F I S C A L I M P A C T R E P O R T

SPONSOR Neville **ORIGINAL DATE** 2/5/16 **LAST UPDATED** **HB**

SHORT TITLE Workers' Comp "Farm & Ranch Laborers" **SB** 244

ANALYST Klundt

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	**FY17**		
	Indeterminate		

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Workers' Compensation Administration (WCA)
Administrative Office of the Courts (AOC)
Attorney General's Office (AGO)
Office of the Superintendent of Insurance (OSI)

SUMMARY

Senate Bill 244 amends the Workers' Compensation Act to add a rational basis for the farm and ranch exemption of the Workers' Compensation Act.

FISCAL IMPLICATIONS

The AOC reports will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the increased disputed claims for worker's compensation benefits and determination of the issue of whether the amendment of SB 244 provides a sufficiently rational basis for the exclusion of farm and ranch workers from the Worker's Compensation Act to pass constitutional muster. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. The AOC is currently working on possible parameters to measure resulting case increase.

SIGNIFICANT ISSUES

In June 2015 a decision by the Court of Appeals in *Noe Rodriguez, et. al. v. Brand West Dairy, et al.,* 2015-NMCA-097 ruled that the farm and ranch exemption of the Workers' Compensation Act, NMSA 1978, §52-1-6, violates the guarantee of equal protection in the N.M. Constitution where farm and ranch laborers seeking compensation for work-related injuries or disabilities are similarly situated to, but are treated differently than, other workers in the state who are likewise seeking compensation. The Court also held that the government's purported interests in the efficient administration of workers' compensation cases and in protecting the agricultural industry from the cost of providing workers' compensation coverage are without any rational basis and do not justify the arbitrary classification created by the exclusion. Following this decision, the N.M. Worker's Compensation Administration issued a statement that absent further case law, it intended to fully enforce the decision by requiring employers of farm and ranch workers to provide coverage.

The Court also made its ruling retroactive to March 30, 2012. The "legislative findings" contained in the bill include rationales offered in support of the legislation, some of which the WCA reports the Court of Appeals already considered and rejected. The decision in the *Rodriguez* case has been appealed to the New Mexico Supreme Court.

SB 244 attempts to insert a rational basis for the exclusion of these workers by moving the exclusion to new Section 52-1-6(B) with the following language:

> "For the purposes of this paragraph, the legislature finds that farm and ranch work is seasonal, that many farm and ranch laborers work temporarily at a farm or ranch and migrate from farm to farm and ranch to ranch and that there is a high rate of turnover in farm and ranch laborers, thus making it difficult to track workers and substantiate the source and cause of an illness or injury. The legislature further finds that farming and ranching work is subject to the vagaries of weather and to the limitations of federal commodities pricing laws that make it difficult or impossible for farm and ranch employers to reasonably assess on a seasonal basis their farm and ranch costs, income, laborer needs and insurance needs. Therefore, this exemption represents a balancing of interests that protects these employers from unreasonable costs of providing insurance in an unpredictable market."

TECHNICAL ISSUES

The WCA raised concerns regarding whether the Legislature can pass legislation articulating a rational basis for legislative classification of farm and ranch workers after New Mexico's appellate courts have already ruled no rational basis exists.

OTHER SUBSTANTIVE ISSUES

In *Rodriguez*, 2015-NMAC-097, ¶11, the Court of Appeals stated that:

> "The New Mexico Constitution provides that no person shall be denied equal protection of the laws. N.M. Const. art. II, § 18. Equal protection guarantees that similarly situated individuals will be treated in an equal manner, "absent a sufficient reason to justify the disparate treatment." *Wagner v. AGW Consultants*, 2005-NMSC-016, ¶ 21, 137 N.M. 734, 114 P.3d 1050. Thus, "statutory classifications that are unreasonable, unrelated to a

> legitimate statutory purpose, or are not based on real differences" do not comport with equal protection guarantees. *Breen v. Carlsbad Mun. Schs.*, 2005-NMSC-028, ¶ 7, 138 N.M. 331, 120 P.3d 413 (internal quotation marks and citation omitted). "The threshold question in analyzing all equal protection challenges is whether the legislation creates a class of similarly situated individuals who are treated dissimilarly." *Id.* ¶ 10.

SB 244 excludes farm and ranch workers from the Act due to the stated difficulty for farm and ranch employers to reasonably assess on a seasonal basis their farm and ranch costs, income, laborer needs and insurance needs. The amendment also states that the legislature finds that excluding these workers "represents a balancing of interests that protects these employers from unreasonable costs of providing insurance in an unpredictable market." However, the AOC states the amendment does not state how the interests of the workers and the purpose of the Act are balanced against the stated interests of the employers. "[E]xcluding farm and ranch laborers from workers' compensation coverage directly controverts the purpose and evenhanded philosophy of the Act by placing farm and ranch employers at an advantage and denying workers the benefits the Act was intended to provide. Legislative classifications that are arbitrary and oppressive without any rational basis are the most objectionable. *Burch*, 1957-NMSC-017, ¶ 12." *Rodriguez*, 2015-NMAC-097, ¶31.

The purposes of the Act are to quickly and efficiently provide limited, but sufficient, indemnity and medical benefits to injured workers at a reasonable cost to employers. Otherwise, benefit recovery must be achieved through the unpredictable, slower and often more costly means of tort recovery. *Rodriguez*, 2015-NMAC-097, ¶ ¶16,26. In *Rodriguez* at ¶17, the Court of Appeals concluded that:

> Excluding farm and ranch laborers from workers' compensation coverage denies them the benefits, including but not limited to the monetary benefits, that the Act was intended to provide. It also circumvents the policy and philosophy of the Act—to balance the interests and rights of the worker and the employer. *See Salazar*, 2007-NMSC-019, ¶ 10. The exclusion tips the scale in favor of employers. Employers of farm and ranch laborers have the option to elect to be subject to the Act while that option is not available to farm and ranch laborers. Section 52-1-6(B). Employers of farm and ranch laborers avoid the cost of providing workers' compensation insurance, which results in expensive drawn out litigation being the only available option to the worker. While the exclusion exposes the employers to tort liability, the injured workers are less likely to pursue a tort claim. *See Salazar*, 2007-NMSC-019, ¶ 16 (recognizing that many injured workers "are not in a financial position to wait out a lengthy, expensive, and risky court proceeding to be compensated for the injury, due to the problems of pressing medical bills, and often the inability to work" and would benefit from workers' compensation (internal quotation marks and citation omitted)). Employers, on the other hand, may be in a better position to plan for and manage the additional cost of providing coverage.

SB 244 states that it is difficult for employers to plan for managing the additional cost of providing coverage as required by the Act, but does not state that the workers are in a better position to pursue tort claims in order to obtain benefits when injured. The AOC states because the goal of protecting employers from the difficulty of predicting the cost and need for insurance does not appear to significantly differ from the goal of lower costs for the agricultural industry found to be constitutionally lacking in *Rodriguez*, AOC reports the bill does not appear to provide a constitutionally sufficient rational basis to exclude farm and ranch workers from the Act.

> We conclude that there is no substantial relationship between the exclusion and the purported government interests of increased workers' compensation efficiency and lower costs for the agricultural industry. There is nothing rational about a law that excludes from worker's compensation benefits employees who harvest crops from the field while providing benefits for the employees who sort and bag the very same crop. *See Madrid v. St. Joseph Hosp.*, 1996-NMSC-064, ¶ 34, 122 N.M. 524, 928 P.2d 250 (stating that equal protection guarantees "prohibit the government from creating statutory classifications that are unreasonable, unrelated to a legitimate statutory purpose, or are not based on real differences").

Rodriguez at ¶31**.**

KK/al