

*LeastStaff*

## Work Comp Staffing Solutions "All Work Comp Solutions - All The Time"



### **Rural Versus Urban Workers' Comp Rates: More Than Mere Numbers**

Driving a combine harvester through a wheat field or welding bolts on the side of a sky scraper 200 feet up. Which employer will have higher workers' comp rates? It's not the easiest question to answer given all the variables, but access to care and safety programs play as big a role as risk. From a big picture standpoint, the larger industries in urban areas employ more workers' in myriad professions. It stands to reason there will be more accidents and likely higher workers' comp rates. Depending on the industry there may be a greater quantity of classifications, but they vary in risk. Even in a low risk profession, a serious injury or two can cause rates to sky rocket, a huge expense especially for a small firm.

According to the Bureau of Labor Statistics in 2019, the largest number of work-related accidents are in the health care industry followed by retail and manufacturing. Nursing assistants suffer the most work-related injuries. In a rural setting, there will be fewer medical facilities with few employees, so fewer accidents. But a large hospital in an urban area with a constant flow of patients, mean more staff and a greater chance of injury.

The last 14 months have also had an impact because of COVID. Statistics available from licensed rating bureaus, show a decrease in rates from 2019 to 2021 in most professions. In addition to changes in classifications, this likely reflects fewer employees. This applies to industries one would find in both an urban and rural setting. Thus, the focus of this white paper is on which professions and injuries drive the costs and what impact location may have.

According to the Merriam Webster dictionary, urban is defined as of or relating to cities and the people who live in them. A city is defined as an inhabited place of greater size, population, importance than a town or village. It stands to reason that in a city, there will be more and larger places of employment

crammed next to each other on busy streets with a mixture of white and blue collar jobs.

Rural is defined as of or relating to the country, country people or life, or agriculture. In small rural towns, there will probably be some light industry that provides a significant number of jobs. There will also be doctors' offices, small grocery stores, a lawyer or two, and insurance agencies. These are low risk employers and will likely have low X-Mods depending on the number of workers' comp claims filed. The rates are relatively low, especially with fewer employees.

Many employees may live in rural or suburban areas and commute to cities to work. Injuries that occur commuting to and from work are not compensable in most states. If your job requires travel or you commute between job sites, any injuries incurred are covered by workers' comp.

The most common workers' comp injury in both urban and rural setting is the slip (or trip) and fall. The best outcome is some medical attention with some time of work and possibly pain medication. The claims are accepted and paid and costs easily absorbed. The downside is these accidents are more likely to lead to serious injuries to knees and especially backs. The workers' compensation benefits to employees can be long-term treatment, temporary or permanent disability and lost time. This doubles or even triples the claim. The occupations in urban and rural areas can also determine the injury type. A hazardous, high-risk profession can lead to catastrophic injuries beyond a torn ACL.

### **Rural Areas Access and Safety: A Crucial Component to Workers' Comp Rates**

When one thinks of rural areas, the first industry that comes to mind is commercial farming. It's a huge, essential industry that employs between 2-3 million migrant and seasonal workers every year, according to the United States Department of Agriculture. The risk varies depending on the type of work being done. And each type of agricultural job has a separate classification to represent the risk. A worker who operates farm equipment will have a different classification from a worker who picks strawberries.

According to studies done on injuries in rural versus urban areas, preventable injuries were far more likely to occur in rural areas. A contributing factor to this is that people living in rural areas were less likely to wear seat belts. This could certainly happen to employees during the course of employment, but federal statutes govern seat belt laws. If an employee driving a commercial vehicle in a rural area has a clean record, but simply forgets to put his seat belt on, an employer will be on the hook for this. If the employee has been warned and still doesn't wear a seat belt, an employer will likely fight a claim.

Another factor that contributes to the costs of rural workers' comp injuries is the use of opioids. Workers injured in a rural setting are more likely to be prescribed opioids as a stop gap for pain relief because access to health care is more difficult <sup>1</sup>. A specialist may be several hours away and appointments longer to get. This means a costlier outlay for employers for medications. The injuries can vary from mangled and crushed limbs in farm machinery or tractor rollovers, and injuries in car accidents going from one agricultural site to another, or transporting produce. Harvesting by hand has its own risks including injuries from bending, stooping, and lifting. In addition to the opioids, the injuries can be substantial, perhaps leading to the loss of a limb or permanent disability.



Growers frequently use farm labor contractors (FLC) to ensure that they have enough workers to harvest all the acreage. Farm laborers doing commercial harvesting on extensive acreage are especially vulnerable these types of injuries. Not all states are required to carry workers' compensation for migrant, seasonal, or agricultural workers. In some states such as Maine, it's only required for full-time workers. It's not required in what would be considered rural states such as Kansas, South Carolina and Nebraska. It is required in California where harvesting by hand is still done. For the largest agricultural state it's essential to have enough workers.

In addition to equipment related injuries, heat is also a contributing factor to illness and even death. Occupational safety and health are shared equitably by the the grower and farm labor contractor. Some Growers think that the FLC provides a buffer of protection for them against liability. This couldn't be further from the truth. <sup>2</sup>

*In California, the law defines an FLC as the following: Any person/legal entity who, for a fee, employs people to perform work connected to the production of farm products to, for, or under the direction of a third person; or any person/legal entity who recruits, supplies, or hires workers on behalf of someone engaged in the production of farm products and, for a fee, provides board, lodging, or transportation for those workers, or supervises, times, checks, counts, weighs, or otherwise directs or measures their work, or disburses wage payments to these persons.*

The farm labor contractor is essentially a staffing firm. If you're an FLC in California you are required to have both a license from the Division of Labor Standards and Enforcement and a certificate of registration from the U.S. Department of Labor Wage and Labor Hour Division. As part of the joint employer liability, a grower must vet a farm labor contractor to ensure that it has the injury and illness

and prevention plan (IIPP) and a heat illness prevention program (HIPP). FLCs are required to provide proof of workers' comp insurance. Other states likely have similar requirements for licensing.

Heat presents a significant risk and farm labor employers are required to provide adequate shade and water. The HIPP is very specific about how much shade must be provided based on the temperature, and how much water must be provided to farm workers per shift. Another important requirement is that supervisors keep a close eye on workers' for signs of heat illness. In keeping with the rural setting a prevention plan must also have specific instructions on how to notify emergency personnel, and provide precise directions on how to get to the worksite, which could be many miles away.<sup>3</sup>

As the agency in charge of providing the labor, all health and safety requirements must be followed. This includes that supervisors are complying with the requirements in the HIPP and workplace safety in general including access to and proper use of first aid. From a workers' comp perspective, the FLC should document that it provided the information on wage and other compensation terms and conditions to the workers, and a copy of the paystub with confidential information removed.<sup>4</sup> This is important given that it contractors should also provide the grower with the number of workers that are being employed for purposes of payroll. The FLC should also make sure the grower is complying with similar requirements and not impeding or jeopardizing the safety of workers.

Harvesting is becoming more mechanized, but even then, workers still must be protected from the heat and stay hydrated. For instance, combine harvesters with vehicle cabins must have A/C units. Despite the precautions, farm labor contracting is still high risk and, unfortunately, an easy target for skirting the law. Recently, The California Department of Insurance charged a farm labor contractor with 20 felony insurance and tax fraud after allegedly under-reporting payroll by over \$17 million resulting in a loss of over \$1.42 million to their insurance companies. The scheme was uncovered when a worker was injured after a trip and fall and subsequently treated in a garage by an unlicensed professional, according a California Department of Insurance news release.

In addition to not following treatment protocols, the FLC under reported payroll to attain a lower workers' comp premium. This can be an all too common experience if growers fail to properly vet their FLCs. Failure to comply with these requirements can lead to illness and other heat-related injuries, the result of which can increase the FLC's experience modification.

Large acreage with workers spread out and even language barriers, depending on the number of migrant workers, can make it difficult to monitor safety compliance. Another challenge in the fields is the legal status of farm workers, many of whom come from Latin America. Even though, FLCs and farmers are supposed to confirm work visas and permits, workers fearful of losing their jobs are less likely to report injuries, or as demonstrated above, do not receive treatment in a medical facility. Temporary employees should be well-versed in the safety requirements and those requirements should be in multiple languages. Make sure the grower also has the same standards in place.

### **The Impact of COVID-19**

The availability of vaccines and more people getting vaccinated has caused the rates of COVID to drop in many states including California. Workers in the agricultural industries are considered an essential critical infrastructure workforce. Depending on the type of agricultural work, whether it be ranching or food cultivation, the Centers for Disease Control still warns that agricultural employers and workers need to adapt and practice safety protocols based on the situation. There will need to be greater

emphasis on masking and distancing, if agricultural workers' are sharing transportation or employer-provided living quarters.

Agricultural workers can also spread COVID through the sharing of surfaces such as tools, farming equipment and toilet facilities. As with every other safety issue, the FLC should have a COVID assessment and control plan. According to the most up-to-date guidance from CDC, "Owners/operators can respond in flexible ways to varying levels of disease transmission in the community and be prepared to refine their control plans as needed." <sup>5</sup>

A control plan should reflect the specific region, work site space, job tasks, and other features of each farm, ranch, orchard, or other agricultural operations and locations. Those involved in the work can best set priorities and assess how realistic these recommendations are for specific situations at their facilities." <sup>6</sup>

COVID Guidance will continue to change, so with so many other factors in workers' comp, clear safety guidelines and enforcement of those guidelines is crucial to keeping rates down in rural areas, despite the inherent dangers.

### **Urban Settings Have Greater Safety Challenges**

Urban areas have more employers with greater numbers of employees. In large cities such as New York, Chicago and Los Angeles, the city centers are made up of a significant number of white collar businesses such as banks, law firms and accountancy firms. These jobs are considered low risk, thus will have lower X-Mods. However, it's in the cities where the mega law firms are located, which means more employees, including clerical, which means a larger payroll. There are also numerous restaurants both high and low-end, with a mixture of risks.

But you will also find hospitals, warehousing, manufacturing, and large construction projects with much higher risks. Even in department stores and malls with a mixture of white and blue collar jobs the risks vary commensurate with the job. For instance, a store manager versus an employee who stocks shelves: Stocking shelves requires heavy lifting and standing on ladders.

The most common workers comp injury is a slip and fall, and it's just as likely to happen to a lawyer as to a welder, but even taking that into account, the riskiest jobs to be found in urban areas will be on industrial premises such as heavy construction or manufacturing. Major road work and warehousing also expose workers to high risk. Many of the jobs will be in higher payroll classifications, so a spotless safety record and a good staffing broker to make sure a company is using the proper classification codes is crucial to keeping rates low.

Construction companies erecting skyscrapers and road repairs carry a heavy risk, thus rely on the highest safety standards to keep workers safe, including fall protection. But despite a sterling safety record, a smaller construction firm may still end up paying more in workers' comp premium. The reason being that experience modifications are also based on payroll, and a smaller company has a lower payroll to absorb the risk from a major claim. This can saddle a small construction firm with a higher X-Mod, even if its safety record is as good as a larger firm's. This isn't always the case, but it can become an issue from a profitability standpoint, as certain projects, especially government jobs, will only accept bids from construction firms that have 1.00 X-Mod or lower. <sup>7</sup>

Making sure a construction company has the correct workers' comp classification code is also an important component of the workers' comp rate. The class code is based on the risks associated by each type of work an employee performs. Construction and warehouse operations have numerous jobs. But as there are so many components, especially to construction, not all the jobs will be high-risk. Some states use the National Council on Compensation Insurance to determine their class codes. Other states, such as California, have their own licensed rating bureaus to determine codes. They are frequently the same, but changes will be made periodically to class codes in certain industries. Staffing firms supplying workers need to consult their brokers on classification codes. It also helps to know the safety record of the firms they'll be working for.

As for safety standards, written plans are essential and usually required. As with farm work, the construction firm contracting for the work must make sure these standards are being followed by all workers including subcontractors and temporary workers. Staffing firms should also follow up on this. A fall from a one story building or a pallet collapse in a warehouse can result in catastrophic injuries.

Accidents involving pallet collapses are on the most common accidents in warehouses. This is usually the result of items not be stacked and wrapped properly on the pallet, an important safety component. Inadequate spacing between items can cause balance issues as a pallet is being lifted.<sup>8</sup> Fork lift crashes are also common, usually due to improper training.

In manufacturing some of the common work-related injuries, over-exertion, vehicle accidents and being struck by falling objects. These accidents are preventable if there are safety plans in place and being followed.



On construction projects, the most common jobs causing serious injury and or death are falls, being struck by objects, caught between and object and electrocution. Even something as haphazard as a nail gun accident through the foot or hand can result in a significant amount of lost time. Just the number of jobs pose different different risks. Staffing firms that provide workers for construction projects need to have strict safety plans that address each one, including fall protection, confined spaces, and eye and ear protection. Fall protection is required above a certain number of feet. A properly fitted harness and an appropriate tying off point will keep the worker safe, if he should slip or encounter faulty scaffolding—another common safety issue. If these standards are ignored, or not properly conveyed, accidents are far more common.

## **Opioids**

Employers with workplaces in urban areas are closer to needed to medical care, so opioids as a stop-gap don't drive their use. But opioids are still prescribed and can add to the cost of a workers' comp claim. According to the Workers' Compensation Research Institute, injuries associated with construction work and mining were more likely to be prescribed opioids as part of pain a medication prescription. They were also more likely to receive opioids for longer periods of time and in larger doses.<sup>9</sup>

It's estimated that workers' prescribed opioids for pain were more likely to spend time off work. According to the National Council for Compensation Insurance, workers with low-back injuries with over 7 days away from work and 3 prescriptions 6–12 months after injury following at least one prescription in the first 3 months, resulted in temporary disability that was more than three times longer than for similar workers with similar injuries who did not receive any opioid prescriptions.<sup>10</sup>

COVID-19 and social isolation caused by shutdowns and job losses also exacerbated the over prescribing of opioids, especially if surgeries were delayed for work-related injuries. The good news, despite the pandemic, opioid prescribing for workers' comp injuries is going down in most states, but the amounts prescribed still vary.

## **Construction Stands Out**

Despite advances in safety equipment and training, construction still faces disproportionate rates of injury-fatal and non-fatal. According the to the Bureau of Labor Statistics, in 2019 construction workers account for 20 percent of the deaths (1 in 5 workers), yet account for only six percent of the workforce (11.5 million workers).<sup>11</sup> In the same year, there were 200,000 non-fatal injuries in construction.

According to experts in the construction industry, the reason fatal and non-fatal injuries remain high is because of the failure to follow safety procedures. Construction stands out because eight out of the ten most common safety violations are found in construction including fall protection, lockout-tag out procedures and defective scaffolding.

Staffing firms need to have a detailed safety plan for their workers' and confirm that the construction company does as well. Identifying hazards and taking steps to mitigate risk cut down significantly on work-related accidents. Safety protocols such as procedures on operating heavy equipment should also be included. Site managers need to make sure all protocols are being followed. Even properly attaching a fall protection harness can be done haphazardly, if a worker hasn't read the procedure or is in a hurry.

While by no means a comprehensive list, here some quick bullet points staffing firms should heed:

- Familiarity with the job site including the location, specifications, and condition. Any one of these items can present a safety issue.
- Make sure the worker meets the qualifications for a specific task. This includes proper training and certifications
- Confirm who your workers will be reporting to and that a steady stream of communication is maintained. This is especially important for workers with limited English skills.
- Assign an individual(s) to contact in case of an emergency. Also keep emergency numbers such as fire departments and paramedics where workers can access them.
- Conduct a morning meeting—usually referred to as a tailgate meeting--to go over safety procedures and protocols. These meetings can include standard reminders to workers to wear hardhats and PPE equipment or COVID-19 safety protocols.

Even as COVID-19 is passing, safety procedures remain in place and can be difficult as communication on construction projects doesn't lend itself to Zoom. Masks and distancing are still as much a reality as fall protection. We hope for not much longer.

Workers' comp rates are a reflection of safety as much as they are of risk or location. That does not change, regardless of whether workers perform their jobs in a rural or urban setting. Staffing firms need to be cognizant of the risks in different professions and what impact location might have. Is medical help just a few blocks away or several miles away? The answer is one of many variables to consider in a safety program.

David Schek, president  
*Leaststaff*  
**Work Comp Staffing Solutions**  
**david@compstaffingsolutions.com**  
**202-302-1212**  
**www.leaststaff.com**

## End Notes

1. *Correlates of Opioid Dispensing*, Vennela Thumula and Ti Chun Liu Workers' Compensation Research Institute (2018)
2. *Farm Labor Contractors: Essential and Risky, What Every Grower Needs to Know*, Amy Wolfe, president and CEO of AgSafe (Aug. 1, 2019)
3. UC Davis Western Center for Agricultural Health and Safety, *Heat Illness Prevention Standard Requirements*.
4. *See Footnote 2.*
5. *Agricultural Workers and Employers Interim Guidance from CDC and the U.S. Department of*

*Labor, February 21, 2021*

6. *Ibid*
7. *CCIG, Not Winning Construction Jobs? It Could be Your E-Mod, April 2018.*
8. *MSDSonline, a-velocityEHS solution, Four Common Warehouse Accidents and How to Prevent Them (2016).*
9. *See Footnote 1*
10. *The Impact of Opioid Prescriptions on Duration of Temporary Disability.* Neumark, D., Savych, B., Lea R. (2018). National Council on Compensation Insurance. Update, March 6, 2018, WC-18-18.
11. *Occupational Safety and Health Administration, Commonly Used Statistics (2019)*