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UNIVERSITY OF CALIFORNIA, BERKELEY
CENTER FOR LABOR RESEARCH AND EDUCATION
INSTITUTE OF INDUSTRIAL RELATIONS
BERKELEY, CA 94720
(415) 642-0323

WORKERS' COMPENSATION PROGRAMS

Workers' Compensation programs (Work Comp for short) were legislated by most state governments by 1915. Now they are the oldest, most criticized, and least effective of all worker security programs in the U.S. Widespread use of the "no-fault" insurance concept in Work Comp was meant to allow prompt payment of pre-established benefits without long and risky litigation. Wage-loss reimbursement, medical care, physical rehabilitation and job retraining were all supposed to be included in the state programs. Among other goals, the programs were expected at least to provide the disabled worker with the opportunity to work again. Also, employers were expected to prevent disabling injuries and illnesses--if for no other reason than because they were required to pay all Work Comp costs.

No state Work Comp program today meets all of its original goals, and most of them fail to meet any of their original goals. A 1972 evaluation by the National Commission on State Work Comp Laws, and a 1976 HEW Task Force Report on Work Comp both concluded that no states are meeting their potential, and that most state laws are both inadequate and inequitable. As a result of these studies, minimum federal standards for Work Comp have been under consideration in the U.S. Senate since 1974 (as proposed by Senators Williams and Javits), and were introduced in the House in 1979. These proposals were modelled on the higher benefit levels and better coverage of the federal Longshore and Harbor Workers' Compensation Act. They also sought to improve many coverage limitations of the state programs--particularly the failure in most states to cover occupational diseases.

Minimum federal standards are difficult (if not impossible) to legislate--and would be equally difficult to enforce. More importantly, even significant improvements in benefit levels and coverage would not solve at least two more urgent structural problems that now appear in all state programs.

1. The Problem of Contested Claims and Too Much Litigation

Work Comp benefits paid in the U.S. have never exceeded 1% of payroll, and these costs appear to be not great enough to induce employers to reduce disabilities by maintaining a safe working environment. In 1977, 12.7% of all workers had a disabiling work injury; that rate has been the same for the past five years, and has been virtually the same for the past decade. The cost-reducing incentive that appeals most to employers is to attempt to reduce the number of claims charged against them by challenging the claims--instead of reducing the incidence of work-related disabilities. Contested claims have jumped over 10% in each year for the past three years.

What is the resulting impact on the cost of administration of Work Comp? In 1977 only 52% of every premium dollar reached workers in the form of benefits. The insurers received the balance, and paid out a great part of it to lawyers to contest worker claims!

2. The Problem of Covering Occupational Diseases

Occupational diseases are feared by workers for good reason. Since OSHA became effective in 1974, many new health hazards have been identified (PCB, PVC,

PBCP, etc.) and many old ones have become more widely known (coal and cotton dust, many carcinogens and pesticide poisons, asbestos fibers, etc.). But what happens to the worker whose health is impaired? A recent Department of Labor analysis disclosed that only 3% of severely disabled adults in the U.S. in 1972 received Work Comp benefits, and that 25% received no benefits from any source whatever!

California has probably done a better job than most states in extending Work Comp coverage to occupational diseases. But the most serious of these health impairments and disabilities are still contested by California employers and insurance companies on a case by case basis. It is taking far too long for California workers to get any kind of resolution of health impairment claims.

The U.S. Senate's approach to minimum federal standards at first included a requirement that all states must extend Work Comp coverage at least to some of the most common job-connected respiratory diseases. Employer and insurance company pressure succeeded in eliminating this extension in the latest Senate version of proposed standards (which the AFL-CIO no longer supports). The employers and insurance companies are now intensifying their pressure to cut back the higher benefit levels and the better coverage of health hazards contained in the federal Longshore and Harbor Workers' Compensation Act.

3. What is Needed

It would be a step ahead if Congress could manage to legislate minimum federal standards. But it would not be enough. Meaningful reform of Work Comp must come on a broader basis.

First, there must be a greater commitment (a) to the identification of on-job health hazards, and (b) to the development of effective standards to control the hazards, and (c) to stricter enforcement of the standards. Fortunately, workers can now have a greater voice in all three of these essential prevention activities.

Secondly, most national health care proposals in the past have not included medical care and rehabilitation of occupational disabilities. Of course, employers should pay for all costs arising from job-connected disabilities; but in fact they are able to avoid most costs by contesting claims or by maintaining the exemption from coverage of most serious occupational diseases. But if all health care bills were paid under a national program, then the employers' Work Comp payments for medical care would be available to increase wage-loss benefits and to provide better job placement and retraining programs. And medical care would be extended to thousands of workers whose health impairments now receive no Work Comp at all.

Prior to the establishment of Work Comp programs, the only hope a worker had for compensation was through the courts. A few workers won law suits against employers, but only after overcoming all the employer's common law defenses. Except for the persistent and lucky few, this system left most workers destitute after sustaining work injuries. In 65 years, little has changed. Perhaps it is time for organized labor to seek to enlarge the right of workers to sue their employers for occupational health impairments, as one way to deal with the continual failure of the employer-dominated state programs to meet their original objectives.

Teresa Ghilarducci