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About the Authors

RICHARD A. VICTOR is the executive director of the Workers Compensation Research Institute. Dr. Victor holds both a Ph.D. in economics and a law degree from the University of Michigan, where he was the George Humphrey Fellow in Law and Economic Policy. He was a principal researcher at the Institute for Civil Justice at The Rand Corporation. Dr. Victor is a frequent speaker and author on workers' compensation public policy issues.

RICHARD J. FEIN is executive vice president and chief operating officer of the National Council on Compensation Insurance. He has worked with NCCI for thirteen years. He holds a Ph.D. in mathematics. Dr. Fein is a fellow of the Casualty Actuarial Society and of the Conference of Actuaries in Public Practice.

EDWARD M. WELCH has been director of Michigan's Bureau of Workers' Disability Compensation since 1985. Before that, he was an attorney representing injured workers. Mr. Welch, who received his law degree at the University of Michigan, is the author of *Workers' Compensation in Michigan: Law and Practice.*

JAMES N. ELLENBERGER has been the assistant director of the AFL–CIO's Department of Occupational Safety and Health since 1984, and has worked for the AFL–CIO since 1972. Mr. Ellenberger has written extensively on international labor affairs. He received his B.A. in political science at San Francisco State University.

THOMAS J. RITTENHOUSE is the director of risk management at GenCorp, Inc. He has been working in the field of risk management since 1972, and has published papers on the subject. Mr. Rittenhouse received his B.A. from Point Park College.

GARY L. COUNTRYMAN is president and chief executive officer of Liberty Mutual Insurance Group. He began working for Liberty Mutual in 1963, after receiving his master's degree in business and economics from the University of Oregon. Mr. Countryman currently serves on the board of directors of several organizations, among them the Alliance of American Insurers and the Insurance Service Office.

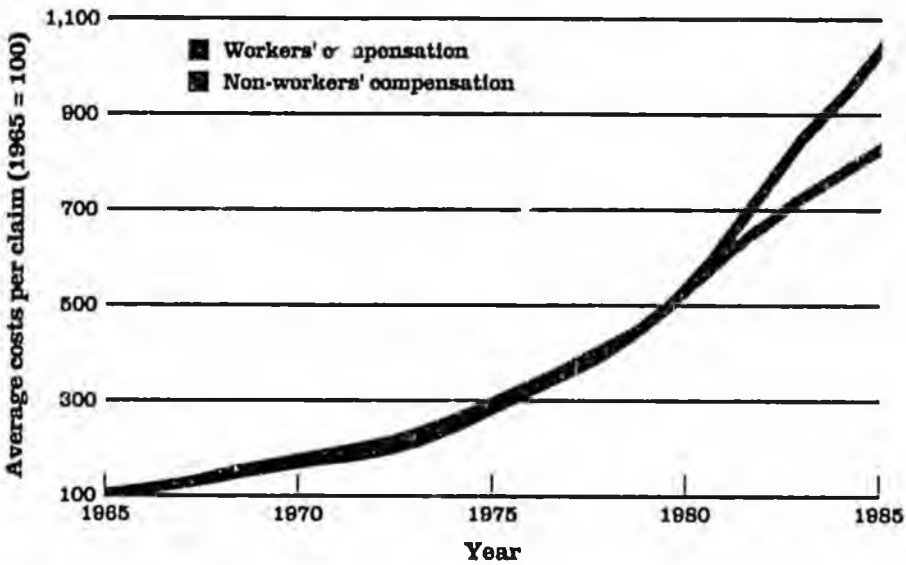
Contents

Table 2.1. Average Medical Costs in Workers' Compensation, 1984

Jurisdiction	Average Medical Cost* (dollars)	Average Annual Growth, 1980–1985 (percent)
Alaska	1,672	10.9
Louisiana	1,363	19.0
California	1,270	15.6
New Mexico	1,259	16.1
Hawaii	1,218	15.0
Texas	1,201	18.2
District of Columbia	1,080	7.7
Oregon	1,057	17.0
Oklahoma	1,036	16.8
Montana	1,017	†
Minnesota	956	13.1
Florida	918	12.5
Arizona	860	10.1
Maine	827	15.6
Colorado	825	15.6
Maryland	814	13.2
Illinois	811	11.2
Idaho	786	12.8
Arkansas	779	11.0
Georgia	776	13.4
Alabama	754	13.1
Kentucky	748	14.8
New Hampshire	747	14.6
Mississippi	737	13.1
Rhode Island	730	10.7
New Jersey	724	12.6
Kansas	708	12.3
Michigan	700	8.8
Virginia	698	11.8

* Average cost per client.
† Data are not comparable.

Figure 2.1. Trends in U.S. Medical Costs: Workers' Compensation Versus Non-workers' Compensation



SOURCE: Boden and Fleischman (1989), p. 16.

- Workers' compensation systems have been slower than other systems in developing cost containment programs. Non-workers' compensation costs have risen more slowly as a consequence.
- In response to non-workers' compensation cost containment initiatives, medical providers may have shifted additional costs to programs with less stringent constraints on reimbursement, notably workers' compensation.
- Other forces affect workers' compensation medical costs. For example, medical services may be used more when litigation increases or when utilization of the workers' compensation system increases as a result of economic recession (as it did in the early 1980s).

The challenge to the states is to contain rapidly rising medical costs while providing workers with access to quality medical services. States may be helped in their efforts to contain medical costs by looking to systems that have been able to control their costs. A recent WCRI study demonstrates the wide variation in average medical costs per state and in the rate of growth of these costs (Boden and Fleischman 1989). Table 2.1 lists average workers' compensation medical costs in each of forty-six jurisdictions. It also describes how these costs changed from

- To encourage employees to return to work
- To create self-executing nonlitigious systems for delivering workers' compensation benefits
- To effectively administer the system
- To impose affordable and stable costs on employers and insurers

Although most workers' compensation systems have achieved these goals in a majority of claims, many have not in claims where legal issues of causation, diagnosis, or extent of disability are not easily determined (for example, back injuries and occupational diseases). Unfortunately the claims for which the systems are not functioning well can represent a significant portion of cases. More important, they will increase over the next decade.

In this paper we discuss some of the challenges facing workers' compensation systems in three important areas where the need for improvement appears significant in a number of states: medical cost containment, benefits, and litigiousness.

Other challenges that confront the systems include improving safety at the work site and restoring balance in insurance pricing mechanisms. Other papers in this book address these issues.[1]

Soaring Medical Costs

Soaring medical costs present a major challenge to both workers' compensation and the entire health care system. Statistics document that medical prices have risen much faster than consumer prices generally. Medical costs now account for more than 11 percent of gross national product. In workers' compensation, expenditures on medical care grew by nearly 400 percent from 1975 through 1985, the most recent year for which data are available. Medical costs now account for approximately 40 percent of all workers' compensation benefit payments, and they are the fastest growing component of those payments (Boden and Fleischman 1989).

However serious the problem is outside workers' compensation, evidence suggests that soaring medical costs are more of a problem for workers' compensation. As Figure 2.1 indicates, average workers' compensation medical costs grew much faster than non-workers' compensation medical costs after 1980 (Boden and Fleischman 1989). Although research has yet to quantify the reasons, several factors seem to be at work:

1. In particular, see the chapter by James N. Ellenberger for a discussion of safety issues, and the chapters by Gary L. Countryman and Richard I. Fein for discussions of insurance pricing issues.

2

Major Challenges Facing Workers' Compensation Systems in the 1990s

RICHARD A. VICTOR

Introduction

Throughout most of this century, victims of industrial disabilities have looked to state workers' compensation systems to provide medical treatment and replace lost income. These no-fault systems replaced traditional fault-based tort remedies. As a result, the majority of injured workers receive prompt medical treatment and income benefits from a system that is largely self-executing. The no-fault concept — employer liability even when the injury arises entirely from the worker's own negligence — increases workers' security and reduces the need for expensive time-consuming litigation. In return, workers accept benefits that provide less than full income replacement and limit payments for less tangible damages. The system creates incentives to return to work and mitigates the cost to employers of expanded access to compensation.

Modern workers' compensation systems throughout the United States share six goals:

- To provide adequate and equitable benefits to injured workers
- To promptly pay those who are eligible

This paper is based on a presentation made in October 1989 by Dr. Victor at WCRI's Annual Issues and Research Conference.

Chapter 4 contains the thoughts of one of the nation's leading workers' compensation state administrators. Edward M. Welch, director of the Michigan agency, reports that there are untapped "win-win" cost containment strategies for employers and employees. He discusses the results of a study in Michigan that suggests several directions employers can take.

The perspective of organized labor is presented in Chapter 5 by James N. Ellenberger, assistant director of the AFL-CIO's Department of Occupational Safety and Health. He points out deficiencies in benefits and safety that have yet to be addressed, that remain as outstanding challenges for the 1990s. And he reminds us that cost containment is not an end in itself, that the system should be designed to prevent injuries and compensate those who are injured. Meeting these challenges is crucial to retaining the confidence of injured workers.

In Chapter 6, Thomas J. Rittenhouse, director of risk management at GenCorp, offers the employer's view. He gives us a list of challenges, among them improving the distribution of benefits to compensate according to the actual severity of disability, reducing litigation and lump sums, and eliminating the tax bias against self-insurance.

Finally, Gary L. Countryman, president of Liberty Mutual Insurance Group, calls for a new order to meet the challenges to the system. "Since inordinate cost escalation is the root cause that threatens the system and inadequate rates are merely the result, it follows that reform is our best and only hope. What is needed is a strategy and a structure to achieve reform across a broad array of states, each with its own culture, its own system, and its own problems."

Together these papers give us stimulating insights into the challenges facing workers' compensation professionals as we move into a new decade and prepare for a new century.

cost containment activities. Employers are looking to their insurers (or the industry) to control the system-level cost drivers.

In Chapter 7, Gary Countryman, the president of the nation's largest workers' compensation insurer, writes that coalitions that include at least representatives of employers and workers, with the help of insurers and other interested groups, are needed to achieve constructive reform that preserves the basic objectives of workers' compensation systems.

Frustration with Reforms

Demands for reform arise from one or more interests in a growing number of states. Yet many of these states implemented major reforms that were heralded as "successful" during the late 1970s and 1980s. Florida and Massachusetts are just two of a growing list of examples. In retrospect, questions are being asked about whether the reforms have addressed the underlying problems or merely the visible symptoms. Questions also arise about whether dynamic systems need regular monitoring and periodic reform.

The cycle of reform and disappointment could produce a cynicism that increasingly questions whether workers' compensation objectives can be adequately achieved. Or it can produce a commitment to learn the lessons and "do better" next time. The next attempts will be served by a clearer understanding of two critical elements of successful reform: (1) what actually works to achieve the promised results and (2) what changes in the political process can lead to improved and more stable results.

Contents and Scope

This book contains papers by six experts. Each offers a unique perspective on the major challenges facing workers' compensation systems in the 1990s. In Chapter 2, Dr. Richard A. Victor, executive director of the Workers Compensation Research Institute, describes research on three key challenges:

- Containing medical costs
- Redressing the maldistribution of benefits
- Reducing litigation

In Chapter 3, Richard I. Fein, executive vice president of the National Council on Compensation Insurance, describes the deteriorating insurance market, a product of costs escalating faster than premiums, and discusses efforts to meet this challenge.

in litigated cases. And most state agencies focus on dispute resolution, not dispute prevention. Dispute resolution procedures emphasize adversariness rather than prompt, efficient, and fair outcomes.

Rethinking Medical Care Delivery and Payments

The past decade has seen increased activity to contain medical costs — enacting fee schedules and other reimbursement regulations, mandating utilization review, encouraging competition among providers, and so on. The 1990s will see continued experimentation and new initiatives.

However, unless these show results, the rapid growth of medical costs and our apparent inability to contain those costs may force us to reexamine traditional ideas of how medical care is provided — in general and in workers' compensation. In the larger health care system, the constituency for dramatic solutions (national health insurance, rationing care to achieve stated expenditure targets) grows. Because workers' compensation is just a small part (2 percent) of the larger health care system, this mood undoubtedly will spill over to workers' compensation systems in unforeseen and unforeseeable ways. Discussions of twenty-four-hour care and managed care are just the beginning.

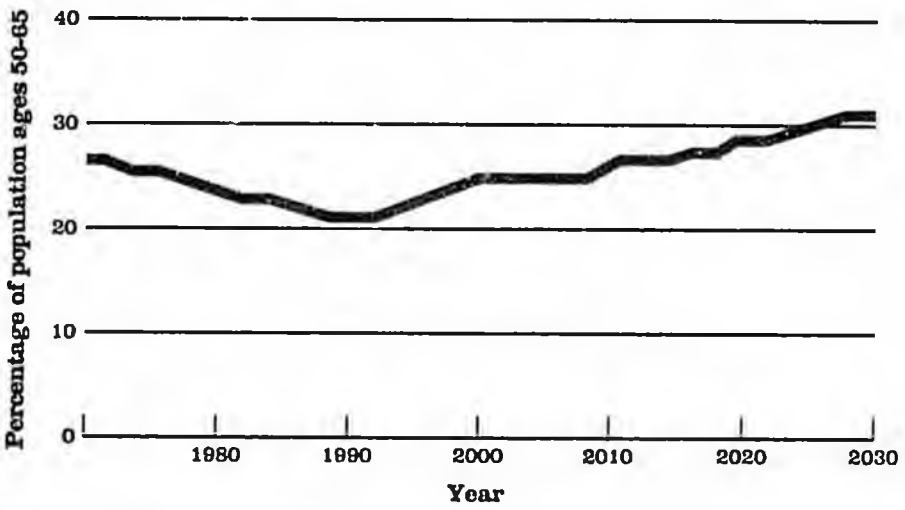
Insistence That Insurers Contain System Costs

Faced with yearly double-digit rate increases, employers are expressing with increasing vehemence their frustration with the costs of the system. Yet many employers, especially small employers, do not adequately understand the sources of cost increases and feel powerless to contain costs at a system level.

Often we hear small employers decry significant premium increases, especially when they have not had claims in several years. This is the same complaint offered by good drivers who see their auto insurance premiums go up. In both instances, the frustration arises from cost drivers outside the individual policyholder's and insurer's control — *system-level cost drivers* — the basic rules of the game that determine utilization, litigation, and benefit payments. In both instances, the policyholder vents frustration by "shooting" the messenger — the insurer.

Growing employer dissatisfaction with rising rates and the reluctance of some insurance regulators to approve adequate rates are symptoms of this frustration. Implicit here is that someone should be responsible for containing the growth of system costs. Insurers readily accept certain cost containment responsibilities for individual policyholders. Employers report that insurer-provided loss prevention services are the single most influential factor affecting their safety actions (Sims 1988). And insurer-provided claims services are highly valued by policyholders as

Figure 1.2. Labor Force Grays



cohort, the "baby bust." The 1990s will bring this trend home to us in striking ways, as labor force growth averages just 1 percent annually, and much less in the next century. The labor market will be a seller's market — workers will be choosier and change jobs more often. And employers will have to work harder to find and retain valued employees.

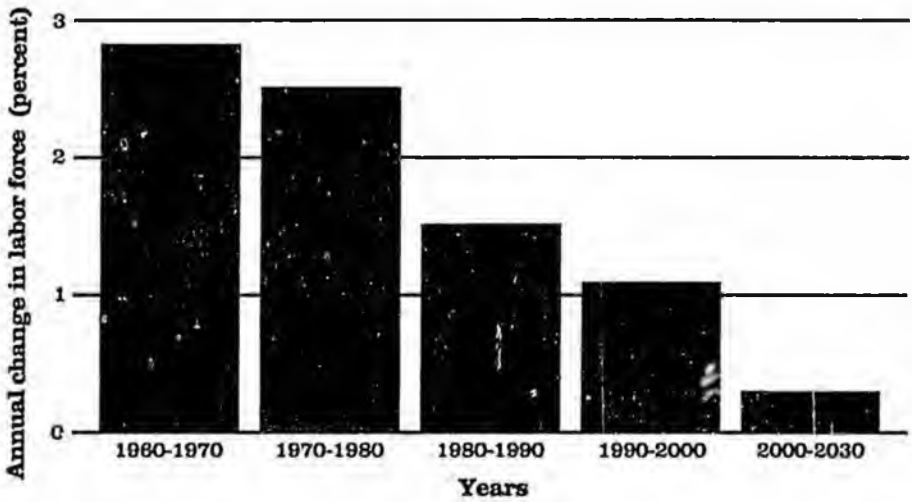
What are the consequences of the new demographics for workers' compensation?

- Accelerating automation and lower injury rates as workers become more difficult and more expensive to find
- A stronger emphasis by employers on return-to-work programs
- An aging labor force that will tend to have disabilities of longer duration and more cumulative injuries (Figure 1.2)

Increasing Litigation and Complex Claims

Older workers are more likely to have diseases associated with both the workplace and the aging process: hearing loss, joint diseases, back problems, cardiac and respiratory diseases, and cancers. These cases typically are litigated. With older workers comprising a larger share of the labor force, litigation will increase significantly. Most state systems are not prepared to meet this challenge. State agencies do not have the staff and budgets to accommodate a sizable increase

Figure 1.1. Labor Shortage Looms



The Context of the 1990s

Many themes will shape workers' compensation unless system reforms resolve some major issues. Among the most significant are the following:

- New demographics that will produce major changes in the labor market: a labor shortage and the rising prominence of older workers
- Increasing litigation arising in part from the growth of complex claims
- A major rethinking of the ways that medical care is provided generally and in workers' compensation
- A growing insistence by employers that insurers find new ways to contain system costs
- Increasing frustration with the political process and reform efforts that have not produced promised results

The New Demographics

During the 1960s and 1970s, we grew accustomed to a plentiful supply of labor. As the baby boomers entered the labor market in record numbers, the labor force grew by at least 2.5 percent each year for twenty years (Figure 1.1). That began to change in the 1980s, as the baby boomers were succeeded by a much smaller

1

The Context of Workers' Compensation in the 1990s

RICHARD A. VICTOR

As we enter a new decade, we often reflect on where we have come from and where we are going on issues of personal, national, and international significance. The popular media barrage us with end-of-decade reviews — some substantive and insightful, others nostalgic or humorous. For workers' compensation professionals, the 1980s were a decade of challenge and increasing frustration. Costs rose dramatically; medical costs exploded, rising even faster than they did in the non-workers' compensation arena; insurers saw losses mount; benefit levels in some states remained low relative to accepted standards; and litigation seemed to increase despite efforts to reduce it. Too often, reforms that were implemented with enthusiasm and optimism were followed by disappointment with the results achieved.

The 1990s provide many challenges, some old and some new. Most important, the 1990s give us an opportunity to use more effectively the lessons learned from nearly two decades of workers' compensation reform in the wake of the report of the National Commission on State Workmen's Compensation Laws in 1972. This book offers the insights of some the nation's leading workers' compensation experts on these challenges and lessons. These experts come from diverse backgrounds: the chief executive officer of the nation's largest workers' compensation insurer, a national spokesman from the labor movement, the director of an innovative workers' compensation state agency, a leading risk manager, the executive vice president of the nation's largest insurance rating bureau, and a researcher.

Challenges for the 1990s

List of Figures

Table 2.1 continued

Jurisdiction	Average Medical Cost* (dollars)	Average Annual Growth, 1980–1985 (percent)
South Dakota	690	12.7
Connecticut	684	14.8
New York	676	13.1
Missouri	649	15.4
Tennessee	630	11.4
Iowa	614	12.2
Nebraska	604	12.4
South Carolina	603	12.8
Utah	593	†
Wisconsin	584	12.7
Vermont	572	10.8
Indiana	450	11.2
North Carolina	432	10.1
Arizona	†	10.1
Washington	†	12.1
Ohio	†	9.7
Massachusetts	†	9.6

* Average cost per client.
† Data are not comparable.

SOURCE: Boden and Fleischman (1989).

1980 to 1985. The higher-cost states show costs that are more than double those of the lower-cost states. From 1980 to 1985, medical costs grew at an average annual rate of more than 15 percent in the states with most rapid growth, but at less than 10 percent in slower-growth states.

Policymakers should ask several questions:

- Are there lessons to be learned from lower-cost or slower-growth states?
- What factors help explain the results?
- What has happened to access to medical care in lower-cost states?

Maldistributed Benefits

A second challenge facing workers' compensation systems is improving the maldistribution of income benefits. The two most common income benefits are weekly benefits for temporary disability and additional payments for any residual permanent consequences of an injury. Both types of payments suffer from significant maldistribution.

TEMPORARY DISABILITY

In all states, workers receive weekly benefits for temporary disability — typically two-thirds of their lost before-tax earnings. For the majority of workers, benefits replace 80 to 100 percent of their after-tax income loss. However a significant fraction of workers receive either more than 100 percent of lost before-tax earnings or less than 80 percent. These disparities are a product of the statutory design of benefit structures.

In a WCRI study of sixteen states, Victor and Fleischman (1989) found that fifteen had a significant percentage of workers who received either more than 100 percent of after-tax earnings from workers' compensation or less than 80 percent (Table 2.2). All base benefits on a fraction of the worker's before-tax earnings. The sixteenth state — Michigan — was the exception. In Michigan, benefits are based on a percentage of the worker's after-tax earnings. For temporary disability, benefits based on a percentage of the worker's after-tax (spendable) earnings provides a more equitable distribution of benefits.

PERMANENT DISABILITY

Most workers heal completely from their injuries and return to work at their old jobs. However some workers sustain permanent consequences from an injury. These workers receive additional benefits.

The conceptual basis for additional benefits varies widely from state to state. Some compensate for future physical consequences (for example, reduced range of motion in a joint or persistent pain). Others compensate for reduced future earnings caused by physical limitations. In either case, the extent of physical or vocational disability must be determined in order to establish the benefit amount. Often that determination is made without a strong scientific basis. Back injuries are the most common source of claims for permanent disability.

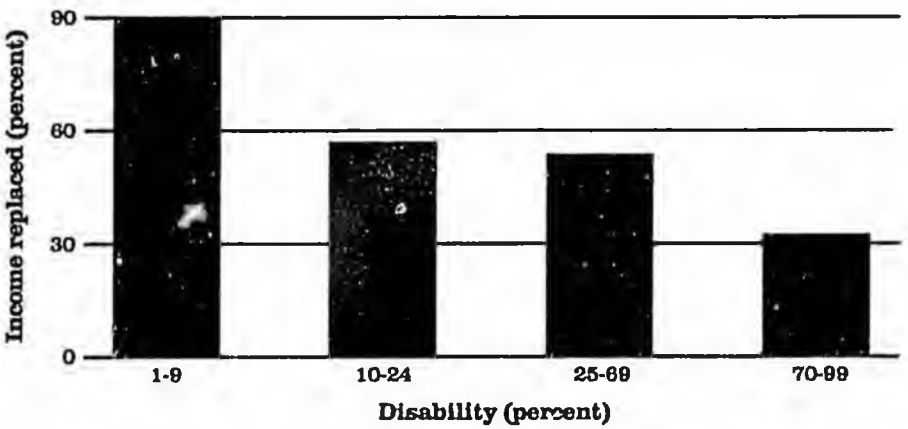
Evidence from several studies indicates that permanent disability benefits overcompensate those with minor disabilities and undercompensate those with serious disabilities. For example, a study by the California Workers' Compensation Institute (1984) found a maldistribution among permanent partial disability

Table 2.2. Workers with Higher or Lower Replacement Rates, by State and Benefit Feature Responsible, 1988*

Replacement Rates	Percentage of Workers' Compensation Recipients in															
	CT	IL	MA	MN	OH	PA	TX	CA	FL	GA	LA	NY	NC	WA	WI	MI
Between 80 and 100 percent	81	78	82	61	78	71	39	49	78	48	68	78	80	41	83	92
Over 100 percent	19	17	13	38	16	25	29	9	1	0	2	0	2	0	5	5
Because of																
High minimum benefit	3	4	1	31	9	20	—	9	—	—	2	—	—	—	—	—
High maximum benefit	16	13	10	7	7	5	—	—	1	—	—	—	2	—	5	5
Other factors	—	—	2	—	—	—	29	—	—	—	—	—	—	—	—	—
Under 80 percent	0	5	5	1	6	4	32	42	21	52	30	22	18	59	12	3
Because of																
Low gross replacement rate	—	5	2	—	4	—	—	6	17	14	15	10	18	37	7	—
Low maximum benefit	—	—	3	1	2	4	32	36	4	38	15	12	—	22	5	3

* Other factors include dependents' allowances (Massachusetts) and the method of calculating the worker's average weekly wage for the purpose of computing benefits (Texas). In Texas, the group of workers noted in the table received 99 percent, which we regard as essentially equivalent to 100 percent for our purposes here.

Figure 2.2. Income Replacement, Permanent Partial Claims in California, 1975–1977



SOURCE: CWCI (1984).

recipients in California from 1975 to 1977. Based on interviews with over one thousand workers, the study found that those with minor disabilities (less than 10 percent permanent impairment) receive almost all of their before-tax income loss from workers' compensation benefits (Figure 2.2). Those who suffer significant permanent disabilities (between 10 and 69 percent permanent impairment) receive between 50 and 60 percent of their before-tax income loss. However, those with the most severe permanent disabilities (greater than 70 percent permanent impairment) receive only 33 percent of their before-tax income loss.

California enacted significant reforms in its workers' compensation system in 1989, but several features of the state's permanent partial disability system were similar to those in other states. So the significance of the study remains: Those with the greatest needs — those with the most severe permanent impairments — are the worst served by the design of many workers' compensation systems.

Assessing Benefit Utilization

Some observers attribute increasing workers' compensation costs to increased use of the system. Increased use is not a public policy problem if workers are making legitimate claims and receiving benefits for which they are eligible. The question that has been raised, however, is the possibility of increased use in other circumstances, where workers are not necessarily eligible and/or receive benefits despite being able to work.

There are many reasons for increased use of the system, and research is needed to better measure utilization and to clarify whether it is appropriate or not. However evidence points to several sources of increased use, namely rising benefit levels, new types of claims, and economic downturns.

A recent study by WCRI identified a very strong relationship between increased benefits and increased utilization (Gardner 1989). The study found that if benefits increase by 10 percent, utilization increases by 5 percent. Increased utilization here is due to reports of more lost-time claims and the extension of claims for longer durations. When benefits are changed, policymakers should be aware of the effect on utilization and system costs.

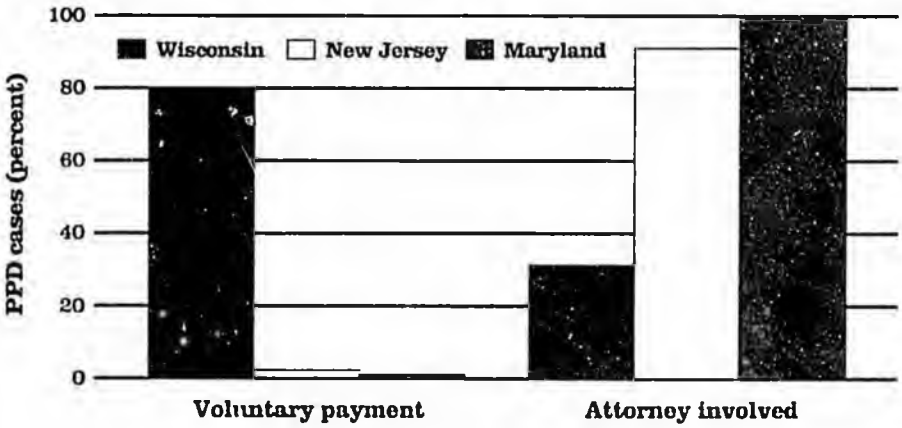
Some of the increased use of the system stems from new types of claims that are being deemed compensable. That is, claims that have not traditionally been a part of workers' compensation systems in the past regularly surface. An example is the mental stress claim, which has become much more common in several states. In California, for example, mental stress claims have more than quintupled from 1980 to 1986 (CWCI 1988a). These types of claims raise two central issues, one conceptual and one practical. First, there is no clear definition of what should be compensable. Too often legislatures leave a definition to the courts. Second, these claims require practical proof of work relatedness where an illness may have both personal and work-related origins. Difficult medical issues of diagnosis and causation must be resolved, too often on a weak scientific basis.

Evidence is emerging that workers' compensation benefits are more heavily used in times of economic distress. The severe recession that hit Michigan saw a surge in claims by workers taking early retirement from automobile companies (Hunt and Eccleston 1990). The recession in Texas saw an increase rate of claim filing and a significant increase in the duration of lost time (Barth, Victor, and Eccleston 1989; Joint Select Committee 1989).

Reducing Litigation

There has been growing concern in the past decade about the societal problem of increased litigation, both in workers' compensation and in court systems. Litigation is very costly. In California, an extreme example, litigation costs in workers' compensation exceeded $1 billion in 1988 (CWCI 1988b).

Figure 2.3. Litigiousness in Three States



SOURCE: Boden (1988).

Litigation in workers' compensation probably will continue to escalate in the future. One important reason is the aging of the labor force. An older labor force means more claims associated with the ordinary diseases of aging — for example, back and joint problems, hearing losses, respiratory problems, and cardiac diseases. All of these raise difficult issues of causation, diagnosis, and extent of disability — the most often litigated issues.

However, even with an aging labor force, the amount of litigation in many workers' compensation systems is unnecessarily high. A recent study indicates that the design of the typical workers' compensation system encourages litigation (Boden 1988). The study also found that there are less litigious alternatives available. This study examined back injuries with permanent disability — the most frequently litigated cases in most states. Two of the states studied, New Jersey and Maryland, use typical approaches to resolving these cases. As Figure 2.3 shows, both are very litigious: Attorneys are regularly involved, and voluntary payments of permanent partial disability benefits are rare. A third state, Wisconsin, uses a different approach and achieves very different results.

Wisconsin shows how a state can design its system to reduce litigation significantly. The Wisconsin system has four features that help reduce litigation:

- Active and early involvement by the state agency to prevent disputes.
- Clear disability evaluation guidelines that encourage prompt voluntary payments by insured employers.
- Heavy reliance on a nonadversary expert, the treating physician.

- Dispute resolution by final-offer adjudication. Under this procedure, an adjudicator who receives conflicting disability evaluations from adversary experts cannot simply split the difference. The adjudicator must select one evaluation — the most credible. This procedure creates incentives to rely on the treating physician's evaluation and reduces incentives to use "dueling" adversary experts.

The study also found that the design of the system, not a nonlitigious climate often attributed to Wisconsin, actually reduced litigation. When governed by the procedures typically used in other states, the Wisconsin system shows markedly more litigation.

THE TYPICAL SYSTEM

Most workers' compensation systems are ill equipped to handle current levels of litigation, let alone the challenge of growing litigation. Apart from limited resources, the typical workers' compensation system has characteristics that tend to discourage voluntary payment of difficult cases and encourage attorney involvement.

First, the typical state agency's posture is often a passive one. Rather than intervening and preventing disputes, the agency waits for disputes to be brought forward. Usually at this point an attorney already has been hired. Unlike the agency in Wisconsin, most agencies are in the business of dispute resolution, not dispute prevention.

Second, the typical system relies heavily on partisan experts to resolve disputes. Cases often depend on the testimony of medical or vocational experts who offer opinions on diagnosis and the cause and extent of disability. Each side hires a medical or vocational expert who supports its position. The dueling experts offer their opinions, which often are different, providing little guidance to the hearing officer who must make the final adjudication. More often than not, the adjudicator simply splits the difference. Dueling expert testimony as a method of dispute resolution gives rise to legal game playing and increases litigation and costs.

Finally, relatively few states have effective guidelines for evaluating disability. These guidelines have the potential to increase the certainty of outcome. In the process, they encourage voluntary payments that help reduce the need for litigation. This is particularly relevant for resolving permanent partial disability claims.

OTHER APPROACHES TO REDUCING LITIGATION

Throughout the 1980s, the states began to focus on reducing litigation by implementing administrative and legislative changes. Fortunately they have tried

to improve the dispute resolution process by relying more on independent experts, mediation, and other mechanisms rather than dueling experts, to help avoid costly formal hearings. And some states have worked to reduce litigation by creating better benefit schedules and guidelines for permanent partial disability to cover often-litigated claims like back injuries.

Independent medical experts. Independent experts often are called *independent medical examiners* or *medical panels*. These experts are not hired by either side, nor are they appointed in a political process that may be partisan. An early WCRI study identified some of the lessons for designing a successful independent expert system (Barth 1985).

First and foremost, the credibility of the experts is key. The system works only if the experts are credible to both parties and to the adjudicator. Experts can be selected by the agency responsible for the administration of the workers' compensation system. However appointment by an agency whose administrator is appointed by the governor or the secretary of labor raises concerns about partisanship and, possibly, the quality of the experts.

An alternative is to let the parties choose an expert using methods similar to those used to select a grievance arbitrator under a collective bargaining agreement. Here each party takes turns striking names from a list of five names drawn randomly by some independent body. The last name left is the expert who is most acceptable to both parties. In the case of workers' compensation claims, a local medical society or workers' compensation agency could provide the parties with the initial list of names.

Should the use of independent experts be mandatory? Research indicates that if the use of independent experts is discretionary, some adjudicators may resist using them. Certain adjudicators may feel that relying on outside experts is tantamount to delegating an important part of their job.

Another design issue facing policymakers is whether or not to make the findings of independent experts binding on the adjudicator. Our study concluded that the advisory findings of a credible expert are essentially equivalent to binding findings. But if an expert is not credible, there is little purpose served by making his or her findings binding on the parties.

Informal dispute resolution. Another increasingly common way that states are trying to improve the dispute resolution process is the use of *informal dispute resolution*. This includes a variety of methods, among them prehearing conferences, mediation, and arbitration. The informal dispute resolution process generally sets a time and place for the parties to meet and discuss settling the case before a more formal hearing is called. The primary purpose of *prehearing conferences* is to bring the parties together (often for the first time) in the hopes of settling in cases where the disputes may not necessitate a formal hearing.

A second type of informal dispute resolution is *mediation*. This is where a neutral

party (generally a mediator employed by the agency) facilitates the resolution of the case by encouraging the parties to settle. Mediation provides not only a time and a place for the parties to meet, but also some expertise.

A third variation involves an *arbitrator*, who not only encourages the parties to settle, but also lets the parties know what he or she thinks the value of the case is. The arbitrator may render an informal advisory opinion or a formal (binding or nonbinding) recommendation if the parties fail to reach a settlement on their own.

Research by both WCRI (Hunt and Eccleston 1990; Pease 1989; Barth, Victor, and Eccleston 1989; Barth 1987) and the Institute for Civil Justice at The Rand Corporation (Rolph 1985; Hensler 1986, 1989; MacCoun et al. 1988) suggests some guidelines for the design of the informal dispute resolution processes for both workers' compensation and court systems. Most cases simply need a time and place for the parties to focus their attention on settling. A majority of cases do not require more. And they do not need highly qualified individuals to preside over this kind of meeting. It can be a very low cost, largely bureaucratic process.

However, a small number of cases need something more, possibly an outside opinion about what the case is worth. This can be accomplished in the context of mediation or arbitration. Most experienced attorneys know which cases can be settled and what they will settle for. But problems sometimes arise when cases involve less experienced (in terms of how long they have been practicing or exposure to workers' compensation cases) attorneys. Although these cases ordinarily settle, inexperienced attorneys may need the help of an objective third party to put a settlement value on a case.

In a third type of case there is a substantive dispute, a fundamental disagreement about the facts of the case and how the law applies. Here the parties are represented by experienced attorneys. In these cases expeditious adjudication makes sense. An informal resolution process is not likely to yield a settlement; in fact it simply postpones the inevitable — a formal hearing.

The major challenge with an informal dispute resolution process, then, is to design a system that can provide a majority of cases with a time and place to discuss settlement. The system also must establish cost-effective and timely mechanisms to identify cases where there are real disputes, and to get them to adjudication quickly.

Improving schedules and guidelines. Certain states have tried to reduce litigation by improving the schedules or guidelines for permanent partial disability payments. Improved schedules reduce uncertainty about what is due injured workers. This means defendants are more likely to make voluntary payments of permanent disability benefits, and voluntary payments have been shown to reduce litigation.

There are some significant concerns about permanent partial disability schedules and guidelines. On the one hand, current schedules often have an

arbitrary element, not necessarily related to the economic loss suffered by a specific injured worker. On the other hand, not having schedules breeds litigation by creating uncertainty. This forces participants to rely on the dueling experts we discussed earlier.

The need here is to develop new schedules or guidelines that are better related to the income that a worker loses. Oregon is one state that has taken steps in this direction. Oregon bases permanent partial benefits on disability evaluations. It also uses a system of "modifiers" that attempts to adjust benefits based on workers' characteristics that are associated with the extent of lost income.

Unfortunately the states are somewhat frustrated in their efforts to create credible schedules, guidelines, or modifiers. The task is a complicated one. Those proposing the schedules must show public officials that they provide acceptable levels of income replacement to workers who have lost or will lose wages. Further research will help identify not just what factors should be considered in these schedules, but how much weight each factor should be given and how much money should be tied to the presence or absence of each factor.

Dispute prevention. A final way of strengthening the capabilities of state systems to deal with growing litigation is to focus less on dispute resolution and more on dispute prevention. The research we discussed on reducing litigation indicates that this can be a successful strategy when properly administered. Success here depends on certain elements.

First, the agency should be an active one that follows the claims and intervenes in a timely way to prevent unnecessary disputes, and to ensure that the parties are doing what they should be doing given the available information. For example, when there is substantial certainty about what is due, the agency should see that prompt payments to claimants are made.

A second element is the development of clear g uidelines for permanent partial disability benefits. This increases certainty about wl at is owed and helps stimulate voluntary payments by providing a basis on which to mandate payment or require that the case be contested in a timely manner. Research suggests that voluntary payments often substitute for workers' going to attorneys. Workers who receive an appropriate voluntary payment are less likely to retain counsel — thus reducing litigation and costs for both sides.

Conclusion

For most claims, workers' compensation systems have worked well for much of this century. However the types of claims for which the systems do not work as well have grown and will continue to grow in the 1990s. This creates several important challenges for public officials:

- Containing soaring medical costs while retaining access to quality medical care
- Redressing the maldistribution of benefits
- Ensuring appropriate utilization of the system
- Reducing litigation

In the 1980s we gained a greater understanding of the problems facing workers' compensation systems. Experts have begun to uncover some important lessons to guide solutions. However, more work and experimentation are necessary.

States regularly make important changes in their systems. Unfortunately, once these changes are implemented, the tendency is to proclaim the problems "solved" and move on. States need to establish monitoring capabilities that allow them to track system performance and respond to changes. This is a critical missed opportunity in the never-ending search for solutions and stable reform.

3

Pricing and Profitability of Workers' Compensation Insurance in the 1990s

RICHARD I. FEIN

Over the last few years, workers' compensation insurance has reached a curious impasse. Despite substantial increases in rate levels, the line continues to be unprofitable. It remains a system with serious and growing financial troubles.

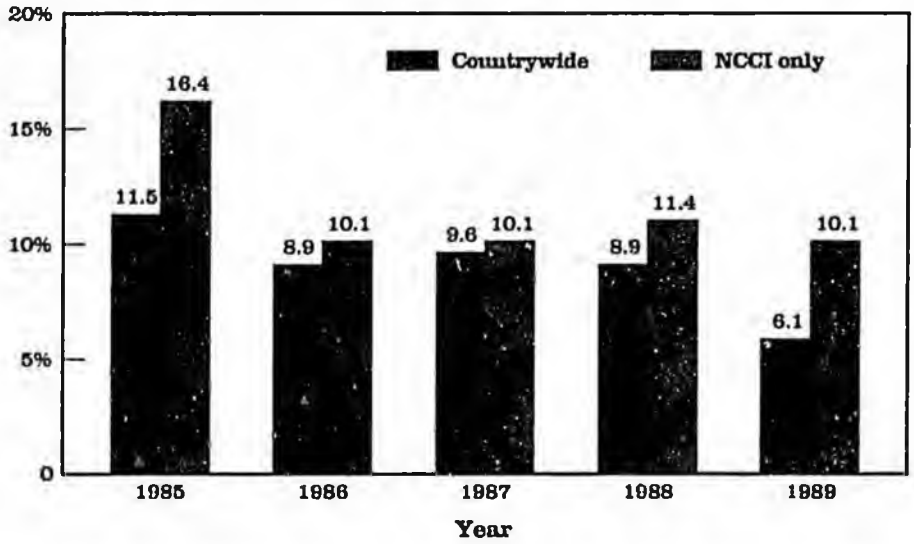
This paper takes a look at some of the factors contributing to an unsatisfactory combined ratio and describes some of the efforts being made to rectify the problems. The figures cited are current as of late spring 1990.

There are many root causes for the workers' compensation debacle the industry is now confronting. To at least some degree, the increased system costs are the result of the increased benefits enacted into law in many states during the 1970s in response to the findings of the National Commission on State Workmen's Compensation Laws. No one can seriously argue that these benefit increases were not needed, but neither can we deny that increased benefit levels generally bring with them increased utilization of the system.

Economic distress in some regions of the country also has played a role, increasing system utilization and, perhaps, stretching out durations in areas where job prospects are bleak. In recent years workers' compensation systems in the oil states of Texas and Louisiana have been under severe strain, even as those state economies have reeled from the decline of oil prices. Other states involved in the oil industry have had problems, though not of the same magnitude.

Medical cost increases have been chronic for many years, outstripping inflation and wage-level increases. Workers' compensation is one of the few so-called first-

Figure 3.1. Workers' Compensation Premium-level Changes

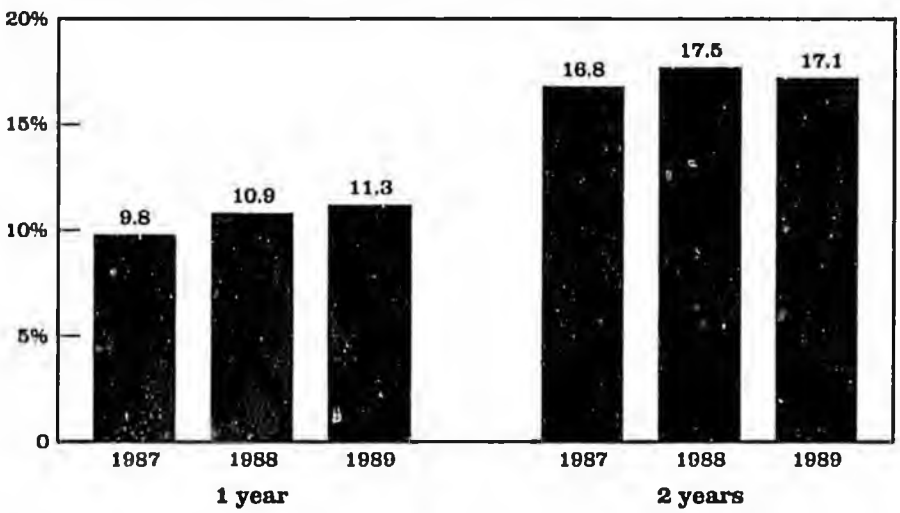


dollar payers of medical costs left. That is, workers' compensation medical costs are paid in full by the carriers, with no upper limits on total payment. There is even some evidence of cost shifting, where medical care providers charge more for workers' compensation cases to offset the limits on payments in group hospitalization policies or such social insurance programs as Medicare and Medicaid. The medical share of the workers' compensation benefit dollar, which was slightly over 30 cents at the beginning of the 1980s, had reached 40 cents as the decade came to a close. Moreover, the rate of increase shows no sign of slowing — it actually picked up momentum this year, after a mild slackening — and may very well bring medical costs to 50 percent of all claims costs by the year 2000.

Whatever the causes of the phenomena we observe, there can be no arguments with the effects. In Figure 3.1, which represents the average level of premium changes that has been approved over the past five years, the solid bar represents data on a countrywide basis, while the shaded bar represents results achieved in NCCI-administered states only. For most of its three-quarters of a century, workers' compensation had been a stable line, with minimal alterations in rate levels. It was of minor concern to employers and insurers alike as the benefits were paid and rates adjusted with little drama. Because benefit levels are scheduled, the kind of sensational judgments encountered in liability did not occur and rate levels rose slowly.

All that changed in the 1980s, when we saw five consecutive years of substantial

Figure 3.2. Earned Impact Achieved*



* Excludes effects of law changes.

rate increases, not only in individual states, but in the countrywide aggregates. In 1985, rate levels for NCCI states climbed 16.4 percent, and increases in each of the next four years averaged more than 10 percent.

In the previous fifteen to twenty years, changes had averaged plus or minus 5 percent. Rates occasionally rose by nearly 10 percent in the mid-1970s, but actually decreased between then and 1984. Moreover, the increases came at a time of high general inflation levels in the national economy and could be seen as a part of a more general societal problem.

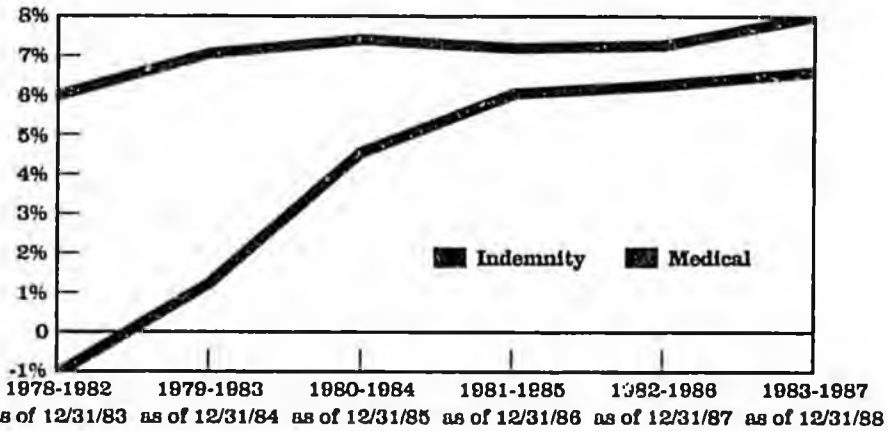
When rate-level decreases occurred in the early 1980s, they left carriers in the red by the middle of the decade, creating the need to ask for the series of hefty increases that began in 1985.

Increases in premium levels in NCCI states brought about earned increases of 9.8 percent in 1987, 10.9 percent in 1988, and 11.3 percent in 1989 (Figure 3.2). Over a two-year period, from 1988 to 1990, the impact of premium-level changes on earned premiums came to 17.1 percent.

Workers' compensation premiums are based on a percentage of employers' payrolls, adjusted for experience. Because premiums are tied to salary levels, they were once thought of as relatively immune to substantial rate increases. Prior to the mid-1980s, increases in premiums were roughly equal to increases in payrolls. The situation is entirely different today.

For each of the last five years, unprofitable operating results have forced NCCI

Figure 3.3. Comparison of Countrywide Annual Trend Factors over the Last Six Policy Year Calls*



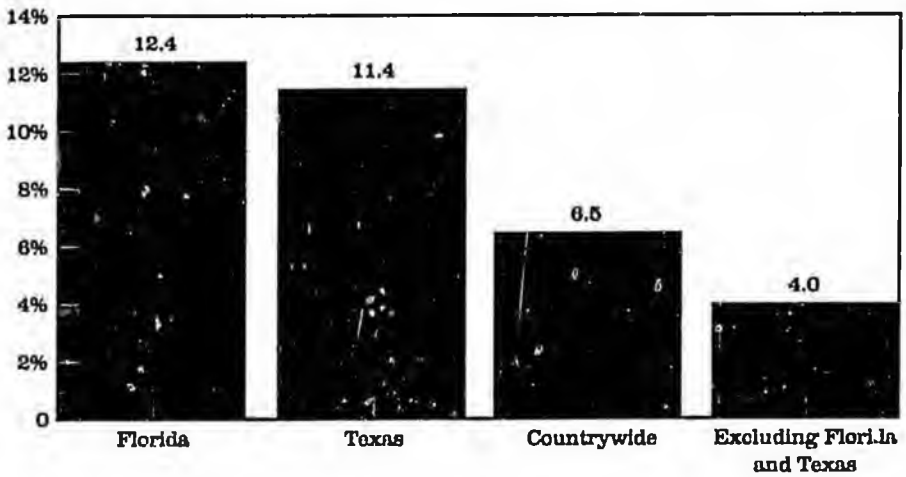
* The trend factors are based on incurred losses including IBNR.

to file rate increases in excess of 10 percent. Nevertheless, many of the approvals from state regulators split the difference between what was needed and what seemed politically possible. Although several regulators took bolder action and issued approvals close to correct actuarial indications, on the average, requests were slashed by 35 percent for 1989. However, that was an improvement over the 50 percent cut the previous year.

The difficulty of the workers' compensation environment is evident from carriers combined ratios for the line in recent years. For 1990, the ratio is projected at 119.0, and the preliminary figure for 1989 is 120.1. The ratio was 118.4 in 1988 and 117.6 in 1987.

What has driven this once stable product line to outpace the general rate of inflation? A high rate of medical cost inflation has plagued every health benefit program from group insurance to social security, and workers' compensation has not been immune. Medical costs have been increasing from 6.5 percent to 7 percent faster than payrolls, and although the impact is substantial, that trend has not changed greatly in recent years. As inflation cooled in the 1980s and wages remained relatively stable throughout the national economy, the expectation was that indemnity benefits, which are the wage replacement portion of workers' compensation claims, would remain stable. Interestingly, that has not occurred. The most dramatic element in recent rate increases has been the change in indemnity costs, which are now rising at a rate nearly equal to medical losses (Figure 3.3).

Figure 3.4. Comparison of Annual Indemnity Trend Factors, Policy Years 1983–1987*



* As of December 31, 1988.

This problem had been noted countrywide, but in two jurisdictions — Florida and Texas — it is especially severe (Figure 3.4). In Florida, the indemnity trend is now 12.4 percent annually; and in Texas it is 11.4 percent. If these two states are excluded from the total countrywide indemnity trend of 6.5 percent, the trend drops to 4.0 percent. Although these jurisdictions are especially troublesome, other states also are posting high indemnity trend increases that need to be brought under control.

Another major indication of problems in the workers' compensation system is the growth and size of the residual market. When rate levels are sufficient, carriers seek out new business and the populations of the pools drop. This is what occurred early in the 1980s. In 1984, the reinsurance pools administered by NCCI accounted for $448 million in written premiums. Unfortunately that was the high point for the pools, which is to say, the period when their share of the workers' compensation market was at its lowest.

Two years later, written premiums had more than quadrupled, to $1.9 billion. In 1988, coverage in the residual market was afforded to more than half a million risks, with written premiums totaling more than $2.89 billion. The preliminary estimate for 1989 is for the residual market to account for $3.6 billion in annual premium volume, of which NCCI pools account for nearly $1 billion (Figure 3.5).

This market of last resort — designed as a mechanism for providing workers' compensation insurance to businesses unable to find it in the voluntary market

Figure 3.5. All NCCI Pools — Written Premiums, All Years Combined

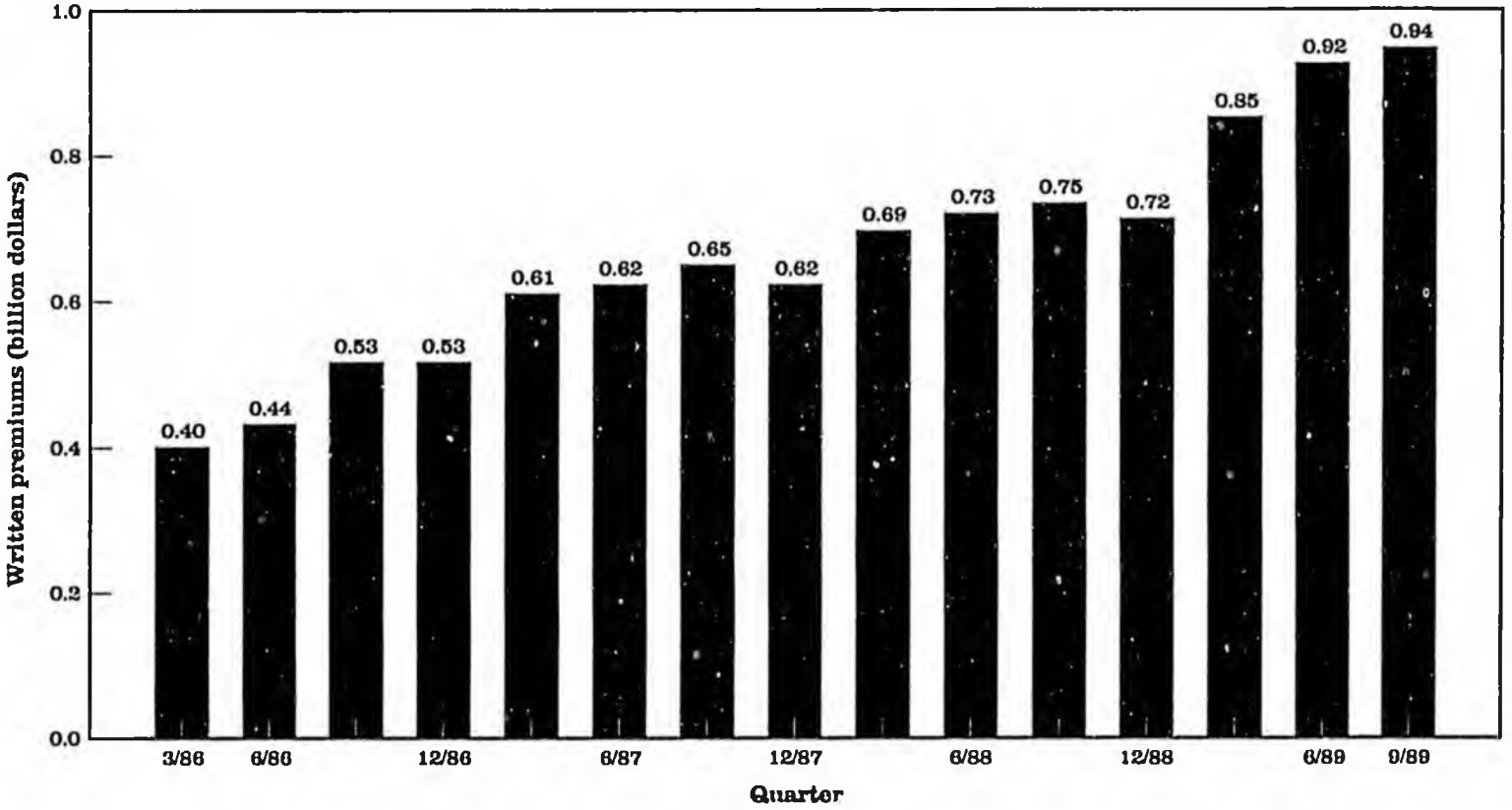
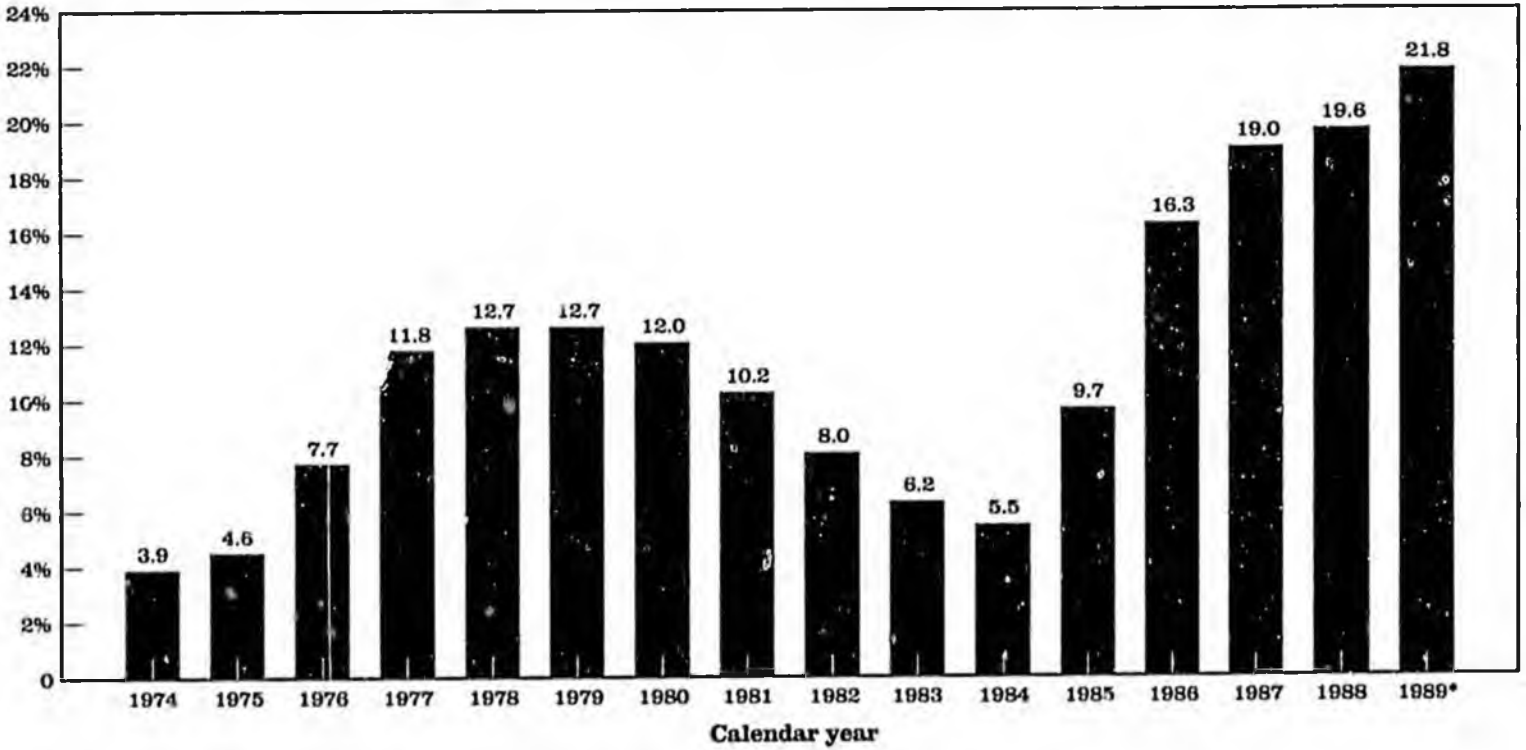
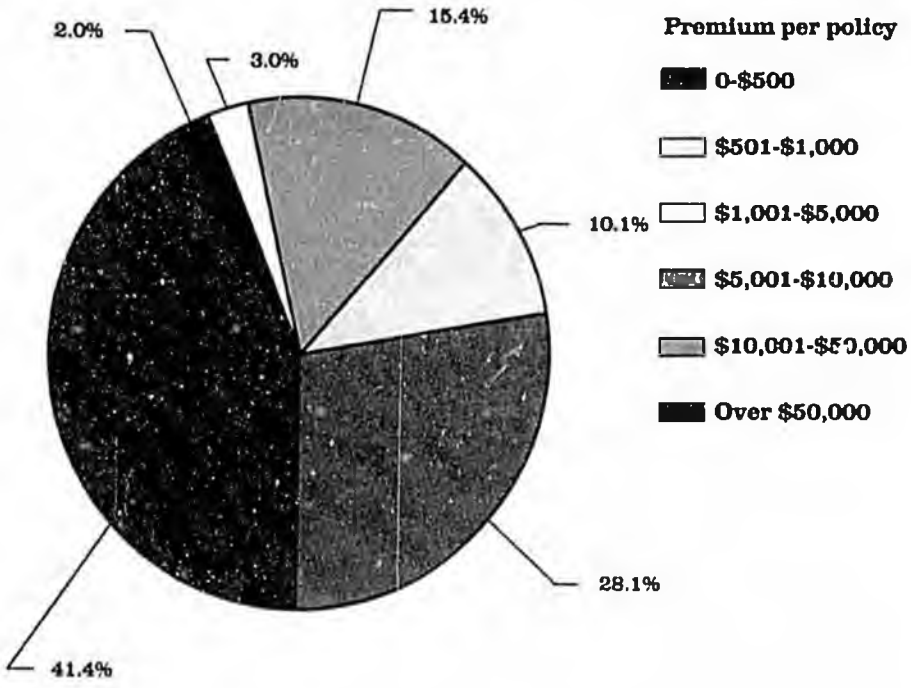


Figure 3.6. Residual Market Share, Pool Premiums as a Percentage of Direct Written Premiums



* For thirty-three states with full assigned risk plans.

Figure 3.7. Premium Size Profile, 1988: Distribution of Premium

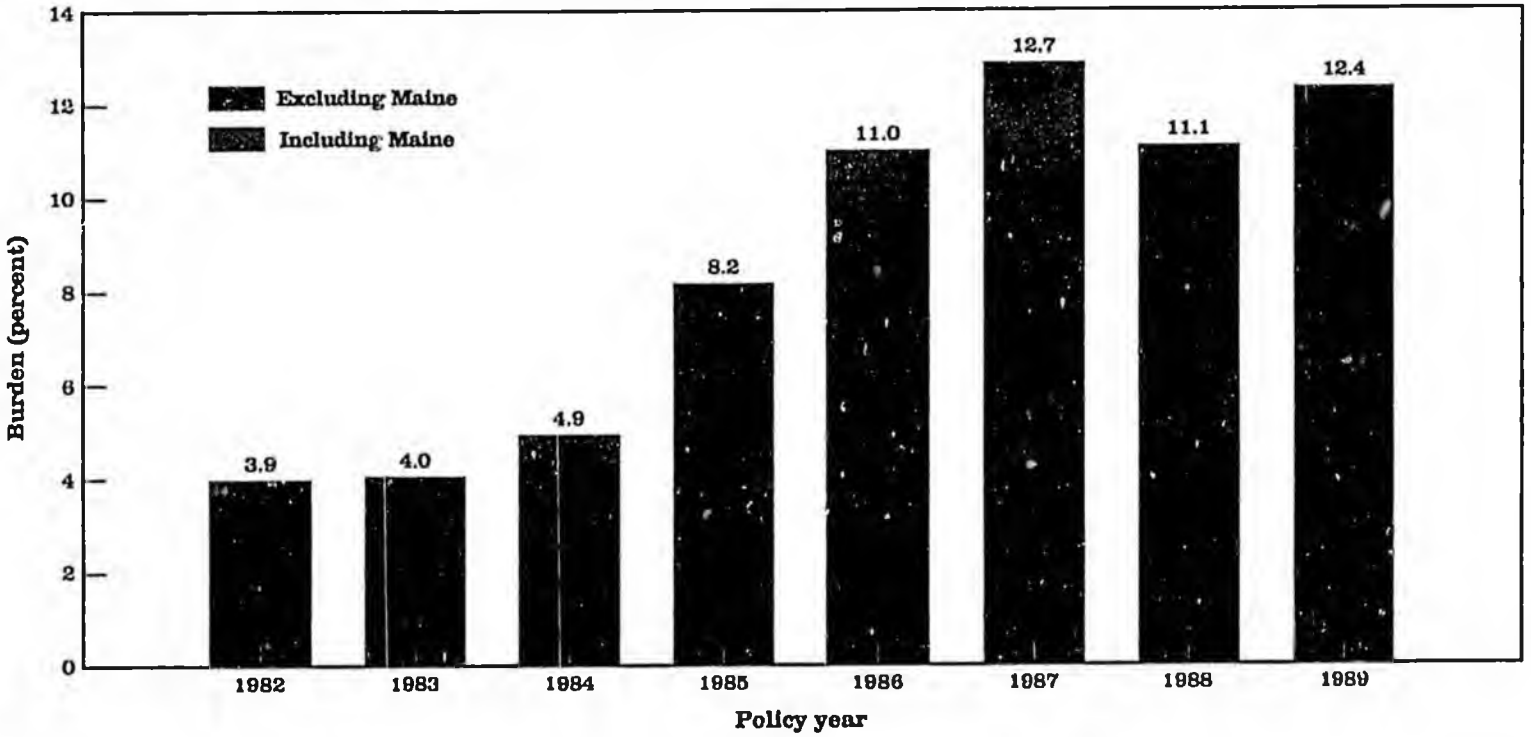


— has grown to a point where it is the largest single source of workers' compensation insurance in the country. The residual market now accounts for more than 20 percent of total workers' compensation premiums in the states where NCCI manages the pool. In 1984 it accounted for only 5.5 percent of the total (Figure 3.6).

A common misconception is that the residual market is made up primarily of employers that are so small that no carrier is willing to underwrite their risk. At one time there was some validity in that viewpoint. However, if the multimillion-dollar accounts are excluded from consideration, there is now very little difference in the size distribution of risks in the voluntary and residual markets. Accounts with annual premiums in excess of $50,000 make up more than 41 percent of the residual market (Figure 3.7). In fact more than four hundred of those accounts have premiums of more than $100,000.

The way many states' workers' compensation systems are structured, residual market risks pay no penalties for being in the market of last resort. The insured obtains the coverage for the same price as insureds in the voluntary market and

Figure 3.8. Residual Market Burden, All States with Full Assigned Risk Plans, 1982-1989



NOTE: Pool operating losses in Maine for policy year 1988 and subsequent years may be partially or wholly financed by insureds. Losses valued as of September 30, 1989.

receives the same other services from the carrier assigned to handle the policy. There is little or no monetary incentive to improve safety records and bring overall costs down to reasonable levels. Thus the profits carriers earn on voluntary-market insureds are used to subsidize risks in the residual market. Currently, that subsidization is estimated to cost carriers nearly 12.5 cents for every premium dollar written in the voluntary market. Figure 3.8 illustrates the residual market from 1982 through 1989.

The National Council on Compensation Insurance views resolution of the residual-market problem as a key to putting the workers' compensation line back on a secure footing. Resolution must come in either of two ways: make the residual market more self-funding or otherwise prod accounts to leave that market and rejoin the voluntary market. In either option, achieving rates that adequately correspond to the degree of risk involved is essential. Residual-market rates must no longer be competitive with those of the voluntary market.

To begin the process of depopulating the residual market and bringing workers' compensation back to a state of reasonable profitability, NCCI is pursuing a three-pronged action involving aggressive rate activity, special residual market programs, and a leadership role in benefit reform.

Without some financial incentive, there is no reason for insureds to leave the residual market. To provide that incentive, it is necessary to make coverage in the residual market more expensive than coverage obtained in the voluntary market. NCCI has adopted several programs designed to do just that.

Since 1986 NCCI has filed price differentials for residual-market rates, and by the end of April 1990, twenty-four states had approved some kind of pricing differential. These programs include the reduction or removal of premium discounts, manual rate differentials, and surcharges on premiums in excess of specified thresholds. In addition, NCCI developed mandatory retrospective rating programs for large residual-market risks and prospective surcharge plans based on risk experience. Similar programs already exist in several states.

But the troubles of the system are deeply rooted and will require a new consensus about the ends and means of the system if it is to be preserved in its present form. Restoration of that consensus is beyond the power of any one entity or even one industry. It will require the combined efforts of many interests, all acting to promote revision and reform. To begin the process of developing that new consensus, NCCI organized a two-day workers' compensation congress of insurance company representatives, academicians, regulators, legislators, employers, and labor leaders, held in Philadelphia early in September 1989.

The idea was to bring together the many groups involved in workers' compensation to review the problems before the system and begin to weigh proposals for their solution. No one party has a monopoly on wisdom; and even if it did, no single group has the strength to impose its vision on all the rest. Without an agreed-on sense of direction, all groups would suffer in the long run.

In preparation for the congress, six committees, each with representatives from

a wide range of disciplines, researched, evaluated, and proposed strategies for dealing with an area of particular concern. The first five committees studied cost containment, benefit utilization, loss control and prevention, rehabilitation, and alternative programs. The sixth committee analyzed and recommended measures for improving the workers' compensation systems in nine critical states: Connecticut, Illinois, Rhode Island, Louisiana, Florida, Texas, Oregon, Colorado, and New Mexico.

The committees submitted their analyses and recommendations at the congress and solicited feedback from attendees. The input was analyzed and incorporated into the final versions of the reports, which were released late in 1989.

The reports are not an end result but rather a starting point from which to begin tackling the many problems besetting the workers' compensation system. It took a long time to reach the impasse in which we find ourselves as we enter the 1990s, and recovery from it will not come quickly. The willingness of regulators to grant all or substantial portions of needed rate increases is an important step forward, but in a sense it still is only playing catch-up ball.

What is needed now, and what we hope the congress has initiated, is a long-term look at these systemic problems. The situation is difficult, but it has not slipped out of control. We are not looking at the insurance equivalent of the savings and loan disaster. The measures needed for reform are still, relatively speaking, modest ones. But as we contemplate them, we must be aware that delay carries its own price. The longer we shirk from the costly solutions we need today, the dearer will be the price that must be paid tomorrow.

4

New Strategies for the 1990s

EDWARD M. WELCH

Introduction

I believe that the most important trend in workers' compensation during the coming decade will be a shift of emphasis away from the state and federal levels to the firm and plant levels. Before addressing that trend, however, I look briefly at potential action on the federal level.

Federal Action

In the short run, I see very little likelihood of any federal action dealing directly with workers' compensation. In the long run, I believe there is one issue that we must be prepared to face.

FEDERAL LEGISLATION AND STANDARDS

During the next decade it is my prediction that we will see no serious attempts to federalize workers' compensation or even to set national workers' compensation standards. Business interests and insurance companies generally oppose federal regulation. Although organized labor would like to see national standards, they currently are not high on labor's agenda.

There are, of course, reasons to argue that we benefit from diversity among the states in their workers' compensation programs. It has been said that we have

fifty different experiments operating simultaneously and that the system benefits from this situation by adopting the best and most successful approach from each state. Unfortunately when a state legislature attempts to modify its workers' compensation system, the situation usually is so surrounded in clouds of political controversy that the parties making the decisions rarely look beyond their immediate situation and lessons from other states often are ignored. I believe that this situation is improving somewhat as legislators, researchers, scholars, and administrators increasingly are sharing with one another their successes and failures. Previous efforts at sharing information by organizations like the International Association of Industrial Accident Boards and Commissions and the National Council on Compensation Insurance have been augmented in recent years by organizations like the Workers Compensation Research Institute and publications like John Burton's *Workers' Compensation Monitor.*

It also can be argued, however, that as we become more of a global economy, the states should stop competing among themselves and instead work together to create a more competitive national economy. This effort is hampered to some degree when the costs to employers and the benefits for workers differ from state to state. Accordingly the nation as a whole might benefit from federal efforts, which tend to encourage a more uniform approach to workers' compensation laws. In view of the current political climate, however, I see little chance that any action along this line will take place before the end of the century.

There is some likelihood that a high-risk occupational disease and notification act may pass Congress during the next ten years. This, however, does not directly impact states' workers' compensation programs, and I believe that the adverse indirect impact of such a law would be less significant than many predict.

CONSOLIDATION IN THE LONG RUN

Looking to the next century, there is one basic change in our system that sooner or later will appear tempting to Congress and to others who examine our system of paying benefits to the disabled. Sooner or later someone is bound to ask, "Do we need so many different programs? Should the social security disability program be separate and distinct from workers' compensation programs? In states that have a no-fault auto insurance program, why does that need to be an additional separate system? Would it be more efficient to somehow combine unemployment insurance as part of this scheme? Should aid to dependent children be brought into the same program?"

If in the interim we have developed a system of national health insurance, it will probably somehow be connected to a person's place of employment. Why should its administration be distinct from the administration of health benefits for workers hurt on the job? The "product liability crisis" and the "medical malpractice crisis" seem to have subsided temporarily. It is likely, however, that

they will reoccur, and it is quite possible that the solution may involve some type of no-fault system for compensating victims. Such a system may well be modeled after our present workers' compensation programs. If such a system is created, should it be maintained as separate and distinct from workers' compensation programs or should they somehow be combined?

There are advantages in maintaining distinct programs. The most common argument is that the cost of on-the-job injuries should be related back to the employment and eventually passed on to consumers. It also is assumed by many that workers' compensation costs provide an incentive for employers to create a safe workplace. Some economists, however, question whether costs are really passed on to consumers and whether the safety incentive really works (Worrall 1983; Worrall and Appel 1985; Berkowitz and Hill 1986). Nevertheless, it is logical to suggest that if the workplace causes injuries, the costs should be allocated through, if not to, the employer, and that if the highway causes deaths, the burden should fall primarily on owners or operators of motor vehicles.

On the other hand, there are many costs that result from having multiple systems. It is not unusual for an injured worker to litigate both his or her workers' compensation and his or her social security disability claim. It also could happen that the worker would litigate a tort action and a no-fault auto action as well. All of this greatly increases the friction costs of a system intended to provide care to injured individuals. In addition all of these programs have different standards for evaluating the extent of disability and for compensating the disability that is measured. Those of us who have been acquainted with the development of these systems can readily explain why the differences exist. To an outsider, however, the distinctions often appear illogical.

The question that must be asked is "Do the benefits derived from maintaining separate systems outweigh the costs of administering all of the individual programs?" At this point I am not prepared to predict what the answer to this question will be, but I do suggest that some time in the next twenty years we will need to give some thought to the topic. It is possible that at some time in the future we will be forced to accept national standards for workers' compensation, not because someone objected to the diversity among state workers' compensation programs, but because someone objected to illogical differences in the way people are treated based on what they happened to be doing when the injury occurred.

Strategies for the 1990s

INTRODUCTION

I believe that in the near future we will see a shift in the way we look at workers' compensation, especially in the way we approach improvements or "reforms" of

the system. This will be a shift of emphasis from the state to the firm level and from the legal to the human resource point of view.

PAST TRENDS

Before going on to the future, it is important to examine past trends. While each of us has been viewing our individual system and wrestling with its problems, we tend to overlook the fact that we often fit into a pattern of change that is fairly consistent on a nationwide basis.

During the 1960s and 1970s, there was a clear trend to expand the availability of benefits and to raise the level of benefits. The tendency to expand was given great impetus in 1972 by the report of the National Commission on State Workmen's Compensation Laws. Although the commission did not recommend mandatory national standards, it did publish a set of recommendations for state workers' compensation programs. Following these recommendations, many states whose system fell below the recommended standards amended their laws to make benefits more readily available and to raise the level of benefits in order to achieve or at least move toward the recommended standards.

During the 1980s there has been a trend in the other direction. Many states have been moving to restrict the availability of benefits, and some have actually lowered the level of benefits. There has been an outcry from business and industry that workers' compensation costs are too high, that this is ruining the business climate, and that companies are moving from one state to another in order to avoid high workers' compensation costs. In state after state there has been a demand to "reform" the workers' compensation program. In some states sweeping reform packages have been adopted, while in others the legislature still grapples with difficult decisions.

It can, of course, be argued that this trend in workers' compensation benefits is not unique and that in fact it merely reflects a change in attitudes that pervades many aspects of our society. During the 1960s and 1970s we experimented with liberal ideas in a great many programs. The judgment of the 1980s often was that we went too far and that a more conservative approach is appropriate. This is undoubtedly true but it does not detract from the fact that these trends have, in fact, taken place in workers' compensation.

THE MICHIGAN RESEARCH[1]

Strategies that lower costs and reduce workers' suffering. In the 1960s and 1970s we had a trend toward increasing benefits to workers at the expense of employers. During the 1980s the trend was to take benefits back from workers in order to save money for employers. I am convinced that for the 1990s we must focus on strategies that will lower costs and reduce workers' suffering at the same time.

Is this possible? Are there really strategies that both lower costs and reduce workers' suffering? We have conducted some research in Michigan that suggests that it is possible. The research shows great variability in workers' compensation experience among Michigan employers. In examining what accounts for the differences, the research points to factors that appear to benefit both the employers and workers.

It has been customary in workers' compensation to focus on *interstate* differences. (Is it more costly in Michigan than in Indiana?) Beginning in 1987 we sought instead to examine the *intrastate* differences. We wanted to determine if there were variables among employers within Michigan and to examine, if possible, what accounted for those differences. Michigan's Bureau of Workers' Disability Compensation contracted with Dr. H. Allan Hunt of the W. E. Upjohn Institute for Employment Research in Kalamazoo, Michigan, to conduct the study. Hunt in turn enlisted the aid of Dr. Rochelle Habeck of the Rehabilitation Counseling Program at Michigan State University, and later Dr. Michael J. Leahy, also of the Rehabilitation Counseling Program at Michigan State University.

Differences among employers within Michigan. The study examined the workers' compensation experience of approximately five thousand Michigan firms with fifty or more employees. It compared the number of claims closed in 1986 with the number of workers employed. We assumed that there would be substantial differences among employers in different industries. Accordingly the study focused on the differences among employers within the same industry.

The study found remarkable differences among employers in the same industry. In fact it found that these intrastate differences were substantially greater than interstate differences. The National Commission on Unemployment Compensation and Workers' Compensation (1988) reports that the difference between Michigan and Indiana is about twofold. Michigan's costs are about two times those in Indiana. The difference between Indiana and Maine (the lowest- and highest-cost states) is about sixfold. Maine's costs are about six times those of Indiana (National Foundation 1988). Because of limitations in the data available we looked at

1. This section is based largely on Habeck, Hunt, Leahy, and Welch (1988). A summary of the study is available free of charge from the Bureau of Workers' Disability Compensation, P.O. Box 30016, Lansing, MI 48909. The complete report is available for $10 from the W. E. Upjohn Institute for Employment Research, 300 South Kalamazoo, MI 49007.

frequency rather than cost, but there is clearly a relationship between frequency and cost. The Michigan study found that the differences among employers within Michigan were about tenfold. The "worst" employers had ten times as many claims as the "best" employers.

The study examined twenty-nine different industries and the tenfold difference was found in each of those industries. For example, in the transportation equipment manufacturing industry, 6 percent of the plants had less than 1 injury per 100 employees, while 8 percent had 11 or more injuries per 100 employees. At the same time 38 percent had less than 3 injuries per 100 employees, while 15 percent had 9 or more injuries per 100 employees (Figure 4.1).

The industry analysis was based on the two-digit standard industrial classification. In order to account for the difference in the work done within industries, the study broke some industries down into their four-digit standard industrial classification. Thus, for example, fabricated metal products was broken down into auto stamping and other subgroups. The differences persisted. In auto stamping 25 percent of the employers had less than 3 injuries per 100 employees, while 18 percent had 11 or more injuries per 100 employees (Figure 4.2). There was as much variation at the four-digit industry level as at the two-digit level.

What accounts for the differences? These large differences among employers within the same state are obviously not attributable to differences in the law. What factors do account for the differences? To answer this question we conducted a mail survey of the high- and low-frequency employers in four industries (food production, fabricated metals, transportation and equipment, and health services). The survey covered a number of areas, but special attention was focused on three factors:

- Safety and the prevention of accidents
- Management climate and culture
- Disability prevention and management

The survey asked a series of questions in each category. When the responses from all of the questions in each category were taken together, each of the three categories was found to be a significant factor in differentiating between high- and low-frequency employers.

The specific items within each category that were statistically significant by themselves are as follows:

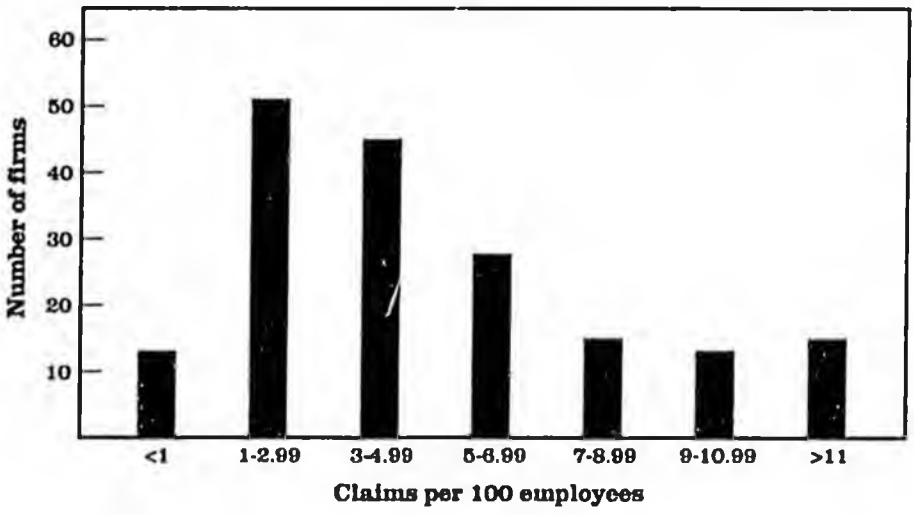
- Safety and prevention of work-related accidents

  Monitoring and correcting unsafe behaviors on a systematic basis

  The occurrence of safety training for new and transferred employees

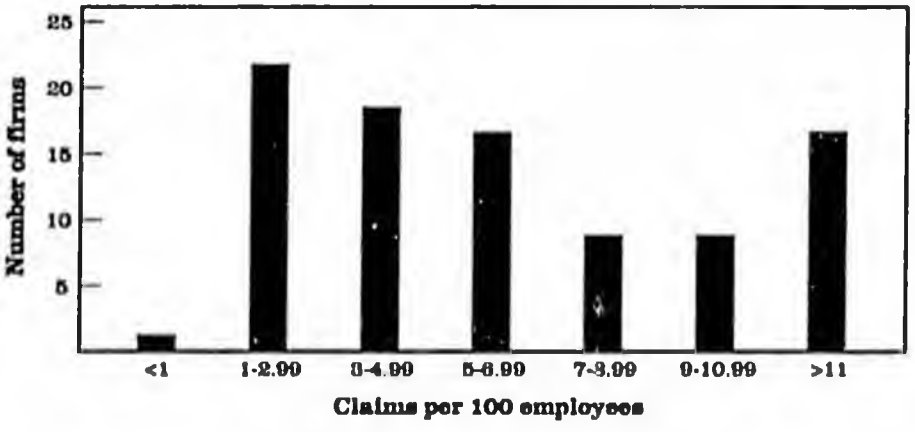
  Modeling and attending to safe behaviors on the part of company leaders

Figure 4.1. Transportation Equipment Manufacturing Industry, Claims per 100 Employees



Number of firms = 168
Mean claim rate = 5.07 per 100 employees
Coefficient of variation = 81.61

Figure 4.2. Automotive Stamping Subgroup, Claims per 100 Employees



Number of firms = 88
Mean claim rate = 6.75 per 100 employees
Coefficient of variation = 74.18

- Management, climate and culture

  Using a profit- or gain-sharing program to stimulate and reward productivity of employees at all levels

  Employee participation in problem solving and decision making

  Communication traveling from the bottom up as well as the top down

- Disability prevention and management

  Providing wellness programs and fitness resources to promote employees' health

  The use of light-duty or modified work assignments to help restricted workers back to the job

  The presence of procedures to monitor and encourage supervisors to assist in the return to work of injured workers

  Providing employee assistance programs

  Screening employees on a continuing basis for job-related health and disability risks

In summary, the study demonstrated that those employers that most frequently engage in safety and prevention efforts, that tend to have an open managerial style and a corporate climate that shares decision making, and that make the most effort to prevent and manage disability are the employers most likely to have low workers' compensation claims frequency.

IMPLICATIONS

Safety, corporate climate, and disability management are factors over which employers and workers have substantial control. They also are strategies that can be implemented in a manner that works to the benefit of employees. If in fact they are important determinants of workers' compensation costs, this has serous implications for employers, unions, insurance companies, state agencies, and workers.

Employers. We often are told that workers' compensation is a very important cost consideration for employers. The research suggests that there are some employers who are using the strategies discussed above to lower their costs. In order to compete, other employers must adopt their own versions of these strategies.

Employers must implement effective safety programs. They must be taken seriously. They must include everyone in the plant. They will not be given the importance they deserve unless they include the serious commitment of top management. At the same time they must be accepted by the hourly work force.

Every employee in the plant must be involved in the planning and implementation of safety programs.

Traditional safety is not enough. We must now employ ergonomics. For years we have been designing plants that produce our products using the fewest possible workers. We must turn our attention to designing plants and machines that use workers in the most efficient possible way. Sometimes the simplest changes, such as raising the height of a work station or changing the angle of a handle on a tool, can drastically reduce the number of injuries and disabilities that result from doing the job. Sometimes the implementation of these strategies requires the expertise of highly trained engineers. To solve these problems we must bring to bear all of the forces that are available. As the research shows, some employers already are doing this.

Disability management, like ergonomics, is a concept that is winning growing acceptance in American industry. The early return to work of the disabled worker is probably the most important single factor. In my experience, most men and women want to return to work during the first few weeks after their injury. They frequently complain of the boredom of sitting at home; they talk about the "four walls closing in on them." If, however, these people are allowed to sit idle for six months or a year, everything changes. Their attitude toward work, their attitude toward themselves, their relationship with their employers and even with their families, all deteriorate. This does not mean that we should force individuals into dangerous situations or "make work" jobs. But it does mean that we should work together with them to lessen in every way possible the disabling effects of an injury.

There are many other approaches to disability management that must be considered, not the least of these is the idea that it should be a unified concept (Berkowitz 1985; Carbine and Schwartz 1987). For too long workers' compensation, medical services, health insurance, long-term disability, and pension benefits have all been compartmentalized and separated from one another. Many businesses are moving to an approach that unifies their treatment of all aspects of disability.

The corporate culture or the industrial relations atmosphere is probably the most difficult aspect to change. Any serious discussion of that is beyond the scope of this paper. It should suffice to say, however, that there are many scholars and practitioners who are suggesting that cooperation between labor and management is the wave of the future. The research suggests that among other things it may reduce workers' compensation claims.

These are only a few of the things that must be done by employers to implement these strategies. What is clear is the fact that some employers are already implementing these and other similar strategies. In order to compete, others will have to do the same in the future.

Unions. Many of the things outlined above for employers cannot be accomplished without the cooperation of their workers. If the workers are

represented by a union, then the union leadership must become a partner in implementing these policies.

Traditionally unions have dealt with workers' compensation by referring their workers to attorneys or advocating that each individual worker should receive the maximum amount of benefits to which he or she may be entitled. There is no need for unions to stop doing that in selected cases. Unions, however, must realize that in the long run they can best serve their brothers and sisters by working together with employers, first by reducing the frequency of accidents and second by lessening the disabilities that result from accidents that do occur.

Often an early return to work requires an exception to the seniority system. Seniority is a very important concept to organized labor in the United States. I would certainly not suggest that it should be abandoned or even deemphasized. Many unions, however, are finding that under carefully defined circumstances it is to everyone's advantage to make temporary exceptions to seniority policies.

Insurance companies. The largest employers in the country already are implementing many of these strategies on their own. Some small and medium-sized employers, however, do not have the knowledge or the resources to put these ideas into practice. They should be able to turn to their insurance carriers for help. The workers' compensation insurance carriers that will capture the largest share of the market in the 1990s will be those who do the best job of helping employers implement these strategies.

Carriers always have provided services called *loss control*. In recent years many also have added or expanded vocational rehabilitation services. The loss-control operations must be expanded, and the vocational rehabilitation experts should be used not only to help workers after they are injured, but to help employers create disability management strategies so that they are prepared to deal with disabilities before injuries occur. Loss control surely includes not only avoiding injuries, but also reducing the amount of loss that results from injuries that occur.

There is clearly going to be a demand for these services in the coming years. There already are some independent private providers who are offering these services to employers. I think that it is reasonable to expect that employers should be able to turn to their insurance carriers for help in this regard. If some carriers begin emphasizing these services, it will undoubtedly have an important effect on their market share. There are, of course, carriers that already provide these services, but they must be greatly expanded and given much more emphasis.

State agencies. State workers' compensation agencies also have an obligation to take the lead in making workers, employers, and insurance carriers aware of these strategies. I am very proud that Michigan has taken the lead in this regard. We have sponsored the research discussed above. We sponsor a variety of educational programs on this topic, and we are implementing further services to

Michigan employers. Other state workers' compensation agencies have similar programs, and I expect many more will be following our lead.

In conjunction with the School of Labor and Industrial Relations at Michigan State University, Michigan's Bureau of Workers' Disability Compensation sponsors an annual seminar focusing on strategies that lower costs and reduce workers' suffering. I should hasten to add that this is not a program in which the state agency tells employers how to run their businesses. Instead we bring in experts from the academic area, from insurance companies, and, in particular, businessmen and -women, who share their successful experiences with other employers.

LRP Publications of Fort Washington, Pennsylvania, has obtained from Michigan the right to publish selected proceedings from our first two conferences. The book *Workers' Compensation Strategies for Lowering Costs and Reducing Suffering* allows people who are not able to attend a conference to benefit from the ideas presented.[2]

In addition to these annual programs, Michigan's bureau sponsors various other educational efforts that provide information about traditional workers' compensation programs as well as these new approaches. Working with the safety and labor relations agencies in the department of labor, Michigan's bureau is initiating a program to provide consulting services to businesses that wish to explore possibilities for implementing these strategies. It is not our intention to compete with private providers in this regard. Instead we hope to stimulate a market so that in the future many individuals will provide these services.

I believe that in the 1990s we will see more and more state workers' compensation agencies providing information and assistance to the people of the state concerning these new strategies.

Conclusion

In the past, workers' compensation has been seen primarily as a legal problem. When workers were injured, they hired an attorney and sued their employer. When business was unhappy with the situation, it went to the legislature and asked for a change in the law. I believe that in the 1990s we are going to treat workers' compensation as a human resource management problem.

Some employers already have learned that they have it within their own power to control their workers' compensation costs. To the extent they are able to do this, they have an advantage over their competitors. State agencies and insurance carriers must work to make employers and unions aware that these strategies exist and to help them to implement the strategies.

These strategies will never solve all the problems. They will never completely

2. The book is available from LRP Publications, 1035 Camphill Road, Fort Washington, PA 19034 (800-341-7874).

eliminate litigation. There will always continue to be some individuals who claim benefits they are not entitled to and some employers who arbitrarily deny benefits. The biggest problem with our system, however, is those large number of cases in which the worker clearly has suffered some injury and is entitled to some amount of disability compensation, but in which he or she claims more than the employer feels it owes. These are the cases that can be helped by disability management. These are the people who would return to work earlier if the work atmosphere had not been so hostile in the first place. This is the area in which the strategies that lower employers' costs also can work to the benefit of employees.

The research shows that some employers are already implementing these strategies. For the 1990s we must all work together cooperatively to lower costs and reduce workers' suffering.

5

Workers' Compensation Challenges: Organized Labor's View

JAMES N. ELLENBERGER

Due to serious questions about the fairness and adequacy of the way in which our society compensated the victims of industrial accidents and exposures, Congress established the National Commission on Workmen's Compensation Laws as part of the Occupational Safety and Health Act of 1970. In the two years following the 1972 report of that commission, many improvements were made in state workers' compensation systems. Since 1975, however, there has not only been a lack of progress in correcting the shortcomings that gave rise to the commission; there has been, in many cases, a retrenchment in coverage and benefits.

Workers' compensation has proved to be woefully lethargic and insufficient. In state after state, workers' legitimate claims are delayed, contested, and frequently denied. Compensation benefits lag far behind the levels that the national commission declared "essential" to the survival of the state workers' compensation system. State legislatures, through their refusal to enact the minimum reforms so strongly suggested eighteen years ago, have sent a clear message to employers and workers that they will not act to establish equity and justice in workers' compensation without mandatory federal standards.

The Challenge

Hazards on the job and the disabilities and deaths that result from those hazards are the very heart of what the workers' compensation system is all about. What we can do about those accidents and exposures and for those disabled or killed — that represents a positive change from what is happening today — is the challenge before us.

There are in fact two directions that, while not "new" by any stretch of the imagination, ought to receive far more emphasis and attention from those concerned about the direction of workers' compensation than is currently the case.

First and foremost is the reduction and elimination of injuries, illnesses, and deaths that occur at and from the workplace. There is no excuse, for example, to accept the fact that in excess of eleven thousand job-related deaths occur each year, including over eight hundred people who die annually from workplace injuries or illnesses in Texas alone. Nor is there any reason to remain silent about exposures to toxic substances that poison workers on the job. Actions can and should be taken to eliminate or reduce all sorts of hazards on the job — from chemicals, repetitive motion injuries, back strains, trenching accidents, falls, and unguarded or poorly designed machines, just to name a few.

The second direction we should pursue relates to renewing the commitment made over seventy years ago when workers' compensation was introduced as the "fair" and "just" way to take care of those injured or diseased from work. Workers were to get prompt, certain, and adequate medical care and financial indemnity for accidents and illnesses related to their work. Employers, in return for providing this protection, were to be shielded from legal action and lawsuits under the concept of "exclusive remedy." What working people have found is that while employers take shelter in exclusive remedy, the other side of the bargain has not been fulfilled.

The Current Debate

The dialogue and controversies that surround workers' compensation today are dominated by issues like premium levels, escalating utilization of medical care and treatment, "new" areas of claims such as stress disorders and cumulative motion trauma, coverage of occupational diseases, the increasing litigiousness of the process, the proper role of providers of rehabilitation services, whether an injured or diseased worker should have the right to seek treatment from the physician of his or her choice or be forced to go to one chosen by the employer, disability ratings, open competition or prior approval for providers of insurance and the appropriate level of their "profits," the role of state insurance funds, pure "wage loss" benefits versus recognition and restitution for pain and suffering in permanent partial disabilities — the list is virtually endless.

The Business Climate

All of these issues, and many more, can be laid at the doorstep of the "business climate" approach to workers' compensation. In a recent presentation to a group of state workers' compensation administrators, a senior representative of the insurance industry said, "I'm sure all of you are anxious to have the most favorable legal, political and economic environment possible in each of your respective states that will bolster your climate for retaining industry as well as attracting new business." Similarly, in a *Business Week* article about workers' compensation costs influencing decisions about where to locate facilities, a vice president of the Indiana Chamber of Commerce bragged, "We've seen more than 100 companies move out of Michigan and Ohio into our northwest corner" (King 1987).

This is the real world of workers' compensation. Forget about safe, clean, and decent workplaces. Don't worry about seriously disabled workers trying to get by on 57.3 percent of the state average weekly wage in Georgia ($225), 57.2 percent in California ($266), 58.8 percent in Texas ($238), or 59.2 percent in New York ($300). Never mind that the national commission said that if states did not set their maximum disability payments at 100 percent of the average weekly wage by 1975, and twenty-two of them have not, the U.S. government should force them to do so with federal standards. Abolish the thought that New Jersey, South Carolina, and Texas should protect their workers with mandatory and compulsory workers' compensation coverage. Perish the concept that all classes of workers, without exemption or exception, should have that right to workers' compensation under law.

The reigning viewpoint holds that it is okay to seek a competitive edge based on maltreatment and undercompensation of those workers killed, broken, or diseased in the process of conducting business. States are compared using such measurers as "average benefit cost per employee" or "benefits as a percentage of total wages" or "costs per $100 of payroll." State legislators are then told that costs have gotten out of line and that measures must be taken to make the state more competitive with those where workers' compensation coverage and benefits are less "generous." Companies have even told their employees in a few instances, though it is rarely the real reason, that plants are being closed or relocated due to workers' compensation costs.

Deprecation of Claimants

Not surprisingly, the focus on costs ranges far beyond simple interstate comparisons and strikes at the motivation and justification of workers who file for compensation for injuries or illness suffered from the job. Board allegations, painting claimants as malingerers or their claims as fraudulent, are common. A

former chairman of the insurance industry's rate-setting body (the NCCI) said, "Employees of small businesses — far less likely to have group health insurance as a fringe benefit — may be turning to workers' compensation as a means of providing medical care for injuries caused by non-work related incidents." (Actually it is much more likely that a far greater number of injuries that are work related end up being covered by regular health insurance than by workers' compensation.) The chairman of the U.S. Chamber of Commerce workers' compensation committee was more direct in charging that "we're getting too many people in the workers' compensation system...people are getting benefits they don't deserve." Proving that there is one-upmanship in denigrating the character of American working people, a former employer representative on the Texas Industrial Accident Board alleged that increases in workers' compensation rates were "fueled by employees' trying to make quick bucks from on-the-job injuries and doctors and lawyers who were eager to help them."

Are sentiments such as these an aberration, or do they accurately reflect the mainline concern of employers with the direction of workers' compensation?

Hostility Toward Insurers and Employers

What about the views of working people toward workers' compensation and the "insurance" it is supposed to provide? Are workers' opinions of insurers any different today than those expressed in 1921 by the mild-mannered and soft-spoken mine worker, William Green, who was eventually to become president of the American Federation of Labor? Green, in extolling the virtues of the Ohio workers' compensation law, told a labor gathering that under the exclusive state fund insurance plan, "no liability insurance company can sell workmen's compensation in the State of Ohio. We have driven them out, and the working man, his wife and his family daily fall upon their knees and thank Almighty God that these blood-sucking liability insurance companies are driven from their homes."

A number of workers injured on the job were interviewed about workers' compensation on the ABC television program "Burning Questions — Working in America: Hazardous Duty." "Just don't get hurt," one worker says, "but, if you do, you better have lots of money." Another worker notes, "You work hard; you give an honest day's work for an honest day's pay and we end up getting sick. The next thing you know, we get treated like criminals."

Elizabeth Groves, the widow of a power company worker electrocuted on the job, went five months after her husband's death without any benefits or burial expenses. The hospital and lab that had treated her husband even threatened to sue her for unpaid bills. The company did not help her, the insurance carrier did not help her, and the state workers' compensation bureau did not help her. As she told ABC News, she got "nothing but a lot of crap...I had to fight to get

it (death benefits). I had to fight every step of the way." In fact she did not get anything until a member of the U.S. House of Representatives intervened on her behalf.

Many claims that ought to be compensated as a matter of course are routinely contested by companies or their insurers. There are, for example, some 5.3 million health care workers at 620,000 work sites who are at risk for blood-borne diseases due to frequent contact with potentially infectious material. Twelve thousand are infected annually with hepatitis B, leading to over 250 deaths each year attributable to hepatitis-related diseases. In a 1988 case, a hospital contested a compensation claim by a nurse who had contracted hepatitis B. The evidence was clear that she had suffered frequent needle-stick accidents in the course of her work. The state workers' compensation commission denied her claim on the basis that there was no causal connection between her disease and her employment. Although this decision was eventually reversed by the state appellate court, the question must be asked: Why was the claim contested by the hospital or its insurer in the first instance?

Similarly, in a contested case involving a women salesclerk who struck her head on a fireplace door and sustained a brain injury that left her unable to care for herself and unable to read or write, the state industrial commission denied a claim for permanent total disability. The injured woman, according to the commission, failed to qualify under the definition of imbecility or insanity as called for by the workers' compensation statute. Although later reversed by the state's court of appeals, this woman's benefit is now reduced by her attorney's fees in a case that should never have been contested in the first place.

In many cases justice does not prevail. Alabama's statute requires that an accident be "an unexpected event, happening suddenly and violently and producing at the time injury to the physical structure of the body." A lumber company employee, whose job involved frequent lifting, suffered a serious back injury at work. The claim for workers' compensation was contested and ultimately denied by the court of civil appeals on the basis that "stress over a period of time is not sufficient cause for compensation since there is no accident."

Unfortunately these are not isolated stories. It is not just occupational disease and back injury claims that are contested by employers or their insurers. Case after case involving traumatic injuries on the job are challenged or even worse, as in the case of Mrs. Groves, ignored. Plagued with uncertainty, burdened with delay, threatened with the loss of employment by their employers, it is not surprising that so many injured and ill workers automatically seek assistance from attorneys when faced with a workplace disability. State workers' compensation agencies or industrial accident boards sometimes advise first-time callers seeking assistance with their claims to talk to a lawyer first.

Renewing the Commitment

It is time to revisit that seventy-year-old mutual pact between workers and their employers and to eliminate the debilitating and destructive arguments among states based on lousy benefits and poor coverage. If a no-fault compensation system is the best way for us to take care of those injured or diseased from the job, the challenge ahead of us is to restore the trust and renew the confidence that employers and workers must have in workers' compensation in order for the program to work. At a minimum this will require leadership, the willingness to do what is right, and the fortitude to withstand the inevitable pressure from outside forces.

When it authorized the creation of the National Commission on State Workmen's Compensation Laws as part of the 1970 OSHA, the Congress noted that serious questions had been raised concerning the fairness and adequacy of workers' compensation. The president appointed members to the commission representative of state agencies, insurance carriers, business, labor, the medical profession, academia, and the public. Those honorable participants said that although all of their recommendations were important, some were "essential" and were particularly suitable for federal support to guarantee their adoption.

Where are the descendants of that commission in today's business community, insurance industry, educational institutions, and state workers' compensation boards? Are those essential recommendations still valid? Is an average compliance rate of 64 percent the best we can do?

The organization of workers' compensation professionals, the International Association of Industrial Accident Boards and Commissions (IAIABC), has adopted over the years since 1919 some twenty-three standards "for the guidance of legislators and administrators." Unfortunately these standards have not been used by workers' compensation directors or industrial accident board members to provide direction to policymakers. Rather they have gathered dust and cobwebs while the "leaders" of this system express their undying support of the workers' compensation program under exclusive state control and their absolute opposition to any federal "interference." They are cannon fodder for the base requests of insurers and employers that appeal for a more favorable "business climate."

One of the key challenges for workers' compensation in the future is for a new generation of leaders, unafraid of committing themselves to action on behalf of the convictions that brought about the historic compromise early in this century, to bring to fruition the national commission's essential recommendations and the standards proclaimed by the IAIABC. This leadership from business, labor, and administrators is the prime ingredient in and intrinsic to the restoration of trust and confidence in the workers' compensation system.

Those who pledge themselves to workers' compensation as the appropriate mechanism to take care of work-related injuries, disease, and death must be prepared to fight for a system that is just and equitable and efficient. The

commitment to workers' compensation must be, as suggested by Dr. Arthur Larson, the "task of providing not only prompt and adequate income protection to the victims of industrial injury or death, but also the fullest possible medical care, rehabilitation and restoration, all within the traditions of the American legal system and form of government."

Spearheading an effort to restore the covenant in workers' compensation to an even-handed, rational, and sufficient method of caring for those "victims of industrial injury and death" will require that leaders have the fortitude to withstand the inevitable pressures from those who are confused as to whether it is their job to serve the system or to be served by it.

Those who represent labor's interest should be of labor and not those who claim to represent working people by virtue of their vested interest in a portion of the injured worker's award. Attorneys are essential to the system and always will have a role. That role is the appropriate adjudication of disputes and controversies — not as a "voice" for labor in negotiations over changes in or reform of the law.

Business and management representatives, similarly, need to get directly involved in the construction of a fair and just workers' compensation system. Their interests are ill served by insurance industry professionals or agents of firms who offer consulting or representative services in workers' compensation. To do otherwise is to accept the proposition that competition can be advanced on the basis of inequity and injustice and that a high-cost system with inadequate benefits and coverage is tolerable.

Those charged with running this system are key to its reconstruction. Directors and commissioners of workers' compensation bureaus, accident board members, and administrators of agencies have the knowledge and experience to help policymakers and representatives of business and labor achieve improvements in the effectiveness and fairness of the system. They must be especially vigilant, however, against the pressure and influence exerted by those who have no interest in and do not support the standards adopted by the IAIABC.

The providers of workers' compensation services — insurers, lawyers, doctors, rehabilitation specialists, and chiropractors, to name a few -- have a role in the system and should be supportive of efforts to improve it. It is not "their" system, however, and it should not be designed in response to their interests.

Can we meet the challenge of changing the direction of workers' compensation before it slips even further in trust and confidence among the people who suffer the pain and death and those who pay the bill for workplace injuries and illnesses? There are a lot of new faces in the system, but the problems remain the same. Will the next generation of workers' compensation leaders do any better than the past?

6

Workers' Compensation Challenges: The Employer's Perspective

THOMAS J. RITTENHOUSE

From a risk manager's perspective, the greatest workers' compensation challenge in the next decade will be to correct those things that presented serious problems for workers' compensation systems in the 1980s. Let me list the ones I believe are most important:

- First and foremost, eighteen years after the report of the National Commission on Workmen's Compensation Laws, workers with truly serious injuries still receive inadequate benefits, while employers continue to bear an ever-increasing burden from unduly generous payments to those with less serious injuries.
- Second, workers' compensation defines permanent total disability, in part, in terms of capacity to perform a specific job rather than purely as a physical disability.
- Third, each year it becomes progressively more difficult to distinguish between work-related and non-work related injuries.
- Fourth, we are still unable to evaluate the extent of disability or impairment in an automatic nonlitigious manner.
- Fifth, workers' compensation claims can be negotiated to a lump-sum settlement.
- Sixth, workers' compensation premium plans are regulated.

- Seventh, insurers can, for tax purposes, deduct incurred losses and self-insurers can deduct only paid losses.

How do we meet these challenges? I suggest that we clearly and honestly define the problems and choose the solutions that are most consistent with the original objectives of workers' compensation, which were to provide adequate, equitable, and prompt wage and medical benefits to employees for injury or death occurring in the course of employment, without a great deal of litigation.

Let us look at the first challenge: the inequitable distribution of benefits paid to those suffering serious and not-so-serious injuries. Current permanent total benefits for someone who is in fact totally physically disabled are inadequate and, due to inflation, grow progressively more inadequate. Why can't we provide adequate benefits to employees who are totally disabled in the course of employment? I fear that if we did, claims for less serious partial disability — the 20 percent of a man, 30 percent of an arm, and 10 percent of a hand — would wreak economic havoc on all employers. The concept of limited liability under workers' compensation would be a fiction on the order of *Nightmare on Elm Street*. If we were to limit partial disability benefits to wage loss, medical, and reasonable rehabilitation, we could afford to provide an adequate benefit to the totally disabled.

The elimination of impairment benefits does not mean that any injury less than total disability does not hurt. Of course it hurts, but the fact is that the vast majority of the permanency awards, both in number and dollars, are paid to people who return to work with little or no reduction in their earning capacity. This allocation of benefits is backwards. A more compassionate system would favor permanent total and rehabilitation benefits before all other benefits. Sooner or later the reality of how workers' compensation treats total disability will come out of the closet. If we do nothing it will come out of the closet as a poltergeist, resembling the Longshoreman and Harbor Workers Act.

A related challenge is that workers' compensation defines permanent total disability, in part, in terms of capacity to perform a specific job rather than purely as a physical disability. If we intend to adequately compensate the totally disabled, we must be able to clearly define *total disability*. That definition should be structured in terms of physical incapacities, not in terms of vocational incapacities.

For instance, suppose an ironworker trips and falls on the job and suffers damage to his inner ear canal. At the point of maximum recovery he still experiences intermittent dizzy spells. No problem for most people who work at ground level, but a serious problem for someone who walks on a 10-inch beam twenty or thirty stories above the ground. Is he totally disabled? No. He may need help in finding a new job, but he is not totally disabled. Finding a new job will not be easy. Many ironworkers do not have a high school education, yet they make more than a plumber. I have encountered similar scenarios many times. Faced with the prospect of a highly paid, undereducated employee prolonging his "permanent total" disability, you find yourself paying large amounts to settle or commute the claim.

Almost without exception, after the settlement is made, the employee decides he can work as an ironworker and returns to his job thirty stories above the ground. The other half of this story is that some ironworkers really are totally disabled. They fall off the side of a building or down the elevator shaft or through a hole in the floor and break nearly every bone in their body, not to mention what happens to vital organs on impact. Believe it or not, many survive this sort of mishap. Nobody negotiates with these unfortunate people. You just send the checks and be thankful that their benefits are not indexed to inflation and that you are not the payee on the check.

The system cannot afford to pay permanent total settlements to people who are not totally disabled and also pay adequate benefits to people who are totally disabled. In my opinion, both reason and compassion tell us that the current allocation of benefits is not right.

An important challenge arises as it becomes progressively more difficult to distinguish between work-related and non-work related injuries. Compounding this problem is the difficulty we have evaluating injuries. The crux of both of these problems is that workers' compensation is almost always a remedial statute, thus requiring that the common law rule of "liberal construction" be used when interpreting this statute. Moreover, a preponderance-of-evidence standard gives way to an evidence-to-support-the-finding standard. Remedial statute, liberal construction, and a support-the-finding standard of evidence are the principal reasons why stress, occupational disease, permanent partial benefits, unlimited medical, and lawyers may very well overwhelm the system.

If you can prove that your job stresses you to the point that you are totally disabled, you deserve workers' compensation benefits. If your job causes you to have a heart attack, you deserve workers' compensation benefits. If you can prove you have not reached maximum recovery from a job-related injury, you should not have to return to work and you should continue to receive benefits.

We all know about the company doctor who thinks everybody is faking, and we all know his cousin, the plaintiff doctor who thinks all injuries are work related and that nobody ever heals. We do not need either of these in the workers' compensation system.

We do need definitive standards that are consistent with the consensus of informed professional medical opinion. A doctor, not a lawyer, should determine whether the rigors of your job are too stressful for the ordinary man to handle. A doctor, not a lawyer, should determine whether physical exertion at work or 95 percent blockage in three arteries caused your heart attack. A doctor, not a lawyer, should determine whether or not you are ready to return to work. It really is not that difficult to obtain a consensus of informed professional medical opinion on the preceding conditions; however, it is impossible to obtain unanimity on any one of them. Somewhere out there there is a doctor who honestly or otherwise is willing to state that *X* condition is work related or that so and so employee has not yet reached maximum recovery. At the same time, there is a workers'

compensation judge out there who by law must accept evidence that supports the most liberal interpretation of the facts. Not surprisingly, there is an attorney out there who wants to bring those two guys together.

To reduce litigation, to guarantee that work-related injuries are compensable and non–work related injuries are not, to see a compensation claim properly closed without the hocus-pocus of the appeal process, the statute must provide an established and predictable framework for decision making and must not provide an arena for entrepreneurial manipulation. Putting the employee and the employer on equal footing under the statute and utilizing a preponderance-of-evidence standard will be essential for the survival of the workers' compensation system in the next decade.

Lump sum presents a further challenge. Lump-sum settlements beget claims. It would be in the employer's and the employee's best interests if payments were limited to disability, death, medical, and rehabilitation, with absolutely no provision, including death claims, for a lump-sum payment.

Workers' compensation premium plans should not be regulated. No insurance rate should be regulated. Rate regulation is irrational and counterproductive. With regard to workers' compensation, irrational rating practices have become a religion with bibles and all. We have codes and factors and applicable payroll and nonapplicable payroll and standard premium and audited premium and retro premium and dividend agreements and now assessment fees. The answer is not to fine-tune this rating scheme. The answer is to dump it, lock, stock, and barrel.

It is inequitable that insurers can, for tax purposes, deduct incurred losses while self-insurers can deduct only paid losses. The IRS says to have insurance you must have "distribution" and "spread of risk." The fact is that it is absolutely right. So what? The pivotal point that seems to be missing is that we are distributing and spreading loss, not insurance. The fact is that you can have loss without distributing or spreading it or, in the IRS's words, "insuring" it.

Just as a pension benefit is accrued and expensed in the year it is earned, so should a casualty loss be accrued and expensed in the year it occurs. The manner in which the loss is financed should have no bearing on when you recognize the expense resulting from the loss event.

In closing I would caution you not to mistake the symptoms for the problem. At the turn of the century, we will look back at the last decade of this millennium and see that occupational disease did not run rampant through the workplace; that employees are a little older but are not senile; that America has not yet become a welfare state; and that state and federal bureaucrats still are arguing about who can do the best job.

The challenge will be for employees and employers to honestly and fairly determine the objectives of the workers' compensation system.

7

Workers' Compensation: A Call for Reform

GARY L. COUNTRYMAN

Liberty Mutual has been the leading writer of workers' compensation insurance in the country for more than half a century, and our prominence in that market continues, accounting for about 12 percent of the private insurance market, or some $3.5 billion in premiums. Despite our leadership role, I am concerned about the future of privately administered workers' compensation — very concerned. A pernicious pattern has emerged in many states that seems beyond the reach of our industry to deal with effectively.

Although no two states are exactly the same, the general pattern goes something like this: Costs rise at rates well above prevailing rates of inflation. The relentless march of medical costs, benefit utilization, the pioneering work and inspiration of the claimants' bar, and a frequently inefficient, understaffed, or statutorily hobbled administrative system are all to blame.

The National Council on Compensation Insurance responds with an eye-catching rate filing. Regulators respond somewhere in between what the analysis seems to dictate and what good short-term politics would suggest. After all, they reason, the observed rate of cost increase is temporary and there's time to catch up later. But, increasingly, it isn't temporary, and after several years the inadequacy of rates begins to grow quite large — certainly beyond the reach of the industry and maybe beyond the political reach of the most well intended regulator.

In the meantime, efforts to enact legislative reforms to eliminate or control costs get under way, but they too are politically difficult. The result is either reform that has little cost impact or no reform at all.

In response to the compelling economics of price inadequacy and the absence

of reform, there has been a slow but accelerating shrinkage in the voluntary insurance supply. According to the NCCI, the involuntary market grew from around 5 percent in 1984 to an estimated 20 percent in 1988.

Now, workers' compensation rate inadequacies are not new; they come and go, and on cue we in the industry whine about them. What is different this time is their scale and scope. More and more frequently we are experiencing accumulating rate inadequacies that are approaching levels that are going to be beyond a point any of us can correct. And the list of affected states that fit this pattern is growing swiftly.

An Emerging and Dangerous Trend

The trend that is emerging is dangerous for those businesses that believe that their interests are best served by a private insurance market. For example, Maine cost Liberty Mutual nearly $130 million between 1981 and 1986 — after investment income. Year after year, we tried to obtain rate relief. Time and again we tried to work with the Maine legislature to reform one of the most liberal compensation laws in the country. On more than one occasion we sought relief in the courts. As a last resort we were left with no choice but to withdraw — the first action of its kind in our history. Needless to say, we found no joy in the actions we took in Maine, but we could no longer tolerate the financial consequences of continuing to do business in that state.

Following our withdrawal, some benefit reforms were enacted and a modest amount of rate relief was granted. It was not enough. That the combination of reforms and rate relief fell short is illustrated by an involuntary market estimated to be 82 percent of the total insured market in 1988, up from 67 percent in 1987.

So what we seem to have under way here is a trend toward restrictions in supply in response to an increasingly politicized regulatory environment, brought on by rapidly increasing system costs and an unresponsive legislative process. It manifests itself in a growing involuntary market and is periodically punctuated by an outright withdrawal of one or more major players. For reasons of financial necessity, insurers have become more selective in both the states and lines of coverage they are willing to write.

At the same time, political attitudes toward the business of insurance seem more hostile today than anytime in memory. The recent trends in workers' compensation insurance are going to be ever more difficult to interrupt because of this hostile political climate. As if that were not enough, the California experience (Proposition 103) also has taught us that insurers, standing alone, have little political clout.

It has become an increasingly desperate and unstable situation. How do we find our way out of this wilderness? Since inordinate cost escalation is the root cause that threatens the system and inadequate rates are merely the result, it follows that

reform is our best and only hope. What is needed is a strategy and a structure to achieve reform across a broad array of states, each with its own culture, its own system, and its own problems.

A Comprehensive Strategy

Although the creation of a comprehensive strategy will take some time and a lot of collaboration, there are a few elements that we at Liberty think are essential.

First and foremost, any strategy must have as its centerpiece a plan for coalition building. Reform is a political struggle, and history shows that without coalition building, it's nearly impossible to achieve. Building at least a partial coalition should not be difficult. Private carriers and the insured and self-insurance business community, along with our respective national and local trade associations, are natural allies. We have worked together in the past, but we need to build stronger relationships as we look to the future. In particular we need to undertake a more coordinated reform strategy at the local level — agreement on affirmative programs before the shooting starts.

Other possible allies are not so natural. We ought to make every effort to include organized labor, and certainly we should reach out to the medical community. On the other hand, it seems improbable that any effort to include the claimants' bar would be successful. Still the legal fraternity is not monolithic, and we should not dismiss the notion that there are groups within the legal profession with which we could work effectively. The point is that coalition building, to be effective, must be as broad based as possible, and no effort should be spared to make it so.

The second element of the strategy is communication. Put simply, we must be willing to talk about the problems of our workers' compensation systems to anyone who will listen. Let us face it, workers' compensation is a fairly esoteric subject that is not at the forefront of public consciousness. The fact that employers bear the direct cost of the system and then pass those costs on to the consumers is not an issue that Ralph Nader is likely to popularize anytime soon. What this means is that our job of communication is both difficult and easy in some ways — difficult because the subject is not naturally attractive to anyone (in particular, most legislators), and easy in the sense that fewer individuals and groups require educating and convincing.

I do not think that the insurance industry or industry generally has done the job here. We must be willing to speak out at legislative and regulatory functions, and at business functions as well. Insurers must do a better job of communicating the issues to its policyholders. And we all must be more willing to talk to the press.

By explaining the problems of our workers' compensation systems, we will not only increase the depth of our coalition building, we will also help shape legislative debate and gain more control over the final outcome of legislative reform.

The third element of a reform strategy is effective lobbying. There is the old-fashioned insider kind, which is still important, and there is the new grass roots lobbying that is becoming more popular and more and more effective, as techniques for mobilizing constituencies within coalitions are perfected. The truth is we need both. We need the most skillful lobbyists available, and we need to mobilize our employees and our colleagues and customers in the business community, educate them to the issues, and show them how to effectively communicate with their own legislators.

In broad brush then, these are the three main elements of a strategy for workers' compensation reform that has a chance of altering the pernicious pattern that is emerging — coalition building, communication, and effective lobbying. Surely, I have oversimplified, but I am convinced each element is critical to a strategy that leads us toward meaningful reform.

A National Catalyst for Reform

So much for strategy. Let us turn to structure. How shall we carry out our reform strategy? The first challenge we face is fifty state systems of workers' compensation that are within the statutory control of fifty state legislatures. What this means is that if reform is going to have a chance in major problem states, it's got to be carried out locally by local coalitions. The problem will be to find the right mix of people and interest groups that can agree on the kind and extent of reform and that have the political base to get it done.

What is needed is a national catalyst with workers' compensation reform as its singular interest. Such an organization would go a long way toward helping to create, nurture, and sustain coalitions at the state level. It would be a resource and a coordinator for reform efforts in various states. It would help create and expand coalitions at the state level, and provide whatever other support state coalitions might need — some funding, technical advice, access to research and research capabilities, experts, and so on.

Although I believe a national group is essential, it would not seek reform in any state, nor would it attempt to dictate the nature of the reform to be undertaken. Rather it would be a resource and a catalyst, a creator of broad themes, for reform in support of local coalitions.

Now, I am not asking for a sudden burst of altruism, nor am I asking for charity. So that there is no misunderstanding, I freely admit that my call for joint action is inspired by my company's own self-interest, not to mention the interests of my industry. What I am asking you to do is to act in your own self-interest too. Because the truth is, our self-interests are compatible.

I believe most of us want the same thing — a private system of workers' compensation that places heavy emphasis on injury prevention and injury

mitigation, including physical and vocational rehabilitation; a system that provides for the basic needs of injured workers by promptly delivering adequate medical and income benefits; a system that delivers those benefits in the most efficient and dispute-free ways possible; and a system that provides cost stability within the framework of commonsense notions about the inevitable rate of inflation.

With the right strategy and the right organizational structure, I believe we can move many of our workers' compensation systems back closer to the ideal that we all want.

My company will provide whatever leadership it can. We pledge our resources and our commitment to a broad-based reform effort. I extend to each of you an invitation to join with us.

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1990

Analysis of

WORKERS COMPENSATION LAWS

Prepared and Published by the U.S. Chamber of Commerce

Contents

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Contents

FOREWORD

The 1990 edition of *Analysis of Workers Compensation Laws* offers an overview of the important provisions of workers compensation statutes and is intended to provide both a comparison and an improved understanding of the various laws. Sixteen detailed charts are presented to aid employers, employees, insurance firms, agents, brokers, attorneys, physicians, and others in locating specific provisions of workers compensation laws.

The *Analysis* tracks the laws of the 50 states, the District of Columbia, Guam, and Puerto Rico, as well as the statutory provisions of American Samoa and the U.S. Virgin Islands. Full treatment is also provided for the federal, provincial, and territorial laws of Canada.

Although the *Analysis* provides essential information needed daily in many business offices, it should not be considered as supplanting exact provisions to be found in statutory texts.

The underlying data required to bring together this publication were supplied by legislative reporting services, insurance companies, and government officials in the several states and jurisdictions. Additional assistance came from the Social Security Administration, U.S. Department of Health and Human Services.

The research, analysis, and editing of the charts and text was furnished by Carol B. Meyer, Publications Coordinator, Resources Policy of the U.S. Chamber of Commerce. For further information, you can write to her at 1615 H Street, N.W., Washington, D.C. 20062 or phone (202) 463-5533.

All contributions to this publication are gratefully acknowledged.

Richard L. Lesher
President
U.S. Chamber of Commerce

INTRODUCTION

HISTORY OF WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY

Workers compensation laws are designed to provide satisfactory means of handling occupational disabilities. A 20th century development in North America, the laws have evolved as the economy became more industrial and less agricultural.

Before these laws were enacted, a well-established common-law principle held that a master or employer was responsible for injury or death of employees *resulting from a negligent act by him.* Thus, disabled workers who sued employers for damages had to prove their injuries were due to employer negligence—a slow, costly, uncertain legal process. As business enterprise and machine production expanded, the number of industrial accidents and personal-injury suits increased. At the close of the 19th century it was apparent that the accepted common-law defenses—contributory negligence, assumption of risk, negligent acts of fellow servants—operated too harshly on claims of disabled workers. The situation led to demands for new legal provisions.

As a result, between 1900 and 1910 so-called employer's liability laws were adopted by many states. Although they tended to modify common-law defenses, they did not prove completely satisfactory; employees still had to prove employer responsibility and negligence. Other legal remedies were urged.

A new answer was forthcoming: In 1911 the first workers compensation laws were enacted in the United States on an enduring basis. The first comprehensive Canadian laws were enacted in 1915.

Today, each of the 50 states has a workers compensation law. The compensation laws of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands are also outlined in this *Analysis.* Federal workers compensation laws have been enacted; for example, the District of Columbia Workmen's Compensation Act, the Federal Employees' Compensation Act, and the Longshoremen's and Harbor Workers Compensation Act—the latter providing for private or public employees in nationwide maritime work. Each of the Canadian provinces and territories has a compensation act or ordinance.

In essence, workers compensation laws hold that industrial employers should assume costs of occupational disabilities without regard to any fault involved. Resulting economic losses are considered costs of production—chargeable, to the extent possible, as a price factor. The laws serve to relieve employers of liability from common-law suits involving negligence.

Six basic objectives underlie workers compensation laws:

1—Provide sure, prompt, and reasonable income and medical benefits to work-accident victims, or income benefits to their dependents, regardless of fault;

2—Provide a single remedy and reduce court delays, costs, and workloads arising out of personal-injury litigation;

3—Relieve public and private charities of financial drains—incident to uncompensated industrial accidents;

4—Eliminate payment of fees to lawyers and witnesses as well as time-consuming trials and appeals;

5—Encourage maximum employer interest in safety and rehabilitation through an appropriate experience-rating mechanism; and

6—Promote frank study of causes of accidents (rather than concealment of fault)—reducing preventable accidents and human suffering.

To what extent have the laws achieved desired objectives? Answers to this vary from state to state and depend on many factors including the viewpoint of the appraiser.

However, a 1972 evaluation by the National Commission on State Workmen's Compensation Laws concluded that state laws were not living up to their potential, and the Commission made 84 recommendations for the [illegible]nt of the system. Nineteen of these were labele[illegible]te this negative assessment, the Commis[illegible] workers compensation is a fundame[illegible]alued institution in our industrial ec[illegible]

In January 1976, the [illegible] of the [illegible]y Workers' Compensation Task For[illegible] members fro[illegible] U.S. government departments an[illegible] reporte[illegible]gs on the need for reform of state [illegible]grams. Essentially, the Task Force f[illegible]ms must be reformed to bring about mo[illegible]t at the state level, with the federal governm[illegible]ogress and providing technical assistance. The [illegible] that, without a reordering of priorities and a new mode of operation, workers compensation would become more expensive, less equitable, and less effective. After completing its mission, the Task Force was merged with the Division of State Workers' Compensation Standards in the Office of Workers' Compensation Programs, Department of Labor.

The constructive criticism rendered by the Commission and the Task Force gave new impetus to the development and growth of workers compensation laws, and these laws now enjoy a more prominent role within the social insurance system of the United States.

The National Commission and the Task Force both rejected proposals to replace the various state programs with one federal program. Nevertheless, legislation has been introduced in the U.S. Congress for the past several years to give the federal government a direct role in the state systems by setting federally mandated "minimum standards." There has never been sufficient support for these bills to move them beyond the committee level, however.

INTRODUCTION
GENERAL INFORMATION

This analysis of workers compensation laws attempts to provide a ready reference to the statutory provisions found in the federal, state, and territorial laws of the United States and the federal, provincial, and territorial laws of Canada. American Samoa, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands are included.

In the following pages, 16 charts will be found grouped under three categories:

- *Coverage of Laws*, listing the various requirements pertaining to employments, injuries, and diseases (Part I);
- *Benefits Provided*, detailing the required income replacement benefits and medical benefits (Part II);
- *Administration of Laws*, grouping the many administrative requirements and safeguards (Part III).

COMMENTS ON CHARTS

Complete up to January 1, 1990, the charts on the following pages present the statutory provisions of the workers compensation laws as amended. The effects of many decisions—by courts and administrative agencies—have been taken into account in interpreting these laws.

All provisions presented by the charts in this booklet have required study and interpretation to reduce them to the brief statements found in the charts. In some cases space does not permit sufficient explanation to clarify all points. In such cases it is suggested that the text of the law should be examined.

For an explanation of the abbreviations used in the charts and a note on benefit computations, see page 49.

FEDERAL AND DISTRICT OF COLUMBIA LAWS

Two federal workers compensation laws are charted. The Federal Employees' Compensation Act (F.E.C.A.) governs compensation of all employees of the United States government. The Longshore and Harbor Workers' Compensation Act provides job disability benefits for all U.S. maritime employment and certain others. Courts have held that the Longshore Act does not apply to maritime employment in Puerto Rico, however.

Entries for the District of Columbia are derived from the District of Columbia Workers' Compensation Act, a D.C. enactment replacing the Longshore Act, effective July 26, 1982. D.C. government employees are covered by a separate D.C. enactment that replaces the F.E.C.A. The law for D.C. government workers is not charted except where it differs materially from the F.E.C.A.

The charts do not cover the federal Black Lung Act, the disability provisions of the Social Security program, the Federal Employer's Liability Act (Jones Act), or veterans' benefits.

CANADIAN LAWS

This booklet includes an analysis of the Canadian federal and provincial workers compensation acts. Each province and territory administers its own act or ordinance. The federal Merchant Seamen's Compensation Act is charted, also.

Employees of the Canadian federal government are compensated under the Government Employees' Compensation Act, administered by Labour Canada. Compensation is paid by the Canadian government, but the amount is determined by the workers compensation board for the province where the worker is usually employed. Government employees residing in the Northwest Territories or the Yukon Territory may receive compensation in accordance with the Alberta Act. In view of this arrangement, the charts do not include the Government Employees' Compensation Act except where it differs materially from the provincial acts.

ANNUAL COST

Reporting in *Social Security Bulletin*, the U.S. Department of Health and Human Services estimated that employers spent just over $38.0 billion in 1987 to insure or self-insure their work-injury risks. This was over $4.0 billion, or 12 percent higher than the 1986 cost of workers compensation. The prior year, the increase in cost was 16 percent. The average cost per $100 of payroll was $2.06 for 1987, compared with $1.98 for 1986.

Medical costs totaled $9.9 billion in 1987. Compensation payments amounted to $17.5 billion—about 64 percent of all workers compensation payments, which totaled $27.4 billion. Figures for 1988 were not available at the time of publication.

HIGHLIGHTS OF 1989

The United States Congress and legislatures in 49 states convened in 1989. In all, more than 270 laws were enacted covering almost every aspect of workers compensation.

Benefits: Maximum indemnity benefit levels increased in 42 states, the District of Columbia, Puerto Rico and Guam as well as under the Longshore Act and F.E.C.A. Thirty eight states, the District of Columbia and the Virgin Islands now provide for the automatic adjustment of the maximum annually, based upon the state average weekly wage. Two other states change the maximum level more than once annually. In 42 states and the District of Columbia, the maximum weekly benefit now equals or exceeds 66-2/3 percent of the statewide average weekly wage for temporary total disability cases. Of these 27 pay 100 percent or more.

State Legislation: During a second special session, the Texas legislature passed major workers compensation reform legislation. Although most changes do not take effect until January 1, 1991 or after, the Industrial Accident Board, for example, will be replaced by a Workers Compensation Commission on April 1, 1990. The 1991 edition of *The Analysis* will cover all applicable Texas changes.

Federal Legislation: During 1989, Congress did not act on the occupational disease notification and prevention legislation, but the proposals considered in the 100th Congress were reintroduced.

Senator Howard Metzenbaum (D-OH), chief sponsor of the bill in the Senate, reintroduced the measure as S. 582, with 20 co-sponsors. In the House, Representative Joseph Gaydos (D-PA) introduced H.R. 3067 with more than 100 co-sponsors. No hearings were scheduled in either chamber during the first session of the 101st Congress.

The Product Liability Reform Act of 1989, H.R. 2700, and the Senate version S. 1400, would limit manufacturers' and sellers' liability for defective products. This proposal would allow an employee's workers compensation benefit to be reduced by the amount of the product liability award. This provision will not apply if the employer can prove tht the injury was not caused by the fault of the employer or a co-employee of the injured worker. Both bills also prohibit manufacturers from suing employers to make the employer contribute his share of the fault to the product liability award. If an employer attempts to recapture his workers compensation benefits from the manufacturer, the employer loses this protection against lawsuits by the manufacturer. H.R. 2700 is pending before the House Committee on Energy and Commerce and the Committee on the Judiciary; and S. 1400 is pending before the Senate Committee on Commerce, Science and Transportation.

NEXT EDITION OF THE ANALYSIS OF WORKERS COMPENSATION LAWS

Forty-four state legislatures and Congress convene in 1990. Undoubtedly, there will be numerous changes in many workers compensation laws. A complete revision of this volume is printed annually. The 1991 edition will be available in March 1991. It will reflect changes made in workers compensation laws up to January 1, 1991.

PART 1
COVERAGE OF LAWS

A basic and oft-repeated objective of workers compensation on which there is broad agreement is that coverage under the acts should be virtually, if not completely, universal. For various historical, political, economic, or administrative reasons no state law covers all forms of employment.

In 1987 the proportion of all wages and salary employees covered by job-injury laws was 87 percent representing 88.4 million workers. Covered payrolls amounted to approximately $1.85 trillion, or approximately 84 percent of total civilian wage and salary disbursements. Charts I through III delineate the statutory employment coverage requirements.

Another basic objective for workers compensation is to provide compensation for all work-related injuries and diseases. Note that workers compensation does not seek to cover all worker health problems. To make this distinction, fairly uniform statutory definitions and tests have been adopted in each state. Typically the statute limits compensation benefits to "personal injury caused by accidents arising out of and in the course of employment."

Although the test is fairly uniform, its interpretation has not resulted in completely uniform coverage of injuries and diseases. Initially, this problem was remedied by providing coverage for specific occupational diseases. With advances in medical technology and increased exposures to a growing number of substances with a variety of physical stresses, it became impractical to define work-related diseases by specific enumeration. The states have therefore amended their statutes to provide coverage of all occupational diseases. Chart IV portrays the status of the laws on this point.

TYPE OF LAW: CHART I

Compensation laws are compulsory or elective. Under an elective law, the employer may accept or reject the act, but if he rejects it he loses the three common-law defenses—assumption of risk, negligence of fellow employees, and contributory negligence. Practically, this means that all the laws, in effect, are "compulsory." A compulsory law requires each employer within its scope to accept its provisions and provide for benefits specified. Coverage is still elective in only three states: South Carolina, New Jersey, and Texas.

Suits for Damages—Under workers compensation acts employers generally are exempted from damage suits. Where an employee rejects the act, and sues an employer who has accepted it, the employer usually retains the three common-law defenses. Conditions for rejection of the act often are so severe as to make the privilege virtually inoperative. In a few states, however, courts have created exceptions to the exclusive remedy rule under certain circumstances.

INSURANCE REQUIREMENTS: CHART I

Security for Payment of Benefits—Most jurisdictions require employers to obtain insurance or prove financial ability to carry their own risk.

Chart I notes provisions relating to (1) insurance requirements, (2) penalties for failure to insure, and (3) whether self-insurance or group self-insurance is permitted.

Six states, two U.S. territories, and most provinces require employers to insure in a monopolistic state or provincial fund; in some instances, employers may qualify as self-insurers. Thirteen states permit employers to purchase insurance either from a competitive state fund or private insurance company. Five of the six monopolistic state funds were created between 1913 and 1915, when the principles of workers compensation were still new. In 1987, state funds collected $5.3 billion in premiums.

The U.S. Chamber of Commerce advocates that employers be permitted to buy private insurance if they so desire and that employers who can qualify be allowed to be self-insurers. Chamber policy states:

"Insurance is an integral part of private enterprise. Insurance should not be regarded as a function to be carried on by the government, and insurance monopolies carried on by governmentally created entities should not be permitted."

Self-Insurers—Some large corporations prefer to assume liability for workers compensation and avoid administrative costs associated with insurance policies. Twenty-eight states and the Longshore Act authorize group self-insurance for smaller employers who pool their risks and liabilities. Employers spent approximately $5.5 billion in 1987 on self-insurance.

Self-insurance operates best when an employer has a spread of risks so large that he may benefit from the law of large numbers. It is necessary and desirable that the self-insurer establish his own protective services—similar to those insurance companies would furnish for safety engineering and claims adjustment. Also, the self-insurer may have to retain attorneys and doctors to handle problems incident to claims and medical and legal services.

Self-insurance is permitted in 47 states—as shown in Chart I. Chart I also reflects those states that specifically authorize group self-insurance.

Employers may set up a reserve fund for self-insurance to pay compensation and other benefits under the workers compensation acts of the states. Contrary to the treatment accorded insurance premiums, amounts paid into this reserve fund are not always deductible from gross income as a business expense for income tax purposes. However, amounts paid out—as cash or medical benefits—are deductible. In many cases insurance is purchased because such purchase can dispose of the item of expense and future cost in the current year.

PRIVATE AND PUBLIC EMPLOYMENTS: CHART II

Virtually all industrial employment is covered by workers compensation. Chart II shows this in detail; also it indicates the extent of coverage for public employment.

Some jurisdictions cover all private employment; others exempt those with less than a stipulated number of employees. Most jurisdictions specifically exclude certain employments. Due to the nature of the work, farm labor, domestic servants, and casual employees usually are exempted. Most jurisdictions permit employees in an exempted class to be brought in voluntarily by the employer or by administrative agency order.

Many jurisdictions provide workers compensation for all or certain classes of public employees.

Merchant marine and railroad workers in interstate commerce generally are not covered by workers compensation acts and may seek damages under the Federal Employer's Liability Act.

MINORS: CHART III

Minors are covered by workers compensation. Some jurisdictions provide double compensation or added penalties—as shown in Chart III. In many states minors also enjoy special legal protections. These are specifically noted for each state.

OCCUPATIONAL DISEASES: CHART IV

Although workers compensation laws initially had no specific provisions for occupational diseases, now all states recognize responsibility for them. Coverage extends to all diseases arising out of and in the course of employment. Most states do not provide compensation for a disease that is an "ordinary disease of life" or which is not "peculiar to or characteristic of" the employee's occupation.

Chart IV outlines provisions governing occupational disease in each jurisdiction. Generally, compensation is the same as for traumatic injuries (see Part II). Medical care is unlimited. A few states that do not provide permanent partial disability benefits for certain diseases are charted under the heading "Compensation."

Occupational diseases usually become evident during employment or soon after exposure. However, as with radiation disabilities, certain diseases may be latent for considerable time. As Chart IV notes, most states have extended periods in which claims may be filed concerning latent, slowly developing occupational diseases.

Some states impose special restrictions regarding disability resulting from exposure to coal dust, asbestos, silica, or radiation. A number of states have established presumptions for police and firefighters who have heart attacks or respiratory conditions, but no attempt is made to chart them.

OCCUPATIONAL HEARING LOSS: CHART V

The difficulty of distinguishing between work-related permanent hearing loss and loss of hearing caused by nonoccupational factors has resulted in enactment of special provisions in certain states, as shown in Chart V. Entries include the threshold for compensable loss of hearing, minimum exposure requirements, and deductions for loss caused by aging (presbycusis).

OTHER CONSIDERATIONS

A. Accident Prevention—The encouragement of safety is another basic objective of workers compensation. The effort to reduce the frequency and severity of work-related injuries is accomplished in at least two ways.

First, the workers compensation program provides employers with preventive services, including safety engineering. This role is assumed by casualty insurance carriers, state funds and safety agencies, and employers. A second general role is to provide a monetary incentive to employers to improve their safety records. Here the insurance premium structure is a primary force.

Costs of accident-prevention services are included in workers compensation insurance premiums. Casualty insurance engineers help in setting up accident-prevention programs of continuing benefit. Benefits are found in lower insurance rates, increased production efficiency, and better use of manpower. Of course, the greatest beneficiaries are those kept from industrial accidents through application of effective loss-prevention engineering methods.

B. Ratemaking Service Organizations—Premium rates for workers compensation insurance are compiled scientifically. Accident experience throughout American business is collected by ratemaking service organizations. In eleven states, there are independent rating organizations, and, in the remaining states, excluding those with monopolistic state funds, a national organization, the National Council on Compensation Insurance, exists to collect data and prepare manual rates. The rates prepared by all rating organizations generally are used as a basis for premium charges made by stock and mutual companies.

Member companies of the ratemaking service organizations report experience incurred under workers compensation policies. This experience serves as a basis for workers compensation rate determinations in accord with a standard nationwide rate-making procedure approved by the National Association of Insurance Commissioners.

Rating organization manuals are standard with all insurance companies writing business in each state where such organizations are licensed to perform ratemaking services. These manuals set forth rules, procedures, and rates applicable to workers compensation insurance. Where statutes provide for rate regulation by a state supervising authority, revised compensation rates and supporting data are filed annually with it; often, public hearings are held before rates are revised. The supervising authority must approve the rates carriers charge. All states now provide for rate regulation by state authority. In Canada rates are in the form of an assessment—established by each provincial compensation board annually by class of risk.

As set forth in these manuals, compensation rates are based on payroll. Usually only an estimated premium is collected when the policy is written. After the policy expires, a payroll audit is required. The actual premium is then figured and adjustments made.

C. Injuries Outside the Jurisdiction—Frequently, when a worker's occupation takes him into another jurisdiction, questions arise as to which law determines compensation payable. In effect, most compensation laws are extraterritorial—either by specific provisions or court decision. Answers depend on provisions of the particular laws involved and require consideration of circumstances—such as place and nature of employment, place where contract was made, employee's residence, and employer's place of business.

D. Civil Defense and Other Volunteers—Many states have laws to compensate civil defense and other volunteer workers (such as firemen) injured in line of duty. Attention is called to these laws, but no attempt is made to chart their provisions.

E. Black Lung Act—The Federal Black Lung Act (Title IV of the federal Coal Mine Health and Safety Act of 1969, as amended in 1972, 1978, and 1981) provides benefits for total disability or death caused by respiratory illness attributable to coal mining (black lung disease). The Act is administered by the Division of Coal Mine Workers in the U.S. Department of Labor's Office of Workmen's Compensation Programs and by the Social Security Administration.

Effective January 1, 1990, monthly benefits range from $371.80 to $743.60, computed at 37-1/2 percent of the monthly pay for federal employees at GS 2, Step 1, plus an allowance for dependents equal to 50%, 75%, or 100% of the basic benefit, for 1, 2, or 3 or more dependents, respectively.

A total of $6.92 billion in black lung payments have been made to claimants from 1974 to 1989. In fiscal year 1989, about $594 million was paid to almost 92,000 claimants each month.

A Black Lung Disability Trust Fund, financed by an excise tax on coal production, was set up by the 1978 amendments to pay claims where the last employment was prior to 1970 or where no responsible coal mine operator has been identified. The fund was in deficit by $3.048 billion as of September 30, 1989, despite 1981 amendments that doubled the coal tax and revised eligibility criteria in an effort to make the fund solvent.

F. Social Security Disability—The federal Social Security Disability program pays benefits on behalf of disabled workers under age 65 whose disability is expected to last 12 months or result in death. A worker becomes eligible after a minimum period of employment covered by Social Security, measured in calendar quarters. There is a 5-month waiting period.

Cash benefits are payable monthly based on wages in covered employment, plus allowances for spouse and children. Effective January 1, 1990, the maximum is $1,152 for an individual, family maximum is $1,728. Average monthly benefit awarded in December 1989 was $556.00. Cost-of-living increases are effective each December, payable the following January.

Benefits are paid out of the Disability Trust Fund, financed from the federal Social Security tax.

Combined Social Security Disability and workers compensation benefits may not exceed 80 percent of "average current earnings" prior to disability. The Omnibus Budget Reconciliation Act of 1981 requires that Social Security disability benefits supplement workers compensation unless state law provided for a reverse offset on or before February 18, 1981.

CHART I — TYPE OF LAW AND INSURANCE REQUIREMENTS — January 1, 1990

JURISDICTION	TYPE OF LAW	INSURANCE	SELF-INSURANCE	PENALTIES ON FAILURE TO INSURE
ALABAMA	Compulsory	Required	Individual and group	Fine of not less than $25 nor more than $1,000. Employer may be enjoined from doing business and liable to suit with defenses abrogated and double amount of compensation.
ALASKA	Compulsory	Required	Permitted	Class B or C felony (up to 1 year imprisonment, $10,000 fine, or both). Board may enjoin use of labor. Employer liable to suit with defenses abrogated, and employer negligence presumed proximate cause of injury. Individuals in charge of corporation personally liable for compensation.
AMERICAN SAMOA	Compulsory	Required	Permitted	Misdemeanor; fine up to $1,000 or imprisonment up to 1 year, or both. Employer liable to suit with defenses abrogated.
ARIZONA	Compulsory	Required	Individual and group	Employer liable to suit with defenses abrogated, 10% penalty of award, expenses, and attorney's fees, or $500 (whichever is greater) plus 10% interest on amount paid from fund and penalty; award paid from Special Fund; injunction against doing business in state.
ARKANSAS	Compulsory	Required	Individual and group*	$500 fine or 1 year imprisonment, or both; employer liable to suit with defenses abrogated.
CALIFORNIA	Compulsory	Required	Permitted	Employer may be enjoined from doing business. Mandatory penalty upon issuance of stop order is $500 per employee, (maximum $50,000). If a claim is filed and an employer has not secured coverage, the employer is liable to pay $1,0[illegible] per employee in non-compensable cases and $5,000 per employee in compensable cases. Failure to obey stop order is misdemeanor; penalty is fine up to $1,000, imprisonment up to 60 days, or both. $50 penalty for failure to respond to Director's inquiry. Penalties are paid into Uninsured Employers Fund and constitute lien on employer's assets. Employee may sue for damages with employer's defenses abrogated and file for compensation. Intentional failure to insure is misdemeanor.
COLORADO	Compulsory	Required	Individual and group	Compensation increased 50% or employer liable to suit with defenses abrogated (at option of employee). Employer may also be enjoined from doing business.
CONNECTICUT	Compulsory	Required	Permitted	Fine of not more than $1,000 for failure to insure. Employer may be enjoined from entering into any contracts of employment.
DELAWARE	Compulsory	Required	Individual and group	Fine of 10 cents per day per employee (maximum $50, minimum $1 per day); if default continues for 30 days employer may be enjoined from doing business. Employer liable to suit with defenses abrogated.
DISTRICT OF COLUMBIA	Compulsory	Required	Permitted	Fine of not more than $1,000 or 1 year imprisonment or both.
FLORIDA	Compulsory	Required	Individual and group	Fine of not more than $500 or not more than 1 year imprisonment, or both; employer liable to suit with defenses abrogated, and may be enjoined from doing business.
GEORGIA	Compulsory	Required	Individual and group	Misdemeanor. Compensation may be increased 10% plus attorney's fees. Penalty up to $50 per day.
GUAM	Compulsory	Required	Not permitted	Uninsured employers may be sued at law or in admiralty. Insured employer liability is exclusive for contribution among joint tort feasors against the employer.
HAWAII	Compulsory	Required	Individual and group	$250 or $10 per employee per day during default, whichever is greater. Employer may be enjoined from doing business.
IDAHO	Compulsory	Required	Permitted	Misdemeanor. Employer also liable to penalty of $2 per day per employee, and may be enjoined from doing business after 30 days default.
ILLINOIS	Compulsory	Required	Individual and group	Fine of up to $500 for each day's default; employer liable to suit.
INDIANA	Compulsory	Required	Permitted*	Class A infraction – maximum fine $10,000. Uninsured employer may be liable for medical and legal expenses plus double compensation and may be enjoined from doing business.
IOWA	Compulsory	Required	Individual and group	Employer liable to suit with defenses abrogated and presumption of negligence of employer. In coal mining, employer is liable to penalty of $10 to $100 per day and may be enjoined from further noncompliance.
KANSAS	Compulsory	Required	Individual and group	Employer liable to suit with defenses abrogated.
KENTUCKY	Compulsory	Required	Individual and group	Failure to secure payment of compensation – claimant may claim compensation and bring action at law or in admiralty with employer's common law defenses abrogated. Employer may be enjoined from doing business.
LOUISIANA	Compulsory	Required	Individual and group	12% penalty and reasonable attorney's fees for collection of claim.
MAINE	Compulsory	Required	Individual and group	Employer liable for civil penalty of up to $10,000 payable to Second Injury Fund. Corporate employers subject to revocation or suspension of its authority to do business. Class D crime. Employer liable to suit with defenses abrogated.
MARYLAND	Compulsory	Required	Individual and group*	Fine of $500 to $5,000 and/or imprisonment for not more than 1 year. Additional penalty for failure to comply with Commission's orders amounting to 6 months insurance premiums. Employer also liable to suit with defenses abrogated. Other insurers assessed* to pay unpaid claims of insolvent insurer. Fine of $300 and 15% penalty on award payable to Uninsured Employers Fund.
MASSACHUSETTS	Compulsory	Required	Individual and group	Fine of not more than $500 or imprisonment for not more than 1 year, or both; employer liable to suit with defenses abrogated.
MICHIGAN	Compulsory	Required	Individual and group	Fine of $1,000 or imprisonment for 30 days to 6 months, or both; employer liable for damages.
MINNESOTA	Compulsory	Required	Individual and group	Penalty of $750 if under 5 employees; otherwise $1,500.* Additional penalty 5 times lawful premiums for continued noncompliance. Employer may be enjoined from further employment. Employer to reimburse compensation paid plus 50% penalty. Intentional noncompliance is gross misdemeanor. Employer liable to suit with some defenses abrogated.
MISSISSIPPI	Compulsory	Required	Individual and group*	Fine up to $1,000 or one year imprisonment or both. Employer also liable to suit with defenses abrogated.
MISSOURI	Compulsory	Required*	Individual and group	Employer liable to suit with defenses abrogated. Worker may receive medical and/or death benefits out of Second Injury Fund and employer is liable for amounts paid plus fine of $100 per day of noncompliance after date of injury (up to $1,000).
MONTANA	Compulsory	Required	Individual and group*	Division must enjoin employer from doing business. Double amount of unpaid premiums assessed as penalty (minimum $200). Employer liable for compensation payable up to $50,000. Employer automatically negligent if no coverage obtained. Penalties payable to Uninsured Employers' Fund.
NEBRASKA	Compulsory	Required	Permitted*	Employer liable to suit with defenses abrogated. $1,000 fine maximum, 1 year imprisonment, or both; may be enjoined from doing business.
NEVADA	Compulsory*	Required in state fund	Individual	Employer liable to suit with defenses abrogated and may be enjoined from doing business. Misdemeanor punishable by a fine up to $500 per offense.
NEW HAMPSHIRE	Compulsory	Required	Individual and group	Penalty of $500, plus $100 per employee per day. Employer may be enjoined from doing business and injured worker may sue for damages.
NEW JERSEY	Elective	Required*	Permitted**	Employer liable to suit with defenses abrogated. Misdemeanor, punishable by a fine of not more than $1,000 or not more than 60 days imprisonment or both, plus $25 for each 10-day period but not more than $100 at any one time. Also assessment of $1,000 plus 15% of award up to $5,000 payable to Uninsured Employers Fund.
NEW MEXICO	Compulsory	Required	Individual and group	Employer may be enjoined from doing business.
NEW YORK	Compulsory	Required	Individual and group	Fine of $100 to $500 or imprisonment for not more than 1 year, or both, with graduated fines to $2,500 for repeated failures. Employer liable to suit with certain special defenses abrogated. Additional fine of $200 for each 10 day period of no coverage, or a sum not in excess of 0.5% of payroll for period of no coverage.*

Ark. *Municipalities with more than 70,000 population may self insure on individual or group basis.

Ind. *Except as to state and political subdivisions, banks, trust companies, and savings and loan associations.

Md. *Eligibility for group self insurance is limited to counties, municipalities, and certain private employers.

Mass. *$2,500 and $5,00[illegible], respectively, for deliberate failure to insure.

Miss. *All self insurers must be members of the Mississippi Workers' Compensation Self Insurers Guaranty Association.

Mo. *Employer engaged in mining must insure only to the extent of maximum liability for 10 deaths in any one accident.

Mont. *Public corporations and state agencies may establish individual or group self insurance funds.

Neb. *Group self insurance permitted for any two or more public agencies.

Nev. *Employee temporarily working in state must prove coverage in another state before beginning work in Nevada.

N.J. *Unless employer rejects. Employer of farm worker not required to insure.

**Group self insurance authorized for hospitals and local government units.

N.Y. *President, secretary and treasurer of a corporation are personally liable for penalties. Corporate officer who failed to obtain insurance ineligible for benefits out of Uninsured Employers Fund (for himself, surviving spouse, or dependents).

CHART I ☐ TYPE OF LAW AND INSURANCE REQUIREMENTS ☐ January 1, 1990 (continued)

JURISDICTION	TYPE OF LAW	INSURANCE	SELF-INSURANCE	PENALTIES ON FAILURE TO INSURE
NORTH CAROLINA	Compulsory	Required	Individual and group*	Misdemeanor, punishable by fine of $1.00 per day per employee (maximum $100, minimum $50 per day), imprisonment, or both. Employer liable to suit with common law defenses abrogated.
NORTH DAKOTA	Compulsory	Required in state fund	Not permitted	Misdemeanor punishable by $500 fine, 1 year imprisonment, or both. Uninsured employer liable for damage or injuries or death and cannot avail himself of common Law defense. Employer may be enjoined from employing uninsured workers.
OHIO	Compulsory	Required in state fund	Permitted	Minor misdemeanor – fine up to $100. If willful, second degree misdemeanor – fine up to $750, imprisonment up to 90 days, or both. Employer may be enjoined from doing business. Employer is also liable to suit with defenses abrogated.
OKLAHOMA	Compulsory	Required	Individual and group	Fine of $250 per employee for first offense, $500 per employee for second offense, up to $10,000. Penalty of misdemeanor or up to six months in jail.
OREGON	Compulsory	Required	Individual and group	Employer is liable to suit with defenses abrogated. Enjoined from hiring workers. Fine up to $1,000 plus up to $25 per day administrative costs and legal fees, and fines up to $5,000 based on type of injury.
PENNSYLVANIA	Compulsory	Required	Permitted	Fine of $500 to $2,000 per day or not more than 1 year imprisonment, or both. Employer liable to suit with defenses abrogated.
PUERTO RICO	Compulsory	Required in territorial fund	Not permitted	Misdemeanor, fine of $25 to $1,000, or imprisonment for not more than 6 months or both. Employer liable to suit with defenses abrogated. Penalty 30% of compensation (minimum $10.00).
RHODE ISLAND	Compulsory	Required	Individual and group	Fine of $1,000 and 1 year imprisonment. Corporate officer liable personally; employer liable to suit with defenses abrogated.
SOUTH CAROLINA	Elective	Required*	Individual and group	If employer does not reject and fails to insure, fine of 10 cents per day per employee (maximum $50, minimum $1 per day); if default continues for 30 days employer may be enjoined from doing business. Employer liable to suit with defenses abrogated. Willful failure to insure is misdemeanor punishable by fine of $100 to $1,000 or imprisonment of 30 days to 6 months, or both.
SOUTH DAKOTA	Compulsory	Required	Individual and group	Employer liable to suit for damages or double compensation and medical care as benefits.
TENNESSEE	Compulsory	Required	Individual and group	Administrative fine of $5,000 for every 30 days of willful refusal and noncompliance.
TEXAS	Elective	Required*	Not permitted**	Employer liable to suit with defenses abrogated. Motor bus certificate may be revoked on failure to insure.
UTAH	Compulsory	Required	Permitted	Fine of not more than 1 1/2 times the premium employer would have paid during period of non-compliance. Employer liable to suit with defenses abrogated. Costs and attorney's fees in civil suit. Employers and officers guilty of a misdemeanor.
VERMONT	Compulsory	Required	Permitted	Failure to secure compensation – fine up to $50 per day, up to a maximum of $1,500. Fine increases to $150 per day 30 days after notice by Commissioner.
VIRGIN ISLANDS	Compulsory	Required in territorial fund	Not permitted	Employer liable for compensation and expenses plus penalty equal to 30% of compensation and expenses. Employer liable to suit with defenses abrogated. Fine up to $500 or imprisonment up to 6 months, or both. Interest on premiums in default. Employer may be enjoined from doing business.
VIRGINIA	Compulsory	Required	Individual and group	Fine of $50 to $1,000. Employer liable to suit with defenses abrogated and may be enjoined from doing business. Intentionally uninsured employer commits class 2 misdemeanor.
WASHINGTON	Compulsory	Required in state fund	Permitted*	Employer may be enjoined from doing business. Willful failure is misdemeanor – fine is $25 to $100 daily. 50% to 100% of claim cost, plus $500 or twice the unpaid premium (whichever is greater).
WEST VIRGINIA	Compulsory	Required in state fund	Permitted	Employer liable to suit with defenses abrogated, all past premiums plus interest, reimbursement to state fund for claims paid on his behalf for failure to subscribe; may be enjoined from doing business in state.
WISCONSIN	Compulsory	Required	Permitted	Fine of $10 to $100 and double the evaded premium. Each day is a separate offense. Employer may be restrained from doing business pending compliance. Employer liable for all benefits awarded on uninsured claims.
WYOMING	Compulsory	Required in state fund*	Not permitted	Fine of not more than $750, plus .02% interest per month on unpaid balance. Employer may also be enjoined from doing business. Employer liable to suit with defenses abrogated.
F.E.C.A.	Compulsory	Federal appropriation		
LONGSHORE ACT	Compulsory	Required	Individual and group	Fine of not more than $1,000 or 1 year in prison or both for failure to secure payment of compensation.
ALBERTA	Compulsory	Required in provincial fund	Not permitted	Failure to furnish required security – Board may order employer to cease employment; violation – fine up to $200 daily. Failure to submit statement of wages – up to 15% assessment plus penalty up to half of compensation payable, maximum $500. Failure to pay assessment – up to 24% penalty per annum. Board certificate has same effect as court judgement; employer's goods may be seized.
BRITISH COLUMBIA	Compulsory	Required in provincial fund*	Not permitted	Failure to submit statement of wages – compensation payable plus percentage of assessment set by Board. Failure to pay assessment – unpaid amount plus costs of collection and percentage penalty, compensation payable, and employer may be enjoined from operating.
MANITOBA	Compulsory	Required in provincial fund	Not permitted	Failure to submit statement of wages – maximum fine $500. Failure to submit payroll return statement – employer liable for half of compensation payable (minimum $50). Failure to pay assessment – penalty of 5% of amount in default for first month and 1% for each succeeding month.
NEW BRUNSWICK	Compulsory	Required in provincial fund*	Not permitted	Failure to submit statement of wages – maximum penalty $500 plus percentage fixed by Board. Failure to pay assessment – employer liable for compensation payable plus percentage penalty and costs of collection.
NEWFOUNDLAND	Compulsory	Required in provincial fund	Not permitted	Failure to submit statement of wages – maximum penalty $1,000. Failure to pay assessment – assessment plus costs of collection, and a percentage penalty. Employer may be held liable for costs of claims or injuries during period of default.
NORTHWEST TERRITORIES	Compulsory	Required in territorial fund	Not permitted	Failure to submit statement of wages or to pay assessment – employer liable for compensation payable and assessment, plus percentage of assessment as penalty established by Board or regulations.
NOVA SCOTIA	Compulsory	Required in provincial fund	Not permitted	Employer liable for compensation payable. Failure to submit statement of wages – employer liable for unpaid amount and costs of collection plus 5% penalty, 1% penalty for each month in default; $50 if annual statement. Failure to pay assessment – 2% penalty plus 1% for each month in default and employer may be enjoined from operating.
ONTARIO	Compulsory	Required in provincial fund	Not permitted	Failure to submit statement of wages upon commencing operations and at other required times – penalty plus liability for additional percentage of assessment and costs of claim at discretion of Board.
PRINCE EDWARD ISLAND	Compulsory	Required in provincial fund	Not permitted	Failure to report payroll or pay assessment – penalty of $100 per week of default plus 2% of amount unpaid after 1 month and 1% for each additional month. Failure to pay assessment – employer may be enjoined from operating.
QUEBEC	Compulsory	Required in provincial fund	Not permitted	Failure to submit statement of wages upon commencing operations or at other required times – maximum fine $1,000. Failure to pay assessment, employer liable for 10% of claim cost which cannot be less than $100.
SASKATCHEWAN	Compulsory	Required in provincial fund	Not permitted	Failure to submit statements of wages upon commencing operations or at other required times – maximum fine $500. Failure to pay assessment, employer liable for percentage penalty to be established by Board and may be enjoined from operating.
YUKON TERRITORY	Compulsory	Required in territorial fund	Not permitted	Upon failure to submit statement of wages upon commencing operations or at other required times and failure to pay assessment, an employer is liable for a percentage penalty established by Board, and employer may be enjoined from operating.
CANADIAN MERCHANT SEAMEN'S ACT	Compulsory	Required	At discretion of Board	Failure to insure or cover by other means satisfactory to the Board may cause ship to be detained by Customs.

N.C. *All individual and group self-insurers must be members of North Carolina Self-Insurance Guaranty Association as a condition of authority to self-insure.

B.C. *Unless employer rejects.

Texas *If employer accepts.
**Except for state and political subdivisions.

Wash. *Group self-insurance permitted for school districts and hospitals.

Wyo. *Nonhazardous employments may also be insured with private carriers or state fund.

B.C. *Employer directly liable for compensation if injury was caused by employer's gross negligence or lack of an accident prevention program; maximum $31,382.81.

N.B. *Subject to approval of Lt.-Gov. in Council, Board may make arrangement for insurance or reinsurance.

CHART II — COVERAGE OF LAWS — January 1, 1990

JURISDICTION	EMPLOYMENTS COVERED[1]		EXCEPTIONS[2]	SPECIAL COVERAGE PROVISIONS[1]
	PRIVATE	PUBLIC		
ALABAMA	Compulsory as to employers of 3 or more. Elective as to partners or sole proprietors. Corporate officers may reject.	Compulsory as to all public employments except municipalities of less than 2,000 population. Certain school systems and institutions covered.*	Domestic servants and casual employees.	Voluntary for employers of less than 3, including farmers.
ALASKA	Compulsory as to all employments, including elected or appointed corporate executive officers. Elective as to sole proprietors or members of a partnership.	Compulsory as to state and political subdivisions, members of state boards and commissions, and members of the state-organized militia. Includes regular firemen if not prohibited by local law. Voluntary as to executive officers of municipal corporations.	Part-time baby sitters, cleaning persons, harvest help, or similar transient help; entertainers employed on contractual basis; and commercial fishermen.	Voluntary as to executive officers of a charitable, religious, educational, or other nonprofit corporation.
AMERICAN SAMOA	Compulsory as to employers of 3 or more; coverage may be required for all hazardous employments.	Compulsory as to all public employments.		Voluntary as to exempt employers.
ARIZONA	Compulsory as to all employments. Elective for working partners. Employee may reject.	Compulsory as to state, counties, cities, towns, municipal corporations, school districts, and volunteers enumerated by statute.	Domestic servants, casual employees, and real estate licensees.	Voluntary as to sole proprietors and employers of domestic servants. Motion picture business employers and employees may be exempted from law provided equal benefits are provided by insurance in domicile state.
ARKANSAS	Compulsory as to employers of 3 or more. Elective as to partners or sole proprietors.	Compulsory as to state agencies, departments, institutions, counties, cities and towns. Excludes workfare recipients.	Farm labor, domestic servants, casual workers, public charities, vendors, or distributors of newspapers and other publications.	Voluntary as to excepted employments. Compulsory for employments in which two or more employees are engaged in building or building repair work; in which one or more employees of a contractor who subcontracts any part of his contract; and in which one or more employees is employed by a subcontractor.
CALIFORNIA	Compulsory as to all employments. Elective for working members of a partnership and for working officers and directors of a private corporation who are sole shareholders.	Compulsory as to all public employments except clerks and deputies serving without remuneration, and to regional occupational centers, programs or school districts offering training to pupils outside attendance area as to enrolled pupils. Volunteers in a sheriff's reserve may receive benefits if county passes a resolution stating they are employees.	Charity workers and volunteer member workers at camps, etc., operated by nonprofit organizations. Employers sponsoring bowling teams. Domestics who work less than 52 hours during preceding 90 days or earn less than $100. Students in sport events (excludes amateur athletic participants who are not employees).	Voluntary as to excepted employments and sponsoring agencies of Economic Opportunity Programs. Employer not liable for injury due to off-duty recreational, social, or athletic activity not part of work-related duties.
COLORADO	Compulsory as to all employments. Corporate officer who is 10% shareholder may reject. Elective as to active employer or partner.	Compulsory as to all salaried public employments. Job trainees deemed employees of training institution.	Employees of religious or charitable organizations, part-time domestic servants*, and casual employees who earn less than $2,000 per year, volunteer ski lift operators, independent real estate salespersons and brokers, and independent truckers.	All farm labor covered in 1977. Officers of farm corporation may reject coverage.
CONNECTICUT	Compulsory as to all employments. Corporate officer may reject. Elective as to sole proprietors or partners.*	Compulsory as to all state, public corporations, and members of General Assembly. Municipalities may elect coverage of elected and appointed officials, police, and firemen.	Casual employees, outworkers,* domestics employed less than 26 hours weekly, officers of fraternal organizations paid less than $100 per year.	Voluntary as to excluded employments.
DELAWARE	Compulsory as to all employments. Up to 4 corporate officer-stockholders may reject. Elective as to sole proprietors or partners.	Elective as to state and certain counties, cities, and towns.	Domestic servants, casual employees earning less than $300 in 3 months from one household; farm labor.	Elective as to licensed real estate brokers.
DISTRICT OF COLUMBIA	Compulsory as to all employments.	Separate act is compulsory for all public employments, except officers or employees of the United States, state, or foreign government, and uniformed D.C. police or firemen.	Farm labor, casual employees, master or crew of any vessel, and employees of common carrier by railroad in interstate commerce.	Act applies to employees principally localized in Washington, D.C. Domestic workers covered if employer employs 1 or more for 240 hours or more per quarter.
FLORIDA	Compulsory as to employers of 3 or more. Elective as to corporate officers, partners, and sole proprietors.	Compulsory as to state and political subdivisions (includes volunteers), except elected officials.	Domestic servants, casual employees, 12 or fewer casual or 5 or fewer regular farm labor, professional athletes, employees of common carriers, and volunteers (except for government entities).	Voluntary as to excepted employments. Excludes real estate salesmen, solely on commission. Numerical exemption inapplicable to employees of subcontractors. When a contractor sublets part of his contract, the contractor is responsible for securing and paying coverage for subcontractor.
GEORGIA	Compulsory as to all employers of 3 or more. Elective as to active partners or sole proprietors.	Compulsory as to state, county, municipal corporations, and political subdivisions including school districts. Voluntary as to planning commissions.	Farm labor, domestic servants, employees of common carriers by railroad, casual labor and licensed real estate salesmen and brokers.	Voluntary as to excepted employments.
GUAM	Compulsory as to all industrial employments.*	Compulsory as to paid and voluntary work done for Government of Guam or any political subdivision.	Casual labor and members of Territorial Board of Education.	All contracts of hire in the Territory for work outside the Territory are presumed to allow remedies under the Guam Workers' Compensation Law.
HAWAII	Compulsory as to all industrial employments.* Compulsory as to all out-of-state employers who work in the state.	Compulsory as to all public officials, elective or appointed. Covers public board members.	Volunteers of religious, charitable, or nonprofit organizations. Domestics who earn less than $225 during each quarter in the preceding year. Unpaid corporate officers with 25%+ shares of corporation with no employees.	Voluntary as to employments not defined as industrial.
IDAHO	Compulsory as to all employments. Elective as to corporate officers who are 10% shareholders, sole proprietors, and working members of partnership.	Compulsory as to all public employments except officials at secondary school athletic contests. Members of Idaho National Guard will be covered under state law, if not covered under federal law.	Agricultural pursuits, domestic servants, casual labor, indwelling members of employer's family, outworkers,* employment not for money, airmen, and commission real estate salesmen and brokers.	Employees within state who work for employers domiciled in another state are covered. Credit is provided for benefits paid to employees under the law of other states.
ILLINOIS	Compulsory as to enumerated "extra hazardous" employments (including occupational diseases). Elective as to partners and sole proprietors.	Compulsory as to all public employments except members of fire and police departments in cities over 200,000 population (such firemen covered to extent of burn-related disfigurement).*	Certain farm labor, domestics, and persons not in usual course of employer's business; real estate brokers and salesmen paid by commission only.	Voluntary as to excluded employments.** Corporate officers of small business may reject.
INDIANA	Compulsory as to all employments including corporate officers. Elective as to sole proprietors, or partners.	Compulsory as to state, municipal corporations, and political subdivisions, includes state legislators, and elected and appointed officials.	Farm labor, domestic servants, casual workers, and railroad workers, and licensed real estate professionals.*	Compulsory as to coal mining and for students in cooperative education.
IOWA	Compulsory as to all employments but up to 4 corporate officers may reject. Elective for proprietors and working partners.	Compulsory as to all public employments, except firemen and policemen entitled to pension fund. Covers highway safety patrol officers, conservation officers, and agricultural workers at state universities.	Domestic and casual workers earning under $200 per quarter; farm labor, if employer payroll under $2,500 per year.	Voluntary as to excepted employments. Persons receiving employment training or evaluations in an approved facility are covered for PP or PT disabilities. Under certain conditions, truck owner-operators and real estate agents are considered independent contractors and are required to maintain own coverage.

NOTE: State courts vary in decisions whether minimum of persons must be in state.

[1] Compensation laws are classified as compulsory or elective. A compulsory law requires every employer to accept the act and pay the compensation specified. An elective act is one in which the employer has the option of either accepting or rejecting the act, but if he rejects it he loses the customary common law defenses (risk assumed by employee, negligence of fellow servants, and contributory negligence). In most states workers in excepted or excluded employments may be brought under coverage of the act through voluntary action of the employer. In other states, such action of the employer must be concurred in by the employees.

[2] Applying to private employments only. The exceptions for public employments are given under "Employments Covered—Public."

*Outworker is person to whom articles are given for cleaning, repair, etc., at home.

Ala. *Employees of all county and city bds. of education, Ala. Inst. for Deaf and Blind, and 2-yr. colleges under state bd. of educ. control. Special act covers employees of U.S.S. Alabama Battleship Comm. and authorizes excess medical care benefits not to exceed $10,000 per employee; also, for employees of Department of Agriculture and Industries. Special act covers employees of Tannehill Furnace and Foundry Commission.

Colo. *Part-time is equal to less than 40 hours per week.

Conn. *Non-members of a civil preparedness force and volunteer firemen who are requested by a municipality to aid in an emergency situation are covered under the workers compensation laws of the municipality where the injury occurs; and under the laws where their company is located respectively.

Guam *Employment in trade, occupation, or profession, carried on by employer for pecuniary gain.

Hawaii *Employment in trade, occupation, or profession, carried on by employer for pecuniary gain.

Ill. *Townships may elect coverage for participants in job training or work program.

**The law is "elective" as to private employments of a nonhazardous nature, but it does not abrogate the employer's defenses if he does not accept the act, and thus is considered to be voluntary.

CHART II ☐ COVERAGE OF LAWS ☐ January 1, 1990 (continued)

JURISDICTION	EMPLOYMENTS COVERED[1]		EXCEPTIONS[1]	SPECIAL COVERAGE PROVISIONS[1]
	PRIVATE	PUBLIC		
KANSAS	Compulsory as to all employments, including corporate executive officers. Elective as to partners, individuals, or self-employeds.	Compulsory as to all public employments. Members of firemen's relief associations may elect to accept or reject coverage. Public agencies or entities may elect coverage for persons required to perform community service work.	Farm labor or any employer whose gross annual payroll is not more than $10,000; real estate brokers and salespersons on commission.	Compulsory as to eleemosynary institutions. Voluntary as to excluded employments. Labor unions and associations may elect coverage for their members who perform services and are not full-time employees.
KENTUCKY	Compulsory as to all employments, including corporate executives. Elective as to owner of business or partner. Worker may reject voluntarily prior to injury.	Compulsory as to state and political subdivisions, including elected and appointed state officials and employees of the General Assembly.	Domestic servants if employer employs fewer than 2 each regularly employed 40 hours a week; casual workers employed less than 20 consecutive days; agricultural labor; worker for charitable or religious organization in return for aid or sustenance; and participant in carpool to and from work.	Specifically covers newsboys, operators of coal mines and members of volunteer ambulance service. Voluntary as to excluded employments.
LOUISIANA	Compulsory as to all employments, including corporate executives. Corporate officers who are 10% shareholders and sole proprietors may reject.	Compulsory as to all public employments, except sheriffs' deputies and officials. Subdivisions may cover elective and appointive officials.	Crews of crop spraying aircraft while acting as contractors, or employees of persons principally engaged in agriculture; real estate brokers and salesmen; domestic workers.	Excludes officers of nonprofit charitable, fraternal, cultural, or religious corporations or associations.
MAINE	Compulsory as to all employments, including corporate executive officers. Corporate officers who are 20% shareholders may reject. Elective as to self-employed persons or partners.	Compulsory as to state, counties, cities, towns, and quasi-municipal corporations. Includes firemen and police and volunteer firemen and emergency medical services personnel.	Domestic workers, seasonal (works less than 26 weeks/year, full- or part-time) or casual agricultural or aquacultural employees.* Maritime employee in interstate or foreign commerce, or lobster sternman. Commission-paid real estate salesman or broker.** Independent contractor. Employee harvesting 150 cords of wood from farm wood lot. Voluntary participant in employer-sponsored athletic event. Elected or appointed executive officers of a charitable, religious, educational or other nonprofit corporation.***	Voluntary as to excluded employments. Parent, spouse, or child of sole proprietor, partner, or corporate officer who is a 20% shareholder, may reject coverage.
MARYLAND	Compulsory as to all employments, including corporate officers. Elective as to partners or sole proprietors. Corporate farm officers who are 20% shareholders may reject. Elective for officers owning 20% or more of a professional services corporation and performing professional services for that corporation.	Compulsory as to state, counties, cities, and their agencies; paid firemen in certain counties; prisoners working for county roads boards; forest wardens; crewmen and fire fighters for Department of Forest and Parks, jurors for non-federal courts, including the state militia during both training and active duty.	Domestic workers who earn less than $250 in a quarter from a single household; certain maintenance workers, not employed for 30 consecutive days around a private home; seasonal, migratory farm labor within 25 miles of residence who work no more than 13 weeks a year and who do not operate machinery or equipment, farmers who employ fewer than 3 or have a full-time payroll less than $15,000, and commission-paid real estate salesman or broker. Also, independent contractors and owner-operators of Class F tractors who are under agreement with a motor carrier.	Voluntary as to excluded employments. Officers of close corporation may reject. Small employers of farm labor may be insured under a group policy. Certain volunteer firefighters and paramedics may be covered.
MASSACHUSETTS	Compulsory as to all employments.	Compulsory as to state; elective as to counties, cities, and districts having power of taxation. Municipalities required to indemnify police and firemen. Cities and towns may cover certain elected or appointed officials.	Seasonal and casual labor, domestic servants employed less than 16 hours a week, masters and seamen in interstate commerce covered by federal law, athletes whose contracts provide wages during job disability, commission-paid salespersons, independent taxi drivers, and voluntary participants in recreational activities.	Voluntary as to domestic servants hired casually or on a seasonal basis.
MICHIGAN	Compulsory as to all employers of 3 or more, or less than 3 if 1 is employed for 35 hours per week for 13 weeks by same employer.*	Compulsory as to all public employments, including Michigan Conservation Corps members. Trainees in federally funded training program deemed employees of sponsoring public entity.	Professional athletes whose average weekly wage is more than 200% of statewide average weekly wage; domestic servants who work less than 35 hours a week for 13 weeks a year; licensed real-estate salesmen.	Voluntary as to employer of 2 or less, and domestic service. Family members may be excluded by endorsement.
MINNESOTA	Compulsory to most employments. Elective as to partners or officers of certain family farms or close corporations and their families.	Compulsory as to most public employments. Subdivisions may cover elective and appointed officers.	Certain casual labor; household workers who earn under $1,000 per 3 months from one private household, family farms with annual farm labor payroll under $6,000, railroad workers covered by federal law, and nonprofit corporations with annual payroll under $1,000; commercial thresher or baler for family farm.*	Election must be in writing. Person, partnership or corporation may elect coverage for independent contractors for a fee.
MISSISSIPPI	Compulsory as to all employers of 5 or more. Corporate officers may reject.	Compulsory as to all public employments, including political subdivisions of the state. Specifically excludes handicapped in state sheltered workshop programs.	Domestic servants, farmers; farm labor; newspaper distributors; officers of nonprofit charitable, fraternal, cultural, or religious corporations or associations.	Voluntary as to exempted employers.
MISSOURI	Compulsory as to all employers of 5 or more.* Elective for partners and sole proprietors.	Compulsory as to all public employments, including elected and appointed state officials, contractors of a public corporation, state militia, and sheriffs and deputy sheriffs. Compulsory for workers on state welfare projects under federal Economic Opportunity Act.	Farm labor, domestic servants, occasional labor for private household, qualified real estate agents, members of employer's family by marriage or consanguinity, inmates confined to a state prison, penitentiary, county or municipal jail, residents of mental health facilities and unpaid volunteers of a tax-exempt organization.	Voluntary as to exempt employments, employers of less than 5 employees, and salaried officers of Missouri farm corporations.
MONTANA	Compulsory as to all employments. Corporate officers may reject. Elective as to partners and sole proprietors.	Compulsory as to all public employments, including public contractors, and volunteer rescue workers.	Domestic and casual employment, employers covered by federal law, person performing services for aid and sustenance only, officials at amateur athletic events, real estate broker or salesman, direct sellers of consumer goods, dependent member of employer's family for whom the employer may claim an exemption under the federal tax code, and newspaper carriers or free-lance correspondents. Cosmetologists and barbers who qualify as independent contractors may exempt themselves.	Coverage is mandatory for partner or sole proprietor who is independent contractor (except real estate or farm services), but may apply for personal exemption. Voluntary as to exempt employments.
NEBRASKA	Compulsory as to all employments. Corporate officers who are 25% shareholders may reject. Elective as to proprietors, partners or self-employed.	Compulsory as to all employments, including officials elected or appointed for fixed terms.	Farm labor and domestic servants.	Voluntary as to farm labor and domestic service.
NEVADA	Compulsory as to all employments. Elective as to sole proprietors.	Compulsory as to all employments, including public contractors. Also includes unpaid members of state departments, boards, commissions, agencies, or bureaus appointed by a statutory authority; members of local bands and orchestras.	Farm labor; domestic servants; casual employees; employees engaged without pay in employer's social or athletic events; voluntary ski patrolmen; and any clergyman, rabbi or lay reader.	Voluntary as to exempt employments. Employee may elect compensation if mandated employer is uninsured.
NEW HAMPSHIRE	Compulsory as to all employments. First 3 corporate officers not counted as employees.* Elective as to partners and sole proprietors.	Compulsory as to all public employments.	Railroad workers covered under F.E.L.A. (Jones Act).	
NEW JERSEY	Elective as to all employments.	Compulsory as to all public employments.	Casual workers, maritime workers, and railroad workers engaged in interstate commerce.	
NEW MEXICO	Compulsory as to employers of 3 or more. Corporate officers who are 10% shareholders may reject. Elective as to partner or self-employed.	Compulsory as to state, counties, cities, towns, schools, drainage, irrigation, or conservancy districts, public instruction or administrative boards, includes elected or appointed officials.	Farm or ranch labor, domestic servants, casual employees, and real estate salespersons.	Voluntary as to farm labor, domestic service, and where less than 3 are employed. Compulsory for charitable organizations employing workers.

NOTE: State courts vary in decisions whether minimum number of persons must be in state.

[1]Compensation laws are classified as compulsory or elective. A compulsory law requires every employer to accept the act and pay the compensation specified. An elective act is one in which the employer has the option of either accepting or rejecting the act, but if he rejects it he loses the customary common law defenses (risk assumed by employee, negligence of fellow servants, and contributory negligence). In most states workers in excepted or excluded employments may be brought under coverage of the act through voluntary action of the employer. In other states, such action of the employer must be concurred in by the employees.

[2]Applying to private employments only. The exceptions for public employments are given under "Employments Covered – Public."

Me. *Employers of six or fewer agricultural or aquacultural employees exempt if employer maintains liability insurance policy with limits of not less than $100,000 per employee and medical coverage of not less than $,000.
**Provided that broker or salesman is independent contractor and signs contract with agency indicating such.
***No compensation allowed if injury or death of employee is brought about by willful intention of himself or another, or by intoxication while on duty.

Mich. *Corporate officer who is 10% shareholder of corporation with up to 10 shareholders may reject.

Minn. *Act does not apply to persons covered by Domestic Volunteer Service Act of 1973, as amended.

Mo. *Employers who do not elect coverage are liable to suit with defenses abrogated.

N.H. *If corporation adds fourth officer or has any other employees, all must be covered, including the first three.

CHART II ☐ COVERAGE OF LAWS ☐ January 1, 1990 (continued)

JURISDICTION	EMPLOYMENTS COVERED[1]		EXCEPTIONS[1]	SPECIAL COVERAGE PROVISIONS[1]
	PRIVATE	PUBLIC		
NEW YORK	Compulsory as to all employments. Elective as to partners, self-employed, sole shareholder/officer and two shareholders/officers.[4]	Compulsory as to state and subdivisions when worker is engaged in hazardous occupations enumerated. Covers school aides and public school teachers in districts outside New York City. Voluntary as to municipal corporations in nonhazardous employments.	Farm labor if payroll during prior year was less than $1,200, volunteer workers, domestic worker not employed by same employer at least 40 hours per week, teacher or nonmanual laborer for religious, charitable, or educational institution; certain real estate salespersons, corporate officer who is sole shareholder and has no other employees, babysitters, and casual employment or repairs in or about a one-family owner occupied residence.	Voluntary as to exempt employments and for certain employment in fulfillment of probationary sentence. Elective as to the individual offices of mental health organizations to provide participants in sheltered workshops with benefits.
NORTH CAROLINA	Compulsory as to all employers of 3 or more and all employments with exposure to radiation. Corporate officers count toward total number of employees but may reject. Elective as to partner or sole proprietor.	Compulsory as to public employments, public and quasi-public corporations, and elective officials.	Farm labor, domestic servants, casual workers, railroad workers, voluntary ski patrolmen, individual sawmill or logging operators with fewer than 10 employees who operate less than 60 days over a 6-month period.	Voluntary as to casual employees, domestic servants, and employers of fewer than 3 employees. Compulsory as to agricultural employer with 10 or more full-time nonseasonal workers. Contractor must certify that his subcontractor has secured compensation. If subcontractor has no employees, he may waive his coverage and if he waives it contractor may not be held liable if subcontractor hires new employees and injury occurs subsequently.
NORTH DAKOTA	Compulsory as to all hazardous employments. Elective as to corporate officers, partners or sole proprietors, and resident family members.	Compulsory as to all public employments.	Farm labor, domestic servants, casual workers, illegal enterprises or occupations, and clergy.	Voluntary as to nonhazardous and excluded employments.[1] Injuries caused by intoxicants are not compensable.
OHIO	Compulsory as to all employments. Elective as to partners and sole proprietors.	Compulsory as to state, counties, cities, townships, incorporated villages, and school districts.	Casual and domestic workers paid less than $160 by one employer in any 3-month period.	Elective as to officers of family farm corporations and for ordained or licensed ministers in the exercise of their ministry.
OKLAHOMA	Compulsory as to all employments. Elective as to 10% shareholders, partners, sole proprietors, and owner-operator truckers.	Compulsory as to the state, counties, cities, or municipalities except where equivalent schemes are in force.	Domestic and casual employees of homeowner whose annual payroll is under $10,000, worker covered by federal law, agricultural/horticultural employer whose annual payroll is under $100,000; real estate salesmen and brokers.	Excludes certain persons sentenced to public service, assigned to work release or private prison industry programs.
OREGON	Compulsory as to all employments. Elective as to sole proprietors, partners, and corporate officers who are also directors with a substantial ownership interest.[1]	Compulsory as to state, departments, cities, or towns and other political subdivisions. Covers volunteer trainees in state schools for deaf and blind. Excludes cities under 200,000 population with equivalent compensation.	Domestics, casual labor, interstate transportation, certain charitable or relief work, newspaper carriers, certain amateur athletes and sports officials, volunteer ski patrols and volunteers in the ACTION Program, certain personnel under federal permits, owners and operators of certain motor vehicles, and commission-paid real estate agents.	Voluntary as to excepted employments. Covers clients in Vocational Rehabilitation Division. Owner-operator of equipment for hire or taxi may elect coverage. Any employer may elect coverage for nonsubject workers.[**]
PENNSYLVANIA	Compulsory as to all employments.	Compulsory as to all public employments except elected officials.	Domestic or casual labor, outworker[2], farmer with 1 employee who works less than 20 days a year or earns less than $150 a year.	Voluntary as to casual and domestic service.[*]
PUERTO RICO	Compulsory as to all employments.	Compulsory as to all salaried public employments.	Casual and domiciliary workers.	Voluntary for sole proprietors and their families when supervising or engaging in manual labor in their business or farm.
RHODE ISLAND	Compulsory as to all employers of 4 or more, and employers in hazardous occupations.	Compulsory as to the state and city of Providence; elective as to cities or towns.	Agriculture, domestic service. Excludes van pooling recipients except driver.	Voluntary as to agriculture, domestic service, and employers of less than 4 employees, except those in hazardous occupations. Excludes employer-sponsored social or athletic activity.
SOUTH CAROLINA	Compulsory as to all employers of 4 or more, including active partners and sole proprietors whose employees are eligible for benefits.	Compulsory as to all public employments[1] except elective and appointive officials. Coverage extended to members of the State and National Guard.	Casual employees, persons engaged in selling agricultural products, farm labor, railroads, express companies, state and county fair associations, employer with annual payroll under $3,000.	Voluntary as to excluded employments.
SOUTH DAKOTA	Compulsory as to all employments. Elective as to employer performing labor incidental to job.	Compulsory as to all public employments, except elected or appointed officials. Firemen covered. Subdivisions of state may elect to cover elected and appointed officials. Students in vocational work program covered as employees of employer.	Farm labor; domestic servants if employed more than 20 hours in any week and more than 6 weeks in any 13-week period; and workfare participants.	Voluntary as to farm labor and domestic service. Compulsory as to operators of farm machinery, e.g., threshers, combines, shellers, cornhuskers.
TENNESSEE	Compulsory as to all employers of 5 or more. Corporate officers may reject. Elective as to partners and sole proprietors.	Voluntary as to state and political subdivisions.	Farm labor, domestic servants, casual employees, employees of interstate common carriers, and voluntary ski patrolmen.	Voluntary as to employers of less than 5.
TEXAS	Elective as to all employments. Elective as to corporate officers, partners, and sole proprietors. Farm/ranch operator may elect to cover self, partner, corporate officer or family member.	State provides self-insurance coverage for Highway Dept., University of Texas, Texas A&M University, and all other state employees. Counties, municipalities, and other political subdivisions may provide compensation for their employees.[*]	Domestic servants, railways used as common carriers, and employees not in usual course of employer's business; seasonal farm/ranch labor for employer with payroll under $25,000.[**] and other farm/ranch labor for employer with payroll under $75,000.[***]	Requires coverage for employers of motorbus carriers and workers in liquified petroleum products. Elective as to excepted workers. Real estate salesmen by commission only may elect coverage.
UTAH	Compulsory as to all employments. Elective as to partners, sole proprietors, and corporate officers and directors.	Compulsory as to all public employments, including community service workers and volunteers.[1]	Casual employees. Farm employers who employ 5 or fewer persons for 40 hours per week for 13 weeks or less during the year, or employer/owner's family. Domestics who work less than 40 hours per week for a single employer. Real estate salesman or broker.	Voluntary as to farm labor and domestic service.
VERMONT	Compulsory as to all employments. Corporate officers may reject. Elective as to sole proprietors and partners.	Compulsory as to all public employees, including legislators while in session, teachers, police, firemen, town and school employees, other municipal employees entitled to pensions, and road commissioners or selectmen engaged in highway maintenance or construction.[1]	Casual or domestic employees, amateur athletics, farm labor where employer's payroll is under $2,000 per year.	Specifically covers circuses and carnivals. Exempted farmers and employers of domestics may elect coverage.
VIRGIN ISLANDS	Compulsory as to all employments. Elective as to partners and sole proprietors.	Compulsory as to all public employments.	Casual and domestic employees and volunteers for charitable organizations.	Voluntary as to exempt employers and employees.
VIRGINIA	Compulsory as to employers of 3 or more and farm employer with more than 2 full-time employees. Elective for partners and sole proprietors. Executive officers may reject for accidental injury only.	Compulsory as to all public employments except administrative officers and employees elected or appointed for definite terms.[1] Includes judges of Supreme Court and Circuit Court and judges and clerks of juvenile, domestic relations, and district courts.	Casual employees, horticultural and farm laborers, taxi drivers and domestic servants, employees of steam railroads, employments not in usual course of employer's trade, business, or occupation, and real estate salesmen/associated brokers on commission under independent contract or who are not treated as employees for federal income tax purposes.[**]	Voluntary as to employers of less than 3, farm labor, and domestics. Employer may elect coverage for as independent contractor provided that independent agrees in writing. The independent contractor may have to pay for all or part of that coverage.

NOTE: State courts vary in decisions whether minimum number of persons must be in state.

Compensation laws are classified as compulsory or elective. A compulsory law requires every employer to accept the act and pay the compensation specified. An elective act is one in which the employer has the option to either accept or reject the act, but if he rejects it he loses the customary common law defenses (risk assumed by employee, negligence of fellow servants, and contributory negligence). In most states workers in excepted or excluded employments may be brought under coverage of the act through voluntary action of the employer. In other states, such action of the employer must be concurred in by the employees.

[1] Applying to private employments only. The exceptions for public employments are given under "Employments Covered – Public."

[2] Outworker is person to whom articles are given for cleaning, repair, etc., at home.

NY [*] Elective as to unsalaried executive officer of not for profit unincorporated association or corporation, and as to executive officer of religious, charitable or educational corporation or veterans' organization.

ND [*] General contractor is responsible for securing coverage and paying premiums for his subcontractor until subcontractor has secured and paid his own coverage.

Ore. [*] Ownership interest not required for certain family farms.
[**] Contractors are covered under policy of person who awards contract.

Pa. [*] Employers may be exempted from covering an employee whose religious sect prohibits benefits from insurance provided that the sect makes provisions for its members.

[*] S.C. Department of Parole and Community Corrections may elect coverage for convicted persons performing community service or participating in a work program.

Texas [*] Subdivisions may elect to cover officer deemed volunteer fireman, police, and emergency medical personnel.
[**] To be adjusted for inflation.
[***] $50,000 for 1988-90, $25,000 or 3 more employees for 1991 (dollar amounts to be adjusted for inflation).

Utah [*] Volunteers are eligible only for workers' compensation medical benefits, not indemnity benefits.

Vt. [*] Municipalities may elect coverage of other employees. Excludes other elected officials, certain judges, sheriffs, and county treasurers and clerks. All state organizations must participate in the state employees' workers compensation fund.

Va. [*] Governing body of county, city, or town may elect coverage of its members.
[**] Does not apply to injury received during emergency services activities, unless it results from gross negligence.

CHART II □ COVERAGE OF LAWS □ January 1, 1990 (continued)

JURISDICTION	EMPLOYMENTS COVERED[1]		EXCEPTIONS[1]	SPECIAL COVERAGE PROVISIONS[1]
	PRIVATE	PUBLIC		
WASHINGTON	Compulsory as to all employments. Elective as to partners, sole proprietors, joint venturers, and corporate officers who are shareholders/directors.	Compulsory as to all public employments.	Domestic servants, voluntary law enforcement officers, Indian tribes or tribal members employed on reservation, home repair and gardening workers, railroad workers, unpaid workers in eleemosynary institutions, children under 18 on a family farm, jockeys, employments not in usual course of employer's business, and interstate truckers.	Covers apprentices registered with Apprenticeship Council. Excludes purchaser of contract musical or entertainment performance.
WEST VIRGINIA	Compulsory as to all employments. Elective as to partners, sole proprietors, and officers of associations and corporations.	Compulsory as to all public employments, including elected officials. Elective for churches.	Domestic workers, farm labor of 5 or fewer, casual employers, and employees working out of state (except temporarily).	Elective as to employers in organized professional sports, including thoroughbred horse racing.
WISCONSIN	Compulsory as to all employments (except farm labor) if payroll is $500 or more in any calendar quarter for services in the state. Compulsory as to farmers with 6 or more employees.	Compulsory as to all employees, including state legislators. Includes certain vocational education students.	Domestic servants and casual employees.	Voluntary as to excluded employments. Elective as to working sole proprietors and partners. Elective for up to two officers of a closely held corporation. Includes participants in community work experience program. Independent contractor is considered employee of any employer for whom he is working, except when the independent meets certain enumerated conditions.
WYOMING	Compulsory as to enumerated "extra-hazardous" occupations conducted for gain. Elective as to corporate officers.*	Compulsory as to state, counties, and municipal corporations when engaged in "extrahazardous" work.	Casual employees, office workers, sales clerks, farm and ranch workers, and independent contractors.	Elective as to farm and ranch workers and non-extra hazardous occupations, including volunteers if employer elects coverage (except dude ranches).
F.E.C.A.		All civil employees of the U.S. government, including wholly owned instrumentalities, and persons performing activities of civil employees without pay.		
LONGSHORE ACT	Compulsory as to all maritime employment nationwide, including longshoring, harborworking, shipbuilding, or ship repair.	Officers and employees of the U.S. or any state or foreign governments are not covered.	Master or crew of any vessel and persons unloading or repairing vessels of less than 18 tons.* Not applicable to maritime employment in Puerto Rico.**	Act also applies to workers at military bases and public works abroad, welfare and morale service workers for military abroad, and workers for nonappropriated funds (ship's services, PX's, etc.) in U.S. and abroad.
ALBERTA	Compulsory as to all nonexempted employments. Corporate officers are covered*; employer may elect coverage for self. Elective as to partners and sole proprietors.	Compulsory as to provincial employees; most school teachers are exempt.	Employments listed in General Regulations (includes farm labor, domestics, outworkers[2], financial institutions, religious and charitable institutions, legal services, medical and dental services, athletes, and employees of labor unions).	Voluntary as to excepted employments and corporate directors. Board may include any individual or class by regulation.
BRITISH COLUMBIA	Compulsory as to all employments listed in Part I. Employer may elect coverage for self.	Compulsory as to all provincial and municipal employees, including members of fire brigade, ambulance staff.	Outworkers,[2] casual labor, performers.	Voluntary as to independent operators, certain members of employer's family and unenumerated employments. Board may include any industry by regulation. Lt. Gov.-in-Council may require coverage of commercial fishing industry.
MANITOBA	Compulsory as to all employments listed in Schedule I. Elective as to corporate officer, employer, or sole proprietor.	Compulsory as to all provincial and municipal employments, except employees of school boards, including teachers.	Farm labor, outworkers,[2] casual labor.	Voluntary as to unenumerated and excepted employments. Lt. Gov.-in-Council may include any industry by regulation.
NEW BRUNSWICK	Compulsory as to all regular employers of 3 or more. Compulsory as to salaried corporate officer or director. Employer may elect coverage for self.	Elective as to public employments.	Outworkers,[2] domestic servants, and persons whose employment is of a casual nature and otherwise than for the purpose of business.*	Voluntary as to excepted employments. Lt. Gov. in council may regulate exclusion of industry in which not more than stated number of workers fixed by regulation are usually employed.
NEWFOUNDLAND	Compulsory as to all employments except as excluded by regulation.	All provincial and federal employees are covered.	Artists, entertainers, circus and trade shows, newsboys, and clergy; employment by a person in respect of a function in private residence of that person; salesmen employed out of province, sports professionals, instructors, players and coaches; volunteers and outworkers.[2]	Commission may accept excluded employer or worker.
NORTHWEST TERRITORIES	Compulsory as to all employments. Elective as to corporate officers.	Compulsory as to territory government.		Commissioner may exempt industry, employer, or worker. Voluntary as to excepted employment.
NOVA SCOTIA	Compulsory as to employments listed in Part I; Board has exempted employers of 2 or fewer. Includes corporate executives, employer may elect coverage for self.	Elective as to public employments. Firemen and police are excluded. Board may exclude public officials.	Casual labor, outworkers[2], farm labor, domestic servants. By regulation Board has excluded specific industries, including educational institutions, persons in medical work and dental surgery, veterinarians, athletes, barbers, taxicabs, florists, horticultural employment, entertainers, and aviation industry.	Voluntary as to excepted employments. Board may include or exclude any industry, or set numerical exemption, by regulation.
ONTARIO	Compulsory as to all employments listed in Schedules I and II. Corporate officer may elect coverage.	Compulsory as to all provincial and municipal employments.	Outworkers[2].	Voluntary as to unenumerated and excepted employments.
PRINCE EDWARD ISLAND	Compulsory as to employments listed in Part I. Board has exempted employers with 1 employee. Elective as to corporate officer.	Compulsory except for municipal officers. Municipal firemen and police may be covered on application.	Casual labor, outworkers,[2] farm labor, domestic servants, taxi industry, junk industry employers of 9 or fewer, aviation industry employers of 99 or fewer.	Voluntary as to unenumerated and excepted employments.
QUEBEC	Compulsory as to all employments.	Compulsory as to all provincial and municipal employments.	Domestic servants and outworkers covered upon request. Persons who play sports as main source of income specifically excluded.*	Voluntary as to unenumerated and excepted employments.
SASKATCHEWAN	Compulsory as to all employments. Compulsory for corporate officers and salaried employers.	Compulsory as to all provincial and municipal employments. Municipalities and corporations may elect coverage of mayor and members of governing body.	Farm and ranch labor, domestic servants, outworkers,[2] and school teachers.	Voluntary as to excepted employments. Lt. Gov.-in-Council may exclude any industry, employer, or worker.
YUKON TERRITORY	Compulsory as to all employments.	Compulsory as to territory government.	Casual employees, domestics, outworkers[2].	Voluntary as to excepted employments.
CANADIAN GOVERNMENT EMPLOYEES' ACT		Compulsory as to employees of government departments, Crown corporations, boards, commissions, etc., in Canada and abroad.		Claims are determined by provincial boards. Benefits same as for private employees in same province; worker in territory is deemed employed in Alberta.
CANADIAN MERCHANT SEAMEN'S ACT	Compulsory as to all employees of Canadian registered ships, as defined.		Pilots, apprenticed pilots, and fishermen.	No compensation payable if entitled under Government Employees' Compensation Act or any provincial act.

[1]Compensation laws are classified as compulsory or elective. A compulsory law requires every employer to accept the act and pay the compensation specified. An elective act is one in which the employer has the option of either accepting or rejecting the act, but if he rejects it he loses the customary common law defenses (risk assumed by employee, negligence of fellow servants, and contributory negligence). In most jurisdictions workers in excepted or excluded employments may be brought under coverage of the act through voluntary action of the employer. In other jurisdictions, such action of the employer must be concurred in by the employees.

[2]Applying to private employments only. The exceptions for public employments are given under "Employments Covered—Public."

[3]Outworker is person to whom articles are given for cleaning, repair, etc., at home.

Wyo. *Salary of corporate officer is $2,400 minimum, $4,800 maximum.

Longshore *Also excluded to extent covered by state law are: office, clerical, secretarial, security or data processing employees; club, camp, recreational operation, restaurant, museum or retail outlet employees; marina employees not engaged in construction, replacement or expansion; persons temporarily on premises not doing work normally performed by employer; aquaculture workers; builders, repairers or dismantlers of recreational vessels under 65 feet in length; and master or crew member of any vessel.
**By decisional law: Garcia v. Friesecke, 597 F.2d 284 (1st Cir.), cert. denied, 444 U.S. 940 (1979).

Alta.* Corporate director may elect coverage.

N.B.* By regulation also excludes fishing industry, except for undertakings in which 25 or more workers are at the same time usually employed.

CHART III — COVERAGE OF MINORS — January 1, 1990

JURISDICTION	COVERED	FUTURE EARNING CAPACITY	ILLEGAL EMPLOYMENT	SPECIAL BENEFIT PROVISIONS
ALABAMA	Yes		Double compensation	Settlement valid.
ALASKA	Yes	Considered		
AMERICAN SAMOA	Yes	Considered		Guardian may be required.
ARIZONA	Yes	Considered	50% additional compensation'	Lump sum payable to guardian.
ARKANSAS	Yes		Double compensation*	
CALIFORNIA	Yes	Considered	50% additional compensation'	Settlement valid until claimed by parent or guardian.
COLORADO	Yes		(•)	
CONNECTICUT	Yes	Considered		If under 18, 50% additional compensation for scheduled injury. If under 16, 100% added. Guardian may be required.
DELAWARE	Yes			
DISTRICT OF COLUMBIA	Yes	Considered		
FLORIDA	Yes	Considered		Guardian may be required.
GEORGIA	Yes			Board may appoint special guardian where no general guardian has been appointed.
GUAM	Yes	Considered		Guardian may be required.
HAWAII	Yes	Considered*		When an exceptional child is employed as part of his education, for purposes of workers compensation, the state is considered the child's employer.
IDAHO	Yes	Considered*		Lump sum under probate jurisdiction.
ILLINOIS	Yes		If under 16, 50% additional compensation	Minor may elect suit for damages.
INDIANA	Yes		If under 18, double compensation'*	If over $100, payable to guardian.
IOWA	Yes	Considered if apprentice or trainee		Settlement valid.
KANSAS	Yes			Payments to minor, guardian, or conservator.
KENTUCKY	Yes	Considered		Lump sum payable to guardian.
LOUISIANA	Yes*			
MAINE	Yes			
MARYLAND	Yes	Considered	Double compensation, discretionary'	Covers handicapped students who work without pay as part of their education.
MASSACHUSETTS	Yes	Considered	Double compensation'	If guardian required, insurer must pay expenses.
MICHIGAN	Yes		If under 18, double compensation*	
MINNESOTA	Yes			Entitled to maximum benefits if permanent partial disability. Guardian may be required.
MISSISSIPPI	Yes		Double compensation*	Guardian may be required.
MISSOURI	Yes	Considered	50% additional compensation	Same as adults. Guardian may be required.
MONTANA	Yes			
NEBRASKA	Yes		Same as adults	
NEVADA	Yes		Up to $500 per offense *	
NEW HAMPSHIRE	Yes	Considered	Illegally employed, double compensation	
NEW JERSEY	Yes'		Under 14, or between 14-18 without permit, double compensation ** Minor may elect suit for damages.	Guardian required.
NEW MEXICO	Yes			
NEW YORK	Yes	Considered	If under 18, double compensation'	Applies to second injuries, rehabilitation, and reopened cases.
NORTH CAROLINA	Yes	Considered*		Permanent disability payments over $500 payable to guardian.
NORTH DAKOTA	Yes			Lump sum payable to guardian.
OHIO	Yes	Considered	Double compensation	Lump sum payable to guardian.
OKLAHOMA	Yes	Considered	Excluded	
OREGON	Yes		25% (maximum $500) to Insurance & Finance Fund	Lump sum payable to guardian.
PENNSYLVANIA	Yes		Violation of child labor law—50% additional compensation'	
PUERTO RICO	Yes		If under 18, double compensation.	
RHODE ISLAND	Yes		Triple compensation	
SOUTH CAROLINA	Yes			Not more than $10,000 payable to father, mother, or natural guardian; more than $10,000 payable to person or corporation appointed by a probate court.
SOUTH DAKOTA	Yes			
TENNESSEE	Yes			If over $250, payable to guardian.
TEXAS	Yes	Considered		Payable to guardian.
UTAH	Yes	Considered		Lump sum payable to guardian.
VERMONT	Yes			
VIRGIN ISLANDS	Yes		30% additional compensation'	
VIRGINIA	Yes			If over $300, payable to guardian.
WASHINGTON	Yes		50% to state fund*	If over $750, lump sum payable under probate jurisdiction.
WEST VIRGINIA	Yes		Same as adults	
WISCONSIN	Yes	Considered	Doubled or tripled*	Guardian may be required.
WYOMING	Yes			
F.E.C.A.	Yes	Considered		
LONGSHORE ACT	Yes	Considered		
ALBERTA	Yes	Considered		Paid as Board deems best.
BRITISH COLUMBIA	Yes	Considered		Paid as Board deems best.
MANITOBA	Yes	Considered		Paid as Board deems best.
NEW BRUNSWICK	Yes	Considered		Paid as Board deems best.
NEWFOUNDLAND	Yes	Considered	Death benefit to parent may be withheld	Paid as Commission deems best.
NORTHWEST TERRITORIES	Yes	Considered		Paid as Board deems best.
NOVA SCOTIA	Yes	Considered	If under 14, death benefit to parent may be withheld	Paid as Board deems best.
ONTARIO	Yes	Considered	(•)	Paid as Board deems best.
PRINCE EDWARD ISLAND	Yes	Considered	(•)	Paid as Board deems best.
QUEBEC	Yes	Considered		Paid as required by law.
SASKATCHEWAN	Yes	Considered		Paid as Board deems best.
YUKON TERRITORY	Yes	Considered		Paid as Commissioner deems best.
CANADIAN MERCHANT SEAMEN'S ACT	Yes			Paid as Board deems best.

'Employer may not insure additional amount of compensation.

Ark. *Unless minor misrepresents age in writing to employer.

Colo. *Permanent disability and death benefits paid at maximum rate payable at time of death or determination of permanent disability.

Hawaii *Permanent total disability and death benefits based on AWW employee would have received at age 25.

Idaho *Adult wages for all scheduled injuries.

Ind. *Student in vocational education program treated as worker age 17 and not entitled to double compensation.

La. *Compulsory coverage for minors between 12 and 18 engaged in street trade.

Mich. *Except in case of fraudulent use of permits or age certificates.

Miss. *Employer may not insure additional amount of compensation. Students 14 and over employed between semesters or on on-the-job training, and junior auxiliary firemen, are excepted.

Nev. *Employer guilty of misdemeanor.

N.J. *Does not apply if working under certificate.

**Employer may not insure additional amount of compensation. Students age 14 and over employed between semesters or on on-the-job training, and junior auxiliary firemen, are excepted.

N.C. *Compensation for permanent disability or death with surviving dependents is based on AWW paid an adult employee in a position to which a minor employee would likely be promoted. If no position exists, then the minor is entitled to the maximum benefit. In temporary disability and no-dependency death cases, compensation may be increased in proportion to expected earnings where total disability extends over 52 weeks.

Wash. *Imposed only if minor is below minimum age for employment or working without permit.

Wis. *Doubles for minor of permit age employed without a permit. Maximum $7,500; tripled where such minor was employed in prohibited work, or in the case of minor under permit age and illegally employed. Maximum $15,000. Additional compensation payable by employer. Minors given contractual power under the Act. Employer misled by fraudulent written evidence of age by minor, extra compensation paid into special children's death benefit fund.

Ont. *Employer may be held individually liable.

P.E.I. *Employer may be held individually liable.

CHART IV COVERAGE OF OCCUPATIONAL DISEASES January 1, 1990

JURISDICTION	NATURE OF COVERAGE*	MEDICAL BOARDS	ONSET OF DISABILITY OR DEATH	TIME LIMIT ON CLAIM FILING	DEDUCTIONS FROM DEATH AWARDS	MEDICAL CARE	COMPENSATION*
ALABAMA	All diseases		Death – within 3 years after last exposure or last payment. Radiation or occupational pneumoconiosis* – exposure must occur in at least 12 months over 5 years prior to last exposure.	Disability – within 2 years after last exposure or last payment (radiation – within 2 years and claimant knows/should know relation to employment). Death – within 2 years after death or last payment. Coal miner's pneumoconiosis – within 3 years after total disability or death and claimant knows/should know relation to employment.		Unlimited	Same as for accidents. Coalminer's pneumoconiosis – total disability or death compensated same as Federal Black Lung Act
ALASKA	All diseases			2 years after knowledge of relation to employment. Within 1 year after death.		Unlimited	Same as for accidents
AMERICAN SAMOA	All diseases	Claimant examined by physician selected by Commissioner.		Within 1 year after claimant knows/should know relation to employment.		Unlimited	Same as for accidents
ARIZONA	All diseases	Board of 3 medical consultants may be appointed by Commission. Report is prima facie evidence of facts	Silicosis or asbestosis – employer liable only if exposure during 2 years	Within 1 year after disability or accrual of right; excusable.*	Disability payments	Unlimited	Same as for accidents
ARKANSAS	All diseases		Disability or death – within 1 year after last exposure (3 years for silicosis or asbestosis), or 7 years for death following continuous disability.* Does not apply to radiation. Silicosis or asbestosis: presumed nonoccupational absent exposure in 5 years over 10 years prior to disability (2 of 5 years in-state unless same employer).	Disability – within 2 years after last exposure (silicosis or asbestosis – within 1 year from disablement; radiation – within 2 years from diagnosis). Death – within 2 years		Unlimited	Where an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or where disability or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated, or in any way contributed to by an occupational disease, the compensation payable shall be reduced and limited to the proportion of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as the occupational disease, as a causative factor, bears to all the causes of the disability or death
CALIFORNIA	All diseases*			Disability – within 1 year from injury or last payment. Death – within 1 year after death (for death within 1 year after injury); 1 year after last medical payment; or 1 year after death if compensation paid; no proceedings more than 240 weeks after injury except for claims based on asbestos exposure.**		Unlimited	Same as for accidents
COLORADO	All diseases*	Committee of 3 physicians reviews care or services for necessity and appropriateness, on request of a party	Disability – within 5 years after injury (no time for radiation, asbestosis, silicosis, or anthracosis). Silicosis or asbestosis – employer liable only if exposure lasts 60 days	Within 2 years after disability or death (3 years in case of ionizing radiation, asbestosis, silicosis, or anthracosis or if reasonable excuse)		Unlimited	Same as for accidents
CONNECTICUT	All diseases	Panel of 3 physicians may be appointed by Commissioner to resolve medical issues involving lung disease		Within 3 years after first manifestation of disease (within 2 years if death occurs within 2 years after first manifestation of disease, or 1 year after death, whichever is later)		Unlimited	Same as for accidents
DELAWARE	All diseases			Disability or death – within 1 year after claimant knows relation to employment		Unlimited	Same as for accidents
DISTRICT OF COLUMBIA	All diseases			Within 1 year after injury, death, last payment, or knowledge of relation to employment		Unlimited	Same as for accidents
FLORIDA	All diseases		Death – following continuous disability and within 350 weeks after last exposure. Employer liable for dust disease only if exposure lasts 60 days	Within 2 years after disablement, death, or last payment		Unlimited	Same as for accidents
GEORGIA	All diseases	Independent medical exam by physician chosen by agreement of parties or appointment of the Board	Within one year of date when employee knew or should have known of existence of an occupational disease but in no event more than seven (7) years after last injurious exposure	Within one year of date when employee knew or should have known of existence of an occupational disease but in no event more than seven (7) years after last injurious exposure	Disability payments	Unlimited	Same as for accidents
GUAM	All diseases			Within 1 year after injury, death, or last payment		Unlimited	Same as for accidents
HAWAII	All diseases			Within 2 years after claimant knows relation to employment		Unlimited	Same as for accidents

*Employer and insurance carrier at time of last exposure are liable in Arkansas, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Minnesota, New Hampshire, North Carolina, Oklahoma, Tennessee, Vermont, and Virginia. The employer at time of last exposure is liable in Alabama, Arizona, Iowa, Michigan, Missouri, Montana, New Mexico, Pennsylvania, South Dakota, Texas, and Utah. Liability is apportioned among responsible employers in New York and Rhode Island. California limits liability to employer during last year of exposure.

*Benefits determined as of the date of last exposure or last injurious exposure in Arkansas, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Michigan, Minnesota, Missouri, New Jersey, South Dakota, Texas, Washington, Wisconsin, and Wyoming. Benefits determined as of the date of disability, knowledge, or manifestation in Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Iowa, Maryland, Massachusetts, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Vermont, and West Virginia.

Ala *Radiation illness caused by gradual exposure

Ariz *Limit on lung suit from when injury is manifest or when claimant knows/should know relation to employment tolled during incapacity.

Calif *Peace officers, including firefighters, who develop cancer during service are eligible for benefits if they can demonstrate that they were exposed to a known carcinogen during employment. Disabling psychiatric injury is compensable if at least 10% was caused by employment.

**Date of injury is date of disability and claimant knows/should know relation to employment.

Colo *Supreme Court held that employees may be entitled to benefits for job-related mental or emotional stress. *City of Boulder v. Steed*, 706 P.2d 786 (1985).

Ga *Bysanosis claims diagnosed before July 1, 1983, must be filed before July 1, 1984.

**Year is 200 days exposure over 12 months.

CHART IV ☐ COVERAGE OF OCCUPATIONAL DISEASES ☐ January 1, 1990 (continued)

JURISDICTION	NATURE OF COVERAGE*	MEDICAL BOARDS	ONSET OF DISABILITY OR DEATH	TIME LIMIT ON CLAIM FILING	DEDUCTIONS FROM DEATH AWARDS	MEDICAL CARE	COMPENSATION*
IDAHO	All diseases		Within 1 year after last exposure (4 years for silicosis, 7 years for death following continuous disability). Employer liable for nonacute disease only if exposure lasts 60 days. Silicosis – exposure must occur in 5 years during 10 years prior to disablement (last 2 in-state unless same employer)	Within 1 year after manifestation or death. Silicosis – within 4 years after last exposure. Radiation or unusual disease – within 1 year after incapacity, disability, or death and claimant knows/should know relation to employment	Disability payments	Unlimited	Same as for accidents. Silicosis – partial disability noncompensable*
ILLINOIS	All diseases		Disability – within 2 years after last exposure (3 years for beryllosis or silicosis, 25 years for asbestosis or radiation).	Disability – within 3 years after disablement or 2 years after last payment. Death – within 3 years after death or last payment. Coal miner's pneumoconiosis – within 5 years after last exposure or last payment. Radiation or asbestosis – within 25 years after last exposure	Disability payments but with minimum compensation	Unlimited	Same as for accidents
INDIANA	All diseases		Disablement – within 2 years after last exposure (3 years if caused by coal or silica dust, 35 years if caused by asbestos*); radiation – within 2 years after claimant knows/should know relation to employment. Death – within 2 years after disablement or during pendency of disability claim filed within that period; within 2 years after fixed disability expires but no later than 300 weeks after disablement. Employer liable for silicosis or asbestosis only if exposure lasts 60 days	Within 2 years after disablement or death	Disability payments	Unlimited	Same as for accidents
IOWA	All diseases	Medical Board may decide controverted medical questions or provide medical examinations for certain employees	Disability or death – within 1 year after last exposure (3 years for pneumoconiosis, 7 years for death following continuous disability). Pneumoconiosis presumed nonoccupational absent exposure in 5 years over 10 years prior to disability (2 of 5 years in-state)	Within 2 years after death or disablement or 3 years after last payment.* Radiation – within 90 days after disablement or death and claimant knows/should know relation to employment	Same as for accidents	Unlimited	Same as for accidents. Pneumoconiosis – partial disability less than 33-1/3% is noncompensable**
KANSAS	All diseases		Disability or death – within 1 year after last exposure (3 years for death from silicosis, 7 years for death following continuous disability). Does not apply to radiation. Silicosis presumed nonoccupational absent exposure in 5 years over 10 years prior to disability (2 of 5 years in-state unless same employer), employer liable only if exposure lasts 60 days	Within 1 year after disablement, death, or last payment (2 years after last payment in case of silicosis). Radiation – within 1 year after claimant knows/should know relation to employment		Unlimited	Same as for accidents*
KENTUCKY	All diseases*			Disability – within 3 years after last exposure or first manifestation. Death – within 3 years, if it occurs within 3 years after last exposure or first manifestation. Limit waived where voluntary payment or employer knows of disease and cause. No claim more than 5 years after last exposure (20 years in case of radiation or asbestos related disease).** except for death within 20 years after continuous disability begins in cases where there is award or timely claim for disability		Unlimited	Same as for accidents. Where disablement occurs after 5 years' exposure or results from silicosis or pneumoconiosis, apportioned between employer and Special Fund. Fund pays 75% of cost if not conclusively proven to result from last exposure, otherwise pays 40%. Employer pays balance
LOUISIANA	All diseases		Diseases contracted in less than 1 year presumed to be nonoccupational. Presumption is rebuttable by "overwhelming preponderance of evidence"*	Disability – within 6 months after manifestation, occurrence of disability, or worker knows/should know relation to employment. Death – within 6 months, or within 6 months after worker knows/should know relation to employment	Same as for accidents	Unlimited	Same as for accidents
MAINE	All diseases		Incapacity – within 3 years after last exposure (does not apply to asbestos-related disease). Employer liable only if exposure lasts 60 days (except for radiation and asbestos related disease). Silicosis presumed nonoccupational absent in-state exposure in 2 years during 15 years preceding disability (part of exposure may be out of state if same employer).*	Within 2 years after incapacity or 1 year after death or last payment (40 years after last payment for asbestos related disease).** If mistake of fact, within reasonable time but no later than 10 years after last payment. Radiation – limit runs from date of incapacity and claimant knows should know relation to employment	Disability payments	Unlimited	Same as for accidents
MARYLAND	All diseases*			Any action for damages from occupational disease – within 3 years of discovery that occupational disease was cause of illness or death, but not later than 10 years		Unlimited	Same as for accidents
MASSACHUSETTS	All diseases			Within 1 year after injury or death, excusable	Disability payments	Unlimited	Same as for accidents

Idaho *Silicosis – worker who is affected but not disabled may waive full compensation and, if later disabled, receive benefits up to $5,000

and *20 years if last asbestos dust exposure occurs on or after 7/1/85, 3 years if last exposure occurred before 7/1/85

Iowa *Death from respiratory disease of coalminer employed 10 years presumed due to pneumoconiosis

**Effective 7/1/84, 33% threshold requirement repealed; benefits now payable are prospective only

Kan *Worker who is affected but not disabled may waive full compensation and if later disabled receive benefits up to 100 weeks

Iowa *Death from respiratory disease of coalminer employed 10 years presumed due to pneumoconiosis

**Effective 7/1/84, 33% threshold requirement repealed; benefits now payable are prospective only

Kan *Worker who is affected but not disabled may waive full compensation and if later disabled receive benefits up to 100 weeks

Ky *Black lung claimant must file under state and federal law

**Applies to asbestos-related disease claims filed on or after 7/15/86

La *Mental injury, heart related and pervascular diseases are not occupational diseases but under certain circumstances are compensable under workers compensation

Me *Asbestos related diseases not covered by Maine Act if at time of last injurious exposure the employee was covered by Federal Longshore Act or FELA

**Claim for asbestos-related disease contracted between 11/30/67 and 10/1/83 must be filed by 1/1/85

Md *Disease or injury compensable under federal law (other than Social Security Disability Insurance) is not compensable

CHART IV ☐ COVERAGE OF OCCUPATIONAL DISEASES ☐ January 1, 1990 (continued)

JURISDICTION	NATURE OF COVERAGE*	MEDICAL BOARDS	ONSET OF DISABILITY OR DEATH	TIME LIMIT ON CLAIM FILING	DEDUCTIONS FROM DEATH AWARDS	MEDICAL CARE	COMPENSATION*
MICHIGAN	All diseases			Within 2 years after claimant knows/should know relation to employment		Unlimited	Same as for accidents*
MINNESOTA	All diseases*			Within 3 years after employee's knowledge of cause of injury and disability		Unlimited	Same as for accidents. Non-disabled claimants eligible for medical benefits. Supplemental benefits may be payable after 4 years from date of injury
MISSISSIPPI	All diseases			Within 2 years after injury* or death	Same as for accidents	Unlimited	Same as for accidents
MISSOURI	All diseases		Last employer liable regardless of length of time of last exposure	Within 2 years after injury, death, or last payment (3 years if no injury report filed; limitation runs from date injury is reasonably apparent)	Disability payments	Unlimited	Same as for accidents
MONTANA	All diseases	Examinations made by 1 or more members of the occupational disease panel	Death—within 3 years after last employment unless continuous total disability (does not apply to radiation)	Within 2 years after disability and claimant knows/should know relation to employment, may be extended 2 more years*	Disability payments	Unlimited	Same as for accidents, excluding partial disability. Worker who is affected but not disabled may leave job and receive compensation up to $10,000. Pneumoconiosis benefits reduced by amount payable under federal law. Silicosis victims or beneficiaries not qualifying for occupational disease benefits may receive up to $200 monthly supplement in resource indemnity trust financed**
NEBRASKA	All diseases			Within 2 years after knew/should have known of injury and relation to employment		Unlimited	Same as for accidents
NEVADA	All diseases	Medical review board selected by director; findings conclusive	Silicosis or respiratory dust disease is noncompensable absent in-state exposure in 3 years during 10 years preceding disability or death	Within 90 days after knowledge of disability and relation to employment or 1 year after death. Silicosis or respiratory dust disease—within 1 year after temporary or total disability or death*		Unlimited	Same as for accidents
NEW HAMPSHIRE	All diseases			Within 2 years after injury or death and claimant knows/should know of injury and relation to employment*	Disability payments	Unlimited	Same as for accidents
NEW JERSEY	All diseases			Within 2 years after claimant knows relation to employment or last payment		Unlimited	Same as for accidents
NEW MEXICO	All diseases*		Death—within 1 year after last employment (3 years for death following continuous disability), and death must follow disability within 2 years. Silicosis or asbestosis—disability or death within 2 years after last employment (5 years for death following continuous disability); employer is liable only if exposure lasts 60 days, noncompensable absent in-state exposure in 1250 workshifts during 10 years preceding disability. Radiation—disability or death within 10 years after last employment	Within 1 year after disability or death or 1 year 31 days after last voluntary payment. Radiation—within 1 year after disability begins or death and claimant knows/should know relation to employment	Disability payments	Unlimited	Same as for accidents
NEW YORK	All diseases			Within 2 years after disablement or death, or two years after claimant knows should know relation to employment		Unlimited	Same as for accidents*
NORTH CAROLINA	All diseases	Commission appoints 3-member advisory board for silicosis or asbestosis cases, although the Commission may designate a qualified physician to examine claimant	Death within 2 years after injury if totally disabled 6 years after injury or 2 years after final determination. Asbestosis—disability or death within 10 years after last exposure; for death following continuous disability, disability must occur within 10 years after last exposure.* Lead poisoning—disability or death within 2 years after last exposure; for death following continuous disability, disability must occur within 2 years after last exposure	Within 2 years after final determination of disability or within 8 years after death from occupational disease		Unlimited*	Same as for accidents**
NORTH DAKOTA	All diseases*		Death—within 1 year after injury if no disability, or 1 year after cessation of disability, or 8 years after injury if disability is continuous**	Within 1 year after injury, within 2 years after death (2 years after injury if no claim prior to death)**		Unlimited	Same as for accidents**

Mich. *Silicosis, dust disease, and logging industry fund reimburses compensation over $25,000 or 104 weeks, whichever is greater for injury after 6/30/65; also reimburses benefits in cases of exposure to bromurated biphenyl before 7/24/79 and where disability or death occurs/becomes known after 7/24/79.

Minn. *Employer and insurer during last significant exposure liable.

Miss. *For radiation, date of disablement is date of injury.

Mont. *Claimant who is discharged or transferred to avoid liability may receive compensation when totally disabled up to $10,000.
**A representative may apply for and receive silicosis payments on behalf of an eligible person or his beneficiary.

Nev. *If claimant worked as a policeman or fireman for 5 continuous years and subsequently develops heart or lung disease, it is presumed to have arisen out of employment.

N.H. *Date of injury is last date of exposure or first date worker knows/should know relation to employment.

N.M. *Occupational Disease Disablement Law applies to employers of 3 or more but excepts employers of ranching and agricultural laborers and domestic servants.

N.Y. *Disability or death due to silicosis or dust disease reimbursed from special fund for all payments over 104 weeks.

N.C. *Asbestosis or silicosis is noncompensable absent in-state exposure in 2 years during 10 years preceding last exposure or if exposure is less than 30 working days in 7 consecutive months.
**Worker who is affected but not disabled by asbestosis or silicosis or who is removed from exposure receives benefits up to $80 weekly for 104 weeks. If later totally disabled, full compensation is paid. If death results within 2 years after last exposure (350 weeks if caused by secondary infection), full compensation is paid. If partially disabled, 66-2/3% of wage loss is paid for another 196 weeks. If unrelated death, balance of 104 weeks is paid plus 300 weeks (total disability) or percentage of 196 weeks (partial disability). Worker may waive full compensation and receive 104 weeks of compensation plus 100 more weeks if later disabled or dies.

N.D. *In order to be compensable, injuries due to heart attack, stroke and mental injury must be caused by related to employment and with reasonable medical certainty must have been precipitated by unusual stress.
**Date of injury is date on which a reasonable person knows/should know relation to employment.
***Police and fire personnel who are paid and full time are eligible for workers compensation if cancer, lung or heart disease develop.

CHART IV ☐ COVERAGE OF OCCUPATIONAL DISEASES ☐ January 1, 1990 (continued)

JURISDICTION	NATURE OF COVERAGE*	MEDICAL BOARDS	ONSET OF DISABILITY OR DEATH	TIME LIMIT ON CLAIM FILING	DEDUCTIONS FROM DEATH AWARDS	MEDICAL CARE	COMPENSATION*
OHIO	All diseases	Medical specialist in specific cases; findings advisory		Within 2 years after disability or death or within 6 months after diagnosis (whichever is later)		Unlimited	Same as for accidents. No partial disability for respiratory dust disease.*
OKLAHOMA	All diseases		Employer liable for silicosis or asbestosis only if exposure lasts 60 days	Within 2 years after last exposure or manifestation and diagnosis by a physician		Unlimited	Same as for accidents*
[illegible]	All diseases			Within one year of worker's discovery of disease, after disablement, or physician informs claimant of the disease		Unlimited	Same as for accidents
PENNSYLVANIA	All diseases	Examination by impartial physician may be ordered	Within 300 weeks after last exposure (except death following disability that occurs within 300 weeks after last exposure). Silicosis, anthracosilicosis, or coalminer's pneumoconiosis—noncompensable absent in-state exposure in 2 years during 10 years preceding disability.*	Within 3 years after disablement, death, or last payment. Radiation—within 3 years after the employee knows/should know relation to employment		Unlimited	Same as for accidents*
PUERTO RICO	All diseases		Disability—within 1 year after last exposure, except diseases with longer latency periods	Within 3 years from time employee learns nature of disability and relation to work or could have learned through reasonable diligence		Unlimited	Same as for accidents
RHODE ISLAND	All diseases	Director of Workers' Compensation appoints one or more impartial physicians; any commissioner can appoint impartial examiner	Disability date determined by the Department or by the Commissioner	Within 3 years from date of discovery. Radiation—within 1 year after claimant knows/should know relation to employment		Unlimited	Same as for accidents
SOUTH CAROLINA	All diseases	Medical board determines controverted medical questions; pulmonary cases may be referred to pulmonary specialist of state medical universities	Disease must be contracted within 1 year after last exposure (2 years for pulmonary dust disease), except radiation. Byssinosis is noncompensable absent exposure for 7 years	Within 2 years after definitive diagnosis or 2 years after death. Radiation—limitation runs from date of disability and claimant knows/should know relation to employment	Disability payments	Unlimited	Same as for accidents. Worker who is affected but not disabled may waive compensation (except radiation).
SOUTH DAKOTA	All diseases	Division may contract with physicians for reports	Silicosis—noncompensable absent in-state exposure in 2 years (in-state requirement waived if same employer); employer liable only if exposure lasts 60 days	Within 2 years after disability or death. Radiation—within 1 year after disability and claimant knows relation to employment	Disability payments	Unlimited	Same as for accidents. No permanent partial disability for silicosis.*
TENNESSEE	All diseases			Within 1 year after incapacity or death	Same as for accidents	Unlimited	Same as for accidents. Coalminer's pneumoconiosis—same as federal Black Lung Act
TEXAS	All diseases	Provides for medical committee to pass on controverted questions and with power to order examinations		Within 1 year after injury or first distinct manifestation, 1 year after death. May be extended	Same as for accidents		Same as for accidents
UTAH	All diseases	Commission appoints medical panel of 1 or more to report on extent of disability	Partial disability—within 2 years after last exposure. Total disability—within 1 year after last employment, for silicosis, 3 years (uncomplicated) or 5 years (complicated). Death—within 3 years after last employment (5 years for complicated silicosis or death following continuous total disability). Not applicable to radiation. Silicosis—noncompensable absent 5 years in-state exposure in 15 years preceding disability; employer liable only if exposure lasts 30 days	Within 1 year after incapacity or death and claimant knows/should know relation to employment, but no later than 5 years after death. Permanent partial disability—within 2 years	Disability payments	Unlimited	Same as for accidents*
VERMONT	All diseases		Disablement—within 5 years after last exposure. Death—during employment or after continuous disability beginning within 5 years after last exposure, but no later than 12 years after last exposure. Does not apply to radiation	Within 1 year after discovery, death, or last payment. Radiation—within 1 year after first incapacity and worker knew/should have known relation to employment		Unlimited	Same as for accidents. Affected but nondisabled worker may waive full compensation and later receive limited compensation
VIRGIN ISLANDS	All diseases			Within 60 days after disability		Same as for accidents	Same as for accidents
VIRGINIA	All occupational diseases and some ordinary diseases of life under unusual evidentiary standards of proof		Exposure in 90 workshifts conclusive as to injurious exposure only for pneumoconiosis	Within 2 years after diagnosis is first communicated to worker, or within 5 years after last exposure, whichever is later.* Within 3 years after death occurring within periods for disability	Disability payments	Unlimited	Same as for accidents.** Worker who is affected but not disabled may waive compensation
WASHINGTON	All diseases			Within 2 years after employee receives written notice by physician		Unlimited	Same as for accidents

Ohio *Includes asbestosis, silicosis, and coalminer's pneumoconiosis. Worker who is affected but not disabled by respiratory dust disease and changes occupation, may receive 50% of SAWW weekly for 30 weeks and immediately following expiration of that award, claimant may receive 66-2/3% of wages lost from change of occupation for 100 weeks, but may not exceed 50% of SAWW.

Okla. *Worker who is affected but not disabled by silicosis or asbestosis may waive compensation for aggravation of disease and, if later disabled, receive benefits for 100 weeks up to $2,000.

Pa. *Under Occupational Disease Act, state pays $125 monthly for total disability or death caused by silicosis, anthracosilicosis, coalminer's pneumoconiosis, or asbestosis, provided there has been 2 years of in-state exposure, in cases where the claim is barred by the statute of limitations and the last exposure occurred before 1965 or where exposure occurred under several employers.

S.D. *Worker who is affected by silicosis but not disabled may waive full compensation and if later disabled or dies receive benefits up to 52 times the maximum weekly benefit, if leaves employment, may receive compensation up to $1,000.

Utah *Worker with permanent partial disability who must change occupation may receive up to $1,000 for vocational rehabilitation and retraining, plus compensation of 66-2/3% of average weekly wages up to 66-2/3% of SAWW for up to 20 weeks, then additional compensation (cumulative total may not exceed $2,080).

Va. *5-year limitation does not apply to cataract of the eyes, skin cancer, radium disability, ulceration, undulant fever, angiosarcoma of the liver due to vinyl chloride exposure, or mesothelioma, bysanosis - within 7 years after last exposure; coalminer's pneumoconiosis—within 3 years after diagnosis; asbestosis—within 2 years after diagnosis or if based on changed condition, within 2 years after diagnosis of advanced stage. No claim for an advanced stage of asbestosis shall be denied on the ground that there has been no subsequent accident. Claimant must file claim within 2 years after positive identification of infection with human immunodeficiency virus.

**Compensation for advanced asbestosis based on wages at a time of diagnosis if employed in same employment where injurious exposure occured, otherwise based on average weekly wage of worker in similar employment.

CHART IV □ COVERAGE OF OCCUPATIONAL DISEASES □ January 1, 1990 (continued)

JURISDICTION	NATURE OF COVERAGE*	MEDICAL BOARDS	ONSET OF DISABILITY OR DEATH	TIME LIMIT ON CLAIM FILING	DEDUCTIONS FROM DEATH AWARDS	MEDICAL CARE	COMPENSATION*
WEST VIRGINIA	All diseases	Occupational Pneumoconiosis Board appointed by Commissioner determines medical questions	Occupational pneumoconiosis is non-compensable absent 2 years continuous exposure in 10 years before last exposure or 6 years cumulative exposure within 15 years before date of last exposure	Within 3 years after knowledge or last exposure. Within 2 years after death.		Unlimited	Same as for accidents
WISCONSIN	All diseases	May appoint independent medical expert in doubtful cases	Disability date is last day of work for last employer whose employment caused disability	Unlimited. After 12 years claim may be filed with state fund.		Unlimited	Same as for accidents
WYOMING	All diseases	Yes		Within 1 year after diagnosis or 3 years after exposure, whichever is last. Radiation—within 1 year after diagnosis or death.	Disability payments	Unlimited	Same as for accidents
F.E.C.A.	All diseases			Within 3 years after injury, death, or disability and claimant knows/ should know relation to employment; excusable		Unlimited	Same as for accidents
LONGSHORE ACT	All diseases			Within 1 year after injury, death, last payment, or knowledge of relation to employment		Unlimited	Same as for accidents*
ALBERTA	All diseases	Referred to external specialist		Within 1 year after injury or death; excusable		Unlimited	Same as for accidents
BRITISH COLUMBIA	All diseases in schedule or otherwise recognized under Act.*	Medical review panel issues final decision on disputed medical question.		Within 1 year after injury, death or disablement by disease; excusable within 3 years**		Unlimited	Same as for accidents
MANITOBA	All diseases	Medical or neurosis review panel reports on medical questions. Special panel for silicosis		Within 1 year after injury or death. Silicosis—1 year after last exposure; if continuously exposed, within 2 years after exam free of disease.		Unlimited	Same as for accidents
NEW BRUNSWICK	All defined industrial diseases			Within 1 year after injury or 6 months after death		Unlimited	Same as for accidents
NEWFOUNDLAND	All diseases	Committee of medical referees appointed by Commission		Within 6 months after injury, disablement, or death		Unlimited	Same as for accidents
NORTHWEST TERRITORIES	All diseases	Board may require examination by impartial physician		Disability—within 1 year after injury; excusable. Death—within 3 years after last employment and within 3 years after death.		Unlimited	Same as for accidents
NOVA SCOTIA	All diseases	Board may appoint medical board to advise on silicosis and coal miner's pneumoconiosis cases	Disablement or death within 1 year after last employment (no limit for radiation)	Within 6 months after injury or death. Silicosis or coal miner's pneumoconiosis—within 5 years after last employment and within 1 year after discovery of relation to employment; excusable but paid only from filing date.		Unlimited	Same as for accidents
ONTARIO	All diseases	Industrial Disease Standards Panel*		Within 6 months after injury or death; excusable		Unlimited	Same as for accidents
PRINCE EDWARD ISLAND	All industrial diseases		Disablement within 1 year after last exposure	Within 6 months after injury or death		Unlimited	Same as for accidents
QUEBEC	All diseases*	All pulmonary diseases are submitted to Committee on Occupational Lung Diseases**		Within 6 months after worker, or beneficiary in case of death, is made aware of disease		Unlimited	Same as for accidents
SASKATCHEWAN	All industrial diseases	Medical panel issues final decision on disputed medical questions	Disablement within 1 year after last exposure	Within 6 months after injury or death		Unlimited	Same as for other injury
YUKON TERRITORY	All diseases	Disputes may be referred to 1 practitioner for decision		Within 1 year after injury or death; excusable on death of worker from disease by a dependent within 2 years of the day on which the worker was last exposed		Unlimited	Same as for accidents
CANADIAN MERCHANT SEAMEN'S ACT	All diseases	Disablement in the course of employment "otherwise than as a result of an accident" is compensated as for an accident					

Longshore *In permanent partial disability claims due to occupational disease where times of injury occurs after retirement, compensation is 66⅔% of average weekly wage times percentage of permanent impairment (according to AMA guidelines) payable while impairment continues.

B.C. *Certain diseases are presumed caused by work exposure as provided in schedule
**After 3 years, compensation is payable only from date of filing

Ont. *Panel reports to the Minister of Labour. Panel reviews and makes recommendations regarding compensation policies for occupational disease, which may be accepted or rejected by the W.C. Board

Quebec *Certain diseases are presumed caused by work exposure as provided in Schedule
**Committee formed by Minister of Labour

Yukon *Within 3 years after accident in post case if proof is filed with Commissioner

CHART V — OCCUPATIONAL HEARING LOSS — January 1, 1990

JURISDICTION	SEPARATION FROM NOISE BEFORE FILING	MINIMUM EXPOSURE IN LAST EMPLOYMENT	LIABILITY FOR PRIOR LOSS	BENEFITS		DEDUCTION FOR PRESBYCUSIS	FAILURE TO USE PROTECTIVE DEVICE	COMPENSABLE LOSS OF HEARING (IN DB)	LOSS OF HEARING CONSIDERED TOTAL (IN DB)	CYCLES AT WHICH LOSS IS MEASURED
				Total Loss	One Ear					
DISTRICT OF COLUMBIA	6 months			200 weeks	52 weeks					
GEORGIA	6 months	90 days	No	150 weeks	proportionate		No compensation	over 15 (26 ANSI/ISO)	82 (93 ANSI/ISO)	500-1,000-2,000
ILLINOIS				200 weeks	100 weeks			over 30	85	1,000-2,000-3,000
IOWA	6 months	90 days	No	175 weeks	proportionate		No compensation	over 25 ANSI/ISO	92 ANSI/ISO	500-1,000-2,000-3,000
MAINE	30 days	90 days	No	200 weeks	50 weeks	Yes		over 15 ASA (25 ANSI)	82 ASA (92 ANSI)	500-1,000-2,000
MARYLAND		90 days	Implead prior employers			Yes		over 15	82	500-1,000-2,000
MISSOURI	6 months	(*)	No	148 weeks	40 weeks	Yes		over 15 ASA (26 ANSI ISO)	82 ASA (93 ANSI/ISO)	500-1,000-2,000
MONTANA	6 months	90 days, 8 hours daily	No	200 weeks	40 weeks	Yes		over 25 ISO '64	92 ISO '64	500-1,000-2,000
NEW JERSEY	4 weeks	1 year, 3 days weekly during 40 weeks	No	200 weeks	proportionate	Yes	No compensation	over 20 ASA '51 (30 ANSI '69)		1,000-2,000-3,000
NEW YORK	3 months*	Under 90 days presumed non-compensable	Implead prior employers	150 weeks	60 weeks	No		over 25 (ANSI '69)	92 (ANSI '69)	500-1,000-2,000-3,000
NORTH CAROLINA	6 months	90 days	No	150 weeks	proportionate		No compensation	over 15 (25 ANSI/ISO)	82 (93 ANSI/ISO)	500-1,000-2,000-3,000
NORTH DAKOTA				200 weeks	50 weeks	Yes		over 25 (ANSI)	92 (ANSI)	500-1,000-2,000-3,000
RHODE ISLAND	6 months		No	100 weeks, lump sum	17 weeks, lump sum			*	*	500-1,000-2,000-3,000
SOUTH DAKOTA	6 months	90 days	No	150 weeks	proportionate	Yes	No compensation	over 25 (ANSI)	92 (ANSI)	500-1,000-2,000-3,000
UTAH	6 months		No	100 weeks	proportionate	Yes		over 25 ANSI '69	92 ANSI '69	500-1,000-2,000-3,000
VIRGIN ISLANDS	6 months			180 weeks	120 weeks					
VIRGINIA								27 ASA	90 ASA	500-1,000-2,000
WEST VIRGINIA	NR	NR	Yes, unless prior non-industrial loss is ascertained and stated or prior industrial loss is reduced to award	220 weeks*	90 weeks*	No	No consequence	over 27.5 (ANSI '69)	90 (ANSI'69)	500-1,000-2,000-3,000
WISCONSIN	7 days	90 days	No	216 weeks	36 weeks		15% decreased compensation	Over 30 ANSI	93	500-1,000-2,000-3,000
LONGSHORE ACT			Last covered employer	200 weeks	52 weeks			over 25 (ANSI)	92 (ANSI)	500-1,000-2,000-3,000

Mo *Employment in which employee was last exposed to hazards for which claim is made regardless of the length of time of such last exposure

N.Y. *Claimant may file up to 3 months after separation from employment

R.I. *Latest standards of AMA's *Guide to the Evaluation of Permanent Impairment* is used to measure hearing impairment

West Va. *Additional award up to 20 weeks for impaired speech discrimination

Is this correct? States left out?

PART 2
BENEFITS PROVIDED

Because workers compensation imposes an absolute (but limited) liability upon the employer for employee disabilities caused by the employment, the benefits payable to the injured employee attempt to cover most of the worker's economic loss. This loss includes both loss of earnings and extra expenses associated with the injury.

Specifically, the benefits provided are:

- **Cash benefits,** which include both impairment benefits and disability benefits. The former are paid for certain specific physical impairments, while the latter are available whenever there is an impairment *and* a wage loss.
- **Medical benefits,** which are usually provided without dollar or time limits. In the case of most workplace injuries, only medical benefits are provided since substantial impairment or wage loss is not involved.
- **Rehabilitation benefits,** which include both medical rehabilitation and vocational rehabilitation for those cases involving severe disabilities.

CASH BENEFITS

In considering workers compensation income or cash benefits—which replace employee loss of income or earning capacity due to occupational injury or disease—*four classifications of disability* are used: (1) temporary total, (2) permanent total, (3) temporary partial, and (4) permanent partial. Permanent partial is divided into "nonscheduled" and "scheduled" disabilities.

Most cases involve *temporary total disability.* That is, the employee—although totally disabled during the period when benefits are payable—is expected to recover and return to employment. *Permanent total disability* generally indicates that the employee is regarded as totally and permanently unable to perform gainful employment.

INCOME BENEFITS FOR PERMANENT AND TEMPORARY TOTAL DISABILITY: CHART VI

Income or cash benefits payable under either temporary total or permanent total disability are shown in Chart VI. For computing weekly benefit payments, a formula—expressed as a percentage of wage—is used. In most states limitations are placed on maximum and minimum benefits payable weekly; some states also limit the total number of weeks and total dollar amount of benefit eligibility. Where there is permanent total disability most states provide payments extending through the employee's lifetime.

For either temporary total or permanent total disability the wage-replacement percentage in each jurisdiction is the same. However, in permanent total disability cases the time limits tend to be longer and the total dollar amounts higher than in cases of temporary total disability. Some states provide additional amounts for dependents and other benefits. Allowances for dependents are charted as a range in the Maximum Weekly Payment and Notations columns.

PARTIAL DISABILITY

Most awards and the preponderance of dollars paid out as income benefits are either for temporary total or permanent partial disability. As partial disabilities involve current earnings or wage-earning ability, in many states weekly benefit payments for temporary or permanent *partial disabilities* of the "non-scheduled" type are based on a wage-loss replacement percentage. The percentage applies to the difference between wages earned before and after injury. In some states "non-scheduled" permanent partial disabilities are compensated as a percentage of the total disability cases.

INCOME BENEFITS FOR SCHEDULED INJURIES: CHART VII

Chart VII indicates maximum amounts payable in cases of "scheduled" injuries. Listed by law, these injuries involve loss—or loss of use of—specific body members, where wage loss based on nature of impairment is presumed. In most jurisdictions the actual amount payable is a specific number of weeks of benefits (based on the member involved) multiplied by the weekly benefit amount (based on earnings at time of injury).

The chart also indicates whether the "scheduled" award is in addition to any payment otherwise payable to the employee while he may be temporarily totally disabled (healing period). Some states limit the amount payable for such periods of temporary total disability.

The Canadian statutes do not provide schedules of specific injuries. Cases are decided individually using medical impairment ratings as guidelines.

SURVIVOR BENEFITS FOR FATAL INJURIES: CHART VIII

Benefits payable in the event of fatal injuries—comprising more than 14 percent of all total income benefits—are shown in Chart VIII. The benefits provided include a burial allowance as well as a proportion of the worker's former weekly wages.

Although death is the ultimate work-related tragedy, the economic loss associated with death cases is often less than that of a permanent total disability. Because of these considerations, death benefits are generally paid to the spouse until remarriage and to the children until a specified age. In addition, some laws provide a maximum benefit total expressed as a maximum period for the payment of benefits. Figures for one child only reflect compensation if sole survivor.

MEDICAL BENEFITS, WAITING PERIOD: CHART IX

Medical Benefits—amounting to about 30 percent of all workers compensation benefits paid—are shown in Chart IX. In most instances unlimited medical benefits are provided either specifically by statute or by administrative discretion.

Choice of Physician—Practices vary with respect to choice of attending physician. States are divided nearly evenly between those that give this decision to the employer or the employee. In some states selection must be made from an approved list. The employer normally has the right to have his own physician conduct an examination.

Waiting Periods—Statutes provide that a waiting period must elapse during which income benefits are not payable. This waiting period affects only compensation; medical and hospital care are provided immediately. If disability continues for a certain number of days or weeks, most laws provide for payment of income benefits retroactive to the date of injury. Statutory provisions for waiting periods are summarized in Chart IX.

REHABILITATION BENEFITS: CHART X

Mutual interests of disabled employees and employers generally favor starting rehabilitation as soon as possible. Although rehabilitation is considered an integral part of complete medical treatment, its uses may extend beyond this (for example, where it includes vocational rehabilitation and retraining).

Specific rehabilitation provisions now in workers compensation laws are outlined in Chart X. However, rehabilitation is provided in all states even if unspecified in the law. Maintenance allowance amounts and special fund sources to finance rehabilitation also are indicated.

Insurance carriers and many employers having medical departments are leaders in carrying on rehabilitation for the industrially injured. Likewise, many major industries have comprehensive programs for employment of the physically handicapped. Smaller industries maintain modified programs for placement of disabled individuals in congenial tasks. All of these private programs help employees and employers alike.

The Federal Vocational Rehabilitation Act is now effective in all states; it includes federal funds to aid states in vocational rehabilitation of the industrially disabled.

CHART VI INCOME BENEFITS FOR TOTAL DISABILITY January 1, 1990

JURISDICTION	PERCENT OF WAGES	MAXIMUM WEEKLY PAYMENT		MINIMUM WEEKLY PAYMENT		TIME LIMIT	AMOUNT LIMIT*	AUTOMATIC COST OF LIVING INCREASE	OFFSETS*	NOTATIONS
		AMOUNT	RATE	AMOUNT	RATE					
ALABAMA	66-2/3	$ 357 00	100% SAWW	$ 98 00	27 5% SAWW*	Disability				Annual increase in maximum effective July 1 *
ALASKA	80% of spendable earnings	700 00		154 00 110 00*		Disability			Social Security, unemployment compensation, employer-funded pension or profit sharing plan	
AMERICAN SAMOA	66-2/3	205 00		40 00		Disability				Compensation increased 10% if installment without award unpaid after 14 days, 20% if installment following award unpaid after 10 days
ARIZONA	66-2/3	276 30*				TT – Disability PT – Life				Benefits payable monthly Additional $10 monthly if 1 or more total dependents, not subject to maximum
ARKANSAS	66-2/3	226 11*	70% SAWW	20 00		TT – 450 weeks PT – Life	TT – $101,749 50		Unemployment compensation, Social Security	25% penalty for employer's violation of safety laws Employer may pay a lump sum equal to present value of all future payments computed at a discount of no more than 10% **
CALIFORNIA	66-2/3	266 00*	66-2/3% SAWW*	98 00		TT – Disability PT – Life		TT – after 2 years	Unemployment compensation, Social Security	50% increased compensation if injury due to employer's serious, willful misconduct Compensation increased by 10% if undue delay in payment
COLORADO	66-2/3	371 21	91% SAWW			TT – Disability* PT – Life			Social Security, unemployment compensation	Annual increase in maximum effective July 1 Compensation increased 50% if employer failed to comply with insurance provisions Compensation decreased 50% if injury results from worker's failure to obey safety regulations or from intoxication
CONNECTICUT	66-2/3	693 00	150% SAWW	138 60*	20% of maximum	Disability		October 1		Annual increase in maximum effective October 1 Additional $10 weekly per dependent child under 18, maximum 50% of basic benefit or 75% of wage (whichever is less) Compensation increased to 75% of wages if employer violated OSHA regulation **
DELAWARE	66-2/3	280 64	66-2/3% SAWW	93 55	22-2/3% SAWW	Disability				Annual increase in maximum effective July 1
DISTRICT OF COLUMBIA	66-2/3 up to 80% of spendable earnings*	551 46*	100% SAWW*	137 87*	25% SAWW*	Disability		PT – October 1, maximum 5%*	Social Security, employer-funded pension	Annual increase in maximum effective January 1*
FLORIDA	66 2/3	382 00	100% SAWW	20 00		TT-350 weeks PT-Disability	TT – 133,700		Unemployment compensation, Social Security	Annual increase in maximum effective January 1 Compensation increased 10% if installment unpaid after 14 days * Compensation reduced by 25% if employee refuses to use a safety device provided by the employer **
GEORGIA	66-2/3	175 00*		25 00		Disability				Board may assess penalties of not more than $1,000, or less than $100 for refusal, unreasonable delay, or willful neglect to make payment *
GUAM	66-2/3	250 00	66 2/3% SAWW	PT – 150 00		Disability	100 000			Compensation increased 10% for late payment without award, 20% if award
HAWAII	66-2/3	383 00	62-2/3% SAWW	TT – 95 75* PT – 95 75	TT – 25% SAWW* PT – 25% SAWW	Disability		PT – injuries prior to June 18, 1980		Annual increase in maximum effective January 1 Compensation may be increased 10% for failure to pay within 31 days after decision or award or within 10 business days for uncontroverted temporary total disability case
IDAHO	60	300 60 to 417 50	90% SAWW	150 30	45% SAWW	Disability		After 52 weeks		Annual increase in maximum effective January 1 For first 52 weeks benefit is 60% of worker's wages if there are no dependent children under 18, after 52 weeks benefit is 60% of SAWW Benefit is increased 7% of SAWW per dependent child (up to 5), but may not exceed 90% of wages 8% interest on late payments *
ILLINOIS	66-2/3	604 73	133-1/3% SAWW	TT – 100 90* PT – 226 78	PT – 25% SAWW	TT – Disability PT – Life		PT – July 15 of 2nd year		Semiannual increases in maximum effective January 15 and July 15 **
INDIANA	66 2/3	274 14*		50 00		500 weeks	137,000**			After 500 weeks additional benefits are payable from second injury fund in 150-week increments ***
IOWA	80% of spendable earnings	TT-684 00 PT-629 00	200% SAWW	0 92*		Disability				Annual increase in maximum effective July 1 Benefits increased 50% if late or stopped without good cause

*Actual weekly wage if less

*Amounts shown in italics have been calculated

*Social Security offsets generally apply by formula up to 80% of basic benefit

Ala *Compensation may be increased up to 10% for failure to pay within 30 days after due

Alaska *Spendable weekly earnings if less $154 with wage documents, $110 without wage documents

Ariz *Maximum monthly wages are $1,800 on 7/1/89 and increase to $2,100 on 7/1/91

Ark *Maximum effective 1/1/90 to 6/30/90
**18% penalty for failure to pay without an award, 20% penalty for failure to pay with an award Benefits are subject to child support withholding

Calif *Based on maximum average weekly wage of $399, effective 1/1/90 (Maximum weekly wage is $504 on 1/1/91)

Colo *TT payments cease when claimant reaches maximum medical improvement, is able to return to work, or as otherwise determined by Director

Conn *80% of average weekly wages, if less
**12% interest benefits added if undue delay in payment, 10% if undue delay in adjustment (4 weeks is presumed undue delay)

D C *Maximum is no less than $681 46, minimum is 25% SAWW or 80% of actual earnings if less Benefits for D C government employees are similar to F E C A

Fla *Compensation increased 20% if unpaid 30 days after award
**Compensation reduced by 25% per week, and up to $5,000 if employee had evidence of a controlled substance or alcohol in his body and the substance was not primarily responsible for the accident The money will be used for substance abuse rehabilitation of the employee

Ga *Income payable without award increased 15% if not paid within 14 days unless claim is controverted or Board excuses Awarded benefits increased 20% if not paid within 20 days unless Board grants leave

Hawaii *Actual wages if less, but no less than $38

Idaho *Benefits reduced by 50% if injury was the result of alcohol or a non-prescription controlled substance

Ill *Maximum TT benefit is $100 90 if unmarried and ranges up to $124 30 if 4 or more dependents In all cases claimant receives actual weekly wage if less
**TT benefits may be increased $10 per day, up to $2,500, for unreasonable delay in payment 14 days is presumed unreasonable Compensation may be increased 50% for unreasonable or vexatious delay in payment Compensation may be increased 25% for employer's willful violation of safety standard

Ind *SAWW increased to $411 on 7/1/89 and increases to $441 on 7/1/90 TTD benefits are subject to child support withholdings
**Increases to $147,000 on 7/1/90
***Award is increased 9% if employer loses on court appeal, court may increase to 10%

Iowa *Minimum based on weekly wage of $1 00