for their injuries, one-third said they paid their medical bills out of their own pockets (see Figure 4). The median amount these workers spent on medical bills was \$55, while the highest amount paid by a respondent in this sample was \$15,000. One-quarter (24%) said that employers had paid for some or all of their medical bills. **Only one respondent in our sample indicated that workers’ compensation covered their medical expenses**, and that individual was working for a residential contractor at the time of injury.

FIGURE 4: Who Paid for Medical Bills?





The majority of day laborers we interviewed indicated they sought medical care at public clinics (33%) or emergency rooms (24%), while others reported visits to private clinics (11%), pharmacies (6%), massage-healers (*sobador*) (6%), and chiropractors (3%).

Three-quarters of respondents also lost work time as a result of their injuries. The median amount of time lost from work was 7 days; the most work time lost was 3 years. Fully 82% of day laborers were never paid for this lost work time. Ten percent indicated that their employer paid for some or all lost work time, and **only two respondents said that lost work time was paid by workers' compensation**. Both of these respondents said they were employed by homeowners at the time of injury.

The financial burdens and other effects of these injuries have substantial impacts on day laborers and their families, as many respondents described:

*I didn't have money for rent or food for my family during that time.*

*I'm afraid of hurting myself again at work.*

*When one gets hurt it is hard, one can become disabled for life, especially if it's the back. I have back pain daily, but I have to go out and work.*

*I lost a lot of work time. I couldn't do what I used to be able to do. I was living in shelters and missions, I received canned food to survive.*

*I didn't have money for rent or food and I had to live on the streets.*

*The family came together to help me, I had limited mobility. They all took part in helping me out.*

*I've suffered a lot of pain. I've thought of returning to Mexico because the pain doesn't stop from my back to my feet. It hurts constantly.*

*I'm not the same person since the injury. I'm handicapped for life.*

*People are abusive and take advantage of day laborers, even knowing that it's possible that we can get hurt.*

### Workers' Compensation Eligibility under Existing Law

Despite the severity of many injuries described by respondents in our sample, only 5% indicated that workers' compensation paid for medical care or lost worktime. One goal of our research was to estimate how many respondents were likely eligible for workers' compensation at the time of injury and to consider factors that served as hurdles to securing resources in cases when workers were eligible.

As noted above, day laborers who are injured while working for contractors in residential worksites are automatically eligible for workers' compensation. **Twenty-six percent of respondent in our sample were employed by residential contractors at the time of injury and were therefore eligible for compensation from the contractor-employer.**

In the case of day laborers hired directly by homeowners, eligibility is determined by certain worktime and earnings thresholds—individuals who have worked less than 52 hours in the 90 days prior to injury *or* have earned less than \$100 are exempt from eligibility. How do these exemptions impact workers in our sample who were injured while employed directly by homeowners?

Two-thirds (68%) of day laborer respondents who had been injured while working for homeowners indicated they had earned more than \$100 in the 90 days prior to injury. However, only one-third (36%) had worked more than 52 hours for the homeowner-employer during that time period (see Table 1). **Only 34% of respondents hired by homeowners met *both* worktime and earnings criteria, making them eligible for workers' compensation.**

**TABLE 1: Workers' Compensation Eligibility for Day Laborers Employed by Homeowners**

	Earned less than \$100	Earned \$100 or more	TOTAL
Worked less than 52 hours	30%	34%	<b>64%</b>
Worked 52 hours or more	2%	34%	<b>36%</b>
TOTAL	<b>32%</b>	<b>68%</b>	<b>100%</b>

NOTE: The shaded cell indicates the proportion of respondents who met current legal criteria as residential employees and who were therefore eligible for workers' compensation.

When taken together, fully half of the respondents in this sample (52%) were legally eligible for compensation at the time of injury. However, only 5% indicated that workers' compensation paid for medical bills or lost work time. What factors account for this discrepancy?

One important factor likely relates to workers' and homeowners' lack of awareness regarding legal obligations and availability of resources. Many respondents indicated they had not told their employer about the injury because they felt the injury wasn't serious enough to report or that the employer wouldn't do anything about it. As one respondent told an interviewer, "I just didn't want to be a bother," while another shrugged off the suggestion that he could have gone to his employer: "One takes one's own risks" ("*Va uno bajo su riesgo*").

Respondents' accounts of their interactions with employers following injury suggest further misunderstanding on the part of homeowners. Among respondents who were eligible for workers' compensation from homeowner-employers, many reported that the homeowner drove them to a hospital or clinic for treatment, sent them home to recover, offered over-the-counter pain medication, and/or paid them extra for the day. Only one individual received information and paperwork from the homeowner to file a claim. (One other respondent who reported that workers' compensation had paid for lost work time said he had received paperwork from an attorney.)

An additional factor likely contributing to low rates of workers' compensation access is the economic and social insecurity many day laborers face. While two-thirds (69%) of the workers we interviewed said they reported their injury to an employer or supervisor, this rate of reporting is lower than that found in studies of injured workers in the low-wage labor market more generally.<sup>11</sup> Respondents commonly cited concerns about missing work or losing their job as reasons not to tell their employers. Undocumented immigration status undoubtedly plays a role in heightening these concerns, given the limited alternative work opportunities available to these workers.

## What is the Anticipated Impact of AB206?

Our data indicate that the proposed changes under AB206 will markedly increase workers' compensation eligibility for day laborers who are injured while working for homeowners (see Table 2). By eliminating the 52-hour requirement for eligibility, the bill will extend workers' compensation resources to any day laborer who had earned at least \$100 from a homeowner-employer in the 90 days prior to injury. **We estimate that an additional 34% of workers we interviewed who were injured while working for homeowners would be eligible for workers' compensation under AB206.** This change would effectively double the rate of workers' compensation eligibility for this segment of our sample.

TABLE 2: Workers' Compensation Eligibility under AB206 for Day Laborers Employed by Homeowners

	Earned less than \$100	Earned \$100 or more	TOTAL
Worked less than 52 hours	30%	34%	64%
Worked 52 hours or more	2%	34%	36%
TOTAL	32%	68%	100%

NOTE: The shaded cells indicate the proportion of respondents who would meet legal criteria under AB206 as residential employees and who would therefore be eligible for workers' compensation.

## Summary and Recommendations

Residential day laborers provide valuable services to many homeowners, but few studies exist on the nature and consequences of injuries they suffer while carrying out their work. The data generated by UCLA-LOSH and NDLO through this research initiative provide a valuable window into the injury experiences of workers who too often remain hidden from official view.

Our findings reveal substantial work hazards in residential worksites in California, serious work-related injuries to many day laborers in these settings, and potentially devastating financial and social impacts on workers and their families. We also find evidence of a substantial burden on public clinics, emergency rooms, and public insurance programs, suggesting that the costs of these injuries are often borne by the general public.

We estimate that half of respondents were eligible for workers' compensation at the time injury, including one-third of respondents who were employed by homeowners. However, only 5% of respondents indicated that workers' compensation paid for medical bills or lost work time. The overall low rate of workers' compensation access in this sample suggests the need for targeted policy and education initiatives to ensure workers receive appropriate compensation when crippling injuries result in lost work time and/or the need for expensive medical care.

Changes proposed under AB206 will greatly simplify eligibility criteria for workers employed by homeowners in California and extend a valuable resource to reach more workers in need. Yet, such legislation alone is not sufficient. In addition to passage of AB206, we recommend the following additional measures to improve outcomes among injured day laborers:

- Increase education and enforcement of existing workers' compensation laws among contractors who employ day laborers for projects at residential worksites.
- Request that the California Division of Workers' Compensation collect and compile data on workers' compensation claims issued through homeowners' insurance policies. Such data would enable better tracking and surveillance of work-related injuries among residential day laborers and would facilitate future cost-benefit analyses of legislation such as AB206.
- Invest in educational initiatives targeted to workers and homeowner-employers to inform them of their legal rights and responsibilities regarding workers' compensation under current and future California law.
- Extend support to worker organizations such as NDLO, WorkSafe, and the Southern California Coalition for Occupational Safety and Health (SoCalCOSH) to educate workers in California and assist them in filing and tracking workers' compensation claims.

Finally, additional resources should be dedicated to preventing work-related injuries among residential day laborers in the first place. Homeowner-employers who are concerned about the wellbeing of workers on their property should have access to information and support to create a safe work environment. For those for whom safety is not a priority, a robust program of enforcement is needed to ensure the financial incentives and penalties inherent in the workers' compensation model extend to residential employers. Only with these resources in place will protect day laborers from harm and enable this workforce to remain a vital resource for homeowners and residential communities.

## About the Research Team

The **UCLA Labor Occupational Safety and Health Program (UCLA-LOSH)** is a nationally recognized university center providing research and education on worker health and safety issues. UCLA-LOSH serves as a resource for underserved workers in Southern California, particularly immigrant and minority workers in low-wage jobs.

The **National Day Labor Organizing Network (NDLON)** is a national network of worker and community centers advocating for the labor, economic, and social rights of day laborers throughout the United States. NDLON is headquartered in Los Angeles, and its network includes twelve affiliates in California.

This report was prepared by Kevin Riley and Jesús Guzmán, with feedback and support from Cal Soto, Edgar Garcia, Linda Delp, and Beverley Keefe. Thanks also to Veronica Federovsky, Maria Carr, and Ernesto Garcia for their contributions to this research. Cover photo courtesy of NDLON.

Funding for this project was provided by the American Sociological Association's Sydney S. Spivack Program in Applied Social Research and Social Policy Community Action Research Initiative, the Occupational Health Internship Program (OHIP), the National Institute for Occupational Safety and Health (NIOSH), and the UCLA Center for Occupational and Environmental Health (COEH).



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## APPENDIX: State Comparisons of Workers' Comp Provisions for Residential Employees

Twenty-six states have legal provisions that extend workers' compensation coverage to residential employees. In some cases, coverage only applies to certain categories of workers (e.g., domestic workers). California is the only state with *both* worktime and earnings thresholds for eligibility.

AB206 will bring California in line with five other states (Delaware, Hawai'i, Iowa, Maryland, and Ohio) that specify only minimum earnings for eligibility. Eleven states specify minimum worktime requirements for eligibility, and thirteen states specify other provisions for eligibility.

State	Minimum Worktime for Eligibility	Minimum Earnings for Eligibility	Other Provisions
Alaska			Employer can be approved as self-insured
California	52 hours or more during 90 days immediately preceding date of injury	\$100 or more during 90 days immediately preceding date of injury	
Colorado	40 or more in a week or 5 days or more in a week		
Connecticut	26 or more per week by one employer		
Delaware		\$750 or more in 3 month period	Workers considered to be independent contractors are not covered
District of Columbia	240 hours during a quarter		
Florida			Employers (including homeowners) with four or more employees, are required to carry coverage
Hawai'i		\$225 or more during calendar quarter & during each completed calendar quarter of preceding 12 months	
Idaho			Employers (including homeowners) with one or more FT, PT, seasonal, or occasional employees are require to maintain WC unless specifically exempt from the law
Illinois	40 or more per week for a period of 13 or more weeks		
Iowa		\$1,500 or more during 12 consecutive months	
Kansas			Coverage if the employer had a total gross payroll of \$20,000 or more for the preceding year

State	Minimum Worktime for Eligibility	Minimum Earnings for Eligibility	Other Provisions
Kentucky	40 or more a week		Two or more domestic workers regularly employed in a private home 40 hours or more a week
Maryland		\$1,000 or more in any calendar quarter	Domestic servants and their employers may jointly elect for employee to be covered even if the earnings requirement is not met
Massachusetts	16 hours or more		
Michigan	53 hours or more per week for 13 weeks or longer during preceding 52 weeks		
New Hampshire			Household employers must obtain coverage for any PT or FT employee
New Jersey			Household employers must obtain coverage for any PT or FT employee
New York	40 hours or more per week		
North Carolina			Covers domestic service if employer has more than 10 FT non-seasonal laborers
Ohio		\$160 or more in any calendar quarter	
Oklahoma			Covers any person who is employed as domestic servant or casual worker in a private home that had a gross annual payroll of \$10,000 or more for such workers the preceding year
South Carolina			Covers domestic service if employer has four or more employees
South Dakota	20 hours or more in any calendar week for more than 6 weeks in any 13 week period		
Utah	40 hours or more per week		
Washington	40 hours or more per week		Compulsory coverage if two or more domestic workers are regularly employed

Information retrieved from <https://gtm.com/household/resource-center/workers-comp-requirements/> on March 22, 2017