

## **SECTION 303.**

### **WORKER'S COMPENSATION; CLAIMS BY UNAUTHORIZED ALIEN WORKERS.<sup>1</sup>**

**IRLI Comment:** This provision is designed to harmonize two related policy concerns: First, unauthorized alien workers should not be excluded from workers compensation coverage for hospitalization or disability on the basis of their lack of legal authorization. Exclusion would create a perverse incentive for employers to hire illegal aliens in violation of law. At the same time, law-abiding employers should not be required to subsidize the unlawful activities of their scofflaw competitors through a universal insurance scheme.

Section 303 would however require an illegal alien who makes a disability claim (as opposed to a hospitalization claim) to voluntarily self-deport to their home nation in order to receive an approved disability benefit.

New section [#76-54-321#] of the [#state# workers compensation] Code is added, to read as follows:

“(1). Notwithstanding any other provision of this [#Chapter#], an employer, against whom two or more claims for compensation are filed within a twelve month period by employees who are subsequently determined to be unauthorized alien workers, shall be deemed to be an uninsured employer, for each date on which such employees performed four or more hours of work.

(2). Safe harbor.-- An employer shall be exempt from classification as an uninsured employer under paragraph (1) if the employer had verified the employment authorization of the workers who had filed the claims for compensation through the E-Verify program.”

New section [#xx-xx-xxx#] of the [#State# workers compensation#] Code is added, to read as follows:

“(3) An employee who is an unauthorized alien worker, who is awarded compensation pursuant to the compensation provisions of [#Chapter X#], shall not receive payment for such compensation until the insurer liable for payment of compensation to the employee has received and retained an official copy of an affidavit, personally executed by the employee before a United States consular representative in the foreign state of which the employee is a citizen or national, or in another foreign state to which the employee has voluntarily departed or been

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<sup>1</sup> Source: MS/VA/IRLI.

removed, confirming that the employee has established his or her identity to the satisfaction of the consular representative, and that the employee has identified to the consular representative a bank or financial institution account in that country into which such compensation shall be paid by electronic funds transfer or other means designated by regulation. Such funds may be withdrawn only in person by the employer or, in the case of total disability or death, by a beneficiary.”