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## **The Vermont Legislative Research Shop**

### **Workers' Compensation Reform**

#### **What it is?**

Workers' compensation laws are created and maintained on a state-by-state basis with an attempt to provide money and medical benefits to an employee who has an injury as a result of an accident, and injury or occupational disease on-the-job. Workers' compensation is intended to protect workers and their dependents against the hardships incurred from injury or death related to the work environment. Nonetheless, it is intended to benefit the employer as well as employee. The employee receives money (usually on a weekly or biweekly basis) and medical benefits in exchange for forfeiting the common law right to sue the employer. The employer receives full immunity from legal sanctions being taken against him/her in exchange for accepting full liability for any accident that occurs on work grounds. The question of negligence or fault is usually not at issue (Workerscompensation.com).

#### **How it works**

Employers in most states are required to buy coverage for their employees from a workers' compensation insurance company. When a worker is injured, it is their duty to file a claim with the insurance company who then will pay medical and disability benefits (Nolo). The rates of workers' compensation premiums are based on the "classification" of the employee that is being covered. The specific insurance company then creates a premium rate for each classification, based on the type of work the employee performs (Michigan Economic Development Corporation, 2001). While employer usually purchases workers' compensation from an insurance company, the employee never accepts the cost of workers' compensation (FreeAdvice.com).

#### **Current problems**

Nearly every state is struggling with the issue of workers' compensation. The main problem that seems to be casting its shadow over the system is the issue of high cost.

The total employer's cost of workers' compensation as a percentage of payrolls has more than doubled from 1972 to 1992. During the same period, injuries involving lost workdays increased up to 18%. The result was a ten-fold increase in overall workers'

compensation costs from \$5.8 billion in 1972 to an estimated \$63.9 billion in 2001 (Braunstein, 15 July 2003).

In California for example, the workers' compensation premium costs jumped from \$5,500 two years ago to \$35,000 this year (Occupational Hazards, 2004). In many of the states' reforms, the main goal is to reduce the overall burden of workers' compensation on employers. Some of the issues that are causing costs of workers' compensation to increase are fraud, increased attorney involvement, terrorism, lack of workplace safety and pharmaceutical fees.

### **Fraud**

New York's landmark 1996 workers' compensation reform created the Office of Workers' Compensation Fraud, an Inspector General, and a workers' compensation fraud unit at the State Insurance Department. It also required all insurers in New York State to create and maintain a special fraud investigation unit and elevated workers' compensation fraud from a misdemeanor to a class felony punishable by fines, restitution, and incarceration (New York State Workers' Compensation Board, 2000). Before New York's comprehensive fraud reforms, Arkansas tackled the issue, creating a Fraud Investigation Unit in its 1993 workers' compensation reform (Little Rock Regional Chamber of Commerce, 2001).

### **Increased Safety**

New York has also enacted reforms dealing with work place safety and created the Employment Safety and Security Act (New York State Governor, 1998). The reforms made it much more difficult for New York employers to sue manufacturers whose equipment caused an injury. In addition, the reform required employers with poor safety records to institute safety programs while creating new anti-fraud protections (New York State Governor, 1998). Although the state recognizes that other factors could be responsible for the following year's 25% decrease in workers' compensation rates, they can attribute at least part of it to the safety reforms (New York State Governor, 1998).

In 1990, Oregon enacted major reforms to their workers' compensation program that functioned to create a joint labor-management safety committee, stiff fines for OSHA safety violations and a pervasive public program of voluntary consultation by safety and prevention experts at individual workplaces. The reform also requires employers with 10 or more employees to set up a worker-management safety committee that pressure employers to become more conscious by investing in safety. The reform authorizes inspections that target employers with the worst safety records. The state offers voluntary safety consultations and safety grants to employers. The deregulated rates cause insurers to compete for business on the basis of safety, while ensuring potential policy holders that its safety experts will work with the employer to reduce accidents and costs below current levels. It has also encouraged groups of smaller employers to buy group coverage (Chelius and Moscovitch, 1996). This newfound emphasis for safety has pushed the number of disability claims down by 20% and fatalities by 16% between 1989 and 1992

alone. In addition, employers in Oregon have realized more than a 40% reduction in workers' compensation rates since the reforms, despite significant benefit increases (Hunt and Habeck, 2004).

### **Substance Abuse**

Another problem aggravating the rising cost of workers' compensation claims is substance abuse. Substance abusers file three to five times more workers' compensation claims than the average employee and account for 38-50% of all claims, while costing their employers about twice as much in medical and workers' compensation claims than drug-free employees (National Conference of State Legislatures). Research by the NCSL in 2003 note 21 states allow employers to reduce or deny benefits to substance abusers and employees accused of misconduct. Recently, some 11 states have taken pre-emptive action to promote drug-free workplace programs by offering a premium reduction for all employers who comply with the regulations. Some participating states include Alabama, Arkansas, Florida, Georgia, and Hawaii, and the regulations typically require companies to have a written substance abuse policy applicable to all employees, conduct drug and alcohol testing, and provide employee assistance programs for those testing positive (National Conference of State Legislatures).

### **Permanent Disability**

Before Jeb Bush and the Florida Legislature passed major comprehensive reforms in May of 2003, the Florida workers' compensation program hurt workers more than it helped. While employers endured some of the nation's highest workers' compensation premiums, workers received the least in benefits paid. In addition, permanent total disability claims in the state were five times as great as the national average. The severity of these problems prompted the legislature to completely reform the entire framework of the program. A main purpose of the reform was to make it harder for employees to claim permanent disability. The legislature addressed this issue by altering the definition of catastrophic injury from the loss of one limb to the loss of both. Florida had previously allowed all workers who were eligible for Social Security disability benefits to automatically qualify for workers' compensation permanent disability benefits. After the reform, it would take a catastrophic injury or proof that the employee could not find sedentary employment within 50 miles of home to receive such workers' compensation benefits (Stafford, 29 May 2003). Another amendment cut short the payment of benefits for mental injury to a six month maximum.

Many insurance companies and businesses in New York blame their uniquely expensive workers' compensation system largely on a similar provision within the state's workers' compensation program. The "permanent, partial disability" provision of New York's workers' compensation program allows workers to collect benefits for life. Unions charge the state with denying an increase in benefits for the last 12 years. In New York, injured workers generally collect considerably less, but sometimes for considerably longer periods of time, than workers elsewhere. This explains how the benefit to workers is substandard, while figures compiled by the National Council on Compensation

Insurance affirm the cost in New York is 72% higher than the national average. The “permanent partial disability” provision only applies to 13% of all claims, yet saddles business with 77% of the total cost. Gov. Pataki's proposal would bring an end to lifetime compensation, limiting benefits to about ten years, while increasing the weekly maximum benefits. His proposal claims it will reduce business costs by a projected average of 15%. Some believe Pataki's reform will help to finally find a way to provide additional protections for injured workers without unduly affecting the business community. Others maintain the need for an increase in benefits as well as keeping permanent partial disability payments (Park, 5 Sept. 2002).

### **Other Reforms**

Texas undertook highly successful comprehensive reforms in the late 1980s that resulted in a substantial reduction in premium prices, benefits paid, and claims filed. Insurers in Texas reported that total benefits paid in the first 18 months under the new law (1991-1992) were 38% lower than before the reform. For many states, such reforms resulted in decreased benefit levels. Texas, however, was able to achieve these results while increasing benefit levels for injured workers. In Texas, impairment benefits are paid regardless of whether the claimant returns to work (Chelius and Moscovitch, 1996).

In Texas, workers compensation insurance premiums were deregulated, and the Texas Workers' Compensation Insurance Fund (a state-run insurance company) was established to emphasize safety and to concentrate on smaller employers. The fund can apply a surcharge of up to 75 percent on employers in the residual market with poor safety records. Both the fund and private insurance carriers can establish separate, lower premium schedules for employers they believe to be at high risk. In this instance, rate deregulation reinforces the statutory emphasis on worker safety (Chelius and Moscovitch, 1996).

California, the most expensive and arguably most dysfunctional workers' compensation system, has finally passed reform bill. The most important parts of the reform include permitting the insurer and employer the choice of doctor, not regulating insurance rates, and setting a higher standard of proof for workers claiming an injury. California's workers' compensation costs have soared in recent years, increasing from \$6.4 billion in claims paid in 1997 to an estimated \$25 billion last year. The average cost of dealing with workplace injuries also has risen dramatically, from \$2.68 per \$100 of payroll in 2000 to \$6.30 per \$100 in 2003 — the highest rate in the nation (Wasserman, 14 Apr. 2004).

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