

*Presentation for:*  
Minnesota Rehabilitation Association  
Spring Conference  
April 8, 2010  
Rochester, Minn.

*Presented by:*  
Francisco J. González  
Mediator/Arbitrator (English/Español)  
Minnesota Department of Labor and Industry

## **Workers' compensation rehabilitation services and immigration issues**

### **General overview**

The population of Minnesota is becoming more diverse in terms of the ethnicity, race, language and culture. Because this will continue to be reflected in our state's workforce, professionals in the field of workers' compensation, such as vocational rehabilitation providers and job placement specialists, should prepare to serve these new clients.

According to a recent University of Minnesota study, U.S. foreign-born workers accounted for almost half of the workforce growth between 1995 and 2005. Many immigrants work in low-skilled occupations, filling shortages created by an aging and better-educated native-born workforce. As more Americans graduate from high school and college, they are less likely to take jobs requiring manual labor. For the more information, see *The Economic Impact of Immigrants in Minnesota* at [www.mnla.biz/ftpgetfile.php?id=162](http://www.mnla.biz/ftpgetfile.php?id=162).

### **Basic immigration-related terms**

There are many terms used to refer to individuals who were not born in the United States, including: immigrant, alien, foreigner, legal immigrant, illegal immigrant and undocumented alien. To avoid confusion, I will use the term "foreigner" in the context of this presentation, simply to refer to an individual who is not a U.S. citizen, regardless of immigration status.

Some of these terms may have both a specific legal definition that can be quite different from the common use of the same term. Below are some of these terms and their definitions.

- **Alien:** Any person who is not a citizen or national of the United States.
- **Immigrant:** Any alien in the United States, except one legally admitted under specific nonimmigrant categories.
- **Undocumented alien:** Foreigner not currently authorized to be present in the United States.
- **U.S. citizen:** Any person born in the United States or naturalized.
- **National:** A person owing permanent allegiance to a state.
- **Lawful permanent resident (LPR):** An alien allowed to live and work permanently in the United States; provides almost the same rights and benefits as those of a U.S. citizen.
- **Green card:** The common name for the lawful permanent resident identification document.

- **Visa:** The common name for a whole range of documents allowing aliens to apply for entry to the United States for different purposes (tourists, students, permanent immigrants, temporary work, etc.).
- **I-9:** The federally required form U.S. employers are required to complete to verify the employment authorization of all workers they hire.
- **U.S. Citizenship and Immigration Services (USCIS):** The government agency that oversees lawful immigration to the United States.
- **Immigration and Customs Enforcement (ICE):** The federal agency that enforces immigration laws.

For more information about these terms, consult the glossary section of the USCIS Web page at [www.uscis.gov/portal/site/uscis/menuitem](http://www.uscis.gov/portal/site/uscis/menuitem) (click on “Resources” at the top of the page and then on “Glossary” from the links on the left).

## **Information frequently requested by QRCs**

**The following addresses information that is frequently requested by vocational rehabilitation providers regarding services to foreign workers.**

*(Please keep in mind that each situation is unique and that the following information is for general guidance only. This information is not legal advice. This is not a complete summary of applicable immigration law. You are encouraged to consult the U. S. Citizenship and Immigration Services or an attorney if you have specific immigration-related questions.)*

### **1. Immigration status of injured workers**

Under Minnesota’s workers’ compensation system, an injured worker must be a “qualified employee” to receive vocational rehabilitation services (Minnesota Rules 5220.0100, subp. 22). The workers’ compensation rules do not directly address vocational rehabilitation in the context of immigration.

Federal regulations have very specific guidance regarding who must ask for verification of employment status, under which circumstances and what kinds of documents are acceptable. For example, under federal law:

- employers must complete an I-9 form, which includes reviewing original documents, verifying the employment authorization status of their employee at the time of hiring. (See the sample I-9 form included in this handout or visit [www.uscis.gov/files/form/i-9.pdf](http://www.uscis.gov/files/form/i-9.pdf).)
- “it is unlawful for a person or other entity ... to refer for a fee, [an undocumented worker] for employment in the United States” (8 U.S.C. § 1324 (a) (1) (B)). Under the governing regulations, “referral” is defined broadly to include transmitting documentation or information, such as a letter of recommendation, with the intent of helping an undocumented worker get employment. A fee constitutes “remuneration whether on retainer or contingency basis” (8 C.F.R. § 274 (a) 1 (d)).
- employers may not, on the basis of citizenship status or national origin, request more or different documents than are required to verify employment eligibility and identity, reject reasonably

genuine-looking documents or specify certain documents over others. U.S. citizens and all work authorized immigrants are protected from document abuse.

For more information about these and other prohibited practices, visit the Office of the Special Counsel for Immigration-Related Unfair Employment Practices, at the U.S. Department of Justice's Web site, at [www.justice.gov/crt/osc/htm/facts.php#verify](http://www.justice.gov/crt/osc/htm/facts.php#verify).

## **2. Foreigners not authorized to work in the United States**

### ***Workers' compensation case law***

In *Correa v. Waymouth Farms, Inc.*, 664 N.W.2d 324 (Minn. Sup. Ct. 2003), the Minnesota Supreme Court held that the Minnesota Workers' Compensation Act does not, as a matter of law, preclude an undocumented employee who is unauthorized to work in the United States from receiving workers' compensation wage loss benefits conditioned on a diligent job search ([www.workerscomp.state.mn.us/2003/Correa-12-19-03.htm](http://www.workerscomp.state.mn.us/2003/Correa-12-19-03.htm)).

*Rivas v. Car Wash Partners, slip op. (W.C.C.A. June 4, 2004)*. In *Rivas*, the employer discovered the employee had used a different name and other identification at the hospital following the work injury than when he was hired, and therefore conditioned a return-to-work job offer on documentation that the employee was authorized to work in the United States. The Workers' Compensation Court of Appeals held that when the injured worker failed to respond to the job offer because he could not provide the documentation, the compensation judge properly concluded that the employee had refused gainful employment within the meaning of Minnesota Statutes 176.101, subd. 1(i) and was therefore ineligible for temporary total disability benefits. The court noted in a footnote: "There is no current provision precluding an employee from receiving temporary partial disability benefits or rehabilitation benefits for refusal of gainful employment" ([www.workerscomp.state.mn.us/2004/Rivas-06-04-04.htm](http://www.workerscomp.state.mn.us/2004/Rivas-06-04-04.htm)).

### ***Workers' compensation vocational rehabilitation rules***

Under Minnesota's workers' compensation vocational rehabilitation rules, qualified rehabilitation providers (QRCs) must abide by rules that prohibit violation of state and federal laws, engage in conduct that would deceive the public or discriminate against a person based on race or national origin:

- Minnesota Rules 5220.1805 (A) requires that "[r]ehabilitation providers shall adhere to all federal, state and local laws."
- Minnesota Rules 5220.1803, subp. 2 requires that the "rehabilitation provider shall be knowledgeable and informed regarding portions of the workers' compensation law and rules that directly relate to the provision of rehabilitation services. Communication of inaccurate information regarding workers' compensation is grounds for discipline."
- Minnesota Rules 5220.1801, subp. 9(K)(2)(3) prohibits the QRC from "[e]ngaging in adversarial communication or activity" such as the "deliberate failure or delay to report to all parties pertinent information regarding an employee's rehabilitation ..." or the "misrepresentation of any fact or information about rehabilitation."
- Minnesota Rules 5220.1801, subp. 9(Q) prohibits "unlawful discrimination against any person on the basis of age, gender, religion, race, disability, nationality, or sexual preference, or the imposition on a rehabilitation client of any stereotypes of behavior related to these categories."

This is not an exclusive list of workers' compensation rehabilitation rules that may apply. The rehabilitation rules are in Minnesota Rules 5220.0100-5220.1900 and can be viewed at [www.revisor.mn.gov/rules/?id=5220](http://www.revisor.mn.gov/rules/?id=5220).

**Practice tip 2.1:** There are no reported cases addressing the extent of rehabilitation services that can be provided to an undocumented worker. Under the above-cited rules, a QRC could not facilitate or refer an unauthorized worker for employment that would require submission of false documents or otherwise be in violation of federal immigration law. However, there may be potentially appropriate goals of vocational rehabilitation plans for undocumented workers. For example, a goal of a rehabilitation plan for an undocumented worker could be obtaining legal employment.

**Practice tip 2.2:** If a dispute arises regarding the employee's work eligibility status during the development or implementation of a vocational rehabilitation plan, the employer, insurer, employee or QRC may file a Rehabilitation Request form to resolve disputes about the direction of the plan.

### **3. Foreign workers currently authorized to work in the United States but whose authorization is due to expire**

Under the current U.S. immigration system, certain foreigners not intending to immigrate permanently to the United States can be admitted to work on a temporary basis. The following are the most common visa classifications under which these non-immigrants may temporarily work or train.

- E-1 – Treaty traders and their spouses
- E-2 – Treaty investors and their spouses
- E-3 – Australian specialty occupation workers and their spouses
- H-1B – Specialty occupations in a field requiring highly specialized knowledge, fashion models of distinguished merit and ability, or certain services of an exceptional nature in Department of Defense cooperative research and development projects or co-production projects
- H-1B1 – Specialty occupations for certain nationals of Singapore and Chile
- H-1C – Registered nurses (Health Professional Shortage Area)
- H-2A – Temporary agricultural workers
- H-2B – Temporary workers performing other services or labor, skilled or unskilled
- H-3 – Trainees or special education exchange visitors
- I – Representatives of information media
- J – Certain exchange visitors
- L-1A – Intra-company transferees (executives, managers)
- L-1B – Intra-company transferees (employees with specialized knowledge)

- L-2 – Spouse of an L-1A or L-1B
- O-1 – Foreign nationals who have extraordinary ability in the sciences, arts, education, business or athletics
- O-2 – Essential support personnel for O-1
- P-1 – Internationally recognized athletes (or athletic team) or members of an entertainment group and certain other athletes and entertainers
- P-2 – Artists or entertainers under a reciprocal exchange program
- P-3 – Foreign nationals who perform, teach or coach under a program that is culturally unique
- P-4 – Essential support personnel for P-1, P-2 or P-3
- Q-1 – International cultural exchange visitors
- R-1 – Religious workers
- TN – Canadian or Mexican professionals covered by the North American Free Trade Agreement (NAFTA)

For more information about these categories, visit the USCIS “Temporary (Nonimmigrant) Workers” Web site at [www.uscis.gov/portal/site/uscis](http://www.uscis.gov/portal/site/uscis) (see upper half of the page).

***Practice tip 3.1:*** Bear in mind any rehabilitation plan should be consistent with the employee’s temporary authorization status. The QRC may inquire from the employee whether he or she has contacted USCIS or an immigration attorney regarding any steps taken to extend this temporary authorization.

**4. Provision of interpreter services to facilitate communication between the employee, the QRC and health care providers as part of “medical management” as defined by Minnesota Rules 5220.0100, subp. 20**

***Practice tip 4.1:*** Unless there is an agreement already in place among the employee, insurer and health care provider regarding the provision of interpreter services during medical visits, and if the employee requests this service, the QRC may contact the health care provider, as part of medical management activities, to ask for an interpreter to be present at a coming medical appointment or service.

***Practice tip 4.2:*** If the QRC proposes to coordinate interpretive and/or translation services to facilitate communication between the employee and health care providers, the QRC is encouraged to include these coordination services in the R-2 (Rehabilitation Plan) form and R-3 (Rehabilitation Plan Amendment) form with documentation of the need for interpretive or translation services in the accompanying narrative report. It may also be a good idea to memorialize in writing or incorporate in the rehabilitation plan any ensuing agreements with the insurer.

**5. Provision of interpreter services to facilitate communication for the purpose of providing “rehabilitation services” as defined by Minnesota Rules 5220.0100, subp. 29.**

Because the purpose of vocational rehabilitation is to assist the employee to return to suitable, gainful employment as soon as possible, translation and interpreting services designed to allow communication between the QRC and employee may also be included as part of the rehabilitation plan.

**Practice tip 5.1:** Rehabilitation providers are encouraged to indicate in the R-2 (Rehabilitation Plan) form or R-3 (Rehabilitation Plan Amendment) form if the QRC proposes to coordinate interpretive and/or translation services to facilitate communication between the QRC or job placement specialist and the employee with documentation of the need for interpretive or translation services in the accompanying narrative report. Discuss with the claims adjuster why the services are needed. For example: because the QRC determined it was difficult to communicate due to the employee's limited English language skills; or because the employee requested an interpreter or translation of documents to better participate in the vocational rehabilitation process. It may also be useful for the QRC to specify who will be providing the interpreting services (name of the agency or individual, plus contact information). It may also be a good idea to memorialize in writing or incorporate in the rehabilitation plan any ensuing agreements with the insurer.

**Practice tip 5.2:** While a bilingual QRC may be able to communicate better with a limited English-speaking employee, it is not advisable that the same QRC also provides interpreter/translation services for the employee when meeting with a third party (such as placement specialist, prospective employer or health care provider) with, perhaps, the exception of short and incidental communications not dealing with substantive issues regarding the rehabilitation plan.

## **6. Addressing other specific barriers a foreign worker or limited English-speaking qualified employee may have**

**Practice tip 6.1:** In cases where the injured worker may have limited English language, literacy or other education-related barriers to employment, the QRCs may consider whether a skill-enhancement course, such as Adult Diploma, General Education Development (GED), English as a Second Language (ESL or ELL), Family Literacy, Basic Skills Enhancement (brush-up), Workplace Literacy or U.S. Citizenship/Civics, should be part of the retraining or rehabilitation plan. These adult basic education (ABE) courses are offered free of charge in most Minnesota counties. For more information about such services, call 1-800-222-1990 or visit [http://education.state.mn.us/MDE/Learning\\_Support/Adult\\_Basic\\_Education\\_GED/index.html](http://education.state.mn.us/MDE/Learning_Support/Adult_Basic_Education_GED/index.html).

---

I hope you have found this information useful. Contact me directly or call the workers' compensation hotline at the Minnesota Department of Labor and Industry – 1-800-342-5354 – if you have questions.

Thank you!

Francisco J. González  
Mediator/Arbitrator (English/Español)  
Minnesota Department of Labor and Industry  
Workers' Compensation Division  
P.O. Box 64221  
443 Lafayette Road N.  
St. Paul, MN 55164-0221  
(651) 284-5202 or [francisco.gonzalez@state.mn.us](mailto:francisco.gonzalez@state.mn.us)

## Other resources

### **Workers' compensation workshop --Working with interpreters: a multicultural experience**

In October 2009, the Department of Labor and Industry hosted the “Working with interpreters: a multicultural experience” workshop to help stakeholders become more familiar with the issues surrounding the use of interpreter services in the workers' compensation context. To view presentations and some of the materials related to the workshop visit [www.dli.mn.gov/WC/InterpWorkshop.asp](http://www.dli.mn.gov/WC/InterpWorkshop.asp).

### **Workers' Compensation Division Web pages**

The workers' compensation system's purpose is to minimize the impact of work-related injuries and illnesses on workers and employers. Learn about the Minnesota Department of Labor and Industry' Workers' Compensation Division at [www.dli.mn.gov/WorkComp.asp](http://www.dli.mn.gov/WorkComp.asp).