
UNITED STATES DEPARTMENT OF LABOR

Frances Perkins, *Secretary*

BUREAU OF LABOR STATISTICS

Isador Lubin, *Commissioner*

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Problems of Workmen's Compensation Administration

In the United States and Canada

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By

MARSHALL DAWSON

Division of Industrial Accidents

SWEN KJAER, *Chief*



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Letter of Transmittal

UNITED STATES DEPARTMENT OF LABOR,
BUREAU OF LABOR STATISTICS,
Washington, D. C., February 27, 1940.

MADAM SECRETARY:

I have the honor to transmit herewith a report on workmen's compensation administration in the United States and Canada. This bulletin contains a comprehensive analysis of the methods of administration in those States having workmen's compensation laws.

ISADOR LUBIN, *Commissioner.*

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PREFACE

During the last few years economists, sociologists, and public-minded citizens generally have been much concerned with problems of unemployment compensation, old-age pensions, and other forms of social insurance. Most of them, however, have paid little attention to the fact that in workmen's compensation the country has had the benefit of a laboratory in one form of social insurance for more than a quarter of a century. The legal and administrative problems involved in workmen's compensation are frequently very much akin to those now confronting administrators of the more recently enacted forms of social insurance.

Much that should be helpful, directly or indirectly, can be learned from an analysis of experience in administering workmen's compensation. The variety of the patterns followed by the individual States throws light on the effectiveness of different policies and procedures. They vary as to types of coverage, exemptions, insurance requirements, compensation, medical benefits, methods of computing the compensation wage base, and in a host of other ways.

It is hardly necessary at this time to restate the necessity for adequate workmen's compensation laws. That the basic principle, prompt protection for injured workers, has found nearly universal acceptance in this country is attested by the fact that all States but one now have such laws on their statute books. In the extent to which this basic principle is realized, however, there is wide divergence. The benefit provisions of some States are much more liberal than others; some laws are much more comprehensive than others; and the legal procedures required in some are much less cumbersome than in others.

The purpose of this volume is to throw light on the conditions under which the best results from a given type of legal provisions or administration can be attained. Under what conditions can we expect the law, or the administration, or both, to break down? Do the experiences of individual States provide clues for the solution of these problems?

Unlike other comprehensive studies in this field, this survey is not a mosaic of studies by a group of individuals in a limited number of States. The survey extended to every State with a workmen's compensation law, as well as to the Canadian Provinces and Puerto Rico. It shows the present conditions in the individual States and also explains how they came to be as they are.

It is apparent from this survey that further studies on a large number of specific problems are desirable. What, for instance, are the relative advantages and disadvantages of exclusive and competitive State funds? What has been the experience with various types of industrial (occupational) disease provisions? What have they cost? What has been the experience with second-injury funds? What has been the experience with the various methods of determining the wage base for compensation purposes? To what extent do the workmen's compensation laws actually cover injured workers? To what extent does compensation offset wage loss? This list by no means exhausts the problems. It merely indicates that much valuable work still remains to be done.

Several chapters in this bulletin are reproduced in substantially the same form as when they were first published as articles in the *Monthly Labor Review*. An article on Ontario Procedure in Settlement of Workmen's Compensation Claims, which appeared in the *Monthly Labor Review* for January 1936, is not included in this bulletin, but features of the Ontario system are discussed, especially in chapters 2 and 7. The laws of the Provinces of Canada are not included in the summary of workmen's compensation laws in appendix 2. Such information may be found in a mimeographed bulletin that is published annually by the Department of Labor (Dominion) of Canada.

The Bureau is indebted to Prof. Arthur H. Reede, Pennsylvania State College, for his searching examination of the manuscript. The draft of the survey report was prepared under the direction of Sidney W. Wilcox, chief statistician, and Max D. Kossoris, senior statistician.

ISADOR LUBIN,
Commissioner of Labor Statistics.

FEBRUARY 1940.

Problems of Workmen's Compensation Administration

Chapter 1.—Scope and Method of Survey

In 1934 the U. S. Bureau of Labor Statistics began a Nation-wide survey of workmen's compensation, which was later expanded to include Canada and Puerto Rico. A single agent of the Bureau visited all jurisdictions, and devoted an average of 2 weeks to the survey in each of the State and Provincial offices. The main features of the compensation system and of the administrative experience were examined in their relation to necessary services, such as the prompt and fair settlement of claims, the medical care and rehabilitation of workers, and the prevention of industrial injuries. So far as the nature of the survey permitted, attention was also given to the framework of the system—the type of law, the means of making certain the payment of compensation, and the scope and adequacy of the provision for injured workers.

The details of management, procedure, and results of administration were discussed at length with State and local compensation officials, who were most cooperative in making available the information at their disposal. Other persons and agencies acquainted with compensation activities were visited. Public hearings and conferences relating to claims settlement, legislative investigations of compensation administration, and hearings upon proposals to amend compensation laws, were attended. The compensation experience and programs of labor organizations were discussed with local leaders.

In contrast with the Bureau's previous survey of workmen's compensation in 1919–20, which covered certain phases of the subject, the recent survey was general rather than special. Because of the numerous features included and the geographical scope of the field visits, it was not possible to undertake new sampling tests or case studies, but measurements of this kind made in other studies were checked to see whether the conditions under which they were made had changed and to determine what inferences should be drawn from them.

The prevailing desire of compensation officials for an improvement of the situation prompted them to discuss frankly the handicaps

under which they worked, while in some cases their own constructive contributions to administration came to light only through the testimony of others. Criticism of performance, where presented in this report, in the main reflects the viewpoint of those administrators who judge their work, under existing conditions, by the goal of a complete program. It parallels the self-criticism of alert administrators, records of which are found in the published reports of the compensation commissions and the proceedings of the annual conventions attended by compensation officers.

The vast amount of existing uncoordinated information on workmen's compensation, obsolete at some points and with gaps at others, is bewildering to students and administrators. The method of presentation in this report is designed to aid the reader in securing an outline of the situation and a grasp of principles which relate the details of administration to the compensation program as a whole. The best possible method of presenting in brief space the varied features of law and administration is by analysis, summary, and illustration by selected examples of situations and practices. Because of continual changes in the law and administration, recourse should be had, for current information on specific details in the benefit systems, to the latest periodicals, tabulations, bulletins, and law digests. So far as possible, this survey report avoids duplicating the material that is to be found in the current publications of the Department of Labor. Summaries of factual data are used primarily to outline the major features of the compensation system and to illustrate important principles and problems, rather than to furnish exhaustive information on the subject in hand. Otherwise, much of the report would soon become obsolete.

An examination of the contrasting practices in the States and Provinces led to a critical consideration of some features of the compensation systems that have often been taken for granted as indispensable. On some of the main lines of development of the compensation program the difficulties that have been encountered by administrators indicate that at some points fundamental changes and different approaches are necessary if progress in the extension and improvement of compensation law and administration is to continue. Attention has therefore been given, not only to the details, but also to the basis of compensation administration.

The presentation of survey findings is necessarily affected by judgments of what information is needed at the time and in the existing circumstances. The first quarter century of experience under workmen's compensation reveals the outline of an adequate program, and also shows the gap between the desired objectives and the actual performance. At the opening of the second quarter century it is apparent that further study must be given to the practical arrange-

ments that are necessary before an adequate program can be made effective. Manifestly, an advance can best be planned where the obstacles to be met are clearly seen. This survey report therefore shows, not only the desirable developments that are in successful operation, but also the points at which the effort to give broad and ample protection to workers was halted by difficulties which the administration was not able to surmount. For example, the experience of an exclusive State fund undertaking to provide broad coverage throws the strongest light upon approaches to coverage problems, because these funds, unlike the private insurance carriers, cannot select their "risks" or evade the responsibility of insuring every employer within the scope of the law. Some adverse experience of State funds has therefore been noted, for the same reason that buoys are placed in channels.

The most fruitful consideration of details is that which leads to the recognition of causes. Wherever possible, this report, in examining the surface aspect of administration, points to the underlying factors, such as, for example, the support of administration, its range of initiative, and the personnel policies.

The existing workmen's compensation system is an incomplete structure, especially, in most jurisdictions, as to scope. A program of adequate compensation laws which can be effectively administered awaits further legislative action. After objectives have been clarified by the course of events, the familiar questions arise, Where is the money coming from to pay the cost? and, How can the law be enforced? In the main, an administrative survey is concerned with secondary matters, but by plain implication these lead ultimately to questions of public policy, which, by virtue of the survey, may be seen in their setting of time, place, and circumstance.

Chapter 2.—Experience Under Different Types of Workmen's Compensation Laws

Social Problem of Compensation Law and Administration

Workmen's compensation laws, in their present state of development, are designed to give an injured worker prompt medical care and money payments at the cost of the employer and with a minimum of inconvenience to the worker. Before these laws were passed, if an injured worker sued his employer for damages he had to prove that the employer was negligent. The court remedy was slow, costly, and uncertain. Under the compensation law the question of fault or blame for the accident is not raised, since the cost of work injuries is now considered part of the expense of production. Injured workers are thus spared the difficulties and delays of court procedure.

More than a quarter of a century has passed since the first workmen's compensation laws were enacted in the United States and Canada. During that period there have been notable developments tending toward a complete system of services. In the more advanced administrations the settlement of compensation claims is not the only activity of the commissions, but is tied in with a program of eliminating accidents and encouraging the rehabilitation of disabled workers. Performance has, however, been uneven, largely because of fluctuating support of administrations and rapid turn-over of personnel in many jurisdictions. Despite these shortcomings the main features of an adequate system of compensation and insurance have been clarified by experience, and the requirements as to machinery and procedure are now relatively clear.

Twenty-five years ago the problem facing the individual States was, Shall we adopt a workmen's compensation law? Today, in most of the States, the problem is, What kind of a compensation law and administration shall we have? Such a question involves, as to legislation, the breadth of coverage and the type of insurance, whether private or public or a combination of the two; the liberality of benefits, and the range of preventive and restorative services; the kind of claim procedure, whether informal or like that of the courts; and the extent of cooperation between the compensation authority and other State and Federal agencies in safeguarding the worker and caring for him or his dependents in event of his injury or death. Finally, there is the question of expertness of the compensation commission and its personnel. When workmen's compensation laws were enacted and commissions provided, it was supposed that members of the commission would become experts in their field. The administration of work-

men's compensation is a difficult and complicated task which touches on the varied fields of law, insurance, engineering, medicine, rehabilitation, and public relations. Many years of experience and study are necessary to master this subject.

From the point of view of social need, the outstanding problem in the further development of the compensation system is how to broaden workmen's compensation coverage to include, as nearly as possible, all workers, and to compensate all types of industrial injuries. Second only to this is the need of setting up the administrations on a basis, as to support and personnel policy, that will make possible a high standard of efficiency in claims settlement and in the preventive and restorative services of a complete compensation system.

Objectives of Workmen's Compensation Legislation

In 1939 there were 62 different workmen's compensation acts in the United States and Canada: 47 State acts and the acts of Alaska, Puerto Rico, and Hawaii; 3 Federal acts, covering the District of Columbia, longshoremen and harbor workers, and Federal employees; and 9 Canadian acts (including the Dominion provisions).¹

There is great variety in the details of the acts in the States and Provinces, but the results sought were much the same in all jurisdictions. Some of these are plainly set forth in the first annual report of the compensation commissioners of the State of Washington.² Among other things, the sponsors of the Washington act "hoped" it would:

Furnish certain, prompt, and reasonable compensation to the victims of work accidents and their dependents, 80 percent of whom have heretofore had no right to redress under common-law rules.

Free the courts from the delay, cost, and criticism incident to the great mass of personal-injury litigation heretofore burdening them.

Relieve public and private charity of much of the destitution due to uncompensated industrial accidents.

Eliminate economic waste in the payments to unnecessary lawyers, witnesses, and casualty corporations and the expense and time loss due to trials and appeals.

Supplant concealment of fault in accidents by a spirit of frank study of causes, resulting in good will between employer and operative, lessening the number of preventable accidents, and reducing the cost and suffering thereunder.

This statement of desired results remains to the present day a challenging summary of the problems of compensation law and administration that are not yet completely solved. Twenty-five years of experience have added two important items to the legislative plan:

¹ For further details regarding the State acts, see appendix 2 (p. 192). A detailed analysis of the Canadian acts is found in *Workmen's Compensation in Canada, a Comparison of Provincial Laws*, Ottawa, July 1938, a mimeographed pamphlet which is published annually by the Dominion Department of Labor of Canada.

² State of Washington. Industrial Insurance Department. First Annual Report. Olympia, 1912. p. 6.

Provision for immediate, and in the main adequate, medical treatment when injuries occur.

Arrangements for rehabilitating workers who, because of their injuries, are no longer able to follow their former occupations.

The legal structure of the compensation system is best seen against the background of these desired results, and confusion may be avoided by keeping in mind the objectives when examining the various provisions and arrangements. This survey report is concerned with administration rather than laws, and therefore presents only the outlines and details that are necessary for understanding administrative situations.³

The extent and complexity of the subject are indicated by the fact that a standard digest of the State and Federal compensation laws covers more than 800 pages, and in order to keep abreast of changes it is necessary to issue a new edition every 2 years.⁴ Brief summaries of the laws, and digests of recent amendments, are also published by the United States Department of Labor. A recent summary of workmen's compensation in the United States by the Bureau of Labor Statistics is included in this report as appendix 2.

Historical Development

The early American laws were necessarily based in part upon foreign experience.⁵ The customary approach to an examination of compensation laws takes, as its starting point, the German legislation. Late in the nineteenth century, the mounting toll of work accidents caused by the rapid mechanizing of industry focused attention on the plight of the injured workers, who were seldom able to recover damages for their disabilities and often became charges upon public support or private charity. The first modern compensation law was enacted in Germany in 1884. Under such legislation a worker who is injured in the course of his employment, receives benefits without having to prove that the employer's fault caused the accident. Compensation for industrial injuries is, therefore, recognized as part of the cost of production. This new principle was adopted in England in 1897. The German plan was compulsory, with nonprofit mutual insurance funds; the British pattern was elective, with the insurance provision left to private initiative.

³ The legal background and phases of workmen's compensation are discussed at length in Dodd, Walter F., *Administration of Workmen's Compensation*, New York, Commonwealth Fund, 1936.

⁴ *Association of Casualty and Surety Executives. Digest of Workmen's Compensation Laws*. New York, 60 John St., 1937.

⁵ Comprehensive studies of foreign compensation systems were made available to bill-drafting committees and the public in the *Twenty-fourth Annual Report of the U. S. Commissioner of Labor*, 1909, Washington, 1911 (2 vols.).

American Compensation Acts

In 1908 the first of the workmen's compensation laws that are now effective in the United States was passed. It covers employees of the Federal Government. In 1939 there were compensation acts in all the States except Mississippi, and in all the Provinces of Canada except Prince Edward Island.⁶ Workmen's compensation was the pioneer in the American movement for social security, and the widespread enactment of such legislation has been hailed as one of the most important legal-economic developments of modern times.

Under workmen's compensation statutes, the worker's right to benefits in event of injury is based on the fact of employment. The remedy, which under the best arrangements is practically automatic and certain, replaces the doubtful contest for a recovery in the courts based on proof of the employer's negligence and the inapplicability of common-law defenses known as the fellow-servant rule, assumption of risk, and contributory negligence on the worker's part.⁷

Varied Types of Compensation Acts

The rapid growth of workmen's compensation laws came through spontaneous action of the jurisdictions. There was an almost simultaneous enactment of laws in a number of States, 10 having been approved in 1911, 3 in 1912, and 8 in 1913, each act being the result of independent study.⁸ Within a few years several distinct patterns had emerged—as to insurance carrier: private insurance, exclusive State-fund insurance, competitive State fund, and mixed; as to coverage of employments: compulsory, elective, and mixed forms; as to organization: setting up a new administrative agency, and leaving claims settlements to the courts. The different patterns may even be distinguished with regard to the extent to which they followed British, German, and other foreign models, not excepting New Zealand.⁹

The first stage of the development of workmen's compensation in the United States and Canada was marked by an exploration of the entire field of compensation law and administration in search of the best models. In several instances, a "thoroughgoing study of the literature of all the compensation-insurance systems in the world" was made, sometimes including personal visitation in America and abroad. But such study of the world's compensation systems was

⁶ In Prince Edward Island railway workers are protected by the Dominion act.

⁷ Under these three common-law defenses it was held that a workman, in accepting employment, assumed the risk of accidents likely to occur in such work, that the worker who sues the employer for damages for a work injury must prove his freedom from negligence, and that the worker accepted, as an implied term of his employment contract, the chances of injury at the hands of his fellow workers.

⁸ U. S. Bureau of Labor Statistics Bull. No. 491, p. 886 (table 3).

⁹ The California competitive fund was based upon a New Zealand model. *American Economic Review*, December 1919: An Adventure in State Insurance, by A. J. Pillsbury.

not, in general, balanced and corrected by a direct survey of the experience and needs of injured workers.¹⁰ The passage of time would be necessary before the American experience under compensation could be interpreted and applied through legislation. The early task was the transplanting, with modifications, of systems and devices from one environment to another. The major attention was given to the perplexing problem of fitting the models into the constitutional framework of the States and adapting them to the theory of political checks and balances. In the Province of Ontario, however, there was a complete break with common-law theory and court methods, and the administration was also freed from legislative control of expenditures. In the United States the new systems, although an improvement upon the existing situation, began operation with admittedly inadequate benefits and services, methods of settling claims that were interwoven at some points with court technicalities, and administrations that were handicapped by insufficient support.

The period in which enactment of workmen's compensation acts in the States was preceded by world-wide study of compensation systems soon closed. After 1916, according to Carl Hookstadt, the type of act usually adopted by a State was "determined generally by two factors, contiguity and the economic and political progressiveness of the State."¹¹ This statement, made in 1920, is still valid. The imitation of near-by systems was sometimes without much discrimination between good and bad features.

The Longshoremen and Harbor Workers Act and the District of Columbia Act incorporated the draft of "a model measure" by the American Association for Labor Legislation,¹² but among the problems left unsettled by such a model are the desirability of public insurance¹³ and administrative self-support.

In the second stage of compensation history, continuing to the present time, administrators in the State jurisdictions have as a rule been occupied with office detail, to the exclusion of theoretical or systematic study of workmen's compensation. The administrations have been inadequately supported, understaffed, and in many States subject to frequent and almost complete changes in personnel. Under such circumstances the commissioners could give little attention to perfecting the compensation laws, and some of them have considered this outside their sphere of duty. Amendments of the laws have

¹⁰ This does not mean that the men who planned the early compensation acts were blind to the injured worker's situation. It is reported that Sir William Ralph Meredith, who designed the Ontario Workmen's Compensation Act, was "shocked" by some of the failures of workmen to secure compensation in the English courts. (U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 273, p. 317.)

¹¹ U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 275, p. 12.

¹² American Association for Labor Legislation. *Standards for Workmen's Compensation Laws*. New York, 1939.

¹³ In 1934 a bill (S. 3186) was introduced in Congress which embodied a new compensation act with an exclusive public fund for the District of Columbia.

come largely through bargaining and compromise. The haphazard changes in laws originally marked by wide variations in type have increased the diversity and confusion of compensation legislation in the United States. In Canada, on the contrary, there has been a trend toward a uniform system, all Provinces having adopted compensation acts based on the Ontario plan, with minor variations.

In the United States experimentation with a variety of patterns has not led, as had been expected, toward uniformity through the general adoption of any one plan on the basis of its proved advantages. The "disinclination of most States to be guided by the experience developed under the laws of other States" has been noted.¹⁴ One reason for such disinclination has been the strong disagreement among administrators as to the merits of the different types of law and insurance. In view of the conditions under which they have operated, no type in the States has proved altogether satisfactory.

In examining the compensation acts it must be kept in mind that the devices found in some laws were originally selected, not as the most desirable, but as promising the easiest way around constitutional obstacles or problems of securing compliance. Nevertheless, after the constitutional obstacles were removed the devices were sometimes left unchanged. In some jurisdictions, compensation administration is not in contact with Nation-wide experience, and in accounting for the present legal forms and administrative practices therein, it is necessary to keep in mind that the existing situation is a stereotype of an early experiment. In analyzing compensation experience it is apparent, therefore, that the history of some jurisdictions throws much more light upon present problems than does that of other areas. Moreover, it is evident that one must guard against the common habit of deciding that certain patterns are preferable merely because they are found in a majority of the jurisdictions, and that the most recent acts or modifications are necessarily the most advanced.

The primary differences in the framework of the compensation systems are in the use of the compulsory or the elective method of covering persons and employments, and in the organization for securing the payment of compensation, whether private insurance, private insurance with a competing public fund, or exclusive public insurance.¹⁵ There are also wide differences in the arrangements for settling claims which are explained in chapter 7 (p. 112).

So far as the structure of the workmen's compensation acts is concerned, the Fifth National Conference on Labor Legislation in 1938 recommended the general adoption of the compulsory form of cover-

¹⁴ U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 275 (1920), p. 12.

¹⁵ Under most of these plans permission is granted an employer, upon showing financial responsibility, to carry his own risk or "self insure." See appendix 2 (p. 193).

age, with an exclusive State fund.¹⁶ It is, therefore, of vital importance to examine the experience of the jurisdictions with alternative forms of coverage and arrangements for assuring payment of compensation to injured workers within the scope of the laws.

Problems of Elective and Compulsory Coverage

Compensation laws may be classed as compulsory or elective, depending upon the degree of constraint to which employers are subjected to accept the provisions of the act. A compulsory law is binding upon every employer and employee within its scope; there is no choice. Under an elective act, employers and employees have the option of either accepting or rejecting the act. But in case the employer rejects, the customary common-law defenses in personal-injury litigation are usually removed, while if the employee rejects, the workmen's compensation principle of liability of the employer for work injuries without regard to fault is not applicable to an action for damages. The compulsory type of act is found in all the Provinces of Canada which have compensation laws. In the United States, as of January 1, 1940, 21 compensation acts are compulsory and 32 are elective.¹⁷

Of the 10 workmen's compensation laws enacted in 1911, only 1, the Washington act, was compulsory. A New York compulsory act had been passed in 1910 but had been declared unconstitutional by the court of appeals of that State. In 1917 the Supreme Court of the United States held, in cases presented to it, that both compulsory and elective types of statutes were valid. Because of the peculiarities of some State constitutions, the validity of certain types or features of compensation acts may require specific determination as the occasion arises.¹⁸ Prior to the 1917 decisions several States, encouraged by a decision in the State of Washington, had passed compulsory statutes. Since 1917, however, most of the State laws which have been enacted are elective. Six States¹⁹ which began with elective statutes have changed to the compulsory form. The Arkansas act, passed in 1939, is compulsory.

Developments and Changes of Elective Coverage

In the Provinces of Canada, all of the workmen's compensation acts are now compulsory. In accounting for the prevailing use in the United States of the elective type of act, it should be kept in mind

¹⁶ U. S. Department of Labor, Division of Labor Standards Bull. No. 25-A, p. 18.

¹⁷ For details, see appendix 2 (p. 194).

¹⁸ For a recent discussion of the constitutionality of compulsory workmen's compensation acts, see an article by Samuel B. Horovitz and Josephine H. Klein, in U. S. Department of Labor, Division of Labor Standards, Bull. No. 24. Constitutional problems and historical situations are discussed in Administration of Workmen's Compensation, by Walter F. Dodd, New York, Commonwealth Fund, 1936; International Labor Office, Workmen's Compensation in the United States, by Ralph H. Blanchard, Geneva, 1926; U. S. Bureau of Labor Statistics Bull. Nos. 275, 423, and 541.

¹⁹ Ohio, California, Illinois, Maryland, Wisconsin, and Minnesota.

that in the process of development some of the actual differences in operation between the elective and the compulsory forms were narrowed in many jurisdictions. Many of the elective laws are compulsory as to some employments, such as public or "hazardous" employments; on the other hand, the compulsory laws are usually elective or "voluntary" as to some employments, notably agriculture and domestic service. Important steps increasing the effectiveness of elective acts are provisions for the automatic acceptance of the act unless it is specifically rejected by employer or employee, with a compulsory requirement of insurance or qualification for carrying one's own risk, where the acceptance of the act, either by presumption or choice, has taken place. In some jurisdictions the obtaining of an insurance policy is sufficient to bring an employer within the scope of the act.

A provision in several of the early acts permitted an employee to elect, after injury, whether to take compensation or to sue for damages in the courts. Such a provision was held to be unconstitutional under the compulsory form of act because it imposed a double liability upon the employer, but is still found in New Hampshire. It has been criticized as leaving the employer little incentive to accept the act.²⁰

Prior to 1929, some observers saw little difference, in operation, between the elective and compulsory acts. Ralph H. Blanchard, in his study of compensation made for the International Labor Office in 1926, said:²¹

In fact, these elective acts involve a degree of compulsion little less than that obtaining under compulsory acts, for failure to accept is made the occasion of subjecting the employer or the employee to highly disadvantageous conditions.

One explanation of the impression that little might be gained by changing from the elective to the compulsory type of law is found in the fact that "complete or accurate statistics pertaining to workmen's compensation are nowhere collected for the country as a whole, nor are they in most cases available for individual jurisdictions."²² While judgments upon the desirability of a change from the elective to the compulsory type of coverage have been formed by administrators and labor leaders from observation of the losses sustained by injured workers whose employers had neglected to insure, no accurate measurements of the relative extent of the failure to insure under elective and compulsory acts have been made as a basis for comparison. The effort to contrast the results of the alternative types of coverage is made extremely difficult by differences in the enforcement program, not only among jurisdictions, but also in the same jurisdiction under successive administrations. A weak compliance program may nullify

²⁰ U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 275, p. 41.

²¹ International Labor Office. *Workmen's compensation in the United States*, by Ralph H. Blanchard. Geneva, 1926, p. 20.

²² *Idem*, preface.

the superior advantage of strong coverage provisions, while, on the other hand, diligent supervision may obtain relatively satisfactory coverage in the absence of drastic laws. Under past and existing situations, it is plain that there has been a wide margin of "electing out" under the optional laws, and considerable noncompliance with the compulsory laws.

In the decade prior to 1929, the legislatures were tolerant of the failure to obtain adequate actual coverage of workers under the elective laws. Experience subsequent to 1929 caused two States, Wisconsin and Minnesota, to change from the elective to the compulsory form of act. A similar change has been advocated in other States. The renewed advocacy of the general adoption of the compulsory type of act arose from the sharp increase in the number of employers withdrawing from coverage, or "electing out," after 1929. A table (p. 42) in the Report of the Industrial Commission of Colorado for the Biennium December 1, 1934, to November 30, 1936, shows the number of rejections of the workmen's compensation act by employers from 1921 to 1936, as follows:

<i>Year</i>	<i>Rejections</i>	<i>Year</i>	<i>Rejections</i>
1921.....	1	1929.....	46
1922.....	2	1930.....	71
1923.....	5	1931.....	92
1924.....	2	1932.....	213
1925.....	12	1933.....	237
1926.....	12	1934.....	140
1927.....	24	1935.....	115
1928.....	27	1936.....	108

In interpreting figures relating to withdrawals from coverage during a depression, it must be kept in mind that some of the formal withdrawals are made by employers whose operations have dwindled and who doubt that the average number of their employees remains within the legal coverage requirements. Unfortunately, the table does not show the number of employees actually covered, from year to year, or affected by the withdrawal of employers. Most of the withdrawals are by small employers. An even more serious, although unusual, situation arises when many large employers reject the act.

The shrinking of coverage in States having the elective type of compensation act was met in different ways. In some jurisdictions it was ignored; some compensation commissions mentioned it in reports, without recommendation; and in rare instances a change in the law was advocated. In Pennsylvania a "State-wide drive against uninsured employers" was begun in 1933 and continued during the first 7 months of 1934.²³ In this campaign, the staff of the department

²³ Pennsylvania. Department of Labor and Industry. Special Bull. No. 39, pp. 107-108: Pennsylvania Labor and Industry in the Depression.

of labor and industry was aided by workers furnished by the Federal Government, who conducted a door-to-door canvass of employers as a C. W. A. project from December 1933 to April 1934. This study was not of employers who "elected out," but of those who neglected to elect out formally when failing to insure. Under the Pennsylvania act, employers who do not elect out are required to insure, but large numbers of them have not done so, either intentionally or through ignorance of the law. The report on the compliance study and campaign is of general interest and permanent value. Some of the findings are typical of widely prevalent situations, and are therefore quoted.

The experience of the depression years has shown there is little hope of collecting compensation against an uninsured * * * employer. Relatively little salvage of uninsured claims has been effected through the most persistent follow-up work by the few adjusters on the bureau's staff. * * *

Considerable difficulty in enforcing regulatory statutes has been encountered * * * from local minor judiciary who are frequently lenient with employers at the expense of maintaining legal safeguards for employees. They base their leniency on the contention that an employer cannot bear the cost of compensation insurance in times of stress, and they contend that it is better to allow him to continue uninsured than to force his employees on relief rolls by putting the employer out of business. They forget that the injured workers of uninsured employers seldom collect any compensation and generally must go on relief rolls with their families.

The procedures and results reported were, in part:

A reply post card was developed for the use of inspectors whenever they found an employer who could not produce an insurance policy. This gave the employer a clear-cut warning that he would be prosecuted if he did not obtain such a policy. As a further cooperative effort the bureau of inspection arranged to keep in touch with these cases after the bureau of workmen's compensation had checked to determine which employers had refused to heed the first warning.

The result of the cooperative arrangement is indicated by a summary of developments in the case of 3,470 employers whom inspectors found without insurance policies during 1933 and the first 7 months of 1934. Of these, 833 insured after the first warning, 239 insured when subsequently contacted, 422 established that they were insured or were not required to be insured, and 1,976 were carried over for further investigation or prosecution. * * *

The composite results of the three surveys (by the Department of Labor and Industry, the Pennsylvania Compensation Rating and Inspection Bureau, and the C. W. A.) disclosed that, of the employers contacted, 2,908 obtained insurance after the warning and 9,692 were listed for investigation and prosecution.

These figures indicate the magnitude of the problem of enforcing thoroughly workmen's compensation coverage provisions in industrial States, under an inclusive act which does not exempt small employers. No State, under such circumstances, has ever had an inspection staff large enough to handle the situation. A planned compliance program is seldom found; too often it is taken for granted that the compensation laws are self-enforcing.

The enforcement "drive" in Pennsylvania was followed by an unusual educational program. Illustrated bulletins and pamphlets explaining the scope and operation of the State's labor laws were prepared and circulated among employers and employees. Nevertheless, in 1938, because of increased insurance rates and costs to self-insurers under the amended compensation act, "electing out" became acute. The outcome of the developments in Pennsylvania from 1933 to 1938 should have both practical value and historical interest, but unfortunately the results were obscured in 1939 by controversy, litigation, and sweeping changes in the administering personnel, if not in the program. In considering compensation situations and programs, especially as to coverage and benefits, it must be kept in mind that as a rule compensation provisions and their application actually reflect an adjustment to estimated strains, especially as to the competitive cost of doing business and the ability to control small employers.

Proposals for increases in benefits and extensions of coverage are usually contested, at legislative hearings, by parties interested in keeping down insurance costs and in minimizing State control over industrial operations. Any proposal for a change made by one group is usually met with counter demands by another group. Great changes in the system have seldom been made at a stroke, and major changes are usually prepared for by agreements between labor and industry. The 1937 Pennsylvania act, however, was opposed by employers. This situation presented problems of unusual difficulty to be met by the Pennsylvania Department of Labor and Industry, because the passage of the act, instead of marking the conclusion of a contest, was the prelude to wide-scale contests in the courts and the legislature. Under 1939 legislation, benefits were reduced.

To understand the problem in the States as to actual coverage under either elective or compulsory laws, the conditions under which the administrators in many jurisdictions hold office must also be kept in mind. As a rule, compensation commissioners have little security of tenure, and their personnel is often deficient both in number and training²⁴. Under the circumstances, most of the commissions have been tolerant of noncompliance up to the point where it becomes acute, and few commissions can do more than guess at the extent of the neglect of employers to insure their industrial-injury risks. In the words of the Pennsylvania administration, "to deal properly with the job imposed upon it by the law, the bureau

²⁴ The need for remedying this condition by inaugurating a merit system was urged in a recent message of a governor to the legislature in these words: "Those presently employed have absolutely no security of tenure, and must spend a large portion of their time thinking of and working for the retention of their jobs." In consequence, "the morale of the public service * * * is at an extremely low ebb, and in my opinion it always will be so long as the spoils system prevails." (U. S. Department of Labor, Division of Labor Standards. Legislative Report No. 3, Jan. 28, 1939.)

would require a field force many times larger than the present one.”²⁵ The dilemma faced by the commissions as to coverage requirements is, therefore, whether (1) to remain content with a law that permits “electing out” as a safety valve, or (2) to risk opposition to the law and administration by some employers who are in revolt against the compensation cost, and proceed with a compulsory program that is actually enforced.

In Pennsylvania the increasing number of withdrawals from compensation coverage by large employers was met by an amendment to the compensation act to facilitate the recovery of damages in the courts. Section 201.1 of the act, as approved September 29, 1938, provides in part:

In any action brought to recover damages for personal injury to an employee in the course of his employment or for death resulting from such injury, the following legal presumption, the rules for admitting certain evidence, and the amount of damages which can be recovered, shall apply:

(a) When injury results to an employee in the course of his employment, it shall be presumed that the employer's negligence caused such injury, which presumption may be rebutted by the employer, and both the injured employee and the employer will be permitted to introduce testimony showing the cause of said injury. The final determination in all cases shall be a question of fact for the jury.

(b) When an employee sustains an injury in the course of his employment, declarations, remarks, and utterances made by the injured employee within 12 hours after the injury was sustained shall be admissible as competent evidence.

(c) If the jury finds that the employee's injury was caused, or contributed to, by the employer's violation or failure to observe any safety law or regulation in effect at the time of the injury, the injured employee or his dependents shall be entitled to double damages.

This amendment halted the wave of rejections in 1938, but in 1939 was held to be invalid by the courts. The experience throws light upon the limits of an attempt to make a compensation act which is elective in name compulsory in fact, through subjecting the employer to peculiarly disadvantageous conditions in the courts. In the judgment of most compensation officers, their administrative problem, under either elective or compulsory laws, ultimately becomes that of obtaining the cooperation of employers and employees in the compensation program. Experience has indicated the difficulty of obtaining a general acceptance of the compensation act by employers in distressed industries.

There are disadvantages in workmen's compensation provisions which place the brunt of enforcement upon the courts. In the first place, investigations have shown that even where, under the law, the claimant has the right to collect double the amount of compensation

²⁵ Pennsylvania Department of Labor and Industry. Special Bull. No. 39 (p. 114): Pennsylvania Labor and Industry in the Depression.

through court action, on the average the recoveries are disappointing.²⁶ In the second place, the best development of workmen's compensation has been where parallel litigation over industrial injuries has been minimized. Under the Ontario plan, for example, such litigation is eliminated. Organized railway employees have not yet unanimously favored the replacement of court remedies by a workmen's compensation law applicable to them. During the 1929 depression sporadic proposals were made by persons inclined toward litigation to repeal the workmen's compensation laws and leave the employees free to seek large damage verdicts in the courts. It is therefore questionable if workmen's compensation administrators can afford to make very attractive to workers an alternative remedy which the compensation system was designed to supersede.

In this connection the comment of George A. Kingston, a former commissioner of the Workmen's Compensation Board of Ontario, at a conference on social security in 1916, has lost nothing in force with the passing of more than 20 years:²⁷

It does not seem to me logical or sensible to put a law on the statute books and then by a sort of third-degree or coaxing method seek to enforce it—practically saying to employers “We'll leave you to the tender mercies of a jury without your defense if you don't accept this new law we offer you.” If the State is not ready for the law it should not be put on the statute books at all, * * * but if the legislators * * * come to the conclusion that this sort of law is wanted and is in the public interest, then let it be a law for all alike without any “by your leaves” or “ifs” about it. The principle of “local option” in certain laws may be all right as applied to communities or municipalities, but I know of no authority on political economy who has sought to justify this principle in legislation as applicable to the individual.

Developments Under Compulsory Coverage

The gist of the coverage problem is how to devise a practical system that will actually protect the greatest possible number of workers, at a cost that small employers and even poor employers can bear. Any arrangements must be examined in the light of results that have been obtained under existing circumstances, even though it is desired or expected that present circumstances may change. For example, under the elective laws of New Jersey and Pennsylvania, the coverage provision is unusually inclusive but actually there are large numbers of uninsured employers. Under a compulsory law of similar breadth, an example of which is the District of Columbia act it has been found that the “large scope of coverage makes it very difficult to secure the proper reporting of cases” in some types of employment. It has been said to be “impossible to carry on a campaign to the extent of informing everybody who might employ any

²⁶ U. S. Department of Labor, Children's Bureau Publication No. 214: The Illegally Employed Minor and the Workmen's Compensation Law. Washington, 1932, p. 216.

²⁷ U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 212, p. 60.

help." Some employers found difficulty in obtaining insurance, while others sought to evade the coverage requirement by camouflaging the employer-employee relationship; as, for example, by taking their employees into partnership.²⁸

The actual increase of coverage caused by changing an elective act to the compulsory form depends, in part, upon the penalty clauses and their enforcement.²⁹ To facilitate the enforcement of the law the compulsory acts have penalty clauses ranging from monetary charges to imprisonment.

The tentative nature of some clauses appears to contemplate their use mainly as a threat, as, for example, the following provision of the Maryland act:

Any employer * * * who shall fail to secure insurance * * * shall be guilty of a misdemeanor, and shall be subject to a fine of not less than \$500 nor more than \$5,000. The court may, in its discretion, remit any such penalty, provided the employer in default assures the compensation as provided in this section; and provided further, that he has paid or secured to be paid any compensation or other benefits under this article which may have been awarded against him.

Few reports of the commissions, under either elective or compulsory statutes, mention the number of prosecutions that the compensation authority has initiated against uninsured employers.

So long as the initiative in obtaining court action, either civil or criminal, is left to the injured worker, a wide gap remains between nominal and actual coverage. But where there is a disposition on the part of the compensation authority to exercise initiative and furnish diligent supervision, the compulsory act provides the necessary basis for administrative developments. For example, under the New York Division of Workmen's Compensation a "no insurance unit" has been set up. The Annual Report of the New York Industrial Commissioner for 1936 (p. 8), describes the operation of that unit during the 12 months ending December 31, 1936.

The no insurance unit of the division handled 3,972 claims against employers who violated the compensation law in failing to provide compensation insurance covering the injured workers. In these cases, awards made directly against the employers amounted to \$375,843.06 of which \$218,601.05 was collected and paid to injured workers, with the remainder in the process of collection.

The compensation division during the year made a special drive to ferret out employers operating without compensation insurance. Criminal prosecution was instituted against 1,699 such employers and convictions obtained in 1,384 cases, which is more than triple the number of convictions secured in 1935. The sentences imposed totaled 2,110 days and the fines \$4,176. In this drive the division had the cooperation of several associations of employers who are interested in cleaning house in their own industry and rid themselves of unfair competition. The noninsured employers are, in the main, financially irresponsible.

²⁸ U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 536: Proceedings of the Seventeenth Annual Meeting of the International Association of Industrial Accident Boards and Commissions, Washington, 1931, p. 103.

²⁹ See also ch. 3 (p. 37).

This report manifestly indicates one of the highest peaks of effectiveness ever reached in State history, both in the scope of prosecutions that had actual results and in the degree of success in collecting the money that was due injured workers. Without prompt, specialized action, little can be collected from noninsured employers, especially in large industrial centers. Nevertheless, this report shows the relative futility of prosecutions, even where vigorous action has been taken, since convictions in 1,384 cases resulted in sentences totaling only 2,110 days and fines amounting to \$4,176. The disposition of courts to impose very light sentences is conclusively shown. The major achievement, out of all proportion to the sentences imposed by the courts, was the collection of \$218,601.05 due injured workers, and success in this direction saved them untold distress. In many cases, however, collection would have been impossible without the threat of prosecution at the initiative of the no insurance unit.

In protecting all workers who are within the scope of the compensation law, some of the exclusive-fund compulsory acts go even farther than the measures taken by the New York compensation authority, and pay the injured worker in every case, whether the employer was insured or not. Such funds try to collect from noncomplying employers, often without success, but in any event the injured worker is paid. The strains upon the compensation act and administration under this form of compulsory coverage are considered in chapter 3 (p. 44).

So far, no industrial State has undertaken to give such complete protection to workers under compulsory-coverage provisions that are as inclusive as those of the elective New Jersey and Pennsylvania laws. Under existing arrangements, cost is the unsolved problem of inclusive actual protection of workers under the compensation system. The willingness of employers to comply wholeheartedly with the law depends upon the cost of the insurance. If the coverage is wide, unless the insurance rate is low and the minimum premium charge is not formidable, many small employers within the scope of the act will not or cannot insure. When pressure has been applied, they have taken their case to the legislature or have sought to bring political influence to bear upon the administration.

Official Supervision a Controlling Factor

Under either elective or compulsory provisions the type of official supervision is the controlling factor in maintaining actual compliance with the compensation law. This is strikingly shown by comparing the report of the Industrial Commission of Wisconsin for the years 1930-32, when coverage was elective, with the report for the years 1934-36, when coverage had been made compulsory. The earlier report reads (p. 44):

The duty of getting all employers who are subject to the compensation act to insure their risk, unless exempt, is one involving great difficulties. In this State, however, there have been comparatively few cases in which injured employees have lost out in their claims for compensation because their employers had failed to insure. This record has been possible because of never-ceasing attention to this problem.

The same words are used in the Wisconsin report for 1934-36 (p. 8) to describe the situation under compulsory coverage. There are no statistical measurements to show any alteration in the actual situation but the compensation officials say that the change was beneficial. In this instance, one reason given for advocating the change to a compulsory act was that since all but a few employers were operating under the compensation act, in fairness to those who had accepted the system all employers not legally exempt should be required to insure or qualify as self-insurers. Prior to the passage of the act, both employers' and employees' organizations had agreed to favor the legislation. The last sentence of the paragraph quoted from the Wisconsin reports is of vital importance. This administration, while seeking the best available legal provisions, has at no time in its history lost sight of the need for "never-ceasing attention" to coverage problems.

In its report for the years 1933 and 1934, the Industrial Commission of Minnesota said that there had been numerous instances in which irresponsible employers had failed to procure insurance coverage, and recommended changing the elective act to a compulsory law. Partly because organized labor at first opposed the compulsory method, the amendment was not passed until 1937. In discussing the situation, J. D. Williams, chairman of the industrial commission, said, in 1938, that following the depression "electing out" increased 600 percent, until practically a third of the employers were outside of the act. The report of the Minnesota Compensation Rating Bureau for the year ending March 31, 1938, shows that after the change to the compulsory law the number of employers covered by compensation-insurance policies was greater than the number insured prior to the amendment. The Bureau said:

One of the principal reasons for an increase in the number of risks handled by the bureau is the law referred to as Chapter 64, Laws of 1937. This became effective July 1, 1937, and voided the right of an employer to elect not to be bound. In order to comply with the provisions of the present law, an employer must insure or become an authorized noninsurer. Our records clearly indicate that many risks today are insured which previously carried no insurance. For the past 12 months we have found it necessary to create 5,840 files to accommodate new risks. In addition, many employers who at one time carried insurance, but in the past discontinued it, for some reason or other, have of late again purchased workmen's compensation coverage so that many of our files which have for 1 or more years shown no record of coverage, now include records of current coverage.³⁰

³⁰ Minnesota Compensation Insurance Board. Eighth Biennial Report. Minneapolis, 1938, p. 6.

In recommending the change from elective to compulsory coverage the Minnesota commission recognized that such a step would necessitate improved arrangements for taking care of undesirable insurance risks, because if the law compels an employer to insure it must also make certain that he can get insurance. The 1937 amendment accordingly required members of the Minnesota Rating Bureau to accept a risk that had been rejected by any carrier. It must be noted, however, that under such arrangements the available insurance may be on terms which some employers think they cannot meet.

Arrangements for Insuring Workmen's Compensation Risks

In all of the Provinces of Canada which have workmen's compensation laws, the acts provide for insurance in exclusive public funds. Private insurance of workmen's compensation risks is not permitted. This development resulted from observation that the exclusive funds could pay workers higher benefits and charge employers lower insurance rates than had been possible under private insurance arrangements. In the United States private insurance is the most widespread arrangement, and is found in all of the jurisdictions having compensation acts except Washington, Oregon, Nevada, North Dakota, Wyoming, Ohio, West Virginia,³¹ and Puerto Rico. In 11 States the private carriers compete with public carriers, which are known as competitive State funds.

The wide extent of private insurance of workmen's compensation was not considered by the Fifth National Conference on Labor Legislation (1938) to be a sufficient reason for perpetuating this arrangement. The conference recommended:³²

Insurance.—Should be in an exclusive State fund, with provision for adequate penalties on employers not complying with insurance requirements and proper protection for employees of defaulting employers.

Since the exclusive funds must provide insurance to all employers within the scope of the law, their experience throws the clearest light on the conditions and possibilities of broad actual coverage of workers under compulsory acts. The private carriers have, as a rule, selected the risks they would accept, and where they have offered coverage to "unwanted risks" under allocation plans, it has often been at a cost deemed prohibitive by some employers. The crucial problem is: If the State requires the employer to insure, can insurance be furnished at a cost he can bear? In Canada, the effort to meet this problem resulted in the general adoption of the exclusive fund type of act.

³¹ West Virginia is usually listed among the "exclusive" funds, but the Digest of Workmen's Compensation Laws, issued by the Association of Casualty and Surety Executives, terms it "semimonopolistic." (See map, inside of back cover of the Digest.)

³² U. S. Department of Labor, Division of Labor Standards Bull. No. 25-A, p. 18.

In the United States the exclusive funds were provided for in the original acts or soon after their adoption, and reflect an early preference for that arrangement rather than a development through supplemental legislation. The provision of competitive funds, however, was in the main an outgrowth of experience, prompted by the necessity for taking care of risks not wanted by private carriers, and, to a lesser extent, by the need for a competitive check upon insurance rates.

Private Insurance Carriers

At the time early compensation laws were enacted, private insurance carriers were insuring employers against losses through litigation under the common law and the employer's liability acts. Since the workmen's compensation laws were designed to displace the common-law and statutory basis for litigation, the insurance carriers desired to take over the new field. The widespread use of private insurance arrangements for covering workmen's compensation risks arose naturally from the insurance carriers entering the new field to replace their employer's liability lines. No special provision of the compensation law was necessary as a basis for this arrangement, and some of the early acts did not even require employers to insure. Observation of the losses sustained by injured workers whose employers had not insured led to the requirement, in all the jurisdictions except Alaska and Alabama, of insurance or alternative arrangements for making certain that compensation would be paid.

After the legal requirement of insurance had been generally adopted, the refusal of insurance carriers to accept bad or unwanted risks became a matter of increasing concern to the compensation commissions. At the 1936 meeting of the International Association of Industrial Accident Boards and Commissions, the report of a committee on the uninsured-risk problem, which reads in part as follows, was adopted:³³

The arbitrary cancelation of compensation-insurance policies and the inability of employers to procure promptly other coverage have become most embarrassing to both administrators of compensation laws and employers subject to the provisions of those laws. * * * Unless the insurance carriers in their own name and right and by the weapons of their own self-government are able to force the individual units to respond to the social necessity of these days, such a failure obviously will become an open invitation to the State to step in and do in the name of the public welfare that which the carriers, privately controlled and managed, prove themselves unable to achieve. * * * Employers everywhere subject to the provisions of these laws ought to be able on short notice, if they have the money to pay the premium, to procure the coverage.

On the other hand, the National Council on Compensation Insurance maintained that in some States the rates "may be inadequate to a point where the carriers feel it necessary to carefully select the risks

³³ U. S. Department of Labor, Division of Labor Standards Bull. No. 10, pp. 29-32, 270.

which they cover. * * * Then, too, there are risks which are not in good faith entitled to insurance." In fact, little use has been made of plans for allocating risks, either under the legal or voluntary arrangements.

The committee on uninsured risks reported further to the 1937 meeting of the International Association of Industrial Accident Boards and Commissions, but without making additional recommendations. The problem of obtaining more adequate arrangements for insurance and coverage was again considered at the 1938 meeting of the Association.

The most recent development to reinforce the security afforded injured workers by the private insurance system has been the proposal, and in some States the adoption, of legislation setting up special funds, through compulsory contributions by stock and mutual-insurance companies, to protect workers in the event of the insolvency of carriers. In North Carolina, for example, the insurance carriers are required to pay semiannually into a compensation security fund 1 percent of net written premiums.³⁴ There are arrangements for guaranteeing the payment of awards against insolvent insurance carriers in New Jersey, New York, North Carolina, Pennsylvania, Wisconsin, and Minnesota.

The restriction of the breadth of actual compensation coverage under existing forms of private insurance has been apparent. A plan for the allocation of unwanted risks has had little effect in broadening coverage, because in many instances the actual obstacle to coverage was the cost of insurance. Setting up a public carrier alongside the private carriers to handle their unwanted risks has not as yet, effected a maximum of economy in the insurance operations. In approximate terms, the operating cost of stock-company insurance has been about 40 cents on the dollar paid as premium, which is more than four times the average cost of administering exclusive funds, even after allowance is made for taxes paid by the private carriers.³⁵ While the operating cost of some mutual companies is about half that of the stock companies, on the whole the private mutual plan does not solve the basic problem of workmen's compensation as to coverage, because in many instances the lower cost is achieved by rigidly selecting the risks that

³⁴ For the complete provision see North Carolina, Public Laws of 1935, ch. 228. For the New York plan, see secs. 106-109j of the workmen's compensation law. See also Proceedings of the 1937 convention of the International Association of Industrial Accident Boards and Commissions in U. S. Department of Labor, Division of Labor Standards Bull. No. 17, p. 44.

³⁵ Efforts to make exact comparison of the overhead or administrative cost of the various types of insurance are baffled by variable factors. For an early study of comparative costs, see U. S. Bureau of Labor Statistics Bull. No. 301 (1922). No significant differences affecting cost comparisons have appeared since 1920. Such comparisons rest upon the assumption that the services furnished by the respective carriers is the same, but it is recognized that there are variations in service, not only between types of carriers, but also within the same types. For a recent examination of the cost of alternative insurance arrangements, and the items making up the aggregate cost of stock-company insurance, see Dodd, Walter F., Administration of Workmen's Compensation, New York, Commonwealth Fund, 1936, pp. 552-560.

are accepted, a process which has been called "skimming the cream" of the business.³⁶ Under a social interpretation of workmen's compensation, the worst as well as the best risks require insurance, service, and, if need be, constraints. What could be accomplished in the direction of complete service at low cost by employers' mutual companies under a State-wide monopoly has been discussed but not tried.

The crux of the problem of private insurance arrangements is, therefore, their relatively high operating cost. As offsetting advantages, some insurance carriers provide superior service in preventing accidents and in furnishing or supervising medical aid to injured workers, with resulting savings to employers through a plan known as experience rating. An examination of the items of overhead expense of the private companies³⁷ does not, however, disclose that any of them had spent more than a few cents on the premium dollar for safety activities, while on the other hand the stock companies have usually spent 17½ cents on the insurance dollar for acquisition cost or production of business. What could be accomplished under private insurance if the major operating expenditure should be on safety activities, remains to be seen.

A significant development under private insurance has been the cooperative arrangement for regional inspection and rating bureaus and for the National Council on Compensation Insurance. Through such organizations, national experience on the cost of insurance, by operation and industry, is used in computing rates which are designed to distribute equitably among employers the burden of insurance expense. Such an arrangement furnishes a check upon the underwriting and pay-roll auditing practices of the carriers, stimulates the scientific development of actuarial methods, and to some extent helps to maintain operating standards on a level of fair competition. Participation in the activities of such regional and national organizations has been open to the competitive funds, but not to the exclusive funds.

Self-Insurance

Self-insurance, so called, is more an incidental feature than a structural arrangement of the compensation system, and therefore does not require detailed consideration at this point.³⁸ The term is a misnomer, for it means, not a form of insurance, but the privilege of not insuring. In some jurisdictions the term "own risk" is used

³⁶ An early statement of the distinctive merits of the various systems of insurance is found in U. S. Bureau of Labor Statistics Bull. No. 281, pp. 212-260 (1921). (See also U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 212 (1917).)

³⁷ For 1937 the items of actual operating expense of nonparticipating stock companies, as shown by the country-wide experience of carriers reporting to the New York State Insurance Department, were: Investigation and adjustment of claims, 8.4 cents on the earned premium dollar; acquisition and field supervision, 17.3 cents; general administration, 8.5 cents; inspection and rating bureau, 2.3 cents; taxes, 3.9 cents; total, 40.4 cents. The expense ratio of participating carriers was 20.1 cents. Under depression conditions, some of these items were higher.

³⁸ See appendix 2, table 1.

instead of self-insurance. In all of the private-insurance States except Massachusetts and Texas, and in some of the exclusive-fund jurisdictions, responsible large employers may be exempted from insuring, usually by permission of the compensation authority. A bond or the deposit of securities is usually required. In view of the laxity of some jurisdictions in granting authorization for self-insurance, the Fifth National Conference on Labor Legislation recommended that "self-insurance should be permitted only under proper and adequate regulation."

Under proper regulation and supervision, self-insurance has been fairly comparable with other private arrangements for making certain that compensation is paid to injured workers. However, under the more advanced legislation, the term is being lengthened during which compensation may be payable in permanent disability and fatal cases. In the judgment of experienced administrators, because of this prolonged period of liability, small employers should seldom be exempted from the requirement to insure their risk. Moreover, self-insurance has been found undesirable in State-fund jurisdictions where the aggregate amount of insurance premiums is too small for division among alternative arrangements; as, for example, in Puerto Rico, where self-insurance is not permitted. The most highly developed regulation of self-insurance is found under the New York workmen's compensation law.³⁹

Public Insurance Carriers

EXCLUSIVE FUNDS

In the first decade of compensation legislation in the United States there was a trend toward exclusive funds. In 1913, there were 5 exclusive funds and only 3 competitive funds. In 1919 there were 8 exclusive funds, including Puerto Rico, and 9 competitive funds. In 1939 there were 8 exclusive funds, and 11 competitive funds. The fact that in two decades no additional exclusive funds have been set up in the United States⁴⁰ calls for a more comprehensive explanation than the opposition of private insurance carriers to State insurance and their influence upon legislation. The arrest of the trend toward exclusive funds in the States would be less impressive if it stood alone, than it is when viewed in conjunction with the acceptance of the exclusive fund in all Canadian Provinces having compensation acts.⁴¹

³⁹ For a discussion of problems of self-insurance, see U. S. Department of Labor, Division of Labor Standards Bull. No. 17, pp. 61-73; Pennsylvania Department of Labor and Industry, Special Bull. No. 40: Part II, Self-Insurance of Workmen's Compensation in Pennsylvania.

⁴⁰ The Puerto Rico fund was reestablished as an exclusive fund in 1935, after a brief experiment with other forms of organization.

⁴¹ The collective-liability system with an exclusive fund was adopted in Ontario in 1914. "Nova Scotia followed Ontario's example in * * * 1915, British Columbia in 1916, Alberta and New Brunswick in 1918, Manitoba in 1920, Saskatchewan in 1929, and Quebec in 1931." (Canada Department of Labor, Workmen's Compensation in Canada, July 1937, p.1.)

The halting of the movement in the United States at the same time that development continued in Canada invites attention to possible differences in the organic law and administrative bases of public carriers in the two jurisdictions. A key to the situation is found in the preparation for establishing the Ontario fund and administration, which have been to a considerable extent the model for subsequent workmen's compensation insurance developments in Canada. A clear understanding of the basic features of this type of fund is important, because it is the only compulsory-fund plan originating in an American jurisdiction that has been widely reproduced.

The Ontario plan.—The Ontario act, which became effective in 1915, was preceded by a prolonged study of existing laws and administrations in the United States, England, and Europe, under the guidance of Sir William Ralph Meredith, then Chief Justice of Ontario. His final report on Laws Relating to the Liability of Employers, which contained what were then and still are radical principles in this field, was submitted "as constituting at least a step in the direction of a just, reasonable, and practicable solution of the problem with which it deals." Chief Justice Meredith was convinced that, in order to render prompt justice to the injured worker, it was necessary for the compensation administration to be completely divorced from the delays both of court procedure and court appeals, especially as in such contests the workman is unequal in resources to the employer and the insurance carrier.⁴²

The founders of the Ontario fund emphasized also the necessity for nonpolitical administration, and from the outset this quasi-judicial agency was autonomous. In practice, it soon became entirely self-supporting, with relative freedom to control expenditures for administration. Particular attention was given to the selection of qualified administrators, at salaries larger than those paid, on the average, in the United States. In consequence, the administration proved satisfactory, and in time other Provinces became convinced that this form of organization and insurance offered the best way out of their own compensation problems. Subsequent workmen's compensation insurance developments in Canada confirmed Chief Justice Meredith's conclusion that his plan, although "not the most perfect measure which could be devised nor the last word which can be said upon the subject," constituted "at least a step in the direction of a

⁴² It is significant that so drastic a departure from existing patterns should come from a chief justice. The advantage to workmen of the new method has been recognized, with a few exceptions, by organized labor throughout Canada. On November 1, 1935, William L. Best, national legislative representative, Brotherhood of Locomotive Firemen and Enginemen, Ottawa, Ontario, gave this appraisal of the Ontario workmen's compensation system:

"Whilst few social or industrial measures of this character produce 100 percent satisfaction in the benefits awarded, especially when dealing with such a large variety of industrial claims for compensation for injuries, there is no measure of its kind in the world, to my knowledge, that has given a greater degree of satisfaction."

just, reasonable, and practicable solution of the problem with which it deals."

Within the last 10 years the pressure of politics has been felt by several of the Canadian administrations, but the foundations have not yet been impaired and the principles essential to the successful operation of workmen's compensation funds are understood in the Provinces and embodied in several official reports.⁴³ The chief danger in the Canadian situation at the present time seems to be the isolation of the Provincial funds, making possible a drift toward administrative stagnation, and occasionally in some jurisdictions leaving the administration without adequate guidance when old administrators are displaced by new ones. At its worst in Canada, the loss of experienced personnel through political turn-over has never been virtually complete, as sometimes happens in State administrations. On the other hand, the Canadian Department of Labor, unlike the United States Department of Labor, has not been provided with specialists in workmen's compensation law and administration who are available to the Provinces upon call.

Handicaps of exclusive funds in the United States.—In contrast with the administrative freedom of the Canadian funds and their relative security from political turn-over, exclusive funds in the United States have been handicapped by one or all of the following difficulties: (1) Dependence upon legislative appropriations for support; (2) complicated procedure and recourse to court appeals; (3) defective or obsolete acts, especially those which deprive the administering agency of freedom to set up classifications and make rates; (4) political turn-over of personnel; and (5) inadequate salaries for commissioners and technical employees. In the United States, a resumption of the early trend toward establishing exclusive funds is dependent on a strengthening of the administration of the funds now in existence, whose performance will in the last analysis determine what type of workmen's compensation insurance is to prevail.

It would be a mistake to infer, from the account given of the handicaps under which exclusive State funds are operating, that they have not on the whole rendered service as good as that of private insurance carriers. With the exception of the Puerto Rico fund, no exclusive fund has yet been superseded even temporarily by a different type of insurance carrier. The Puerto Rico fund failed in 1928. A competitive system was then established and operated for 7 years, but with a progressively increasing deficit in the competitive government fund. In 1935 the exclusive fund was reestablished and faced once more the problem of imposing and collecting rates adequate to meet the cost of injuries and administration.

⁴³ See, especially, Report of the Investigation Commission on the Compensation in Labor Accidents, Quebec, 1925; Report of the Royal Commission appointed to enquire into Workmen's Compensation for Saskatchewan, 1929.

The dilemma faced by an insurance carrier, in such a situation, is whether to continue to give full coverage and risk insolvency or the employers' opposition to adequate rates, or to keep the losses within balance by excluding classifications having a continuous deficit.⁴⁴ In Puerto Rico the government appropriated money to aid the insolvent funds.⁴⁵ The alternative method of meeting such a situation is illustrated by the experience of the Nova Scotia fund with the fishing industry. After the classification accumulated a large deficit because of storm disasters in 1926 and 1927, the industry requested Government aid to ease the burden of the assessments upon the owners of the vessels. Such aid was not granted, but the industry was allowed to withdraw from compulsory compensation coverage in the fund.⁴⁶ The resulting problem is examined further in chapter 3 (p. 42).

In judging the performance of a certain type of act or insurance carrier in a given area, it is necessary to understand the problems encountered. Several of the exclusive funds are operating in areas where some of the employments are bad insurance risks. It is still open to question whether, in the absence of public subsidies, some of the workmen who most need compensation coverage will be able to secure it under any known form of insurance organization.

COMPETITIVE FUNDS

The principles discussed in connection with the experience of exclusive funds apply to a considerable extent to the competitive funds also, since in each case there is involved the establishment and operation of a public insurance carrier. In the past there has been less strenuous opposition, on the part of private insurance carriers, to the setting up of competing funds than to the adoption of exclusive funds, since the existence of a competing fund would relieve carriers in many instances of the necessity for accepting undesirable insurance risks. Moreover, until the last 10 years it was often believed that competing funds, especially where the rule prevailed that such a fund must not solicit business, would remain small and get only a negligible percentage of the insurance premiums. In recent years, however, the volume of business written by the competing funds has increased, and in Arizona this growth has been such as to make a competing fund in fact almost an exclusive fund.

Most of the competing funds in the States have fewer legal and administrative handicaps than some of the exclusive funds, the legislatures having accepted the theory that a public fund could not compete

⁴⁴ See also ch. 3 (p. 42).

⁴⁵ As late as Jan. 1, 1938, only a part of the money appropriated had been made available for paying the claims of injured workers.

⁴⁶ See Report for 1926 of the Workmen's Compensation Board of Nova Scotia (p. 13); and Report and Findings of the Royal Commission on Ratings of the Lunenburg Fishing Fleet, 1927 (pp. 8-10, 32).

with private carriers unless its affairs were conducted on a business basis and with relative administrative freedom as to budgets, expenditures, and methods of support. Moreover, the competing funds have been less isolated than most of the exclusive funds because of their contacts, especially as to rate making, with organizations that are regional or national in scope and scientific in methods. Nevertheless, there are wide variations in the performance of competing funds. A few of them are equal in excellence to the ranking private insurance carriers; on the other hand, several competing funds have suffered severely from rapid political turn-over of management, and a competent outside analysis would show the need of strengthening their reserves.

Considerations Affecting Choice of Type of Fund

In an examination of types of acts it is not the purpose to evaluate in detail the different kinds of insurance carriers, but to point out the advantages and disadvantages found in each type of law under existing conditions. It is not necessary for any jurisdiction which contemplates a change in its compensation system to reproduce exactly any existing type, including its known imperfections, after the basis of a satisfactory system has been made plain by wide experience. Such experience shows that a superior administration may make a theoretically obsolete type of insurance fairly satisfactory in operation, while a handicapped administration may make a theoretically advanced type of insurance sufficiently imperfect to give prejudiced observers grounds for condemning it. It should not be necessary to choose either alternative. The operating handicaps of some State funds, both exclusive and competitive, are obvious in the light of experience and the remedies are plain.

Legislatures at times face the question as to which is preferable, an exclusive fund or a competitive fund. The question cannot be answered except in relation to an existing situation and the needs to be met. It is clear, however, that a competing fund should not be inaugurated in a jurisdiction having a small volume of pay rolls, since the variety and kind of service necessary in a workmen's compensation system makes it highly undesirable to split up a small amount of premiums among many carriers.⁴⁷

The Problem of Standardization

The situation as to workmen's compensation law and administration in the United States, from the point of view of structural arrangements, can best be summarized by noting some efforts to find a solu-

⁴⁷ Proceedings of the 1937 convention of the International Association of Industrial Accident Boards and Commissions in U. S. Department of Labor, Division of Labor Standards Bull. No. 17, p. 179. James E. Green, Jr., superintendent of the Maryland State Accident Fund, says: "It would seem risky to establish a [competitive] State fund in a State with less than 1½ to 2 million dollars in total premiums."

tion of the continuing problems arising from the variety of patterns, and considering the outlook for greater uniformity. For many years the need for standardization and uniformity has been discussed by administrators at the conventions of the International Association of Industrial Accident Boards and Commissions. In 1937, the "many unaccountable variations, inconsistencies, and inadequacies" of compensation law, "still untouched by all the sound philosophy" available upon the subject, were deplored by Commissioner Donald D. Garcelon in his presidential address to the twenty-fourth annual convention.⁴⁸

In contrast with the situation in the United States as to variety of structural pattern, all the Provinces of Canada except Prince Edward Island have adopted the compulsory exclusive fund act.

In the United States the experience with the different patterns has not yet been such as to convince the legislatures that there is any one paramount type of act. The strain upon elective acts under depression conditions was clearly shown by the increase in the number of employers who "elected out." Wisconsin in 1933 and Minnesota in 1937 changed to the compulsory form of coverage requirement.

The American Federation of Labor has recommended the adoption of the Ohio model of exclusive fund.⁴⁹ On the other hand, this fund has operated under handicaps which have been obstacles to maximum efficiency, and the resulting dissatisfaction as to claims and insurance service has been exploited by adversaries of this type of workmen's compensation act as proof that it is not superior to the private-insurance arrangement. The main handicaps of the Ohio fund, as a model, are: (1) Dependence upon legislative appropriation for administrative support;⁵⁰ (2) a complicated claims procedure, due largely to the predisposition of groups in Ohio for legal technicalities and latitude as to court appeals;⁵¹ (3) salaries for commissioners and technicians inadequate for a fund of such magnitude; and (4) political turn-over of commissioners. All the exclusive State funds have suffered from one or more of these handicaps, which have arisen, in part, from the difficulty experienced by legislatures in adjusting a new type of governmental service to the traditional theory of "checks and balances" and the existing attitudes with regard to public employment. The extension of the social-security program has emphasized the necessity for a satisfactory legislative and admin-

⁴⁸ U. S. Department of Labor, Division of Labor Standards Bull. No. 17, p. 2.

⁴⁹ American Federation of Labor, Report of Proceedings of Fifty-Fourth Annual Convention, 1934, p. 610: "As past conventions of the American Federation of Labor have taken action upon the subject matter of the resolution your committee recommends that the convention reaffirm the declaration of previous conventions in approving of the Ohio Workmen's Compensation Act as the model workmen's compensation law. The report of the committee was unanimously adopted."

⁵⁰ See ch. 9 (p. 159).

⁵¹ See ch. 7 (p. 125).

istrative basis for the conduct of public-insurance operations, especially as to the qualifications and tenure of personnel.

The competitive public fund has been established in a number of States as a means of easing the difficulties of the private-insurance system. Its continuance in jurisdictions where it does not evolve into a virtually exclusive fund therefore depends upon the future attitude toward the private insurance of workmen's compensation risks.

The outlook for uniformity through the general acceptance of private insurance arrangements was considered a possibility by some insurance representatives 20 years ago,⁵² but, in view of the pronouncements of the National Conference on Labor Legislation and the American Federation of Labor, and the arrangements adopted for new forms of social insurance, this is not on the horizon today. The historical background of private insurance of workmen's compensation is employer's liability insurance, which was for the protection of the employer and not the worker. To some extent the tradition of liability insurance has colored the practices of compensation-insurance carriers and retarded the best development of their services.⁵³ In the face of the pronouncements of labor organizations and the National Conference on Labor Legislation, it is now evident that private carriers need to study not only the commercial but also the social features of workmen's compensation. On the whole, private insurance of workmen's compensation risks has proved unsatisfactory, even to the carriers, some of whom have lost heavily on this line.⁵⁴ However, premium rates were increased during the depression following 1929, and by 1937 the private carriers were earning substantial profits. An improvement of the private-insurance system might be expected from the regional and national cooperation of carriers to set and maintain standards of claims, medical, and safety services, but as yet no steps have been taken in this direction.

In the past, debate over the respective merit of the different insurance schemes, public and private, has diverted attention from the consideration of needed improvements in all the existing types, and especially the need for recognizing that the administration of workmen's compensation is a distinct professional specialty that cannot

⁵² A map on the inside of the back cover of the Digest of Workmen's Compensation Laws, published by the Association of Casualty and Surety Executives, still shows, in solid black, the exclusive-fund States. The States in which there is no "state-managed insurance" are colored green.

⁵³ See chs. 6 and 7 (pp. 110 and 115).

⁵⁴ See Proceedings of the Casualty Actuarial Society, Nov. 18, 1937, p. 1, An Outline of Current Problems in Workmen's Compensation, presidential address by Leon S. Senior: "Available data covering the period 1923 to 1936 show that a group of carriers reporting to the New York Insurance Department have sustained Nation-wide an underwriting loss of \$11,781,000 per annum. Fifteen of the insurance carriers who have nursed it through childhood and adolescence have given up the task of supervision and have retired, laying down their responsibilities voluntarily or by force of law. Others who would be willing to give up its care are obliged to retain supervision, fearful to desert the offspring because of the detrimental influence which such action may have upon the other children in the family."

be mastered without diligent study and years of experience. The failure to recognize that in the conduct of workmen's compensation there is required, not only a knowledge of law and arithmetic, but also the touch of a trained specialist in human relations, is the cause of the greatest defect in workmen's compensation insurance technique today. While in the case of public funds the profit motive does not act directly as an incentive to "claim shaving," there is nevertheless the pressure of the necessity for the management to make a good financial showing, and losses arising from the lack of proper actuarial guidance have at times compelled the paring down of claims or of payments to physicians, to avert manifest insolvency.

In the face of continuing proposals for the amendment of compensation laws and changes in administration, the problem of each jurisdiction is whether to improve its existing type or to change the pattern.

In the year 1937 approximately 600 bills relating to workmen's compensation were introduced in the legislatures of the United States, of which number 151 passed, 14 were vetoed, and 137 were enacted into law.⁵⁵ Some of this legislation brought fresh confusion into an already overcomplicated field. The manifest need for guidance in the direction of standardization of law and practice was one factor which led, in 1914, to the organization of the International Association of Industrial Accident Boards and Commissions. One reason given by commissioners for the relative failure of the recommendations of that organization in fostering uniformity is the rapid turn-over of administration in many of the States, with the consequent lack of trained local guidance.

In 1934 the National Conference on Labor Legislation was organized, and at its annual meetings recommendations are made upon workmen's compensation and other branches of labor legislation. An important step toward guided change, as distinguished from local experimentation in amending compensation laws, is the expansion of the U. S. Department of Labor for promoting, through the Division of Labor Standards, regional and general conferences on labor legislation. The Bureau of Labor Statistics has facilitated the development of the compensation system, from its earliest beginnings in the United States, by publishing reports and studies upon compensation law and experience in the United States and in all countries having such legislation.

⁵⁵ U. S. Department of Labor. Division of Labor Standards. ABC Reporter for October 1937, pp. 5-7.

Chapter 3.—Persons and Employments Covered ¹

Incompleteness of Coverage

The question is often asked, How many persons are covered by workmen's compensation? The only answers to this question have been estimates. For instance, in 1920, Carl Hookstadt estimated the number of employees covered by the existing laws, but "owing to lack of definite information no estimates" were made "of employees unprotected because of failure of employers to elect under elective acts."² In 1939 exact information was not available either as to the percent of employees included in the legal provisions or the number of employees actually covered by compliance of employers with the statutes.

In regard to the difficulty as to sources of information upon coverage, an explanation given in 1926 by Ralph H. Blanchard in the preface to the International Labor Office study, *Workmen's Compensation in the United States*, is still pertinent: "Complete or accurate statistics pertaining to workmen's compensation are nowhere collected for the country as a whole; nor are they, in most instances, available for individual jurisdictions." In 1928, Ethelbert Stewart, United States Commissioner of Labor Statistics, in discussing the problem of covering small plants before the International Association of Industrial Accident Boards and Commissions, said:

There is not a State in the Union, from which I can get statistical returns, that knows how many and what percent of establishments, according to size, have voluntarily elected to come under the workmen's compensation law. They can tell me how many have come in. They cannot or do not or will not tell me how many have not come in.

During the depression following 1929 the existing statistical activities of the workmen's compensation commissions were severely curtailed in most jurisdictions and virtually discontinued in some. Consequently, in the absence of a Nation-wide special study of the extent of coverage, only approximate estimates are available.

The United States Bureau of Labor Statistics has estimated that on December 15, 1938, there were 32,945,000 workers actually employed, not including agricultural labor, but including domestic servants and self-employed persons. According to the census of agriculture, there were 9,482,000 agricultural workers on December 1, 1938.³ According to an estimate made for the Bureau of Labor Statistics by Swen Kjaer, chief of the Division of Industrial Accidents, not more than 40 percent

¹ This chapter was published as an article in the *Monthly Labor Review*, June 1939, p. 1267.

² The estimate of employees included in the legal provision of the State acts ranged from 99.8 percent of the workers in New Jersey to 30.7 percent in New Mexico. (U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 275, p. 33.)

³ U. S. Department of Agriculture press release, Jan. 1, 1939.

of the total gainfully employed workers are actually protected by workmen's compensation coverage. On this basis, at a time when 42,500,000 workers were employed, 17,000,000 would be covered by workmen's compensation. It should be kept in mind that workmen's compensation, unlike unemployment insurance or sickness insurance, covers only persons who are actually working.

The problem of the scope of coverage is vitally related to cost, and at this point, also, only approximate estimates for the country as a whole, including the experience of all types of carriers, are available. On the basis of actual figures as to part of the coverage and conjecture as to the rest, it is probable that the total annual country-wide cost of workmen's compensation coverage is not less than \$400,000,000.⁴ In examining types of coverage it was observed that especially during depressions the cost of insurance causes a shrinkage of actual coverage, through the election of employers not to come under the law or their noncompliance with it. In considering the problems relating to persons and employments covered, the effect of cost upon coverage will appear most clearly in connection with the experience of distressed industries and the effort to include farmers and small employers.

Types of Coverage Provisions and Limitations

No State compensation law covers all employments. Farmers, domestic servants, and casual workers are usually excluded, although as a rule these can be brought within the compensation act by application, election, or taking out insurance. In several jurisdictions, however, no election can be made for excluded employments.⁵ Moreover, under prevailing conditions throughout the United States and Canada, small employers are often outside the scope of the act. The actual exemption of many small employers, in some jurisdictions, results from listing the industries that are included, and in others is effected by stating the minimum number of employees an employer must have in order to come within the scope of the law. These two methods, at times, are found together. The "numerical exemptions" range from 1 employee to 16 employees.

The wide variety of the coverage provisions arose from the circumstances under which the laws have been enacted. All of the State acts have been prepared in the face of constitutional problems

⁴ In the absence of complete reports any estimate is in part conjectural. Casualty companies operating in New York reported to the New York State Insurance Department that their earned premiums, on a country-wide basis, on workmen's compensation insurance during 1937 amounted to \$233,529,705. Stock companies are credited with \$141,773,299 in earned premiums, mutuals with \$70,297,075, the New York State Insurance Fund, with \$21,459,331. Exclusive-fund premiums were approximately \$43,000,000. The premiums of private carriers not included in the compilation of the New York State Insurance Department, of competitive funds other than the New York State Insurance Fund, and the costs of self-insurers, are estimated at \$150,000,000.

⁵ For a detailed analysis of coverage provisions, see Monthly Labor Review, September 1938, p. 566: Workmen's Compensation in the United States as of July 1, 1938.

and also the opposition or demands of certain groups or interests. Each act is the result of compromises rather than the development of an ideal program, although in some instances much weight was given to a carefully studied plan. An expedient employed in a number of the early acts, in order to make sure of bringing the legislation within the police powers of the State and thus assuring its constitutionality, was to declare the law to be applicable to "hazardous" or "extra hazardous" employments, of which a list would be given. A cautious regard for administrative practicality or the demands of influential groups led, in many instances, to broad "numerical" exemptions, which are sometimes not the same for all employments or industries within a State. Farmers were exempted in most States because of the belief that otherwise their opposition would defeat the passage of the act. Interstate transportation workers were not covered by the State acts because their inclusion would give rise to conflicts between State and Federal jurisdictions.

In examining typical provisions and limitations relating to coverage, it should be kept in mind that there are pronounced differences of viewpoint with regard to principles and practices. On the one hand, compensation administrators have usually accepted some limitations upon coverage as inevitable under existing operating conditions. On the other hand, the Fifth National Conference on Labor Legislation has recommended, as to coverage that—

All industries and all employees, including the State and political subdivisions, should come under the act. There should be no exemption of small employers or nonhazardous industries or occupations. The law should not permit employees to waive compensation. Extraterritorial workers should be covered; and in this connection reciprocity and cooperation between States is desirable and necessary. All employees excluded from State jurisdictions by reason of being subject to Federal jurisdiction should be covered by a Federal workmen's compensation act. (U. S. Department of Labor, Division of Labor Standards Bull. No. 25-A, p. 18.)

List or Schedule Coverage

It has been noted that a number of the early acts, for constitutional reasons, included only hazardous employments, and this criterion has been retained after the need for it has been removed by court interpretation. In some of the exclusive-fund acts, such lists or schedules serve as the nucleus of an insurance rate manual. In the Ontario act, two schedules are provided—of industries under the collective-liability system, and of industries in which the employer is individually liable or (in the language of the State acts) a self-insurer. However, other industries or employments may be added by the Ontario board on the application of the employer, and any industry excluded by number limit may be brought under the act by notification to the board by the employer or a workman.

The use of the limiting terms "hazardous" and "extra hazardous" and of restrictive lists was an expedient, and the resulting provisions are confusing. For example, the Maryland statute lists "extra hazardous" employments that are covered (sec. 32), and then provides: "In addition to the employments set out in the preceding paragraphs, this article is intended to apply to all extra hazardous employments not specifically enumerated therein, and to all work of an extra hazardous nature." In applying this type of legislation, difficulties of interpretation arise in regard to both the specific and the general provisions. In some instances the extra hazardous nature of an employment will inevitably be determined after instead of before it has caused injuries. Under the Wyoming statute, one provision of less than a page (secs. 124-104, 124-105) sets forth the "extra hazardous occupations" that are covered. The lack of a clear-cut standard for determining what is extra hazardous is indicated by the circumstance that "dude ranching" is included as extra hazardous while stock raising is excepted from the application of the chapter.

The New York statute provides (sec. 2, subd. 3): "Employer, except when otherwise expressly stated, means a person, partnership, association, corporation * * * employing workmen in hazardous employments." But the law nowhere defines hazardous employment. An application of the term is found in section 3, which enumerates employments. This section, with comment and interpretation, covers 24 pages. Section 3, subdivision 1, group 18 includes "all other employments * * * notwithstanding the definition of employment in subdivision 5 of section 2, not hereinbefore enumerated, carried on by any person, firm, or corporation in which there are engaged or employed 4 or more workmen or operatives regularly."

Especially in a large industrial State, the continual changes in the composition and processes of industry make it hard to keep up to date any list of hazardous employments. Moreover, difficulties in the interpretation and application of the lists continually arise. Items in the lists sometimes represent political rather than engineering judgment. A detailed examination of provisions which determine coverage by lists, and by use of the term "hazardous," "extra hazardous," or both, raises the question of the desirability of replacing such arrangements by simpler and more inclusive provisions. If, for constitutional reasons, there is a present-day need for such limiting words in any jurisdiction (which is doubtful), the definition of "hazardous" in the North Dakota act (sec. 2) is of interest: "'Hazardous employment' means any employment in which one or more employees are regularly employed."

It has been noted that in several exclusive-fund jurisdictions a schedule or list of employments covered also serves incidentally as the nucleus of an insurance rate manual. Experience, however, has

shown the disadvantage of elaborate specific legislation at this point, and in the States the trend has been in the direction of general provisions authorizing the commissions or funds to make the classifications of employments and employers. As late as 1934 the act of the State of Washington contained an 8-page list of employments with the accompanying rates; but in the 1937 edition of the act, this material is omitted and reference is made (sec. 7676) to a "yearly Classification and Rate Manual issued January 1 of each year." The New York act provides (sec. 89): "Employments and employers in the State fund shall be divided into such groups and classes as shall be equitably based upon differences of industry or hazard for the purpose of establishing premium rates." It has been recognized, therefore, that the preparation of classifications as a basis for allocating insurance costs is a year-to-year task for actuaries and engineers, rather than a matter that can satisfactorily be put into the legal basis of the compensation system.

Numerical Exemptions

The numerical exemption prescribes the number of employees an employer must have in order to come within the compensation law. For example, the Wisconsin act (sec. 102.04) applies to "every person, firm, and private corporation * * * who usually employs three or more employees." This device is found in many of the State acts and, as to some employments, in the Canadian Provincial acts.

The numerical exemptions range from fewer than 2 employees in Oklahoma to fewer than 16 in Alabama.⁶ Such exemptions may not be uniform even with a single jurisdiction. For example, the Florida act, which exempts employers with fewer than 3 employees, exempts sawmills employing 10 or less, and the North Carolina act, which exempts employers with fewer than 5 employees, exempts sawmills with fewer than 15 employees, and this in spite of the extra hazardous nature of small sawmill operations. An opposite practice in the use of numerical exemptions is found in the New York act. It has been noted that this act exempts some employers who have fewer than 4 employees, but the limitation applies only to nonhazardous employments. A "hazardous" employment with even 1 worker is covered. The application of the law at this point, however, is sometimes complicated by court interpretation.

Under the numerical exemptions, in many jurisdictions the employer with only two or three employees is exempt from coverage upon other than a voluntary basis. Some of the reasons given for such an arrangement are the small employer's unwillingness or inability to pay insurance premiums, his neglect of safe working practices, and his failure to keep accurate pay-roll records. No jurisdic-

⁶ For details, see appendix 2 (p. 195).

tion has had enough inspectors for adequate supervision of working conditions even in the large industries, and in most jurisdictions small establishments are seldom visited. The same is true of pay-roll auditing. Moreover, in some jurisdictions it is reported that the cost of safety and pay-roll inspection alone, for isolated small establishments, would exceed the total amount paid by such employers as premium or insurance assessment. In the face of the demands for economy made during the depression, safety inspection and also the compliance activities of labor departments and compensation boards sank to a low ebb. In consequence, many of the small employers within the scope of compensation laws neglected to report or insure their operations, leaving a considerable gap between the legal and the actual coverage of their workmen.

Exclusion of Specified Employments and Occupations

In many jurisdictions numerical exemptions would automatically bar from coverage most of the persons in such employments as farming and domestic service, even if such were not named as exempt. But there are also specific exclusions, the list of which usually begins with farmers, domestic servants, and casual workers. Such exclusions give rise to serious problems, which are best understood by examining some of these limiting provisions in their settings.

AGRICULTURE

This is the greatest single gap in effective workmen's compensation coverage. The general lack of farm coverage is due primarily to the farmers' demand for exemption from the operation of this law. In most jurisdictions voluntary coverage is allowed, but as a rule the cost is deemed prohibitive by farmers. For example, in 1938 the minimum premium for a policy covering farm workers in New York was \$115. In part because of the expense, actual farm coverage is found in the States only on a very limited scale, although it has long been advocated.

The hazardous nature of farm work has been amply shown by statistics. Estimates of fatalities and injuries for 1937, for example, indicate that there were 4,500 fatalities, 13,500 permanent injuries, and 252,000 temporary disabilities in agriculture. The total fatalities for agriculture exceed those of any other major industrial group. Expressed in terms of fatalities per million workers, the fatality rating for agriculture exceeds the ratings for manufacturing, public utilities, wholesale and retail trade, and services and miscellaneous industries.⁷

In Ohio, if a farmer has 3 or more employees, he is subject to the compulsory coverage of the act; if fewer than 3 employees, he may

⁷ See Monthly Labor Review, March 1939, p. 597. Agriculture, which in the aggregate had more fatalities than any other single group, had 416 fatalities per million employees.

apply for coverage. But the farm accident experience has been much worse than in some supposedly hazardous industries. In 1930 the farm rate was \$2.20 per year per hundred dollars of pay roll, but in 1936 the rate was \$4 per hundred. In the 5-year period from January 1, 1930, to December 31, 1934, Ohio farmers paid into the State insurance fund premiums totaling \$677,131, while during the same period the losses due to accidents and paid from the fund amounted to \$813,631. In spite of the compulsory provision for coverage, relatively few farmers have insured with the fund. "According to the United States Census reports, on April 1, 1930, there were 219,296 farmers in Ohio, yet on July 1, 1935, approximately 2,150 Ohio farmers were insured under the workmen's compensation act."⁸ Nevertheless, the situation in the agricultural classification "is ideal for organized safety work." With the granges, farm bureaus, cooperatives and youth organizations, it is possible quickly and effectively to contact a large proportion of the employing farmers in Ohio and their employees. The steady increase of accident frequency and severity on farms makes some organized safety effort imperative if agricultural insurance premium rates are to be maintained at their present level and a start made toward an experience that will merit reductions.⁸

A few States (for example, Illinois, Minnesota, and Wisconsin) facilitate farm coverage by making a farmer's purchase of a compensation-insurance policy equivalent to an election to accept the compensation statute. The New Jersey act seems to be an exception to the general practice of excluding farm employments. Acceptance of the act by the farmer is presumed; but such apparent inclusiveness is weakened by a provision exempting farmers from compulsory insurance. In a few other jurisdictions not specifically excluding agriculture the farmer is, in practice, exempted by the numerical limitations, or omitted from the lists of employments covered by enumeration. An important step facilitating farm coverage is a 1931 California amendment, under which a farmer is presumed to accept the act unless his last annual pay roll has not exceeded \$500. The Oregon fund has extended coverage to farmers at low rates without a minimum premium, but the fund takes a loss on the classification.⁹ The accident experience is bad. In 1937, this fund was considering a safety code for agriculture.

There are few conclusive instances of satisfactory coverage of mechanized farm processes. For example: The South Dakota act imposes compulsory coverage for threshing, grain combines, corn shellers and huskers, silage cutters, and seed hullers, but "the pro-

⁸ Industrial Commission of Ohio. Division of Safety and Hygiene. Accident Experience of Ohio Agriculture. Columbus, 1936.

⁹ The 1935 Oregon rate for general farming was \$3.50 on a basis of \$100 of pay roll, plus an additional 1 cent per day for each workman employed. Collection of premium was said to be difficult, although in some cases the annual premium charged was less than 50 cents.

visions * * * shall not apply * * * to those who are not generally engaged in the operation of said machines for commercial purposes.”

Coverage, therefore, is determined not by the hazard of the process but by the industrial classification of the person who operates the machine. The border line between agriculture and industrial employment is not well defined, and from time to time the courts are called upon to interpret the compensation coverage provisions on this point.

Many persons are permanently injured by unguarded machinery used in agricultural or semiagricultural pursuits. For example, the operation of portable saws by farmers has proved to be extra hazardous. A workmen's compensation commissioner sums up the accident experience in operating portable firewood-sawing machines in his jurisdiction by calling them “veritable butcher shops.” In this instance there is a gap both in workmen's compensation coverage and the application of safety codes.

Certain types of farming are industrialized. Such specialty farming is susceptible to safety programs which might effect a saving of life and a lowering of insurance rates to a bearable level. It is claimed for instance, that certain sugar corporations in Florida have “extremely well-developed safety organizations” and minimum accident experience.

An outstanding experiment in compulsory coverage of agriculture is found in Puerto Rico. Since 1925 there has been virtually full coverage of farm work on the Island. Under the present act, only those farm laborers working for employers of from one to three workmen¹⁰ are unprotected by the compulsory insurance, but their employers may voluntarily pay the premium and obtain coverage.

Even under normal economic conditions the enactment of compulsory-coverage provisions for agriculture has been followed by strong resistance to the fixing of adequate insurance rates. The difficulty of collecting adequate premiums was intensified in Puerto Rico by disastrous hurricane losses. The exclusive fund failed in 1928 and its successor, a competitive fund, became insolvent in 1935. On July 1, 1935, a new act reestablished an exclusive fund providing compulsory coverage for employers of four or more workmen.

The Puerto Rico experience is of outstanding importance in throwing light upon compensation problems, because all types of insurance arrangements have been tried in the effort to provide coverage of employments that are mainly agricultural. The outcome of such an undertaking depends to a considerable extent upon the legal and administrative bases of the insurance carrier's operation. At the time the exclusive fund was reestablished in 1935, it was recognized by executives and independent actuarial advisers that its success would

¹⁰ Most of the agricultural workers in Puerto Rico are employed in sugarcane operations and other types of farming in which at least 4 workers are hired.

depend upon close supervision, adequate safety service, scientific methods of accounting and rate making, special arrangements for medical care, and nonpolitical management.¹¹ Notwithstanding, on account of outside budgetary control, the fund, as late as January 1, 1938, was without a safety specialist. Moreover, during the fiscal year 1937-38 the industrial commission, which had been established separately from the fund management as a "quasi-judicial body divested entirely of administrative functions," heard appeals from 1,226 employers as to the rates fixed by the fund, and in 23 of the 39 classifications that were challenged, reduced the rates.¹² Such a situation throws a strong light upon the difficulty of maintaining rates adequate for claims and catastrophe reserves, under the existing arrangement for revision of the rates that have been fixed by the fund management with the aid of an independent actuary. Under the simpler method prevailing in the Provinces of Canada, if the fund management finds the rates charged for any year more than adequate, an adjustment is made by a reduction in the next year. The Puerto Rico experience has shown the vital connection between agricultural coverage and the insurance carrier's ability to maintain adequate rates and collect premiums.

In the Provinces of Canada and in the States, exclusive funds which have extended coverage to farmers on a voluntary basis without making the burdensome minimum premium charge which is customary with private insurance carriers, indicate in their reports that few farmers have taken advantage of the privilege, and also that the collection of assessments is difficult. Most of the reasons advanced for not insuring small employers in general apply with even greater force to farm coverage. In some jurisdictions the compensation commissioners said, when questioned upon the subject, that the cost of medical supervision and care of an injured farm employee would be prohibitive in view of the small pay roll reported by farmers and the high charges made by physicians for visits to isolated places. In addition they pointed out the difficulty, especially during depressions, of knowing when an injured farm employee has actually recovered and is able to return to work.

In practice, farm coverage under the Provincial acts is found only in Alberta and British Columbia, and even there to a very small extent.

DOMESTIC SERVICE

Domestic service is one of the largest employments commonly excluded by workmen's compensation acts. As in the case of farming, the exclusion does not mean that domestic service is not hazardous,

¹¹ For an analysis of the problem in Puerto Rico and a statement of the methods applied by the present fund management, see U. S. Department of Labor, Division of Labor Standards Bull. No. 10, p. 44.

¹² Industrial Commission of Puerto Rico. Annual Report, 1937-38, pp. 1, 8, 27.

for there are more accidents in homes than in shops. To a considerable degree, the difficulties that have been noted in regard to efforts to extend coverage to farmers and small employers are also applicable to the problem of wide coverage of domestic service. However, employers of servants usually have the means for paying insurance premiums and are also acquainted with the simpler forms of accounting. The coverage of domestic service, other than casually employed help, appears, therefore, more feasible than agricultural coverage. The Fifth National Conference on Labor Legislation expressed the opinion that the coverage of domestic service "may be either compulsory or elective." In the existing situation the application of compulsory coverage to this employment has not been considered, by compensation officers, to be administratively practical except where the law extends only to employers of several domestic or other employees.

RELIEF WORK

At the outset of wide-scale local and Federal relief activities, confusion arose as to whether injured relief workers should receive compensation, and if so from what agencies. In 1933 a Federal act for the relief of unemployment extended the provisions of the United States Employees' Compensation Act to enrollees of the Civilian Conservation Corps, and to other persons given employment under that emergency legislation. In 1934, an act extended these same provisions to employees of the Civil Works Administration, subject to certain conditions and limitations. Later legislation included employees of the Works Progress Administration, those injured in camps by the Florida hurricane, and persons employed and paid by the United States in those States in which the Federal Emergency Relief Administrator assumed control (Massachusetts, Ohio, Oklahoma, and Georgia).¹³

In some States there are special provisions as to coverage or exclusion of relief workers, while in others the coverage depends upon the interpretation of such words in the act as "contract of hire." The payment to relief workers, under the Federal legislation, of wages lower than in prevailing scales for private employment, is reflected in special compensation scales. Where injured relief workers receive, under such scales, compensation lower than that paid to employees in private industry, some discontent arises. On the other hand, in some States, owing to the method of computing the wage base for compensation benefits to workers in private employments, it sometimes happens that such workers receive smaller compensation than that paid to relief workers by the Federal administration.

¹³ Address by Frank M. Phillips, Chief, Division of Statistics, U. S. Employees' Compensation Commission, June 6, 1938: *Employees' Compensation under Acts of Congress.* (Mimeographed.)

OTHER EXCLUDED EMPLOYMENTS

Examples of miscellaneous exclusions found in the acts are casual employees, home workers and outworkers, public charities, employments not for gain, totally blind persons, the vending or delivering of newspapers, rural employments (blacksmiths, etc.), persons earning more than a certain sum, aircraft flying, clerical workers, teachers, preachers, members of partnerships, executives, members of an employer's family. In the main, such exclusions arise from the desire to simplify the administration of the act and avoid insurance difficulties. Opposing reasons are given for certain exclusions; for instance, a clerical worker may be excluded on the theory that the occupation is safe, whereas an aircraft pilot may be excluded because the hazard is too great to be insurable at a cost the employer is willing to bear. As against such exclusions, it has been urged that all persons who are exposed to injury by reason of their daily work should be brought within the protection of the compensation system.

Examples of Especial Difficulties in Coverage

DISTRESSED INDUSTRIES

Workmen's compensation coverage has at times been curtailed by the demand of a distressed industry for exemption on the ground that it can no longer pay for insurance and continue to operate. A dramatic example of such shrinkage in the original scope of an act is the exclusion of the fishing industry from obligatory coverage by the Nova Scotia fund after disasters had caused a heavy deficit in the fishing classification and it became necessary to increase the insurance assessments. Because of the resistance of the industry to the rate increase, the legislature excluded the fishing classification from compulsory coverage by the fund. The risk is now carried by a mutual benefit association which, according to recent information has no disaster reserve out of which to pay compensation in event of the recurrence of such storm losses as were sustained in the past. As a memento of its experience in trying to protect employees in the fishing industry the Nova Scotia fund carries a permanent deficit of more than \$380,000 in the "fishing subclass."¹⁴

When hazardous industries are depressed, the claim is made by employers that the compensation rates threaten the very existence of the industry. The alternatives are presented as a dilemma: Shall the workmen have compensation coverage but no employment, or jobs but no compensation coverage? A recent, admittedly unsatisfactory, arrangement in Nova Scotia was to continue giving coverage

¹⁴ Nova Scotia Workmen's Compensation Board. Report, 1938 (p. 21, table 8a), Halifax, 1939. See also Report and Findings of the Royal Commission on Ratings of the Lunenburg Fishing Fleet and the Lumber Industry, as applied by the Workmen's Compensation Board, Province of Nova Scotia, 1927.

to the lumber industry, but to pay injured workmen in that employment, compensation based upon a smaller percentage of their wages than that fixed for compensating workmen in other employments. Such an adjustment was accepted as undesirable but, under existing conditions, necessary. Especially in the East, difficulty has been experienced in furnishing the lumber industry coverage at rates which the employers are willing to pay.

COAL MINING

In many jurisdictions difficulty has been encountered in the coverage of coal mines.¹⁵ Coal mining has been looked upon as an undesirable risk by many private insurance carriers, and the industry has in most jurisdictions been permitted to "self-insure" or carry its own compensation risks under conditions prescribed by the acts and the compensation boards. Because of the distressed condition of the coal industry in Pennsylvania and the increasing cost of compensation, in 1938 many of the coal operators rejected the compensation act. Discussion of the difficulties involved in the coverage of coal mines will be found in reports of the meetings of the International Association of Industrial Accident Boards and Commissions.¹⁶

CONFLICT OF LAWS

Large gaps in coverage arise from the conflict of State and Federal jurisdiction. A step reducing some of the jurisdictional uncertainty was taken in 1936 by Public Act No. 814 (74th Cong.), which grants to the States authority to apply their workmen's compensation laws to work done on Federal property situated within their geographical boundaries.

The State coverage of railway employees and other workers in interstate commerce is not only limited, but often hard to interpret and apply to specific cases where doubt arises as to whether an employment is interstate or intrastate. Because of opposition from certain influential representatives of labor, there are no Federal statutes providing workmen's compensation coverage for railway and maritime workers.¹⁷ In several instances, labor organizations have preferred the expectation of occasional large verdicts from law courts to the practical certainty of compensation awards in all cases. Recent studies indicate that such a preference is not warranted by the facts.¹⁸

¹⁵ Because of the difficulty of obtaining insurance coverage for coal-mine risks in Tennessee, legal provision was made for a State fund limited to coal-mine coverage. The arrangement, however, was not put into effect and the proposed fund never operated.

¹⁶ See especially U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 511, pp. 279-290.

¹⁷ American Labor Legislation Review, December 1935, p. 169: Accident Prevention for Transportation Workers, by John B. Andrews. For a statement of the attitude of the railroad brotherhoods toward workmen's compensation, see Proceedings of the International Association of Industrial Accident Boards and Commissions, 1932 (U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 564), p. 53.

¹⁸ See American Labor Legislation Review, December 1935, p. 174: Cost of Occupational Accidents in the Railroad Industry, by Otto S. Beyer.

The same preference for the results of litigation, which at certain points has retarded the spread of compensation legislation in the United States, accounts for the failure to apply compensation coverage in the Provinces of Alberta and Saskatchewan to train-service employments, although such employees might come within the act by a majority vote of their memberships.

Administrative Problems Affecting Coverage

PROBLEMS UNDER INCLUSIVE ACTS

Each type of compensation act—whether compulsory, elective, exclusive fund, list or general coverage—has its peculiar administrative problems. A number of the problems incident to exclusive-fund insurance that are in part responsible for numerical and other limitations of coverage have already been considered.

Some of the difficulties encountered in administering a compulsory act of the inclusive type are: The failure of many employers to make reports of injuries; difficulty of determining the status of employees; prohibitive insurance rates for certain risks covered by the law; and the impossibility of informing all employers as to the requirements of the act. Employers in some economic activities, to avoid insuring, go through the form of taking employees into partnership with them, or attempt to create legal relationships which, although in effect those of employer and employee, are held by courts to create a different status, as for example that of independent contractor. Most of the evasions or violations of an inclusive compensation law are attributed to ignorance.¹⁹

LIMITATION OF COVERAGE UNDER ARRANGEMENTS FOR GUARANTEEING PAYMENT OF COMPENSATION

One of the unsolved problems of workmen's compensation is how to guarantee the payment of compensation to all employees covered by the act, even if their employers have neglected to insure or pay premiums, without impairing the solvency of the insurance carrier or limiting the scope of coverage. This problem is most clearly illustrated by the experience of certain exclusive funds which pay compensation to injured workers covered by the law even if their employers have not insured or paid assessments. This is the practice in Ohio, Oregon, Washington, and Wyoming, and also in the Canadian Provinces.

The extent of the possible loss to a fund because of inability to collect from uninsured employers is shown by the experience of the

¹⁹ See Proceedings of the International Association of Industrial Accident Boards and Commissions, 1938 (U. S. Department of Labor, Division of Labor Standards Bull. No. 24): The Independent Contractor Problem in Workmen's Compensation, by Harry A. Nelson; also, U. S. Bureau of Labor Statistics Bulls. No. 536 (pp. 103-104) and No. 511 (pp. 4-6).

Ohio fund. Up to December 31, 1936, this fund paid to the injured employees of uninsured employers \$916,726.10, while it was able to collect from such employers only \$58,332.41. With such losses sustained under coverage subject to numerical exemptions, it is apparent that with existing enforcement facilities, the Ohio fund could hardly carry its present responsibility to uninsured employees under universal coverage. The Canadian boards are authorized, under certain conditions, to include or exclude employments by administrative action, and have restricted their losses caused by uninsured employers by both legislative and administrative limitations upon coverage.

Chapter 4.—Injuries and Diseases Covered

The Legal Basis and Limitations

Compensation laws are limited, not only as to persons and employments included, but also as to injuries covered. No State holds the employer responsible for every injury received by the employee. Some injuries are compensable and others are not. Workmen's compensation laws are not designed to provide general accident and health insurance, and if strictly interpreted cover only injuries received in the course of the employment and as a natural consequence of it.

Within this boundary there are three main types of limitation upon the injured employee's right to receive medical or money benefits. As a rule, no cash benefit is paid unless the disabling effect of an injury continues beyond a certain number of days, known as the waiting period, specified in the act. If disability continues beyond the waiting period, then, to be compensable, the injury must come within the legal definition of accident or injury found in the statute.

In addition to the limitations upon coverage arising from duration of disability and the legal definitions, most of the acts contain specific limitations of one or two kinds, the first relating to the conditions under which the injury was sustained, and the second relating to the nature of the injury, whether sudden and violent or gradual in onset and effects. Sudden and violent injuries are usually called injuries by accident or traumatic injuries. An industrial injury that is gradual in onset is classified as a disease. Such injuries are covered by the compensation act in some jurisdictions, while in other jurisdictions they are not compensable. However, the distinction between the terms "accident" and "injury" has been blurred by varying interpretations. For example, lead poisoning has sometimes been construed to be an "accidental" injury. But such interpretations have been applications of the law to individual cases rather than the establishing of a general rule.

Reduction of Waiting Period

The tendency to reduce the length of the waiting period has brought about one of the major improvements in compensation law. In 1916, 21 States¹ required a waiting period of 2 weeks. In 1938 there were but two States with such a limitation and only four States with a waiting period of 10 days or longer. No Canadian Province has a waiting period longer than 7 days, and in four of the eight Provinces having compensation acts the waiting period is 3 days. Since the

¹ U. S. Bureau of Labor Statistics Bull. 210, p. 94. Hawaii is included.

majority of industrial injuries cause disability of less than 2 weeks, this change has benefited great numbers of workmen. The waiting time required in each State and Province in the year 1938 is shown in appendix 2, table 12 (p. 201).

The Fifth National Conference on Labor Legislation (1938) recommended a waiting period of not more than 7 nor less than 3 days, compensation to be retroactive to date of injury if disability continues for 14 days.²

Legal Definitions of Accident or Injury ³

An injured workman's right to compensation is bounded by the legal definition of accident or injury. This definition is subject to interpretation both by the administrative agency and the courts. In consequence, there has been much confusion in most jurisdictions in the attempt to apply the legal definitions to actual situations. On the one hand, this condition of uncertainty has at times worked hardship on claimants, while on the other hand it has occasionally endangered the solvency of insurance carriers or threatened the insurability of workmen's compensation risks. In the United States the confusion in regard to definitions of injury and accident is caused largely by conflicting or incompatible court decisions, together with lack of continuity of policy of the administering agencies. Canada has avoided the former difficulty by making the decisions of the compensation boards in most jurisdictions final, without recourse to the courts. Confusion of definition is detrimental to compensation administration because, on the one hand, the workmen should know with reasonable certainty whether or not they have a right to compensation after an injury, and, on the other hand, insurance carriers need to know what injuries are included in order to make fair and adequate rates and to set up the necessary reserves.⁴

Court interpretation has complicated rather than clarified the definitions of injury,⁵ according to E. H. Downey. Prof. Ray A. Brown of the University of Wisconsin attempted to classify and rationalize court interpretations of the phrase "arising out of and in the course of the employment." He found it impossible to formulate a general principle on the basis of the decisions examined by him, but reported that the acts are being given a more liberal interpretation.⁶

² U. S. Department of Labor, Division of Labor Standards Bull. No. 25-A, p. 18.

³ This and other legal phases of workmen's compensation are treated at length in *Administration of Workmen's Compensation*, by Walter F. Dodd, New York, Commonwealth Fund, 1936.

⁴ Some compensation commissions publish annotated editions of the compensation act in order to show the judicial interpretation of its provisions. The mass of interpretation to be considered is impressively shown by the annotated edition of the Virginia act. The 4-line definition of injury is followed by 17 fine-print pages of commentary, citing many court decisions.

⁵ "Unfortunately the British courts, followed in this respect by most American jurists, have so involved both phrases [i. e., injury arising out of and in the course of employment] in a fog of subtle and contradictory distinctions that 20 years' litigation has done less than nothing to clarify the legal definition of an industrial injury."

⁶ *Wisconsin Law Review*, 15, 37 (1931-32); Dodd, Walter F.: *Administration of Workmen's Compensation*. New York, Commonwealth Fund, 1936, p. 685.

The workmen's compensation boards report that, on the whole, both administrative and court interpretations of the legal definitions of accident and injury have been liberal. Both public and private compensation insurance carriers have at times complained that some court decisions have been so liberal as to unsettle the actuarial basis for rate making and to usurp legislative prerogatives by virtually amending the acts.⁷

During the time when workmen's compensation legislation was the only wide-scale and measurably adequate social-security legislation in America, there was unquestionably great pressure upon the compensation boundary lines. Whatever the definitions contained in the acts, the worker's need, in the absence of alternative provision, tended to make workmen's compensation in some situations a substitute for sickness, old-age, and unemployment insurance.⁸ Partly because of this, the breaking point was almost, if not actually, reached in some jurisdictions during the depression. Many private insurance carriers became insolvent and several of the State or Provincial funds would have been reckoned so, by an outside actuarial audit, on any other than an "in-and-out" basis of payment and collection. For a full discussion of the role of definitions and interpretations of accident and injury in compensation administration, reference is made to law publications.⁹ Only the outline of the subject can be given here.

There are two main types of definition—inclusive and restrictive. An inclusive definition of an industrial injury may be brief and simple, as for example, an injury sustained while in the performance of duty, or arising in course of employment, or arising out of and in the course of the employment.¹⁰

Restrictive definitions may be rigid and complicated, as for example: "The word 'injury' as used in this act means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical condition as results therefrom."¹¹

The difference between the two types of definition (inclusive and restrictive) has in practice been blurred by interpretation and narrowed by the advance of either general or schedule coverage of occupational diseases.

Injuries specifically excluded.—In the definition of accident or injury, or appended to it, there may be a list of injuries specifically excluded

⁷ State of Washington. Department of Labor and Industries. Report, 1932, pp. 10-12: Ominous Abuses Threatening the Insurability of Workmen's Compensation, F. Robertson Jones.

⁸ See also ch. 5 (p. 82).

⁹ See also Dodd, Walter F., Administration of Workmen's Compensation, New York, Commonwealth Fund, 1936, for a lengthy study with many citations.

¹⁰ U. S. Employees' Compensation Act; North Dakota Workmen's Compensation Act; Massachusetts Act.

¹¹ Industrial insurance law of the State of Washington.

from coverage because of the conditions under which they were received. A comprehensive example of specific exclusions is found in the Virginia Workmen's Compensation Act (1932 ed., sec. 14):

No compensation shall be allowed for an injury or death due to the employee's willful misconduct, including intentional self-inflicted injury, or growing out of his attempt to injure another, or due to intoxication or willful failure or refusal to use a safety appliance or perform a duty required by statute, or the willful breach of any rule or regulation adopted by the employer and approved by the industrial commission, and brought prior to the accident to the knowledge of the employee. The burden of proof shall be upon him who claims an exemption or forfeiture under this section.

The application of these clauses is rigidly circumscribed by the Virginia commission. The party wishing to make such defenses to the payment of compensation must give notice of his intention to do so prior to the hearing. Workmen's compensation commissions, in practice, seldom disallow compensation on such grounds.

A clause altogether denying compensation because of the violation of a safety rule is apt to defeat its own purpose, because commissions, like juries, are reluctant to enforce oversevere penalties. A provision that has produced better results is a clause, found in several State acts, diminishing compensation instead of denying it altogether. Under the Wisconsin act, for example, compensation is decreased 15 percent "where injury is caused by the willful failure of the employee to use safety devices where provided by the employer, or where injury results from the employee's willful failure to obey any reasonable rule adopted by the employer for the safety of the employee, or where injury results from the intoxication of the employee." Compensation is increased 15 percent where injury is caused by the employer's violation of safety provisions.

In the judgment of the Ontario compensation officers, the only exception that is essential, in defining "personal injury by accident," is found in clause (b), section 2, of the Ontario Workmen's Compensation Act, under which no payment is made for injuries "attributable solely to the serious and willful misconduct of the workman unless the injury results in death or serious disablement."

Under the Puerto Rico act of 1935 no compensation is paid "when the injury is caused to the workman or employee by the criminal act of a third person." The Puerto Rican courts interpreted this clause to mean the criminal act of a third person for reasons not connected with the employment. An affirmative type of coverage provision at such points is less open to doubtful interpretation; as, for example, the provision in the Longshoremen's Act: "The term 'injury' includes * * * an injury caused by the willful act of a third person directed against an employee because of his employment."

Waiver of Compensation

In certain jurisdictions an employee handicapped by an existing disability—as, for example, blindness, epilepsy, or the loss of a member—may by special contract waive his right to compensation in event of a subsequent injury, subject to approval by the compensation agency. Where such a practice prevails to any considerable extent, the scope of the compensation law is narrowed and workmen may suffer losses they can ill afford to bear. To avoid the necessity for a partial surrender of the compensation principle as an alternative to the unemployment of handicapped workers, some States have provided “second injury” funds which take care of an employer’s excess loss arising from disabling injuries sustained by handicapped employees.¹²

In practice, waivers are restricted or prohibited in most jurisdictions. The laws of Massachusetts and Connecticut give broad authorization for waivers, but in Massachusetts relatively few are granted. Waivers are more favored in Connecticut than in any other jurisdiction, approximately 5,000 waivers being granted annually.¹³ However, a 1939 amendment provides that waivers shall not be granted for occupational disease, susceptibility thereto, or a recurrence thereof.

The laws of four jurisdictions—Illinois, Indiana, Michigan, and North Carolina—contain provisions for a restricted waiver, express or implied, of compensation for disability arising from silicosis. In Canada waivers are not allowed.

Constitutional Limitation Upon Coverage of Injuries

The Oklahoma Constitution provides that “the right to recover damages for injuries resulting in death shall never be abrogated, and the amount recoverable shall never be subject to any statutory limitation.” Fatal injuries, therefore, are not covered by the Oklahoma workmen’s compensation law.

Effect of Type of Administrative Development Upon Breadth of Coverage of Injuries

Unsatisfactory Result of Legalistic Approach

In order to outline the existing situation, it has been necessary to approach the examination of injuries covered under workmen’s compensation by considering the legal provisions, definitions, exceptions, and their interpretation by the courts. The one thing definitely ascertained by this approach is that complicated provisions, especially

¹² See ch. 5 (p. 84).

¹³ Address of James J. Donoghue, Compensation Commissioner, Connecticut, at the twenty-fourth annual convention of the International Association of Industrial Accident Boards and Commissions in 1937. (United States Department of Labor, Division of Labor Standards Bull. No. 17, p. 90.)

of the restrictive type, have not led to uniformity or certainty of interpretation of the compensation provisions.

In a study of compensation administration, it is highly important to understand that, from some points of view, the legalistic approach to the problem of the coverage of injuries leads into a "blind alley." A preoccupation with this approach has not only caused, in some jurisdictions, an arrested development of the compensation system, but in some instances has led to retrogressive changes that have been mistaken locally for progress and have been advocated, by some administrators, as desirable measures for adoption in all the States. Another factor responsible for retarding the development of broad provisions for the coverage of injuries has been the attitude of the insurance carriers. With but few exceptions, private-insurance carriers have opposed broad coverage for injuries and especially for occupational diseases, and have sponsored specific restrictive amendments of the acts.

A brief examination of the main trends of administration in the States and Canada, showing the connection between types of administrative development and the breadth of coverage of injuries, throws light upon situations in regard to which purely legal research has admittedly failed to find anything but confusion. In view of the vast amount of labor that has been expended in the United States in sifting court decisions, in order to find certainty as to the interpretation of definitions of injuries that are covered by workmen's compensation, it is interesting to recall that Sir William Ralph Meredith, Chief Justice of Ontario, foresaw the difficulties that would be caused by dependence upon legal technicalities and court interpretation of definitions. In 1912, in formulating the basis of the Ontario compensation law and administration, he insisted that administrative, instead of court, determination was essential to the satisfactory operation of a compensation system. Those who questioned this viewpoint said that "then, of course, the constitution of the board becomes of great importance." Chief Justice Meredith replied: "Everything depends on the constitution of the board; if it is a bad board the whole thing will be a failure."¹⁴

The alternatives presented were, on the one hand, to guard against ill-considered awards and excessive costs by legal technicalities, court interpretation, and litigation, or, on the other hand, to make a broad and relatively simple provision for the protection of injured workers, and place the dependence for prompt and just awards upon competent administration. Chief Justice Meredith advocated the latter alternative, which became the basis of the Ontario development.

¹⁴ Final Report on the Laws Relating to the Liability of Employers, by Sir William Ralph Meredith, pp. 510, 512 (1913).

Plan for Coverage of Injuries in Ontario

The Ontario plan placed in the administrative agency the exclusive right to interpret the compensation act. Chief Justice Meredith said that, while some mistakes would be made, these would be less serious than those of the courts, because the administrators, through specialization and long experience, would have a better opportunity than the courts for learning the subject. Moreover, in this type of remedy prompt action was necessary. It was quite possible, of course, that administrators might drift into subtleties and technicalities in construing the definitions of what injuries are covered. To prevent such a trend, the statement in the Ontario act (sec. 2, (2).) of what injuries are compensable was followed by a clause establishing two presumptions which would simplify the worker's task in establishing a claim for compensation:

Where the accident arose out of the employment, unless the contrary is shown it shall be presumed that it occurred in the course of the employment, and where the accident occurred in the course of the employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.

This plan worked satisfactorily and has remained unchanged.¹⁵ Occupational diseases were covered by a supplementary list or schedule, which has been enlarged from time to time. The legislative changes since the passage of the act have, therefore, made the coverage of injuries more inclusive.

Development in the United States as to Coverage of Injuries

In strong contrast with Ontario experience, which was based upon an original legal and administrative plan that did not require subsequent piecemeal changes in the definition of a compensable injury, in many of the States the definition has been altered. In some instances a definition, which in the original act was brief and simple, has through amendment become a long and complicated network of limitations and restrictions. In rare instances a definition has been elaborated to make it more inclusive.¹⁶ These different directions in the development of the coverage provisions have been paralleled by differences in the type of compensation administration. Such a correlation is highly significant, as a clue to solving the problem of how to provide inclusive coverage of injuries at a cost that is not unduly burdensome to industry.

¹⁵ For a statement of the attitude of labor toward the Ontario plan, see *Monthly Labor Review*, January 1936, p. 1: *Ontario Procedure in Settlement of Workmen's Compensation Claims*.

¹⁶ In examining the process of change in the definition of injuries covered, with its setting, so far as possible the complications arising from the supplementary or schedule type of occupational disease coverage are reserved for separate consideration.

RESTRICTIVE CHANGES IN DEFINITIONS

State of Washington.—The 1911 act of Washington, as amended in 1913, provided:

Each workman who shall be injured whether upon the premises or at the plant or, he being in the due course of his employment, away from the plant of his employer, or his family or dependents in case of death of the workman, shall receive out of the accident fund, compensation in accordance with the following schedule.

From time to time, reports of the department of labor and industries stated that the courts interpreted the coverage of injuries so loosely or with such "maudlin sentiment" as to unsettle the basis for rate making. "Decisions have been handed down by superior courts, and sustained by the supreme court, which have changed a mutual agreement between employer and employee that industry care for the injuries it causes into a blanket insurance, forcing upon the backs of a selected group of operators the social diseases and chronic ailments naturally accruing to the human family entirely aside from their labor and hastened by old age."¹⁷

To correct this condition, a restrictive definition was inserted in the act, as follows:

The word "injury" as used in this act means a sudden and tangible happening, of a traumatic nature, producing an immediate and prompt result, and occurring from without, and such physical condition as results therefrom.

In 1929 the coverage of injuries was further restricted, in an effort to segregate "preexisting disease" and avoid payment for its consequences, as follows:

If it be determined by the department of labor and industries that an injured workman had, at the time of his injury, a preexisting disease and that such disease delays or prevents complete recovery from such injury the said department shall ascertain, as nearly as possible, the period over which the injury would have caused disability were it not for the diseased condition and/or the extent of permanent disability which the injury would have caused were it not for the disease, and award compensation therefor. (Sec. 7679-1.)

In 1935 compensation officials said that this provision had been nullified and rendered inoperative by a supreme court decision. In these circumstances, the futility of restrictive definitions of injuries covered, as a means of solving the problems of the insurance carrier, was demonstrated.¹⁸ In order to meet deficits during the depression following 1929, the Washington fund was compelled to levy assessments upon employers. Nevertheless, during this period when employers were least able to pay, the Ontario fund reduced the insurance rates.

¹⁷ State of Washington. Department of Labor and Industries. Report, 1924-27, p. 11.

¹⁸ For a reiteration of the statement which preceded the last restrictive amendment, see Report of the Department of Labor and Industries of Washington for 1928-31, pp. 9, 10.

The contrast in the experiences of the Washington and Ontario funds points to differences in the bases upon which the two administrations were founded, which affected their ability to control insurance costs by such methods as activity in the prevention of injuries and in the supervision of medical aid of injured workers. The Ontario fund is self-supporting and self-directing, and can spend upon supervisory activities whatever it considers necessary. The Washington fund, on the other hand, depends for administrative support upon legislative appropriations, and consequently can spend upon supervisory activities only the amounts that have been provided. Wherever this condition has prevailed, the supervisory activities have usually been inadequate and fluctuating.¹⁹ Moreover, the Ontario fund, as originally established, was placed upon a nonpolitical basis. The officers and employees have had time to learn their duties thoroughly. The Washington fund, on the contrary, has been exposed to frequent political turn-over of personnel. The contrast indicates that the most satisfactory means of controlling insurance costs is through providing for adequate administration rather than by restrictive provisions relating to injuries covered.

Connecticut.—An instructive example of the process of restricting the coverage of injuries in a private-insurance jurisdiction is found in Connecticut. The 1913 statute provided that the employer shall pay compensation for a "personal injury sustained by an employee arising out of and in the course of his employment or on account of death resulting from injury so sustained." Subsequent elaborate definitions and restrictions read:

The words "personal injury" or "injury," as the same are used in this chapter, shall be construed to include only accidental injury which may be definitely located as to the time when and the place where the accident occurred, and occupational disease as herein defined. The words "occupational disease" shall mean a disease peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of employment as such. The words "arising out of and in the course of his employment," as used in this chapter, shall mean an accidental injury happening to an employee or an occupational disease of such employee originating while he shall have been engaged in the line of his duty in the business or affairs of the employer upon the employer's premises, or while so engaged elsewhere upon the employer's business or affairs by the direction, express or implied, of the employer. A personal injury shall not be deemed to arise out of the employment unless causally traceable to the employment other than through weakened resistance or lowered vitality. In the case of an accidental injury, a disability or a death due to the acceleration or the aggravation of a venereal or syphilitic disease or to the habitual use of alcohol or narcotic drugs shall not be construed to be a compensable injury. In the case of aggravation of a preexisting disease, compensation shall be allowed only for such proportion of the disability or death due to the aggravation of such preexisting disease as may be reasonably attributed to the injury upon which the claim is based. (Sec. 5223.)

¹⁹ See ch. 9 (pp. 153 et seq.).

The right of the injured worker to claim compensation was still further circumscribed by the wide use of "waivers"—which the original act (sec. 33) had forbidden. The amendment to permit waivers reads, in part:

Whenever any person having a contract of employment, or desiring to enter into a contract of employment, shall have any physical defect which imposes upon his employer a further or unusual hazard, it shall be permissible for such person to waive in writing for himself or his dependents, or both, any rights to compensation under the provisions of this chapter for any personal injury arising out of and in the course of his employment, or death resulting therefrom, which may be found by the commissioner having jurisdiction to be attributable in any material degree to such physical defect.

The workmen's compensation administration in Connecticut, during the period when these restrictive amendments were made, had virtually no program relating to the prevention of injuries or to the supervision of the curative phase of medical aid. As late as 1935 coordination of the compensation administration with other agencies, for the supervision of insurance, safety, and rehabilitation activities, was in the main undeveloped. The administration lacked not only the necessary mechanism, but also the organized information upon which adequate supervision must proceed.²¹

The basic plan of the Connecticut administration set up a decentralized system for adjudicating claims, with virtually no provision for the integration of supervisory services and preventive activities, such as is found, for example, in Wisconsin and New York. In Connecticut, dependence for controlling insurance cost has been in part upon restrictive legal provisions and the wide use of the waiver system. A relatively undeveloped coordination of services and supervision, on the one hand, coexists with restrictive coverage of injuries on the other. This lack of coordinated action does not imply, however, that there are no examples of excellent preventive work on the part of some employers and public agencies. Moreover, in Connecticut, as elsewhere, restrictive legal definitions tend to break down under liberal administrative interpretation.

CHANGES MAKING COVERAGE OF INJURIES MORE INCLUSIVE

Outstanding examples of changes which have made the provision for the coverage of injuries more inclusive are found in Wisconsin, New York, and Ohio. The development of integrated supervisory and

²¹ See Report of the Board of Compensation Commissioners to the Governor, covering the period November 1, 1932, to November 1, 1934 (typewritten), p. 1: "This commission has no statistical bureau. It has been suggested on various occasions that the general assembly allot to us sufficient funds to set up an organization for gathering figures and information which are on many occasions requested by persons who are vitally interested in the cost of compensation accidents and the administration of the law itself. This information we cannot give to any informative extent."

preventive services in Wisconsin and New York has been notable.²² In the circumstances, these jurisdictions have been able to provide relatively high benefits²³ to injured workers, at a cost which employers have been able to bear.

Wisconsin.—In 1917 the Wisconsin act provided:

SECTION 2394-3. Liability for the compensation hereinafter provided for * * * shall exist against an employer for any personal injury accidentally sustained by his employee, in those cases where the following conditions of compensation concur:

(1) Where at the time of the accident both the employer and employee are subject to the provisions of sections 2394-3 to 2394-31, inclusive.

(2) Where at the time of the accident the employee is providing service growing out of and incidental to his employment.

Every employee going to and from his employment in the ordinary and usual way, while on the premises of his employer, shall be deemed to be performing service growing out of and incidental to his employment.

(3) Where the injury is proximately caused by accident and is not intentionally self-inflicted.

This provision for the coverage of injuries was broadened in 1919, by an amendment which specifically makes the definition of "injury" very inclusive:

SECTION 102.01. *Definitions.* * * * Injury is mental or physical harm to an employee caused by accident or disease.

Such a definition provides what is known as general or "blanket" coverage. The conditions of liability are set forth in section 102.03 of the Wisconsin statute, but this appendix to the definition of injury is expository rather than restrictive. For example, compensation is not paid unless the injury "is not intentionally self-inflicted"; but, of course, "intentionally self-inflicted injuries" are outside the compensation plan because they are not industrial or work injuries.

At the 1937 meeting of the International Association of Industrial Accident Boards and Commissions, Harry A. Nelson, Director of the Workmen's Compensation Department, Industrial Commission of Wisconsin, said:²⁴ "Our experience teaches that the administration of disease provisions is fraught with no more difficulty than those covering accidental injuries. * * * In its administration of occupational-disease provisions the commission has never departed from the regular routine and procedure utilized in accident cases, nor has the commission ever seen the need for different procedure." However, the "administrators must, first of all, be capable, and then must study and inform themselves fully upon the subjects before them, if they are to be competent for their task. They must combine at least a fair

²² See ch. 8 (pp. 132 et seq.).

²³ Under a 1936 amendment in New York the benefits payable in case of the dust diseases are now lower than those for other injuries.

²⁴ U. S. Department of Labor, Division of Labor Standards Bull. No. 17, p. 54.

knowledge of the elements of law, insurance, medicine, and of specific compensation provisions."

After the broadening of the coverage provision to include occupational diseases, the Wisconsin commission called a conference, to which medical experts and research men were invited. The commission made a special study of the subjects of tuberculosis and silicosis. Safety codes were formulated and preventive measures were instituted. In consequence, it is expected that in the future silicosis will be "stamped out."²⁵ Such a program contrasts strongly with the efforts, in some jurisdictions, to keep down occupational-disease costs, in part, by restrictive definitions of injuries covered or by leaving unprotected workers who have been disabled by occupational diseases.

Types of Occupational-Disease Legislation

Methods of Determining the Coverage

It has been noted that by broad interpretation the term "injury" in compensation acts includes "disease," and also that, from the point of view of the Wisconsin compensation officers, there is no need for setting up separate procedures for the administration of occupational-disease provisions. In some compensation acts, however, the provisions relating to occupational disease are separate from those relating to accidental injuries. As a rule, insurance carriers have advocated separate provisions or even separate acts as a means of limiting the coverage that is provided for occupational disease. It is therefore necessary to consider the types of legislation upon this subject.

Under the original State workmen's compensation laws occupational diseases were not specifically covered, although the provision of compensation for "a personal injury," in the Massachusetts act, was held broad enough to include diseases of occupation. In 1920 only seven jurisdictions in the United States (California, Connecticut, Hawaii, Massachusetts, North Dakota, Wisconsin, and the Federal Government) provided compensation for occupational diseases.²⁶ The other jurisdictions, in theory at least, excluded such injuries from coverage (1) by limiting the scope of the law to injuries by "accident"; (2) by adverse rulings of the courts and commissions; and (3) by express provisions in the compensation acts. On July 1, 1939, some or all occupational diseases were compensated by 30 State and Federal acts and by 8 Canadian acts,²⁷ under the forms of coverage known as "schedule" or "general."

²⁵ *Idem*, p. 55.

²⁶ U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 275, p. 51.

²⁷ See Appendix 2 (p. 198). For the text of State legislation, see U. S. Bureau of Labor Statistics Bull. No. 652: Occupational-Disease Legislation. For a summary of the Canadian legislation see Canada, Department of Labor, Workmen's Compensation in Canada, July 1939. Mimeographed.

SCHEDULE COVERAGE AS OF JULY 1, 1939

List or schedule coverage was found in all the Provinces of Canada having workmen's compensation acts, and in 12 States,²⁸ while in 3 additional States (Kentucky, Nebraska, and West Virginia), there was special coverage limited to a few diseases contracted in specified employments.

An example of a rudimentary form of list coverage is the provision of the Kentucky statute (Sec. 4880) which compensates—

* * * Injuries or death due to inhalation in mines of noxious gases or smoke, commonly known as "bad air," and also shall include the injuries or death due to the inhalation of any kind of gas. * * * Any employers and their employees engaged in the operation of glass-manufacturing plants, quarries, sand mines or in the manufacture, treating, or handling of sand may, with respect to the disease of silicosis caused by the inhalation of silica dust, in like manner voluntarily subject themselves thereto as to such disease.

An example of coverage by definition and list is found in Delaware, as follows:

SECTION 6114 (as amended 1937). * * * Compensable occupational diseases shall not include any other than those scheduled below and shall include those so scheduled only when the exposure stated in connection therewith has occurred during the employment, and the disability has commenced within 5 months after the termination of such exposure: [Listing 12 diseases, including anthrax, lead poisoning, wood-alcohol poisoning, and chrome poisoning.]

An example of the schedule coverage of occupational disease by a separate supplemental act is found in the Pennsylvania legislation of 1939. The schedule is so broad, however, as virtually to amount to general coverage.

GENERAL COVERAGE AS OF JULY 1, 1939

Under 15 acts²⁹ there was general or blanket coverage. Such coverage, as has been noted, may be by definition or by specific terms, or, as in the case of Massachusetts, by court interpretation of the word "injury" as used in the compensation act. An example of general coverage by a separate supplemental act is found in Illinois. Under such an arrangement the benefits, as for example in cases of silicosis or asbestosis, may be subject to more limitations than under the original compensation act, especially as to the provision for medical aid. Moreover, as has been stated, nominally general coverage may be so

²⁸ Arkansas, Delaware, Idaho, Maryland, Michigan, Minnesota, New Jersey, North Carolina, Pennsylvania, Rhode Island, Washington, and Puerto Rico. Of these jurisdictions Minnesota in 1936 listed 23 diseases, New Jersey 10, North Carolina 25, Rhode Island 31, and Puerto Rico 15; while New York, which formerly compensated 27 specific diseases, retained the schedule in the legislation but amended the law in 1935 (ch. 254) to provide general coverage of "any and all occupational diseases."

²⁹ California, Connecticut, District of Columbia, Hawaii, Illinois, Indiana, Massachusetts, Missouri, New York, North Dakota, Ohio, Wisconsin, Philippine Islands, Federal Employees' Compensation Act, and Longshoremen's and Harbor Workers' Compensation Act.

circumscribed by conditions and undercut by "waivers" as to defeat, in part, the compensation program. Inasmuch as it has often been assumed that it is sufficient to classify the coverage of occupational disease as "schedule," on the one hand, and "general" on the other, it is important to keep in mind the differences within the types. Under either form of coverage what is of chief concern is the actual degree of protection afforded the worker. From the point of view of what injured workers have actually received in benefits and protection, the Wisconsin development of general coverage has been outstanding.

Impact of Cost Estimates Upon Occupational-Disease Legislation

Fear of Excessive Cost

The desirability of occupational-disease coverage has been generally recognized, in principle. The Fifth National Conference on Labor Legislation recommended³⁰ that "injury should be defined to include occupational disease, and coverage for occupational disease should be by general or 'blanket' coverage instead of under a 'schedule'." Proposals for occupational-disease coverage have been submitted to legislatures in many States during recent years. In opposition to such proposals, especially where broad or general coverage was advocated, statements have been made that the cost of such coverage would be high or even unbearable by industry. In this connection it is of interest to note that after the change in Ohio in 1939 from schedule coverage to the coverage of all occupational diseases, the occupational-disease rate applicable to all classifications remained unchanged at 2 cents.

Various estimates by private insurance carriers and employers' associations relating to the cost of extending the range of coverage have necessarily been based mainly upon past experience. Where the result of such experience has not been available in scientifically organized form, the dependence has been upon conjecture or analogy. The estimates of the cost of occupational-disease coverage that have been presented to legislatures have therefore ranged from bona fide actuarial computations to broad guesses. An example of the arguments that have usually been submitted in opposition to the general coverage of occupational disease is found in the minority report of a legislative committee of Maine in 1939.³¹ The majority report favored general coverage, with dependence upon "the tradition of competency in Maine's Industrial Accident Commission"³² as an adequate safeguard against abuse of the broad provision. The minority report, however, arrived at the conclusion³³ that although the occupational-disease

³⁰ U. S. Department of Labor, Division of Labor Standards Bull. No. 25-A, p. 18 (1938).

³¹ Maine. Legislature. Recess Committee on Compensation for Occupational Diseases. Majority and Minority Reports, Augusta, 1939.

³² *Idem*, p. 27.

³³ *Idem*, pp. 52-54.

problem in Maine is a "minor one" the general-coverage law would "drive industry from Maine." Typical statements of conclusions are:

We are confident that the occupational-disease problem in Maine is a minor one as compared to other problems in the accident-prevention field. The records of the vital statistics bureau, the department of labor and industry, and the industrial accident commission indicate that Maine is practically free from occupational diseases, a survey of an entire year, and over 17,000 accident reports showing but 0.07 percent of all cases being attributable to "poisonous substances." * * *

It is our opinion, substantiated by abundant evidence, that an occupational-disease law as recommended by the majority of the committee will drive industry from Maine, afford Maine's competitors distinct and considerable advantages and will completely disrupt the smooth functioning of the industrial accident commission. * * *

There is no doubt that the costs of compensation insurance will amount to ridiculous proportions. Nor is there any doubt that the near-chaotic conditions that have existed and now prevail elsewhere will result, to plague us here. * * *

We are guided by experience elsewhere in our conclusion that a deluge of claims for real or fancied injuries to health will result from the passage of such legislation, and that Maine manufacturers will be called upon in some instances to pay for ailments incurred in whole or part in other plants, States, and countries. * * *

We therefore recommend that the occupational-disease legislation as proposed by the majority of the Recess Committee to Study Occupational Diseases not be adopted, and we further recommend that the search be continued that means may be found whereby all interests may be protected without the imposition of crushing penalties on any group or groups.

"Depression" Background of High Estimates of Silicosis Cost

In explanation of such statements of the cost of silicosis coverage as have often been made to legislatures by opponents of occupational-disease coverage, one must bear in mind that from 1933 to 1938 the newspapers and even the motion pictures directed public attention to the widespread ravages of dust diseases and especially silicosis. Under depression conditions, workmen—particularly those who were unemployed—whose lungs had been impregnated with silica dust, claimed compensation benefits or filed damage suits amounting in the aggregate to many millions of dollars.

The rush to capitalize disabilities connected proximately or remotely with dust diseases was in part legitimate and a beneficial exposure of injurious working conditions. But to a considerable degree, since silicosis is not disabling in its early stages, the claim situation from 1933 to 1938 was an understandable effort of distressed workers to use workmen's compensation as a substitute for unemployment insurance, health insurance, or old-age pensions, or to collect damages for the wholesale dismissals which had been instigated by insurance carriers.³⁴ Moreover, the situation as to claims and damage suits was aggravated by instances of large-scale commercial exploitation of the nuisance value of litigation. As a rule, however, the actual

³⁴ See appendix 1 (p. 186).

amounts collected were relatively small. The outcome was on the whole beneficial, because the sensational publicity compelled many jurisdictions which had ignored occupational-disease hazards and coverage to study the problem and to inaugurate preventive measures.

Actual Silicosis Awards Under General Coverage

North Dakota.—In many States, the item in the occupational-disease-coverage program that is viewed with greatest alarm is silicosis. In some States, however, the silicosis hazard is negligible. In North Dakota, under the broadest general form of occupational-disease coverage, it was said in 1936 by R. H. Walker, Chairman of the Workmen's Compensation Bureau, that "there had been only two cases that might be silicosis in 17 years, and both of these probably were due to exposure outside the State."

Wisconsin.—In some other States, under the existing situation, silicosis has been the main item of occupational disease cost. The Wisconsin experience was discussed by Harry A. Nelson, Director of the Wisconsin Workmen's Compensation Department, in a statement made to the 1937 convention of the International Association of Industrial Accident Boards and Commissions, as follows: ³⁵

In 17 years, since the passage of the disease provision, total payments of compensation benefits in Wisconsin have amounted to \$48,000,000. In the same period \$1,600,000 was paid because of occupational disease, or 2½ percent of all payments. Of the total payments for occupational diseases, over 95 percent were for silicosis, which has proved the major item of occupational disease generally.

The Wisconsin experience is of outstanding importance because it has shown that even where silicosis is the major item of occupational-disease cost, and where the benefits paid are the highest to be found in the States,³⁶ the general coverage of occupational disease has been proved to be practical. But Mr. Nelson said further:

Let it be carefully observed, however, that because of depression conditions, and many other factors to be commented on later, a much larger amount per year has undoubtedly been paid than will ever be paid in the future. This was because of the factors of so-called accrued liability, and overliberality in settlement, because of lack of knowledge and early hysteria on the part of employers, insurance carriers, and the industrial commission.

Actual Awards under Scheduled Coverage

North Carolina.—The occupational-disease amendment providing for schedule coverage in North Carolina, enacted in March 1935, has sometimes been cited as a model for consideration by other States. Twenty-five listed occupational diseases are compensable, subject to special provisions. From July 1, 1936, to July 1, 1937, the compensation and medical cost in occupational-disease cases

³⁵ U. S. Department of Labor, Division of Labor Standards Bull. No. 17, p. 53.

³⁶ According to the comparison of benefits made by the National Council on Compensation Insurance, the Wisconsin liberality of payment is rated at 1.145 as compared with 1.000 for New York. See ch. 5 (p. 80).

amounted to \$12,280. This total included \$6,000 compensation and \$145 medical cost in two silicosis cases. During the same period approximately \$1,500,000 was expended for compensation and medical aid in approximately 40,400 claims.³⁷ From July 1, 1937, to July 1, 1938, the medical and compensation cost of occupational-disease cases amounted to \$4,615. This total included silicosis cases which cost \$465.³⁸ In the face of actual costs of occupational-disease coverage which have been so negligible, it appears that the main result of covering this type of injuries has been the extension of the State's program for preventing occupational diseases.

Ohio.—The disbursements for occupational diseases in Ohio for the 3 calendar years prior to 1939³⁹ have been as follows: 1936, \$149,569.54; 1937, \$160,886.90; 1938, \$161,408.56. No segregation of occupational-disease cost has been made by diseases. The total losses incurred for 1937 for all types of injuries were \$21,350,784. It appears that the occupational-disease cost under the Ohio plan has been relatively negligible. Twenty-one occupational diseases are listed. In addition, compensation is allowed for silicosis, but subject to special conditions and limitations. In February 1939, E. I. Evans, the actuary of the fund, said:

The Ohio Fund has a general occupational-disease premium rate of 2 cents per \$100 of pay roll. This is a flat rate applicable to all industries.

Prior to the inclusion of silicosis in the schedule of compensable occupational diseases the rate was 1 cent per \$100 of pay roll. The doubling of the rate does not mean that the contemplated silicosis cost was equal to the combined cost of all other diseases, in that the occupational-disease rate would have been increased from 1 cent to 2 cents at a later date notwithstanding the inclusion of silicosis.

Under date of December 13, 1938, the legal section reported that of the 146 silicosis claims filed since the effective date of the amendment, July 31, 1937, 19 have been allowed by the commission:

At the present time, judging from hearings thus far, the ratio is approximately three claims disallowed to every one allowed. This ratio will probably become narrower in the future since the main reason for disallowance of many of the claims, namely, no exposure after July 31, 1937, will disappear as the time goes on.

Pennsylvania.—Silicosis awards in Pennsylvania during 1938, under 1937 legislation, were negligible in amount, but the situation in that State as to silicosis cost was not clear because the 1937 statute was involved in litigation.⁴⁰ Some insurance officers say that the actual

³⁷ North Carolina. Industrial Commission. Fifth Biennial Report, 1936-38. Raleigh, 1938, pp. 5, 14.

³⁸ *Idem*, pp. 26-29.

³⁹ In 1939 schedule coverage of occupational disease in Ohio was changed to general or blanket coverage.

⁴⁰ In the absence of available official reports, information regarding the amount of awards in claims for disability or death resulting from silicosis during 1938 in Pennsylvania was sought from John A. Robb, Director of the Bureau of Workmen's Compensation, on January 11, 1939. He said: "My guess would be, that not more than \$40,000 was paid out for silicosis death cases in 1938."

cost of occupational-disease claims under recent legislation cannot be accurately estimated until several years after the effective date of the statutes.

Limited Provision for Silicosis in New York

As has been noted, the schedule coverage of occupational diseases in New York became, by process of amendment, in effect general or "blanket" coverage. But under the pressure of statements that the cost of compensation for silicosis under the prevailing general coverage would compel a number of employers to close their establishments or have certain operations performed in other States, an amendment was passed in 1936 limiting compensation payments and medical benefits in silicosis and other dust-disease cases.

The New York experience under article 4-A of the compensation law, covering silicosis and other dust diseases, was stated on February 23, 1939, by J. M. Cahill, associate actuary of the Compensation Insurance Rating Board, as follows:

TABLE 1.—*Compensation Cost for Silicosis and Other Dust Diseases in New York, 1935-37*

Policy year	Earned premium	Incurred losses		
		Indemnity	Medical	Total
1935 (second report).....	\$37,066	\$5,851	\$1,417	\$7,268
1936 (first report).....	397,810	25,950	7,151	33,101
1937 (January-April policies).....	186,942	12,900	1,860	14,760
Total.....	620,818	44,701	10,418	55,119

These figures were accompanied by the following qualifying statement:

It should be pointed out that certain additional losses have been incurred under article 4-A for classifications where a specific occupational-disease rate has not been charged because there did not appear to be a serious exposure to a dust-disease hazard. The above losses do not include any employer's liability losses which may have been suffered during this period.

This loss experience is obviously immature. We understand that additional losses have been incurred which will be reported to the board when the experience of these policy years is again compiled for submission to the board.

Furthermore, because of the accumulated liability which exists, the insurance carriers are carrying substantial reserves to cover this accumulated liability for occupational diseases. It is the general belief that the indications of the experience to date are more or less meaningless and that the carriers should set aside the difference between the loss provision in the occupational-disease premiums collected and the known incurred occupational-disease losses as a precautionary reserve which will eventually emerge in future years.

From the figures cited it appears that workers disabled by silicosis in New York have as yet received very little. The legislation, how-

ever, provides for a gradual increase in the amounts to be paid upon future claims. The compensation provision, as stated in article 4-A, section 66 of the law is as follows:

Compensation shall not be payable for partial disability due to silicosis or other dust diseases. In the event of temporary or permanent total disability or death from silicosis or other dust diseases, notwithstanding any other provision of this chapter, compensation shall be payable under this article to employees in the employments enumerated in section 3 of this chapter or to their dependents in the following manner and amounts: If disablement or death occur during the first calendar month in which this act becomes effective not exceeding the sum of \$500; if disablement or death occur during the second calendar month after which this act becomes effective not exceeding the sum of \$550; thereafter the total of compensation and benefits payable for disability and death shall increase at the rate of \$50 each calendar month. The aggregate amount payable shall be determined by the total amount payable in the month in which disablement or death occurs. In no event shall such compensation exceed an aggregate total of \$3,000.

Medical aid is restricted. Section 68 provides:

Notwithstanding any other provisions of this chapter the medical treatment herein provided for shall be limited in the case of an employee disabled by an occupational disease due to or resulting from the inhalation of harmful dust to a period of 90 days from the date of such disablement, but the requirement for such medical treatment may be extended for an additional period not to exceed 90 days upon the order of the industrial board.

The New York Times protested editorially that such limitations upon medical aid and compensation violate "every fundamental principle of the compensation act."⁴¹ Bills have been introduced in the legislature to remove the medical limitations and to increase the amount of compensation payments.

Many private insurance carriers refused to accept the risk of silicosis coverage. In explanation of the situation as affecting the New York State Insurance Fund, which carries the silicosis coverage, Henry D. Sayer, deputy executive director, said in February 1939:

The rates charged for silicosis coverage were very high, because no accurate forecast of the losses could be made, and because men were known to have been employed in silica-dust exposures for many years and many of them might be assumed medically to have acquired a degree of silicosis which, while not at the moment wholly disabling, might become disabling at almost any time. As soon as a safe reserve has been accumulated and data are assembled as to the actual emergence of disabilities and claims, the rates will be adjusted.

In the State fund we have set apart risks having a dust hazard in special groups for which a separate accounting is made. In these groups a considerable part of the premium for occupational-disease coverage is set aside as a reserve to meet the accruing liabilities which will emerge in future years in the form of claims. Just how much these reserves should be and how long it will be before we can discover a normal rate of emergence of occupational-disease claims, it is well-nigh impossible to state at this time. By carrying these reserves in special accounts, if future experience develops that the rates charged have been excessive or that the reserves carried are too great, a fair proportion of the amount carried in reserve will be returned to the members of the groups by way of dividends.

⁴¹ American Labor Legislation Review, December 1938, p. 172.

Effect of Preventive Measures

The experience cited has shown that, on the whole, the actual payments for silicosis cases have been relatively small, and sometimes almost negligible, except in the few instances where large payments have been made under depression conditions or after the wholesale dismissal of workmen at the instance of insurance carriers. Because of the slow maturity of the dust diseases and the uncertainty as to the extent of their prevalence, private insurance carriers have been reluctant to insure the hazard even at high rates, and the fixing of rates by the public competitive funds has been experimental.

There is, however, little uncertainty, in the light of experience in Europe and America, with regard to the effect of the thorough application of preventive measures in curtailing the prevalence of silicosis and other occupational diseases. Where such measures have been taken, occupational-disease coverage ceases to be a costly burden, because there are relatively few such injuries to compensate. For example, the *Ohio Health News*⁴² for June 1, 1935, citing Report of the Miners' Phthisis Medical Bureau of South Africa for the 3 Years Ended 31st July, 1932 (p. 37), says that "figures are presented, showing great decrease in silicosis with tuberculosis—a drop of 96 percent in the case rate over a 14-year period—and, in fact, in 1 year, 1927–28, no such disease was reported among the approximately 15,000 European miners employed." Dr. F. H. Lewy, under the topic "First Systematic Efforts of Introducing Industrial Hygiene in the Rubber Industry,"⁴³ says that "during the 10-year period preceding 1898, there was a reported regression of 75 percent in general morbidity and almost 86 percent in mental morbidity, among the rubber workers at Leipzig." Such hazards were in connection with a process not used in the United States in the manufacture of rubber articles; but the inauguration of an occupational-disease prevention program in Pennsylvania disclosed the prevalence in that State of a similar type of poisoning in the viscose-rayon industry, 30 years after the cause of the injury had been recognized in Europe and in part controlled by a preventive program.⁴⁴

At the 1928 meeting of the International Association of Industrial Accident Boards and Commissions, Dr. G. H. Gehrman said, in the course of an address on *How Chemistry Has Changed Industry, and as a Result Has Changed the Tendency to Occupational Disease*:⁴⁵

Our early days of handling these [poisonous] products taught the necessity of introducing improved methods of manufacture, together with precautions in handling, and these two factors have practically eliminated our difficulties.

⁴² Published by the Ohio State Department of Health, at Columbus.

⁴³ Pennsylvania Department of Labor and Industry. *Survey of Carbon Disulphide and Hydrogen Sulphide Hazards in the Viscose Rayon Industry*. Harrisburg, 1938, p. 19. (Bulletin No. 46.)

⁴⁴ See also p. 67.

⁴⁵ U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 485, pp. 125–129.

In February 1939, Dr. Gehrman supplemented this statement to include 12 additional years of experience, as follows:

Since 1926 the Du Pont Co. has with medical supervision, careful methods of handling, and rigid rules of operation been able to manufacture tetraethyl lead, which is a potentially dangerous material, without a single case of lead intoxication.

In the early stages of the use of this product mixed with gasoline, it will be remembered, there were many cases of illness and a few fatalities. The impression was created at that time that the product was "so toxic in nature and so difficult to handle that the idea of further manufacture should be abandoned."

The application to the problem of occupational-disease coverage of what has been shown by such typical examples of the successful use of preventive measures, has been epitomized by Gregory C. Kelly, general manager of the Pennsylvania Compensation Rating and Inspection Bureau, in the course of an interview as follows: "I take it that occupational disease will gradually disappear as the hazards become known and are prevented." He illustrated this statement by showing the unexpected source of certain recent cases of poisoning, and added: "These poisonings occur in the industries where you do not expect them, because employers in the industries where the poisonous substances have been used for some time have taken means to overcome their harmful effect."

Administrative Program

In the plan for occupational-disease coverage, it has usually been recognized that provision for preventive measures is no less important than the payment of benefits in case of injuries. In some jurisdictions the program of prevention of occupational disease has not been developed as a distinct feature. Under recent legislation, however, special units for research and inspection activity in the field of industrial hygiene have been set up in many States.

The first step in a program of occupational-disease coverage, after legal provision therefor has been made, is for the administrators to study the subject thoroughly. This necessitates conferences with experts, and often requires travel. In his account of the preparation undertaken by the Wisconsin Commission, Harry A. Nelson, compensation director, explained⁴⁶ that the commissioners did not think that because of such study "they would be able to comprehend fully the complicated ramifications of the medical phases involved, but that they would comprehend the basic facts, and, above all, would know to whom to turn as authority upon these subjects, with a view to scientific determination of cause, condition, and extent of disability."

⁴⁶ U. S. Department of Labor, Division of Labor Standards Bull. No. 17, p. 54.

The second step is to acquaint employers, workers, insurance carriers, physicians, and the public with the requirements of the law and the means of preventing injuries. In Pennsylvania, a year after the effective date of the broadened occupational-disease coverage under the 1937 legislation, a significant conference on the control of occupational disease was held. This conference was followed by a series of smaller conferences, in which the more specific problems pertaining to the individual types of occupational-disease hazards were discussed. A special investigation of certain hazards was made, with the cooperation of specialists from other States, from universities, and the Federal Government.

An adequate program necessitates the preparation and adoption of safety codes and the organization of inspection activities. In describing the Wisconsin practice, Mr. Nelson says that commissions "should not wait for cases to arise before making their studies."⁴⁷

An account of the swift action of the New York Division of Industrial Hygiene in mobilizing its own resources and those of other agencies to prevent widespread injury or death from the use of a harmful new process in the printing industry is given in chapter 6 (p. 106). An outstanding example of an analysis and report on health hazards in a particular industry, sponsored by a State workmen's compensation administration, is the Survey of Carbon Disulphide and Hydrogen Sulphide Hazards in the Viscose Rayon Industry in Pennsylvania in 1938.⁴⁸ In that investigation, chemists, engineers, medical consultants, and governmental officials cooperated in analyzing the hazards and in framing preventive measures. An account of the operation of a State division of industrial hygiene is found in the New York Department of Labor Industrial Bulletin for October 1938 (pp. 466-470).

Obsolescence of Schedule Coverage

The schedule plan of covering occupational disease has often been criticized as arbitrary and unfair.⁴⁹ The jurisdictions originally providing this form of coverage copied or adapted the practice of continental European countries and England. Such a method is vitiated by gaps in the schedule due to poor and incomplete selection of items in the list and also to the emergence of new processes the hazards of which are not recognized until after workers have been injured, whereas it has been recognized by commissions that they should not wait until after claims are filed before undertaking research and inspections to discover hazards. Industrial processes change and

⁴⁷ *Idem.*, p. 56.

⁴⁸ Pennsylvania. Department of Labor and Industry Bull. No. 46.

⁴⁹ For a recent discussion of the merits and demerits of schedule coverage, see Maine, Legislature, Recess Committee on Compensation for Occupational Diseases, Majority and Minority Reports, Augusta, 1939.

the knowledge of disease hazards is rapidly expanding. A revision made 10 years after the first publication of a printed guide to impairments that may occur in various occupations increased the number of poisonous substances considered from 52 to 94. The number of hazardous occupations listed was increased to approximately 900.⁵⁰

Manifestly, the public welfare is advanced by a program for the prevention of all occupational-disease hazards. Under effective programs of prevention there is a dwindling of the number of injuries that come from former recognized sources, and a relatively greater percentage of cases that come from sources where such hazards had not been expected. Under the type of occupational-disease schedule which restricts the worker's right to benefits to the injuries sustained in connection with certain specified operations or processes, it is apparent that a certain number of workers who have unquestionably sustained occupational injuries are unable to recover benefits. It is apparent that broad coverage for occupational disease has stimulated research and preventive activities, through necessitating closer attention to the reporting of occupational-disease cases and the control of costs by medical and engineering activities. Only after the enactment of broad provision for occupational-disease coverage have preventive activities been launched on a wide scale. In the case of fairly comprehensive schedules, so few injuries are omitted from coverage that there is no economic justification for a complicated limited form of coverage in the place of general coverage.

It is significant that the old schedule or list arrangement for limited occupational-disease coverage has been challenged in Europe by those best qualified to pass upon the situation—representatives of the profession of industrial medicine. The Thirteenth Italian Congress of Industrial Medicine, in September 1938, passed a resolution⁵¹ calling for "the abolition of the system of schedule and the introduction of blanket coverage for occupational diseases, which would constitute the final stage in the development of insurance against occupational accidents and diseases; and asking that, pending this, the system of enumeration of diseases and the list of trades and processes should be abolished."

In this connection it is of interest to note that New York, in 1935, and Ohio, in 1939, expanded the existing schedule coverage to general or blanket coverage. Moreover, the Ohio amendment of May 1939 removed the provisions limiting the scale of benefits for silicosis, and permits benefits as for disability or death due to accidents.

⁵⁰ The number shown in the earlier edition was not stated. U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 582: *Occupation Hazards and Diagnostic Signs*. Washington, 1933, p. vi.

⁵¹ International Labor Office. *Industrial and Labor Information*. Geneva, Oct. 10, 1938, p. 41.

Desirability of Government Aid to Facilitate Occupational-Disease Coverage

Under legislation enacted in 1937 (Act No. 552, sec. 7-a) an interesting experiment in financing the coverage especially of dust-disease injuries is being tried in Pennsylvania. A legislative appropriation has been provided, out of which, together with assets of the "second-injury fund," the accrued liability is to be paid. Under the arrangement, during an initial period of 10 years a percentage, decreasing year by year, of the compensation for such diseases as may be determined to develop disability only after long exposure is to be paid out of the "second injury reserve account in the State workmen's compensation fund."

In 1935 the American Federation of Labor requested Federal grants-in-aid to match appropriations for the conduct of State-pooled funds for workmen's compensation to cover occupational accidents or diseases.⁵²

The report of the economic, legal, and insurance committee of the National Silicosis Conference, submitted February 3, 1937, favors Government aid as a necessary means of satisfactorily meeting the problem of accrued silicosis liability.⁵³

The lack of Nation-wide coverage of occupational disease has been an obstacle to advanced legislation on this subject in the various jurisdictions. In the case of accident coverage, the States with high benefit scales are, of course, at a disadvantage in competing with low-benefit States, so far as this one element of production cost is concerned. In regard to an occupational disease such as silicosis, however, there is a further consideration. Victims of this slow-maturing disease at times move out of jurisdictions which have no compensation coverage for such disabilities. States having or planning silicosis coverage fear that they may be made the dumping-ground for the accrued silicosis liability of such jurisdictions as Vermont and New Hampshire, important quarrying regions, which give no compensation for disability from dust diseases. The unprotected condition of workers in the jurisdictions that are less advanced in occupational-disease coverage becomes, therefore, a Nation-wide instead of a local problem. This phase of the dust-disease situation warrants action on the part of the Federal Government to encourage the study and control of the hazard in all jurisdictions.

⁵² American Federation of Labor. Report of Proceedings of Fifty-fifth Annual Convention. The program for compensation legislation to cover occupational diseases is reproduced in U. S. Department of Labor, Division of Labor Standards Bull. No. 13, p. 43.

⁵³ U. S. Department of Labor, Division of Labor Standards Bull. No. 13, p. 35.

Canadian Arrangement for Carrying "Accrued Liability" in Silicosis Cases

Canadian workmen's compensation funds which have extended coverage to include silicosis have been able to assume the "accrued liability" by including the cost in the insurance rate and spreading the expected increase over a period of 10 years. In private insurance States this could not be done, since no employer can be required to contract with one insurance company for a sufficient period of time to enable the carrier to recoup gradually the expense incurred for old occupational-disease liabilities.

An account of the Ontario experience with the coverage of silicosis is found in the proceedings of the 1936 meeting of the International Association of Industrial Accident Boards and Commissions.⁵⁴ Compensation for silicosis is at the same rate as for accidental injuries. The conclusion from 19 years' experience of the Workmen's Compensation Board of Ontario with silicosis is that "if industry will realize the importance of the condition, and, without becoming panicky, will exert all of its efforts" in discovering and applying the best preventive measures, "there is reasonable hope that the condition will be so far reduced as to be a matter of only moderate peril to the workman and of no serious danger" even to the industries in which the silicosis hazard has been greatest.

⁵⁴ U. S. Department of Labor, Division of Labor Standards Bull. No. 10, pp. 164-170.

Chapter 5.—Adequacy of Benefit Payments¹

Experimental Origin and Development of the Benefit System

The benefit scale has been called the heart of the compensation system. Upon its adequacy rests the injured worker's chance for decent maintenance during helplessness and the protection of his dependent family from destitution or a lowered living standard.

The benefit provisions of the early compensation laws were experimental. They were made in the face of predictions that the cost of the new system of caring for injured workers would be overwhelming. Although the advocates of compensation statutes were convinced that the estimates of cost announced by opponents of workmen's compensation were much exaggerated, such statements had influence with legislatures. In consequence, the early benefit scales were not only low but the laws were sometimes without such features as medical aid, considered indispensable in the present statutes.

The low scale of benefits and the technical devices for reducing cost resulted from compromise between conflicting interests rather than from the application of rational principles to the benefit provisions. Subsequent changes have come in part through a comprehensive and intelligent development of the system and in part through alteration of one item or another regardless of its relation to the statute as a whole.

In the present examination of the benefit systems, attention is given to features that have caused particular hardship to workers or their dependents. The details of the provisions for payment are bewildering unless they are seen in relation to the main lines of growth in the compensation systems. Although excessive variations in the benefit provisions still persist, the practices relating to payment have in some jurisdictions been broadened.

The situation of the injured worker under the compensation statutes is beyond question much better than it was under the common law and the employer's liability acts, but in many cases the benefits obtainable have been too low for subsistence, and the injured worker has at times become dependent upon private charity or public relief. The incalculable aid furnished by the compensation system cannot hide the fact that in a number of States many injured workers would starve if society left them to depend entirely upon the compensation they receive. The insufficient attention given to this situation may arise from the defenseless condition of the lowest-paid or intermittently

¹ This chapter was published as an article in the *Monthly Labor Review*, September 1938, p. 463.

employed workers, who have in some instances received as compensation less than a dollar a week. How this could happen, even under a seemingly liberal compensation act, is shown herein by explanations and illustrations of principles and practices relating to payments.

Factors Determining the Compensation Actually Received

Varying Applications of the Wage Base for Payment

In many jurisdictions the experience of injured workers, especially during periods of part-time or intermittent employment, has compelled restudy of the wage base for the computing of compensation payments. In jurisdictions which have not adopted a full-time wage base, this feature in arriving at the amount of payment has been the chief cause of complaint from workers in recent years.

Except in a few jurisdictions which pay fixed sums or pensions, the scale of compensation is based upon a percentage of the worker's earnings. Insurance premiums also are based on wages. In most jurisdictions the first step in determining the amount of compensation is to find out what wages the worker received. At this point confused and varied practices are found. In the first place, the amount paid the worker may not be correctly reported, and the administrations are faced with the problem of devising and enforcing satisfactory reporting by those obligated to furnish information. The next step is to determine, under the provisions of the law, whether compensation is to be calculated upon full-time or part-time wages, normal or abnormal. It is apparent that if compensation is based upon part-time earnings, especially if wages are low, the compensation received by some workers will be insufficient for their subsistence. Workers have challenged such an application of the compensation-insurance principle. Administrators have been divided in their attitude.

Arguments for and against the use of a part-time wage base for compensation payments were given at the 1932 meeting of the International Association of Industrial Accident Boards and Commissions, an organization of compensation officers of the United States and Canada.² On the one hand, it was asserted that insurance carriers could not maintain satisfactory reserves for payment of compensation over long periods, if payments to injured workers were based upon full-time employment while the carriers collected premiums on pay rolls based on part-time employment. On the other hand, it was maintained that the cost to the insurer should be rated according to the amount of exposure to the hazard of injury, and that the part-time worker is an insurance risk only during the time he works. Under this interpretation the worker would be entitled to compensation

² U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 577, pp. 61-85: Ascertainment of Average Weekly Wage, by Walter O. Stack, and discussion following.

upon a full-time wage base even if he had been employed for but a few hours before his injury.

Distress resulting from the use of the part-time wage base, especially during the period 1930-35 when wages were low and employment was intermittent, led in some jurisdictions to radical changes in the administrative practice, in the law, or in its interpretation by the courts. Outstanding instances of reversals by administrations or courts of the prevailing rule of interpretation, by setting up full-time instead of actual wages as the base for computing compensation, occurred in Minnesota and Pennsylvania.

In a Pennsylvania case 57 cents per week had been awarded as compensation to a totally disabled skilled worker. Under a changed interpretation of the wage base, this worker was paid \$15 a week.³

In 1937 an amended Pennsylvania act (sec. 306a) put a substantial floor under compensation awards in total disability cases, by the provision of an absolute minimum⁴ of \$12 a week regardless of the wages earned. In a number of Canadian Provinces the emergency was met by the exercise of administrative discretion, and the workmen's compensation boards fixed a "subsistence" minimum below which payments might not fall.

The Third National Conference on Labor Legislation (1936) recommended, as the wage base for computing compensation, a normal full-time week. With such a provision in the compensation statute, reinforced by the fixing of a "subsistence level" below which payments may not fall, it would appear that a percentage-of-wage basis for compensation is preferable to the designation of fixed sums, as in the Washington and Wyoming acts—a method too inflexible to reflect changes in wage scales and living costs.

In addition to the wage base used and the percentage of the wage that is allowed, the usual factors determining the amount of compensation are the limitations upon weekly and total payments and the periods during which payments are made. Such limits vary widely in the jurisdictions. At one point or another the limits upon the amount of compensation are changed at almost every session of the legislatures. The exact situation as to benefits in the States, as of any given year, is shown by periodic or occasional publications of the United States Bureau of Labor Statistics.⁵ Information regarding the scale of compensation in the Provinces of Canada has been published annu-

³ U. S. Department of Labor, Division of Labor Standards Bull. No. 2: Discussion of Industrial Accidents. 1934 convention of the International Association of Industrial Accident Boards and Commissions. Washington, 1935, p. 193.

⁴ In many jurisdictions the minimum is not absolute, but is qualified by the clause "unless the wages are less," in which case compensation would be the full amount of wages. As interpreted, such a provision sometimes yielded only nominal compensation to intermittently employed workers.

⁵ A biennial analysis is given in the Handbook of Labor Statistics, the 1936 edition of which is Bureau of Labor Statistics Bull. No. 616. Reprints of the information on workmen's compensation are available in pamphlet form. Analyses of legislative changes in benefits also appear in the Monthly Labor Review from time to time.

ally in a mimeographed pamphlet by the Dominion Department of Labor (Ottawa). A current analysis of workmen's compensation in the United States is given in appendix 2 (p. 192), to which reference is made for tabulations of benefit provisions.

Broadening Application of the Benefit System

Marked differences are observed not only in the determination of the wages upon which payments are computed, but also in the scope and application of the benefit schemes. In a comparison of the compensation acts in 1920, Carl Hookstadt said:

The necessity for a workable law, not excessively burdensome to the employer and not conducive to malingering, while affording such reasonable benefits to the injured workman as to prevent hardship to himself and family, has led to a wide variety of attempts to determine the proper amount to be awarded. * * *

No 2 of the 45 States have identical compensation provisions, and few States seem to have followed any definite theory in this respect. Nevertheless, two factors have operated in determining the amount of compensation provided in the various State laws: (1) Loss of earning capacity, and (2) social need. (U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 275, pp. 59, 60.)

To the two factors observed in 1920 others have been added in the subsequent development of compensation laws. Mr. Hookstadt maintained that in estimating the loss suffered by an injured worker, he should be looked upon as a human being subject to impaired enjoyment of life as well as loss of earning power. For example, a worker who has lost an arm or suffered a serious disfigurement is not restored to the same status he was in before the accident, even if he is reemployed at the same wage as before. For the rest of his life he suffers inconvenience or humiliation because of the lack of an arm or his bad appearance. To a limited extent this is recognized in some of the acts. In case of disfigurement, for example, in several jurisdictions the worker is now given additional compensation for what the courts have referred to as impairment of life, over and above what is paid for wage loss. Another development found in some States is the use of increased or decreased payments to penalize unsafe practices on the part of the employer or the injured worker. In a few States additional payments are made for the maintenance of workers undergoing rehabilitation.

In the administration of the benefit provisions, increasing emphasis has been placed upon the bodily or the economic restoration of injured workers, and such a consideration in many instances now affects either the form or the amount of payment. In short, in the jurisdictions where the greatest development is found, the benefit systems are used in part to reinforce accident prevention, rehabilitation, and the laws safeguarding the employment of minors. In such developments what may be termed the "humanizing" of workmen's compensation is seen.

**Operation of Factors Determining Payment, as Observed in the Provision
for Disfigurement**

Although payment for disfigurements is a minor feature of the benefit systems, analysis of the laws and experience at this point provides a good approach for observing both the variety and the development of the compensation provisions. There is extreme variation in the maximum amount of compensation allowed for disfigurements, but no general comparison can be made because the principle underlying the payment in one jurisdiction may be different from that in another. Examples are:

Colorado: Amount not to exceed \$500 "in addition to all other compensation benefits."

Oklahoma: "Not in excess of \$3,000 * * * not in addition to the other compensation provided for."

Texas: For "any disfigurement which will impair the future usefulness or occupational opportunities of the injured employee, compensation shall be determined according to the percentage of incapacity, taking into account among other things * * * the nature of the disfigurement, the occupation of the injured employee, and the age at the time of injury * * *. Not to exceed \$20 a week, multiplied by the percentage of incapacity caused by the injury for such period not exceeding 300 weeks."

New Brunswick: The amount allowed for disfigurement is entirely within the discretion of the compensation board, "proportioned upon the diminution of earning capacity and the degree of disfigurement, but not exceeding in any case \$2,500."

Change in legal theory underlying the payment.—There is variation not only in the amount of compensation for disfigurements but also in the type of injury for which compensation is allowed. Usually, only injuries to the face or head are listed as compensable; sometimes injuries to the neck or hands are included. For example, in South Carolina bodily disfigurement is included; in New York, "serious facial or head disfigurement" is compensated, and also some neck injuries.⁶ In New York, the payment for disfigurement of face or head may be awarded in addition to compensation for disability or loss of earnings, but in case of the other disfigurements mentioned, payment is made only if "the earning capacity of employee has been or may in the future be impaired."

In court decisions upon compensation awarded in New York for disfigurements, where the payment had no relation to earning capacity, the broadening of the basis of compensation to include "any substantial physical impairment attributable to the injury, whether

⁶ Part of the New York provision is framed in words too difficult for the average reader to understand. Compensation for neck disfigurement is limited to "any serious disfigurement in the region above the sterno clavicular articulations anterior to and including the region of the sterno cleido mastoid muscles on either side" (New York Workmen's Compensation Law, sec. 15, subd. 3, par. t).

it immediately affects earning capacity or not," was held to be constitutional.⁷

This transition from the narrow legal basis of early legislation to the broad principle found in some of the later amendments is of vital importance in the development of workmen's compensation and has had marked effects upon the administrative attitude. In the hands of an alert administrator, benefit payments based upon "any substantial impairment" are a means of obtaining the kind of medical care of the injured worker that restores, as completely as possible, both function and appearance.

Varying applications of the benefit provision.—The experience of disfigured workers in jurisdictions where no payment is made for such an injury unless it results in wage loss is somewhat as follows:

A coal miner whose face is shattered receives no compensation except for temporary disability, but an actor suffering such an injury might be paid for permanent total disability if his unsightly appearance kept him from finding another job. But if, by good fortune, the actor found other employment paying him the same wages he had earned before the injury, he might thereafter either receive no compensation, or payment based upon an estimate of probable future wage loss, according to differences of interpretation in the jurisdictions. Under this theory the worker is looked upon, for compensation purposes, as a robot or animated machine in need of repair for continued work instead of a human being subject to serious impairments other than those registered in wage loss. In some cases the medical care of the injury might end with restoring function, without regard to the worker's appearance, and the compensation commission would lack power to demand more complete surgical attention.

The experience of a disfigured worker under the more advanced legislation, in the course of an informal hearing conducted at San Francisco in 1935 by Warren H. Pillsbury, Deputy Commissioner, United States Employees' Compensation Commission, may serve as a vital cross section showing problems encountered in the application of benefit provisions:

At the time a longshoreman was injured a jar of acid broke and some of it splashed on his face. The insurance company paid the worker compensation for temporary disability, and he signed a final settlement receipt. The deputy commissioner, in checking upon the settlement, inferred from the report of the accident that a facial disfigurement might have occurred, for which the worker would be entitled to additional compensation under the Longshoremen's Act. He com-

⁷ See especially *New York Central R. R. Co. v. Bianc* (250 U. S. 596). The appellant argued that "it is of no public concern whether the claimant shall or shall not receive a further award for impairment of good looks not in any wise related to earning power" and that "only impairment of earning power justifies compulsory payment of workmen's compensation for disability or fatal injuries inflicted without fault." In support of the earlier narrow construction of workmen's compensation, *Ball v. William Hunt & Sons, Ltd.* (1912), App. Cas. 496, was cited: "The theory and datum upon which such compensation proceeds is that of compensation for injury to the worker as a wage earner."

municated with the worker, who said that his face was scarred. An informal hearing was then arranged, at which the worker and the insurance adjuster appeared. The deputy commissioner reminded the insurance adjuster that he had not mentioned the disfigurement in his settlement with the worker, and asked him to make arrangements for an operation to clear up the scar. The worker then said he did not want an operation, that the scar did not bother him, and that instead of an operation he would like to have some money. The deputy commissioner replied that the purpose of the compensation act was to relieve the consequences of an injury rather than to pay for injuries that could be cured; that if he received the cash it would soon be spent, but that he would have to live with his scarred face for the rest of a lifetime. Meanwhile, from an adjoining room, the insurance adjuster had telephoned a surgeon and learned that the cost of an operation in this case would be \$250. The adjuster so reported to the deputy commissioner and agreed to take care of this expense, and also to pay the worker for the additional time lost in connection with completing the cure. The worker refused the operation, and again asked for money. The deputy commissioner replied that since the scar meant so little to the worker himself, he would award only \$150 in cash, and reminded the worker that the insurance company was willing to spend \$300 if necessary for surgical attention and payment for lost time. Once more the worker refused the alternative, and said that he would be glad to get the \$150.

It is apparent that, in applying the benefit provision in this case, the administrator was handicapped by the lack of a clause in the act requiring that, if practical, disfigurements shall be reduced by medical treatment before they are rated for compensation payments. Under such an arrangement the worker would have had no financial inducement for refusing medical aid.

Certain types of injury may be exaggerated deliberately or by neglect, and there are occasional instances of such abuses. Proved instances of self-injury, to collect compensation, are very rare. Because one obstacle to broadening the benefit scale has been the fear of malingering, it is apparent that the permanent improvement of the benefit system, in law and application, is safeguarded by linking the scheme of payments to the most complete possible restoration of the worker as a chief aim of administration. In some jurisdictions there has been notable progress in this direction both through medical aid and vocational rehabilitation, but as a rule the development is at a half way stage.

Increasing Diversity in the Benefit Systems

The continuing diversity in benefit provisions was deplored by Donald D. Garcelon, Chairman of the Maine Industrial Accident Commission, at the 1936 meeting of the International Association of Industrial Accident Boards and Commissions:

Not only do the individual States vary greatly in the amount of benefits paid for similar losses, but their entire systems of such compensation, including other factors, in many cases differ widely. In fact, the amounts paid for the losses of certain members in each State often bear no consistent relationship at all to the amounts paid for the losses of other members, nor are they in proportion to the

value of the body as a whole. The various systems of such compensation in the United States, or lack of system, have been characterized as a veritable crazy quilt. The schedules themselves have been declared over and over again, by commissioners and other competent authorities, as haphazard, unscientific—even as absurdities (U. S. Department of Labor, Division of Labor Standards Bull. No. 10, p. 78).

The details of rating schemes and the schedules for compensating permanent disabilities are found in the proceedings of meetings of the International Association of Industrial Accident Boards and Commissions, to which reference is made.⁸

Disadvantages of the prevailing interstate diversity in the scale of compensation include (1) the bewilderment of workers who find, when moving from one State to another, different practices in the payment for injuries; and (2) because of the operation of interstate competition, the retarding effect of low benefit scales in some areas upon programs for securing liberal scales elsewhere.

There has been a continuing demand for exact and detailed information upon differences in the scales of payment in the various jurisdictions. But comparisons and tabulations of benefit systems, in other than a broad and general way, are subject to many qualifications and at some points fail to reflect the exact situation. Because the variations occur not only in the percentages and items but in underlying principles and administrative applications, it is difficult to find a common yardstick by which the benefits of the systems can be measured for the purpose of comparison. Until more uniform bases and administrative practices are adopted, the difficulty of making comparisons will persist.

Comparison of Benefits Made by National Council on Compensation Insurance

The National Council on Compensation Insurance prepares each year for its member companies a "Table of Comparative Benefits, showing the approximate relative values of the benefit provisions of the various compensation acts as near as can be estimated." The letter of transmittal notes, however, that—

The index numbers shown are subject to qualification and limitation because of the many elements entering into the computations which are not subject to exact mathematical valuation. In addition, the index of cost under the "Total" column is a weighted average and is correct in a general way only. The distribution of accidents by type of injury varies between States and will, therefore, be somewhat different in each case from the national distribution or from the distribution of any other set of weights which might be used to obtain an average. For these reasons the index numbers of this table cannot be interpreted as representing without qualification a mathematically exact comparison of the benefit

⁸ See especially U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 511 (p. 291), and U. S. Department of Labor, Division of Labor Standards Bulls. No. 4 (p. 46) and No. 17 (p. 78).

provisions of the various compensation acts. Accordingly, when using this table or quoting therefrom, it is essential to realize its limitations.

Subject to these qualifications, the table for 1938 (reproduced below) shows variations in the scale of total benefits, as compared with an index of 1.000 for New York as the base, ranging from 0.578 for Vermont to 1.145 for Wisconsin. Much greater variations are found in the comparative liberality of payment for the different types of injuries; as, for example, for permanent total disability, 0.178 in South Dakota compared with 1.000 for New York and 1.073 for Wisconsin.

TABLE 2.—Comparative Benefit Cost of Various Workmen's Compensation Laws¹

State	Fatal	Perma- nent total	Permanent partial		Tempo- rary total	Medi- cal and hospi- tal	Total benefits	Benefits pro- vided in law of—
			Major ²	Minor ³				
New York.....	1.000	1.000	1.000	1.000	1.000	1.000	1.000	9- 1-37
Alabama.....	.424	.322	.553	.750	.795	.912	.741	5- 1-36
Alaska.....	.947	.500	.984	.805	1.255	-----	1.004	6-10-37
Arizona.....	1.089	.897	.773	.867	1.232	.957	.994	6-26-33
California.....	.498	.576	.642	.736	.912	1.000	.820	8-27-37
Colorado.....	.453	.644	.587	.397	.577	.957	.669	8-13-37
Connecticut.....	.498	.339	.795	.737	.779	1.000	.807	7- 1-37
Delaware.....	.339	.226	.481	.587	.736	.802	.642	5-19-37
District of Columbia.....	.772	.414	1.016	1.013	.974	1.000	.960	5-26-34
Florida.....	.487	.244	.592	.751	.886	.994	.798	7- 1-37
Georgia.....	.393	.242	.506	.683	.704	.969	.717	3-30-37
Hawaii.....	.459	.244	.760	.782	.826	1.000	.813	5- 3-37
Idaho.....	.553	.515	.650	.653	.799	1.000	.784	5- 6-37
Illinois.....	.542	.568	.643	.852	.803	1.000	.820	7-13-37
Indiana.....	.498	.289	.666	.777	.754	.957	.775	6- 7-37
Iowa.....	.501	.292	.523	.550	.645	.994	.709	7- 4-37
Kansas.....	.496	.321	.626	.764	.807	.969	.785	5-15-35
Kentucky.....	.495	.305	.455	.578	.856	.957	.734	4-16-37
Louisiana.....	.438	.339	.583	.644	.925	.944	.770	8- 1-34
Maine.....	.481	.327	.785	1.220	.886	.784	.823	7- 3-31
Maryland.....	.608	.343	.683	.741	1.095	.969	.861	6- 1-37
Massachusetts.....	.614	.769	.664	.555	1.046	.994	.836	8-27-37
Michigan.....	.579	.400	.575	.759	.912	.957	.808	11-10-37
Minnesota.....	.754	.511	.868	.913	.984	1.000	.926	7- 1-37
Missouri.....	.617	.540	.659	.920	1.127	.944	.892	9-14-31
Montana.....	.628	.359	.524	.444	.837	.963	.744	3-16-37
Nebraska.....	.562	.594	.716	.787	.833	1.000	.830	8-14-37
Nevada.....	.919	.703	.622	.722	1.166	.988	.917	4- 3-35
New Hampshire.....	.498	.210	.436	.288	.909	.877	.668	7-15-37
New Jersey.....	.506	.882	.735	.956	.944	.877	.836	6- 3-37
New Mexico.....	.467	.411	.601	.524	.827	.957	.738	6-12-37
North Carolina.....	.793	.294	.633	.805	.885	.988	.855	4-24-35
North Dakota.....	.998	.664	.813	.715	1.169	1.000	.962	7- 1-35
Ohio.....	.720	.856	.763	.832	.878	.938	.855	8-18-37
Oklahoma.....	.576	.418	.745	.856	.956	.938	.846	8-10-37

¹ Examples of use of table: The figures on total benefits for Georgia and New York are 0.717 and 1.000 respectively. This indicates that, on the basis of this table, the ratio of Georgia benefits to New York benefits for all kinds of injury is $\frac{717}{1000}$ or that Georgia benefits average $\frac{717}{1000}$ of the New York benefits. The figures on permanent total disability for Colorado and Montana are 0.644 and 0.359, respectively. This indicates that on the average, and on the basis of this table, the Montana benefits for permanent total disability are $\frac{359}{644}$ of the corresponding Colorado benefits.

² Defined as the loss or loss of use of a hand, arm, foot, leg, or eye and the loss of hearing in both ears. Also partial loss of use is related to the benefits for total loss of use.

³ Defined as loss or loss of use of thumb, finger, toes, etc.

⁴ A figure based on actual experience has been substituted for the Oklahoma fatal value. This departure was necessary because of peculiarities in the law.

TABLE 2.—Comparative Benefit Cost of Various Workmen's Compensation Laws—Continued

State	Fatal	Perma- nent total	Permanent partial		Tempo- rary total	Medi- cal and hospi- tal	Total benefits	Benefits pro- vided in law of—
			Major	Minor				
Oregon.....	0.852	0.524	0.522	0.584	0.978	0.938	0.819	6-7-37
Pennsylvania.....	1.004	.840	1.036	1.291	.974	1.000	1.044	1-1-38
Puerto Rico.....	.378	.170	.524	.507	.549	1.000	.670	7-1-35
Rhode Island.....	.686	.476	.982	1.158	.924	1.000	.958	4-27-37
South Carolina.....	.794	.319	.663	.843	1.102	.988	.906	7-1-37
South Dakota.....	.378	.178	.554	.687	1.042	.914	.777	6-1-33
Tennessee.....	.420	.269	.454	.580	.719	.833	.656	4-22-33
Texas.....	.638	.319	.561	.716	.906	.950	.802	1-1-38
United States Longshoremen's Act.	.772	.414	1.016	1.013	.974	1.000	.960	5-26-34
Utah.....	.624	.696	.631	.550	.989	.969	.810	5-11-37
Vermont.....	.320	.184	.503	.477	.678	.710	.578	6-1-37
Virginia.....	.464	.290	.540	.675	.733	.969	.740	6-19-36
Washington.....	.927	.607	.554	.642	.920	1.000	.853	6-11-37
West Virginia.....	.724	.799	.701	.895	.932	.988	.886	6-12-37
Wisconsin.....	.816	1.073	1.645	1.228	1.248	.969	1.145	6-9-37
Wyoming.....	.568	.366	.782	.588	.957	.994	.825	3-1-37

Experience Relating to the Limits of Liberality

The location of the "floor" and "ceiling" in workmen's compensation benefit systems is of vital importance to workers. It has been seen that during the depression some administrations put an absolute instead of an adjustable floor (which was sometimes a bottomless pit) underneath compensation awards, at approximately a "subsistence" level. Between the years 1930 and 1935 there was not much complaint from workers about the "ceiling" or maximum limit of weekly payments in the jurisdictions which have liberal benefit scales, as, for example, New York, where the maximum is \$25 a week. When wages were low and employment was irregular, few of the injured employees had earned, on the average, more than \$25 a week. But when wages have been high and employment steady, the weekly maximum has caused much dissatisfaction, especially in jurisdictions allowing only \$15 a week or less. Proposals to raise the level of the weekly maximum have long had a place on the legislative programs of labor organizations, and there has been marked progress in this direction since the adoption of the early acts.

The height of the "ceiling," as to weekly payments, is determined not only by the fixed maximum but also by the percentage of wages allowed as compensation. It is plain that if compensation is paid upon 50 percent of wages fewer workers will receive awards equal to or exceeding the fixed maximum installment than when the percentage is 66% or 70. Conferences on labor legislation have recommended, as the percentage for nonfatal cases, not less than 66% percent of the wage. In Wisconsin the percentage in nonfatal cases is 70, but not to exceed 65 in fatal cases. New York and Ontario

are examples of jurisdictions allowing 66% percent in nonfatal and fatal cases.

There has been much conjecture as to the highest percentage of wages that industry can pay as workmen's compensation. In isolated instances compensation of as much as 100 percent has been voluntarily paid by employers, under special arrangements. By an agreement between the city of Winnipeg and the Winnipeg Central Labor Council, that city was paying compensation in 1936 as follows: For the first month during which an employee received workmen's compensation, an amount sufficient to bring the total up to 100 percent of wages; and for the next 2 months, an amount sufficient to bring the total up to 75 percent of wages. Proposals have occasionally been made for legislation establishing a 100-percent compensation scale.

It may be admitted that a prosperous industry can pay 100 percent benefits if safety and personnel conditions are excellent and operation is stable. But such a situation is the exception and not the rule. Under present conditions a law may be regarded as setting a high standard if it provides for benefits at the rate of 66% percent of wages, with lifetime payments for permanent disabilities. With a difference of 20 points between the State with the highest percentage and States paying 50 percent, it is hardly to be expected that there will be further important increases in the percentage paid in the more advanced States until the gap between their rate of payment and that of other States has been lessened. In some jurisdictions there has been difficulty in maintaining the existing percentage levels, especially as regards occupational disease benefits and the coverage of distressed industries. Thus, under recent legislation in Illinois, New York, Michigan, and Ohio, the compensation for silicosis is at a reduced rate of payment. In Nova Scotia the lumber industry successfully resisted an increase in benefits which had been allowed to employees in other industries.

Under adverse accident experience, disasters, and disturbed economic conditions, it has appeared to legislatures that the limits of liberality in compensation payments has been passed in some jurisdictions, and the compensation scale was reduced in part or as a whole.⁹ The attainment and maintenance of high benefit scales in some jurisdictions has been at the cost of restricting the scope of coverage, leaving out employments and industries in which accidents are severe and wages low, and also employments that are difficult to control by safety codes and insurance regulations. This restriction of coverage has worked hardship upon many wage earners, left

⁹ Amendments to the North Dakota compensation act in 1927 reduced the benefits about 20 percent. Benefits under the Puerto Rico act of 1935 are less than those paid in 1925. For example, in 1925, \$4 000 was the maximum for death or permanent total disability as against a \$3,000 maximum in 1935. The weekly minimum was reduced from \$3 to \$1.50 and the maximum from \$15 to \$10.

outside the compensation provision, who are even more in need of protection than some of the employees covered by the act.

The difficulty of providing coverage that is at the same time inclusive and liberal in benefits is not, of course, an argument for reducing or not increasing benefit scales. It does show the necessity for studying the compensation system as a whole, and also for keeping in mind the conditions which make high compensation benefits possible, especially the safety education of employers and employees and the cooperation of both in the engineering, medical, and adjudication phases of compensation administration. With a better understanding of how social insurance works, and with intelligent cooperation, higher benefits may be paid than would otherwise be possible; more than that, hazardous employments can be successfully covered which, in many instances, are now left outside the scope of the law.

Other things being equal, an economical system of administration and insurance helps to make possible a high-benefit scale. On the assumption that public and private insurance systems are equally efficient, it is of course apparent that the one with an administrative expense ratio of 10 percent of premiums is able to pay higher benefits than one with an administrative cost ratio of 40 percent of premiums. It must be noted, however, that there are variations in the performance of insurance carriers. The costliness of deficient compensation administration is so great that efficient rather than cheap administration should be stressed.

To the factors affecting liberality that have already been mentioned—the scope of coverage, the economic situation as a whole, interstate competition, the favorable or adverse condition of an industry, safety and medical programs, efficient administration, and the intelligent cooperation of employers and workers with all phases of the compensation system—one other consideration remains for the future to determine: The completion of a social-security program, which will help the worker not only in event of an industrial injury but also during sickness, unemployment, and old age, will have some bearing upon the liberality of the payments that can be made for any one of these purposes. Insurance organizations have claimed that in the past workmen's compensation has been made to serve, in some cases, as a substitute for health and unemployment insurance and also old-age pensions.¹⁰ It is for the future to determine whether, on the one hand, the inauguration of health and unemployment insurance and the extension of old-age-pension arrangements will lighten the burden upon workmen's compensation insurance and consequently make possible a more liberal scale of payment, or whether, on the other hand, the aggregate cost of all forms of social insurance will make economy in each field a controlling consideration. The conclusion

¹⁰ See also ch. 4 (p. 48).

seems inescapable that a more inclusive scope of the social-insurance program will compel, through pressure of aggregate cost, closer attention to efficiency and economy in the administration of workmen's compensation and also a more constructive use of benefit payments.

An advance in workmen's compensation law and administration, in regard to benefit provisions, has at times been retarded by the mistaken assumption that industry, on the one hand, is concerned only with the economy of benefit provisions, while labor is concerned only with the liberality of benefits. On the contrary, labor and industry should have a common interest in adequate benefits and an economical compensation system. Inadequate compensation provisions are costly to industry in the long run because they retard the recovery and rehabilitation of injured workers and impair living standards. On the other hand, liberal benefits carelessly administered are in the long run detrimental to workers because they discredit the administration and lead to reaction. In the nature of things, accident benefits can never be satisfactory, not only because human life and limb has no rational money equivalent, but also because everybody loses when industrial accidents occur. On the average, the workman, even under so-called liberal-benefit systems, probably does not receive, net, more than 40 percent of the wage loss entailed by injuries,¹¹ whereas it has been estimated that, on the average, industrial accidents cost the employers four times the amount of the compensation payments to the worker.¹² From such estimates it is apparent that both the employer and the worker have a stake in accident prevention.

The necessity for observing safety regulations is emphasized by provisions in some of the benefit systems (1) increasing the payment to an injured worker when the injury is caused by the employer's failure to comply with safety regulations and (2) diminishing it in certain cases when the employee has disobeyed the safety orders. The rate of increase or diminution varies; in Wisconsin it is 15 percent and in New Mexico 50 percent. In practice too high a percentage is not favored. Compensation administrators are reluctant to make a large reduction in the employee's compensation where a safety regulation has been violated, especially in case of major permanent injuries, because of the severe hardship that would be inflicted upon the injured worker and his dependents. Before making any reductions in compensation, administrators inquire carefully into the

¹¹ The shrinkage from the 50 or 66⅔ percent of wages named in the benefit scales to approximately 40 percent of the wage loss, the amount actually received, is the result of the operation of waiting periods, of the weekly maximum, and other limitations. Under earlier laws, estimates of what the injured worker actually received ranged from 20 to 35 percent. (See U. S. Bureau of Labor Statistics Bull. No. 301, pp. 8, 66-71.)

¹² The "hidden costs" include time lost by other employees in consequence of accidents, time lost by foremen and superintendents as a result of the accidents, property damage, payment of forfeits for failure to complete the job on time, and portion of overhead cost loss during delay due to accidents. (Bureau of Labor Statistics Bull. No. 536, p. 172 (1930): Cost of Industrial Accidents to the State, the Employer, and the Man, by H. W. Heinrich.)

posting of the regulations said to have been violated, and also into their actual enforcement.

Features Reinforcing the Benefit System

Second-Injury Fund

An unforeseen consequence of workmen's compensation laws as originally drafted was an adverse effect upon the employment of physically defective workers, because an additional injury to such persons may cause disability out of proportion to the last injury considered by itself. Employers therefore considered the increased risk of loss, in case of injury to a partially disabled worker, a reason for refusing to employ him. For example, when a one-eyed worker loses his second eye in an industrial accident, he is totally disabled for life. If the law requires the employer, in such cases, to pay the entire compensation for permanent total disability, he may be penalized in his insurance costs for having employed partially disabled men. On the other hand, if the employee receives compensation for the loss of one eye only, regardless of the resulting impairment of earning capacity, he is inadequately compensated and the purpose of the compensation act is partially defeated.

To remedy this injustice and also to minimize the handicap of partially disabled workers in securing employment, some of the States have created special "second-injury" funds and amended the compensation act to provide that in case of a second major disability sometimes restricted to specific injuries, the employer shall be held liable only for the second injury considered separately. The injured employee, however, is compensated for the disability resulting from the combined injuries. The additional compensation is paid out of a special fund supported by death-benefit payments to the fund where there are no dependents, from payments in first major injury cases, or both.

There is a statutory provision for second-injury funds in California,¹³ District of Columbia, Hawaii, Idaho, Illinois, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Pennsylvania, (effective Jan. 1, 1938), South Carolina, Utah, and Wisconsin, and also in the Federal Longshoremen's Act.

Some of the exclusive State funds, as in North Dakota, attain the ends served by a second-injury fund by charging the employer's accident-experience account only for the normal effect of the second injury and charging the excess cost to the reserve or surplus fund. However, employers who pay compensation directly—known as self-insurers—would not be governed in their accounting methods by

¹³ Declared unconstitutional as a result of the strict court interpretation of a too-specific clause in the California constitution. (*People v. Standard Oil Co. of California*, 132 Cal. App. 563, 23 Pac. (2d) 86 (1933).)

such provisions unless the compensation act specified the practices to be followed by them in setting up reserves and contributing to the second-injury fund. In the absence of such requirements in exclusive-fund jurisdictions there remains an incentive for the self-insurer to refuse employment to partially disabled men or to discontinue a worker's employment after a first major injury is sustained, since the entire disability resulting from subsequent injuries would be chargeable to the employer at the time the later injuries occurred. At present, except for an unusual provision in the Ohio act (sec. 1465-69), there has been virtually no legislation in the States or Provinces covering this contingency.

In the absence of second-injury funds, some States provide that the employer shall pay compensation only for such disability as would have been caused by the later injury if there had been no preceding disability, while other States provide that the decreased earning capacity of the employee because of an earlier injury shall be used as a basis in measuring the loss of earning power to be compensated as a result of the second injury. Under such methods of calculation the employee is inadequately protected. Some States attempt to meet the problem created by second injuries by permitting the employee to "waive" compensation for a subsequent injury.¹⁴

Special Allowance in Permanent Total Disability Cases

By an act of Congress approved May 13, 1936, the United States Employees' Compensation Act was amended to permit an additional allowance of not more than \$50 per month to employees permanently and totally disabled where the constant service of an attendant is needed. This is an important advance toward adequate provision for totally disabled workmen, in the absence of which great hardship is sometimes entailed both upon the disabled person and his family. A workmen's compensation commissioner who has observed the experience of injured workers for 20 years was of the opinion that most totally disabled workers do not live long after the injury and that the cost of adequate provision for them is not a burdensome feature of the insurance system. Few families of injured workers are in a position to sustain both the diminished income from wages and the cost of an attendant for a disabled worker when one is needed.

Benefit Provisions in Relation to the Rehabilitation Program

In a few States there are comprehensive provisions in the compensation acts for thorough cooperation with the program of rehabili-

¹⁴ The Third National Conference on Labor Legislation (1936) recommended: "The right of the employee to waive compensation (should be) prohibited." (U. S. Department of Labor, Division of Labor Standards Bull. No. 12, pp. 97, 98.)

tation agencies for restoring injured workers to vocational usefulness. Adequate cooperation necessitates a second-injury fund, a rehabilitation fund, properly drafted compensation scales, and special maintenance payments to injured employees undergoing retraining,¹⁵ to be made from the rehabilitation fund if there is one.

Insufficient study has been given to the problem of devising a system of rating disabilities that will give a maximum incentive to the worker's full cooperation in his restoration to vocational activity. Under the prevailing plan in most of the States the worker who has sustained a permanent partial disability receives full compensation for a limited number of weeks, while under the Ontario plan he receives full compensation during the healing period and then partial compensation during life.¹⁶ In criticism of the practice of paying full weekly compensation for partial disabilities it has been urged that it is the tendency for the man receiving full compensation "to stay away from the job" until the payments cease.¹⁷ If the payments are generous, the loss of compensation through a prompt restoration to earning capacity may outweigh, in the worker's mind, the desirability of rehabilitation. From the point of view of the rehabilitation program, it appears that the best arrangement is full compensation during the healing period plus a special maintenance allowance during retraining, followed by partial compensation for life, based upon degree of impairment, or loss of earning capacity.

There is a conflict of viewpoint and practice with regard to continuing compensation payments to a permanently injured worker if he is reemployed at the full wage received by him before the injury. The more generous practice was advocated by an Ohio commissioner who said, in a discussion of this point: "When we get a young man or an older man who will cooperate with the rehabilitation service, we go along with him." Instances were mentioned of payment of permanent disability compensation to workers who, after retraining had been reemployed at a wage equal to or greater than that received before the accident. "We encourage them to go back and earn what they can, feeling it is in the interest of the public policy that it should be done."¹⁸

¹⁵ In Wisconsin the additional compensation for maintenance during rehabilitation is not more than \$10 per week during a period not to exceed 20 weeks. In Arizona no limit is placed upon the additional amount that may be spent for rehabilitation, but up to the year 1935 the special rehabilitation fund was accumulating instead of being frequently utilized.

¹⁶ Section 39 (1) of the Ontario act provides for the computation of the payments upon the difference in the employee's earnings before and after the injury, but this provision is now disregarded in practice and compensation computed upon the broader basis of section 39 (3): "Where deemed just, the impairment of earning capacity may be estimated from the nature of the injury, having always in view the workman's fitness to continue the employment in which he was injured or to adapt himself to some other suitable occupation." This section allows the board considerable discretion in rating injuries.

¹⁷ A. J. Altmeyer, in U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 536, p. 137 (1930).

¹⁸ U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 536, p. 138.

A base broader than wage loss alone for compensating permanent injuries was advocated by Carl Hookstadt:

Most persons sustaining the loss of a major member suffer a serious handicap, irrespective of any wage loss. Such a person's expenses are probably greater than those of a normal person, and in addition he suffers many inconveniences and hardships and loses opportunity for advancement and enjoyment of life not experienced by a normal fellow worker. Such a loss deserves a recompense. (U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 333, p. 88.)

In the judgment of rehabilitation officers, a physically disabled person suffers an employment handicap during his working life and especially when it becomes necessary for him to find new employment. Regardless of the wages earned by a disabled person after his reestablishment in industry, he is faced with a more restricted employment horizon than the able-bodied worker. The injustice of requiring such a person to sacrifice any part of the compensation due him because of the wage he receives after reemployment may therefore be recognized.

In many jurisdictions the unwise granting of lump-sum settlements has been an obstacle to rehabilitation. Workers unaccustomed to handling large sums of money are exploited by salesmen and others when they receive their compensation in a lump sum. In many cases workers receiving lump-sum settlements have considered rehabilitation only after they became destitute. In the judgement of rehabilitation officers the benefit provisions should restrict and safeguard but not entirely forbid lump-sum settlements.¹⁹

Benefit Provisions for Widows

Application of group experience in benefit provisions for widows.—The necessity for applying the purpose and principles of a compensation system to each feature of the program is again evident upon examining the customary provision for widows of killed workmen. The existing plans are upon an arbitrary or traditional basis too much resembling the common-law payment of damages for a loss, the chief difference between collecting damages in the courts and receiving compensation being that under compensation the amount is specifically defined and the payments are usually periodic instead of in a lump sum. For compensation purposes all widows are looked upon as alike, except that in some jurisdictions the size of the family, as to dependent children, has more effect upon payments than in others. Many acts provide for additional payments to children, but on account of percentage-of-wage and weekly payment limitations, the additional amount allowed may be small, and quite inadequate for the support of the children especially if there are several of them.

¹⁹ Because of unsatisfactory experience with lump-sum settlements in Puerto Rico the 1935 act restricted them to fatal cases. Administrative safeguards required are investigation by the manager of the fund and unanimous approval of the settlement by the industrial commission, with a statement of the facts and reasons for such action.

Although it is recognized that workmen's compensation is social insurance, the group experience of beneficiaries has seldom been considered as having any bearing upon benefit provisions. With commendable initiative, the California Industrial Accident Commission, in 1919, sponsored a case study of the experience of widows who had received compensation. The necessary basis—commonly forgotten—for an improvement in compensation provisions is a study of the actual experience and needs of the persons involved. The California study disclosed that, for compensation purposes, the group of widows needed to be divided into such classifications as "lone widows," "widows with one child," "widows with several children," and also that there were important differences arising from age, health, and family connections. In the cases studied some of the widows did not need a pension, while in other cases families were broken up and great hardships suffered because the pension was inadequate or paid for too brief a period.

The California commission stressed the undesirability of the existing indiscriminate provision as encouraging young widows without children to remain idle and dependent, while the inadequacy of the payments to widows with several children undermined living standards and broke up homes. Under the commission's proposal, adequate life-time pensions would be paid to widows who needed them. Such an increase in the cost of widows' pensions would be balanced by savings through rehabilitating childless widows eligible to retraining for gainful employment. "The reeducation, rehabilitation, and placement of dependents is as essential to the well-working of a compensation law as in the cases of workmen permanently crippled, and should be provided for either in the death-benefit law itself, or by some auxiliary source of income."²⁰ The plan was presented to the annual meeting of the International Association of Industrial Accident Boards and Commissions as early as 1920, but there has been no development of this kind in the compensation systems.

The difficulties in relation to widows' pensions, disclosed by the California case study, remain unsolved. In many jurisdictions the benefit schemes are not sufficiently flexible to meet the emergency of widows with several children, because the ostensible allowance of additional amounts for the support of children is largely neutralized by limitations of the period during which the provision for dependents may continue, of the total amount payable, or both.

Arrangements for supplementary payments to dependents.—In Wisconsin there is a separate fund out of which additional death benefits are paid to children under the age of 15, and such a device merits

²⁰ U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 281, pp. 348-374. For a later discussion of the problem, see *idem*, Bull. No. 536, pp. 129-130.

study as a clue to desirable readjustments in the benefit provisions for dependents. The Wisconsin arrangement operates in two directions to discourage discrimination by employers against hiring workers with dependents. At the same time it removes the differential in insurance loss upon workers with families, and makes necessary the collecting of appreciable payments from employers in cases of fatal injuries to workers without total dependents, the maximum charge for the children's additional death benefit fund being \$2,000 in such instances.

States which have or in future provide second-injury and rehabilitation funds could meet the purposes of the Wisconsin arrangement by expanding the scope of such funds to include part of the benefits to dependent children in cases where, because of the size of the family, the requirements of a subsistence provision would exceed the maximum percentage of payments fixed by the statute.²¹

The expansion of second-injury and rehabilitation funds to include payments above the basic maximum where there are several dependent children would cause a more active use of these funds. In several instances money has piled up in rehabilitation funds, almost unused, to such an extent as to create an administrative embarrassment.

There are few jurisdictions which have supplementary arrangements for increasing the amount or extending the term of payment to dependents. In many of the States widows' pensions are for a limited period and payments cease in some instances when the need for support is greatest. In practically all jurisdictions the amount is insufficient to maintain a completely dependent person. But in Utah the Industrial Commission has discretionary power to extend payments to wholly dependent persons after the expiration of the customary term of benefits. The additional amounts are paid out of a special fund maintained, for this and other purposes, by payments in fatal injury cases where there are no dependents.

Lifetime pensions are desirable in some but not all cases.²² Complete and permanent dependence upon an inadequate pension is demoralizing.

Special payment to widows.—The Ontario and Quebec acts provide for a special payment to the widow of \$100, in addition to all other benefits. Such a provision is based upon the well-understood need of the widow of a killed workman for immediate cash with which to meet extraordinary incidental expenses.

²¹ In Russia the maximum payment to dependents is from 94 to 100 percent of wages. See Report of the International Labor Office, part II, Social Conditions: Technical Tripartite Meeting on the Coal-Mining Industry, p. 74, Geneva, 1938.

²² According to Pennsylvania experience for the policy years 1930-34, of 1,465 widows of killed workers, 590, or 40 percent, were without children.

Safeguarding the Welfare of Injured Workers and Their Dependents

"After-Care" Service

The New York Division of Workmen's Compensation has on its staff specialists in "after-care" service to workers and their dependents. Among other activities, this unit gives advice on the law and secures "financial assistance from outside agencies to carry the worker and his family along until a decision is made on his claim."

As early as 1920, A. J. Pillsbury, of the California Industrial Accident Commission, suggested a plan of development to meet the need for "the reeducation, rehabilitation, and placement" of dependents of killed workers. But the Federal rehabilitation act did not extend to widows and children the service it provides for disabled workers. With the enacting of the Federal law, the movement of individual States to set up independent rehabilitation systems ended. The California plan was dropped, and a gap remains in the compensation and rehabilitation service at the point discussed by the California commissioner. After-care service to dependents of workers by the compensation administration is needed, especially as to financial guidance and funeral contracts. This is largely a neglected field in the development of compensation administration.

At present, there is an almost complete lack of information in the compensation agencies as to the experience of widows in regard to expense for burials.

The Washington act (sec. 7679a), for example, provides: "No sum shall be paid an undertaker for the burial expenses * * * unless the undertaker shall make and file with the department an affidavit that no part of the burial expenses have been either directly or indirectly paid by or charged to the widow or orphan child or children." In 1935, however, the compensation officers said this provision was not enforced.

Inasmuch as the compensation agency pays a funeral benefit, it should be in a position to pass upon the bills for burial expense, in like manner as the commission supervises medical bills, and safeguard the widow against assuming a large debt for expense in addition to the amount allowed the undertaker in the benefit provisions. The restriction of expense found in the Washington act, to be readily enforceable, requires the supplementary clause, "unless the contract for such expense in addition to that provided for under the act shall have been approved by the commission." What is reasonable in the circumstances can be determined only by an examination of each case.

Safeguarding the Expenditure of Compensation Payments

Prior to the enactment of workmen's compensation laws, when the injured worker or his dependents collected damages in the courts, no public interest was recognized in the use of the money received. What was done with it, and how soon the receivers became destitute, was the business only of the successful party in the lawsuit. In contrast, provisions in the more advanced compensation acts recognize a fundamental difference between compensation benefits and recoveries at law. The theory is occasionally urged that compensation belongs to the worker to do with as he pleases, and that it should be paid in a lump sum if desired by him. The fact that under compensation law the benefits are paid to the worker without regard to fault in the cause of the injury is, however, ample basis for the principle, recognized in advanced compensation law, of a public interest in the transaction.

The third National Conference on Labor Legislation (1936) recommended that "commutation of workmen's compensation shall be approved only for good cause shown with proper safeguards as to the use of the funds so commuted, with the best interests of the workman or his dependents in case of death being the primary consideration."

An example of broad power given the compensation administration to safeguard the expenditure of compensation awarded to minors is found in the Alberta act, section 59:

Where a workman or a dependent is under the age of 21 or under any legal disability the compensation to which he is entitled may be paid to him or applied in such manner as the Board may deem most for his advantage.

Section 47a of the Ontario act safeguards the wife and children of workmen receiving compensation. If a worker is entitled to compensation and it appears to the board that the worker is no longer residing in Ontario, but that his wife and children are still residing there without adequate means of support and apt to become charges upon charity or public relief, the board may pay his compensation, in whole or in part, to the wife and children. If the worker still lives in Ontario but is not supporting his wife and children, the board may, in certain cases, divert his compensation for the benefit of the wife and children.

Chapter 6.—Medical Aid ¹

Competent and adequate medical aid for injured workers is of great significance to all parties concerned. It is important to workers because on it depends the speed and degree of their recovery and restoration to earning capacity, and the rating of the extent of disability for which they receive compensation. It is important to employers and insurance carriers because they pay the bills. It is important to physicians because of the broad scope and rapid expansion of industrial medicine as a phase of medical practice.² Finally, medical aid is of importance to administrators, because their duty is to see that injured workers receive adequate and proper medical attention.

The discussion which follows is based primarily on the results of interviews with compensation commissioners, medical officers, insurance representatives, labor leaders, and attorneys in all the States and Canadian Provinces having compensation laws, as well as in Puerto Rico.

Medical-Aid Provisions

In the United States the greatest advance in the workmen's compensation system since the first acts were passed has been in the provision for medical aid. Even as late as 1919 there were three jurisdictions which furnished no medical service, except that in fatal cases involving no dependents the medical expenses of the last sickness were paid by the employer. In 1938, 15 jurisdictions provided virtually unlimited medical aid under the law or the administrative practice, as compared with 6 in 1919. To these 15 jurisdictions there should be added, for most practical purposes, 10 others in which the administering authority may extend, without limit, the provision for medical aid beyond the initial limitation of time or amount specified in the acts.³

In proposals to legislatures for remedial amendments the prevailing argument has been that adequate medical aid is "economical"; humanitarian motives, though undoubtedly present, have seldom been stressed. Employers and insurance carriers increasingly recog-

¹ This chapter was published as an article in the *Monthly Labor Review*, January 1939, p. 25.

² For the programs of medical organizations in relation to the compensation system, see American College of Surgeons, *Medical Service in Industry and Workmen's Compensation*, Chicago, and American-Medical Association, *Bureau of Medical Economics, Medical Relations under Workmen's Compensation*, Chicago.

³ For details, see Bureau of Labor Statistics Serial No. R. 815: *Workmen's Compensation in the United States as of July 1, 1938*. For a presentation of early situations and developments prior to 1920, see U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 275, pp. 90-112.

nize that "what is best for the patient is, in the same proportion, an economy for the insurance carrier and for industry." ⁴

In Canada, under all the Provincial workmen's compensation acts, with the exception of Nova Scotia, unlimited medical aid is furnished. In Nova Scotia medical aid is given for 30 days only, unless authorized for a longer period by the workmen's compensation board. In British Columbia and Alberta the workers themselves contribute toward the cost of medical aid.⁵

The Ontario act has served to some extent as a model in the drafting of other Canadian acts. The Ontario provision for medical aid reads:

Every workman entitled to compensation * * * or who would have been so entitled had he been disabled for seven days, shall be entitled to such medical, surgical and dental aid, and hospital and skilled nursing services as may be necessary as a result of the injury, and shall be entitled to such artificial member or members and apparatus and dental appliances and apparatus as may be necessary as a result of the injury and to have the same kept in repair for a period of one year (sec. 49).

Problem of Medical Cost

While on the one hand workmen have pressed for increased medical benefits in some jurisdictions, on the other hand much has been said and written, especially during the years 1930-35, about so-called alarming increases in the cost of medical aid. The change in the ratio of medical aid to compensation cost especially under depression conditions has become a matter of concern to both insurance carriers and State administrations.

Some attempts to make upon the basis of State reports a comparison of the ratio of medical cost to compensation payments are vitiated by the diversity in the reporting and statistical practices in the States compared, and also by the variable nature of the two items compared. Few States have complete and dependable data on medical cost.⁶

Factors in the Situation

In an analysis of the situation the following appear to be significant factors:

(1) Both the scale of compensation and the provision for medical

⁴ *American Journal of Surgery*, March 1936 (p. 436): *Economic Aspects of Industrial Fractures*, by Dr. A. D. Lazenby.

⁵ For details of provisions and practices in the Provinces, see Canada, *Department of Labor, Workmen's Compensation in Canada, a Comparison of Provincial Laws*, Ottawa, July 1938.

⁶ The general situation as to estimates of medical cost, is indicated by a typical explanation in the report of the Industrial Commission of Minnesota for 1933-34 (p. 186): "The total cost of medical and hospital treatment rendered to injured employees in the State of Minnesota in the cases closed during the biennial period is not given in this report as indicated by tables numbered 5, 6, and 7 because of the fact those figures are not obtainable." Medical cost under what is known as "contract medical" arrangements is seldom reported. The medical cost of self-insurers is rarely known. The Minnesota Industrial Commission adds this caution with regard to its tabulations of medical cost: "In studying the medical and hospital expenses hereinafter given in the statistical tables and in the analyses of these tables it must be borne in mind that the figures there shown are for those cases only in which the employers or their insurers have reported these items."

aid have been greatly increased in many jurisdictions during the last 20 years.

(2) The increase in the scale of compensation payments has stimulated an increase in medical aid or made it necessary, to save the large compensation costs which would result from inadequate medical treatment of injuries.

(3) An increase in medical cost, wisely applied, diminishes compensation payments, and therefore may increase the ratio of medical to compensation cost.

(4) Compensation payments in some States are abnormally lessened, during periods of intermittent employment, by a method of computing the wage base which makes it only a fraction of full-time earnings. Where this is done a high ratio of medical cost may indicate either low compensation payments or ample medical aid.

(5) No matter how low the wage or the wage base sinks, the cost of treating an injured worker is relatively constant, and tends to increase during depression periods under the stress of physicians' pecuniary need and the reluctance of the worker to admit that he is cured in the absence of available employment.

(6) Fee padding and other unethical practices on the part of a minority of the medical profession, especially in the largest cities, has increased medical-aid cost.

(7) Where the worker selects a physician of his own choice, administrators find that in some cases the physician has difficulty in controlling the situation, because he risks losing the practice of the worker's family and friends if he reports, contrary to the wishes of his patient, that the injured employee is able to return to work. The question of the comparative skill of the physicians engaged under the two methods is also a point at issue.

(8) In most of the States medical supervision by the compensation commissions has been deficient, since few of them have a medical staff, and the turn-over of the administering personnel has been too rapid to allow the commissioners to master the medico-economic phase of the work. Statistics are seldom used by the compensation administrations for the guidance of their medical supervision.⁷

Inexpert Service as a Factor in Cost

In addition to the factors mentioned, it must be noted that in some areas part of the recent increasing cost complained of is attributed, by both compensation administrators and insurance carriers, to the increasing participation of the general practitioner or "family" physician in the treatment of industrial injuries. In the early stage of workmen's compensation many physicians did not seek or accept

⁷ Forms for use in compiling information relating to medical aspects of workmen's compensation are found in a Manual on Industrial-Injury Statistics prepared by Max D. Kossoris, U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 667.

opportunities to treat injured workers if they could avoid doing so, in part because of their reluctance to make reports and appear at hearings, and attention to such cases was in the main left to surgeons and specialists. But since 1929 physicians of all types have sought a wider participation in workmen's compensation practice. Compensation officers attribute this to the relative certainty of payment for the medical care of injured workers, in contrast with the difficulty of collecting medical bills from private individuals during the period 1929-35.

Unspecialized and inexpert medical care of injured workers has often proved disproportionately expensive because of errors in diagnosis and treatment. Compensation officers mention instances of serious harm done by bandages that were too tight, of permanent impairment of function because plaster casts were left on too long, and even of skull fractures that were overlooked until the patient died and an autopsy brought to light the unsuspected cause of his unwillingness to return to work. It is not expected that a general practitioner will be skilled in interpreting the diagnostic signs of the varied types of occupational diseases. Under workmen's compensation, mistakes in medical diagnosis and care are reflected not only in the bills for prolonged treatment, but also in augmented benefit payments.

Medical Aid as Affecting Rehabilitation

As reported by the Vocational Rehabilitation Service, U. S. Office of Education,⁸ difficulties of the medical aspect of workmen's compensation which affect the rehabilitation of injured workers are:

1. Amputations are frequently made more with a view to minimizing the compensation benefits to be paid than to usefulness of the remaining part. For example, in the case of an injury to a foot requiring amputation, the surgeon makes a Chopart amputation leaving an almost totally useless stump but reducing the benefits to be paid. In any number of cases the disabled person must either use an appliance that at best is very unsatisfactory or have a reamputation in order to get a useful stump.

2. In many instances in making amputations even when the amount of compensation is not involved, the surgeon either leaves too long or too short a stump for effective use of an appliance.

3. Amputations are frequently left improperly shaped and closed, or the bone is too long for the stump and, therefore, improperly padded.

4. In the case of mutilations, muscles that otherwise might be restored to much usefulness are rendered practically useless by adhesions and contractures that could be avoided by better procedures and more careful treatment.

While great strides have been made in the past few years in these respects there is still room for improvement.⁹

⁸ Summary furnished by Terry C. Foster, Oct. 15, 1938.

⁹ For an account of the effective use of surgery in the rehabilitation of amputation cases under workmen's compensation, see the discussion by Henry H. Kessler, M. D., in U. S. Department of Labor, Division of Labor Standards Bull. No. 17: Discussion of Industrial Accidents and Diseases, 1937 convention of the International Association of Industrial Accident Boards and Commissions (p. 160).

Such difficulties point to a lack of coordinated supervision on the part of workmen's compensation and rehabilitation administrations and the medical profession. The Vocational Rehabilitation Service, U. S. Office of Education, has planned conferences with representatives of medical organizations and workmen's compensation administrators as a first step toward the formulation of coordinating procedures for Nation-wide use.

Relations of Medical Profession and Compensation Authorities

The attitude of physicians and medical organizations toward the compensation law, the administrators, and the insurance carriers, has been an important factor in the operation of the compensation system. Because of the narrow limitation of payment for medical aid to injured workers provided by the early compensation acts, physicians complained that part of the burden of workmen's compensation insurance had been put upon their shoulders. Disputes over the payment of medical bills were frequent. Amendments providing more adequately for medical expense have facilitated the improvement of relations between the compensation authority and the medical profession. At present, either informal or organized cooperation is found in most jurisdictions, and as a rule compensation administrators stated that on the whole their relations with physicians and their organizations were satisfactory. Difficulties experienced were attributed to a minority—sometimes a small minority—of the members of the medical profession.

Continued improvement in medical relations is expected as a result of the advancing standard of medical education, the increased emphasis in education and practice upon organized attention to industrial hygiene, and a better understanding by physicians of the requirements of the compensation system, particularly as to records and reports. It is customary to invite the participation of the medical organizations when medical-fee schedules are formulated or revised. In many jurisdictions, in case of disputes over doctors' bills and hospital charges, the judgment of officers or committees of medical organizations is requested by compensation officers.

Scope of Medical Administration

The full scope of medical participation in workmen's compensation includes treating, adjudication, and preventive service. A medical officer who had long experience under workmen's compensation insisted that "compensation administration is 80 percent medical." Certainly the satisfactory operation of workmen's compensation depends largely upon competent medical treatment of workers, together with the prompt furnishing by physicians of correct medical reports upon injuries and the giving of unbiased testimony at hear-

ings. The ability of compensation officers, therefore, to enlist the full cooperation of the medical profession in the compensation program is a highly important factor in administration. In some of the States and Provinces compensation commissioners, as a means of advancing a program of intelligent medical cooperation, make addresses at medical conferences and sometimes at medical schools which give courses in industrial medicine. In some jurisdictions, by arrangement with the medical associations, committees are created to aid the compensation commission in settling controversies over medical fees. In some instances, through such committees the cooperation of medical organizations is secured for upholding professional standards in the treatment of injured workers.

The supervisory responsibility of the workmen's compensation authority extends not alone to the medical care of injured workers but also to medical expenditures, the scrutiny and weighing of medical testimony in the course of settling claims for compensation, and the physical rating of injuries or disabilities, including the determination of their relation to the employment of the injured worker and their probable effect upon his earning capacity.

The Rating of Disabilities

The awarding of compensation payments depends in part upon the reports and testimony of physicians with regard to the occupational cause and the extent of disability resulting from the injury. The rating of disabilities, or the determination of the degree to which a certain injury entails loss of function and the relating of such impairment to some corresponding degree of industrial disability, is a task of the greatest difficulty, sometimes requiring a revision of the findings of the medical practitioner by the compensation officer, who should have a knowledge of the injured man's working situation which the physician may lack. In at least one instance the court has held that the compensation officer's expertness in medico-economic judgments may justify his disregarding medical testimony and forming an opinion upon the facts.¹⁰ Discussions of this problem and of rating schemes are found in the reports of the annual meetings of the International Association of Industrial Accident Boards and Commissions.¹¹

¹⁰ *McCarthy v. Industrial Commission*, 194 Wis. 198. Cited by A. J. Altmeyer in University of Wisconsin Studies in the Social Sciences and History, No. 17: The Industrial Commission of Wisconsin, Madison, 1932, p. 96.

¹¹ For an analysis of the rating problem, see U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 577 (p. 162 et seq.); and U. S. Department of Labor, Division of Labor Standards Bull. No. 10 (pp. 78 and 99). For an example of the correction, by a compensation commissioner, of a medical rating of an injury in its bearing upon vocational disability, see Bureau of Labor Statistics Bull. No. 577 (p. 172). See also *Disability Evaluation*, by Earl D. McBride, New York, J. B. Lippincott Co., 1936.

Problem of Preexisting Ill Health

In compensation cases where a preexisting condition of ill health is aggravated by an industrial injury, a problem arises not only in regard to compensation and medical benefits but also in determining the burden to be borne by insurance carriers. As to the latter there are two contrasting practices in the jurisdictions. In some areas, the legal rule is that industry takes the workman as it finds him and is fully responsible for what subsequently happens to him in the course of his employment. In other areas, the legal rule is that industry is responsible only for the ordinary consequences of the kind of injury sustained by the workman; medical aid is limited to the period over which the injury would have caused disability had there been no diseased condition, and compensation payments are limited to the disability which the injury would have caused except for the disease. In many instances it would seem to be difficult if not impossible to divide with an accurate line the mingled consequences of an injury and the aggravation of an existing disease. It would appear to be more desirable to allocate a workman who has heart disease, for instance, to tasks not requiring overexertion than to pay compensation for his untimely death. But the difficulty with some existing approaches to the problem is that they would deny such a man the right to work, because of the expectation that he might be a compensation liability.

Administrative Safeguards Against Biased Ratings¹²

Among the causes of difficulties in rating injuries, compensation officers mention, as leading factors: Lack of knowledge on the part of physicians in regard to the occupational relations and consequences of industrial injuries, which affects not only their estimates of extent of disability but also in some cases surgical operative practices and results; extreme differences of viewpoint upon extent of disability, arising in part from the absence of accepted standards of measurement; differences of attitude with regard to subjective factors affecting disability, such as, for example, "hang-overs" of fear and pain or loss of self-confidence; and, most important of all in the judgment of administrators, the absence of scientific impartiality on the part of many physicians in their reports and testimony regarding the cause and extent of disability. Compensation officers find, in regard to medical testimony upon extent of disability, that too often the attitude of physicians resembles that of retained advocates rather than impartial experts. Where there is much antagonism between injured workers and the insurance carriers or the compensation hearing officers, it frequently is caused by the feeling that medical specialists called upon to make "impartial" ratings of disabilities have not been unbiased in their reports and testimony. Administrative steps to guard against

¹² See also ch. 7 (p. 127).

partisan testimony include the exercise of care in avoiding the use, as impartial specialists, of physicians known to be employed, on a fee basis or otherwise, by compensation insurance carriers; and, in rare instances, the disciplining of physicians habitually giving biased testimony. Under the Rules of Procedure of the Workmen's Compensation Board of Pennsylvania (sec. 38) "the board will, upon petition, or of its own motion, issue a rule to show cause why" a physician who gives partisan testimony, and who is "not actuated by a desire to further the just administration of the act," should not be disciplined. The steps in such action are as follows:

If, after a full hearing, the board in conjunction with two members of the Medical Society of the State of Pennsylvania selected by the Medical Board of Education, shall deem that the facts require such action, the rule will be made absolute, and a certified copy of the order of the board sent to all referees and compensation authorities, who will be instructed that, in any matter when such physician shall testify, in considering what weight to give his testimony, due consideration shall be given to the action of the board in the matter in which the rule was issued.

Under this new measure only one instance was mentioned, early in 1939, in which disciplinary action had been considered.

Checking Up on Progress and Results of Medical Care

The task of watching over the honesty of the injured worker and his physician, as indicated by the size of the compensation claim and the medical bills, has too often overshadowed the necessity for unceasing vigilance to make certain that the worker is receiving the best possible care. Medical supervision has usually been unbalanced by the stress of medicolegal tasks. With the formulation and adoption of uniform methods of rating disabilities, and also with the use of a claims procedure which minimizes public controversy over the disabilities of injured workers,¹³ more attention could be given to developing improved methods of guarding against unnecessary loss and suffering to workers resulting from delayed recovery and undue permanent disability. Compensation officers have cited instances of treatment unsuccessfully prolonged for more than a year, under one physician, when a cure has been promptly effected after the patient was transferred to a properly qualified practitioner. A method sometimes used for disclosing such situations, before irreparable harm has been done, is to check upon the progress of cases by comparing the time during which treatment has continued with statistical averages of the period of treatment for similar injuries.

The American College of Surgeons, after making surveys of medical departments and services in industry, reported that "these surveys revealed that compliance with the compensation law does not in itself

¹³ See U. S. Department of Labor, Bureau of Labor Statistics Serial No. R. 734: Claims Administration in Workmen's Compensation.

signify an efficient medical service and that financial awards cannot correct a disability that is chargeable to inadequate medical service."¹⁴ Clearly, maintaining or elevating the standard of medical care of workers by approved methods of checking upon medical performance and by unceasing administrative vigilance is a service that goes beyond enforcing the letter of the compensation law. An example of such service would be a thorough check upon the completeness of restoration, at the time disability ratings are made. The unsatisfactory surgical results that have been noted by rehabilitation officers indicate the absence of such a check. Reasons given by some compensation officers for not checking upon surgical results are the lack of a medical director, the inadequacy of the medical staff, or the cost of the examinations.

A thorough medical reexamination of many old cases, made in Alberta Province in 1936, brought to light a number of instances of unsuspected conditions that were a cause of troublesome complications and dissatisfaction with previous awards of compensation.¹⁵ In the Alberta examinations a group of specialists cooperated and considered, in conference, their findings upon "problem" cases. One result of the intensive attention given to complete examinations has been the inauguration of a program for the after-care of certain injured workers, which has resulted in some instances in a marked reduction of permanent disability. Such reduction of disability, by reducing compensation payments, has more than offset the unusual expense of the examinations and additional care. The Alberta experience indicates that a complete examination of the "end results" of treatment at the time an award is made would eliminate one of the causes of the reopening, in later years, of cases supposed to have been finally closed.

In States where claims are settled under the procedure known as the "agreement system," investigations disclosed that the actual condition of the injured worker is sometimes incorrectly shown by the reports and agreements. The Fifth National Conference on Labor Legislation, 1938, recommended that "wherever agreement settlements are permitted, no case should be considered closed unless the injured person has been examined by the board or commission or its medical staff."

Problem of Choice of Physician

Whether the injured worker shall freely choose his own physician or accept a physician selected by some one else is one of the most controversial points in compensation administration. Under the earlier acts the choice of a physician by an injured worker, except at his own cost,

¹⁴ American College of Surgeons. *Medical Service in Industry and Workmen's Compensation Laws*. Chicago, 1934, p. iii.

¹⁵ Analysis of the results of the examinations has been in preparation by the Alberta Workmen's Compensation Board, but has not yet been published.

was seldom permitted, but there has been a trend toward free choice both in statutory amendments and in the administrative practice.¹⁶

The various arrangements for the selection of the injured employee's physician are: (1) Choice of physician by employer or insurance carrier, (2) selection by the employee from a list or panel made up by the employer or carrier, (3) selection by the worker from a panel made up by the workmen's compensation authority and medical organizations, and (4) "free choice" by the worker. In actual practice the first two and the fourth methods are sometimes found in the same jurisdiction. It should be kept in mind that under any arrangement the right of choice is not absolute, but is subject to control by the compensation authority in case of abuse. It is quite common, in jurisdictions where the employers or insurance carriers have the legal right to choose the physician, for them to allow the worker to do so if he prefers his own physician. Where the worker is entitled to choose, he often accepts the employer's medical service, especially in large plants with medical-aid arrangements which the worker has found satisfactory. Often the industrial worker does not have a "family physician"; he is sometimes not in a condition to choose; in thinly populated areas the scarcity of physicians often makes a range of choice by either party impractical, and it is usually so under "contract" medical arrangements. "Self-insurers" are often allowed to follow their own practice with regard to the selection of physician.

In Wisconsin the employer or carrier makes up a list or panel, from which the employee may select his physician. In 1937 Harry A. Nelson, director of workmen's compensation, said that there was very little dissatisfaction with this system of selection, and that employers and insurance carriers were liberal in making up or revising panels to meet the worker's preference.

In 10 States¹⁷ the law or the administrative practice gives the injured worker first choice.

In New York, under a 1935 amendment, the injured employee has a right to select his physician but must choose from a list or panel made up by the compensation administration in cooperation with county medical societies. Physicians who are licensed to practice have been admitted without question to the panel, but the medical societies determine what type of injuries they may treat.

By rule of the New York Department of Labor, employers are not

¹⁶ This subject has been discussed at length at the annual meetings of the International Association of Industrial Accident Boards and Commissions. See especially U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 432 (pp. 117-128), and No. 577 (p. 41); and U. S. Department of Labor, Division of Labor Standards Bull. No. 17 (p. 108).

¹⁷ Arizona, Massachusetts, Nevada (by administrative practice whenever the employee expresses a choice), North Dakota, New York (from a panel), Ohio, Rhode Island, Utah (by administrative regulation, i. e., Medical and Surgical Fee Schedule, Rule 2), Washington (except in contract hospital cases), and Wyoming. The usual qualifications upon the right of choice have been mentioned elsewhere. In other States, the injured worker is usually allowed to choose a physician at his own expense if he so desires.

allowed to recommend a physician to an injured employee, except when requested by the worker. The new system has caused grave concern to some insurance carriers, who contend that under it their power of safeguarding the medical care of the injured worker is impaired. On the other hand, the insurance carriers actually retain, to some extent, the power to influence the treatment that is given, because if dissatisfied they can resist payment of a physician's fees subject to arbitration by a committee or in some cases to a contest before the compensation authority.

From the point of view of persons and organizations emphasizing the importance of assuring the best possible medical attention to the needs of the injured worker, an important phase of the problem of medical administration is the marked reluctance of compensation officers to interfere, except upon specific complaint, in cases of unsatisfactory treatment. In some jurisdictions compensation officers at times undertake to discourage physicians from treating injuries which are outside the range of their knowledge and skill by disallowing part of their fees. It is apparent, however, that such punishment of a physician does not repair the damage done to a worker who has lost an eye because the family practitioner in charge of the case neglected to call in a specialist.

Experience indicates that if the extension of "free choice" of physician by the injured worker is not to be followed by reaction to directed choice, thorough supervision of medical aid is necessary. In the best examples, such supervision is furnished in part by well-trained claims officers and by medical officers whose checking upon the performance of physicians is aided by adequate records and statistical information, as for instance, calculations of average periods of duration of temporary disability in certain types of injuries.

The information that is available indicates that under the existing situation compensation costs under "free choice" are greater than under directed choice. In the 1934 edition of its publication *Medical Service in Industry and Workmen's Compensation Laws*, the American College of Surgeons made reference (p. 24) to a continuing study of the "costs and disabilities resulting from injuries, based upon the fact that the physician * * * is or is not selected by the insurance carrier." By September 1938, comparative statistics had been prepared covering over two million noncompensable cases, or cases showing no loss of time from work, and also 182,000 other cases covering cuts, lacerations, punctures, abrasions, bruises, and contusions, excluding all cases involving any permanent disability or temporary disability exceeding 40 days. According to Allen D. Lazenby, M. D., chief surgeon of the Maryland Casualty Co., "the results have indicated that the choice of doctor by the employer or his insurance carrier, if that choice is intelligently, sincerely, and

effectively exercised, results in definite saving not merely in medical expense, but in compensation loss, as evidenced by decreased periods of disability and improved end results."

An interesting example of oscillation from one type of medical control to another is found in Quebec, where each system, in turn, has proved unsatisfactory to one group or another. From 1931 to 1933, the claimant had the right to choose his physician. From 1933 until late in 1936 the choice was given to the employer under the supervision of the compensation board. Since that time, under the 1936 amendment, the claimant has had the right to choose his physician. According to the compensation officers, under free choice the medical bills increased.¹⁸

No arrangement for medical aid yet devised in the States has been altogether free from abuses. The preponderance of evidence indicates that under directed choice of physician recovery is quicker and permanent disability is less. On the other hand, compensation officers find that in some instances favoritism has put unqualified practitioners on an employer's panel. It is significant that in one State the legislature, beset by the difficulties of medical administration, passed a Medical Abuses Act. This title is symptomatic of the medical-aid situation in a number of jurisdictions. In recent years measures for controlling abuses have received more attention than the objectives of maximum restoration and adequate after-care which were earnestly advocated by some compensation commissioners as early as 1920. At times the medical care of injured workers has been a battleground upon which workers and insurance carriers, doctors, lawyers, and commercial interests have fought for control.¹⁹

Main Points To Be Guarded

Although there are differences of opinion as to the best arrangements and also the scope of activity of compensation officers in supervising the medical phase of administration, in the judgment of medical officers the main points to be guarded may be summarized as follows:

- (1) The worker should be treated by a physician, surgeon, or specialist whose competence to treat the type of injury sustained has been determined by recognized medical organizations.²⁰

¹⁸ An article in the *Journal of Commerce and Commercial* (New York) for July 19, 1938, announcing changes in the Quebec workmen's compensation administration, says that "costs to employers have risen sharply, notably so since the injured workmen have been allowed to choose their own physicians. This has meant an additional cost of approximately \$500,000. While the expectation is that the choice will still be left with the workmen, observers say that more prudence will have to be exercised by the new commission in checking abuses." This statement was orally confirmed by members of the compensation board.

¹⁹ The medical phase of the compensation system has been more fully investigated in New York than in any other State. See U. S. Bureau of Labor Statistics Bull. No. 577: *Proceedings of the International Association of Industrial Accident Boards and Commissions* (pp. 27-42); and Dodd, Walter F., *Administration of Workmen's Compensation*, New York, Commonwealth Fund, 1936 (pp. 445-469). The New York investigations were prompted not alone by a concern for costs but also for the proper care of injured workers.

²⁰ There are national boards of certification for the various medical specialties. These boards, approved by the American Medical Association, certify to the competence of individual practitioners in the specialty.

(2) The injured employee should be protected from a biased rating of his disability or prejudiced medical testimony as to its cause by reference to the medical staff of the compensation commission or, in the absence of such staff, to impartial medical experts or to special medical boards.

(3) Physicians should be required to submit upon standard forms to the compensation administration, prompt, accurate, and comprehensive reports upon all industrial injury cases treated by them. These reports should serve as the basis for determining the adequacy of medical care. Serious injuries, particularly those involving permanent disability, should be reviewed by competent physicians, preferably on the staff of the compensation administration.

(4) Fees charged for treating industrial injuries should be supervised by the compensation administration.

(5) The desirability of transferring the injured man from one physician to another, or from one institution to another, should in some cases be conceded but safeguarded from capricious exercise and from abuse by interested parties.

It has been noted that compensation administrators do not always accept without qualification the medical rating of injuries and disabilities made by physicians. They say that physicians employed by insurance carriers often underrate or minimize the seriousness of disabilities, while physicians employed by injured workers usually overrate disabilities.

Medical Examination of Workers as a Preventive Procedure

The main step in the medical program for the prevention of injuries has been the physical examination of employees. Except under the provisions of recent legislation giving workmen's compensation coverage for the dust diseases (silicosis, anthracosilicosis, asbestosis, or those included in the more general term pneumoconiosis), preemployment physical examination of workers and also periodic reexamination, where it was found, was required by the employer but not by the law.²¹ A necessary phase of the extension of occupational disease coverage, and especially coverage of the dust diseases, is a program of cooperation between the State and industry in guarding the health and to some extent supervising the placement of workers. But the fact that preemployment and periodic examinations of workers have sometimes been used oppressively has aroused opposition to such practices. There are, however, examples of legal and administrative protective measures which have led to a more favorable attitude of workers toward medical examinations. In Wisconsin a recent law provides for payment up to the sum of \$3,500, predicated on wage loss, if a workman is discharged on account of nondisabling silicosis. In the absence of protection against the unjust use of medical examination the voluntary cooperation of workers in this feature of a health program is not to be expected.

²¹ An unusual provision found in the New Mexico Compensation Act (sec. 23) makes it the "duty of the workman, at the time of his employment or thereafter at the request of the employer, to submit himself to examination by a physician or surgeon duly authorized to practice medicine in the State, who shall be paid by the employer, for the purpose of determining his physical condition."

In the judgement of medical officers, the medical examination of workers should be thorough, should be given by a physician and not by a first-aid man or nurse, and should be used not only as a guide to placement but as a step toward the correction of remediable defects. For example, impaired eyesight has caused many accidents, and competent attention to the eyes of the worker, if contemplated in the medical program, is mutually advantageous to employee and employer.

The chief concern of compensation officers, in regard to the examination of workers by employers, has been to protect workers against indiscriminate discharge. Although compensation officers seldom have adequate legal authority for interfering in this matter, they have at times by persuasion, threats, or disability awards, halted the discharge of workers or secured their reinstatement. Where the offending employer was a self-insurer, the compensation commission has sometimes warned him that the privilege of self-insurance would be revoked unless the employer used the medical examinations more constructively. An outstanding example of protection of the workers by the compensation authority occurred in Massachusetts in 1933. Because the situation is one which may recur during the initial stage of an occupational-disease-coverage program in other States, an account of the procedure is quoted from the Report to the General Court of the Special Industrial Disease Commission (1934), (p. 171).

The Taunton case.—In April 1933 a situation arose in Taunton whereby 42 foundrymen were summarily discharged, following physical examinations by a local physician at the behest of an insurance company, on the theory that they were suffering from silicosis or tuberculosis. This situation, it was stated, was caused primarily by the refusal of another company to continue to carry the risk and the cancelation of their policy on 10 days' notice. The matter was a serious one and gave the commission grave concern. At its door at almost every hearing was a delegation from these 42 discharged men, begging for an opportunity to work. They pleaded that they were able to work, that they were not sick, and that all they wanted was an opportunity to go back to their employment and support their families. The commission rightfully devoted no little time to the problem of getting these men back to work, and also endeavored to secure for them some payment for their loss of time. After 7 months, it was able to secure for them the payment of compensation, on the theory of total incapacity, for the entire time they were out, a total payment of over \$17,000, and an agreement that all who were adjudged by the commissioner of public health fit to do so might return to work. Forty-one of the men did return to work, and, at the writing of this report, are still employed.

An outstanding example of the use of medical examinations, as a step in the disclosure of injuries and prevention of unsafe working conditions, is reported in the September 1938 issue of the New York Industrial Bulletin (p. 424). Because many States are as yet not aware of the need of labor department facilities for such action, part of the narrative is reproduced to show how the health and lives of workers were safeguarded and disastrous losses avoided or minimized.

The initiative, in this instance, was taken by the division of industrial hygiene. In New York, this division is set up separately from the workmen's compensation division, while in Ohio the division of safety and hygiene is within the agency that administers workmen's compensation; but in any event the operation of such a unit, where it exists, is aided by a coordination with the compensation authority, which, through the accident reports received by it, may be the first to know of situations requiring preventive measures.²²

Word came to the division that a death occurred in an establishment in Philadelphia where rotogravure printing was done with the use of inks containing large amounts of benzol. It appeared that with the introduction of faster printing presses, a need was created for inks which would dry more rapidly, and benzol inks were introduced to meet this need.

Immediately on hearing of this death, an investigation was begun to determine whether or not these inks were also being used in New York State. This brought to light the fact that they were in use in three large rotogravure plants in New York City. The inks were being purchased from the same ink manufacturer which was supplying the Philadelphia plant with its fast-drying ink.

Almost coincidental with this initial survey, a telephone call came to the division from a physician in the city who had a case which he suspected of being benzol poisoning in a man working in one of the rotogravure plants under investigation. This man subsequently died of benzol poisoning in the Brooklyn Jewish Hospital.

Within a few days following the initial investigation of the three plants, arrangements were completed for the physical examination of all workers there employed, the making of air tests, ventilation studies, and chemical analyses of all materials handled. Because of the emergency, the division of women in industry arranged for the doctor connected with that division to work with the medical staff of the division of industrial hygiene.

Within the following 3 weeks, 361 workers were given complete physical examinations including blood counts and, where indicated, urine analyses. Approximately 2,000 blood determinations were made and 96 urines examined. A total of 47 air analyses were made, and 25 inks and solvents were analyzed quantitatively to determine their precise chemical composition.

Seven of the workers were found to be in need of immediate hospitalization. Six were admitted to the Rockefeller Institute and one to Presbyterian Hospital. One hundred and thirty-eight of the workers were found to be in need of medical care and were referred either to their own physicians or the blood clinic at the Rockefeller Institute. All of these workers were carefully followed by the division of industrial hygiene and 123 reexamined. * * *

Conferences with the companies * * * resulted in the immediate discontinuance of the use of benzol-containing inks, and the substitution of nontoxic inks.

Special Administrative Devices

Special devices relating to medical administration appear from time to time in one place or another, such as boards and committees which have to do with fee supervision, the medical examination of workers,

²² A description of the coordination of the New York Division of Industrial Hygiene with the Division of Workmen's Compensation is found in the Industrial Bulletin for October 1938, p. 470.

the rating of disabilities, and also appeals from such ratings when made by compensation officers. Upon close examination, some of these devices prove to be of local significance only. The remedy that is tried may prove to be useful as an expedient but may be discarded soon or superseded by another device.²³ In 1938, in seven States (Massachusetts, Michigan, New York, North Carolina, Ohio, Pennsylvania, and West Virginia) there was a statutory provision for special medical boards or referees, in some instances as a phase of silicosis coverage. In any effort to supplement the administration by setting up special medical and rating boards, care should be exercised not to curtail or undermine the authority of the compensation commission, which, through long experience, may have an understanding of the problems and situation of the injured worker superior to that of some medical practitioners.

In 1936 an experiment of unusual interest was made in Alberta. A traveling group of specialists was established, for making thorough reexamination of all cases in which the claimants had expressed dissatisfaction with their disability ratings or awards. This committee, accompanied by the chairman of the compensation board and sometimes by labor leaders, visited cities and also isolated mining communities. Its findings provided a basis for the reconsideration of "problem" cases. There were no formal sessions for "hearings" attended by attorneys. The method was that of diagnosis and conference.

Importance of Adequate Provision for Medical Supervision

Existing Provision for Medical Staffs

As of January 1, 1938, in 21 States²⁴ the workmen's compensation authority had a medical staff, but with full-time officers in only 8 instances.²⁵ With the exception of Saskatchewan, which has part-time medical officers, all the Canadian funds have full-time medical officers. In New Brunswick in 1936 a physician was appointed as a member of the workmen's compensation board. In Alberta the chairman of the board is a physician.

A compensation commission can hardly cover its task of medical supervision unless it has authority under the law, as well as funds, for making upon its own initiative any needed arrangements for advisory

²³ In the State of Washington the administration of the medical-aid law was transferred in 1921 from the State medical-aid board to the workmen's compensation authority. This ended the experiment in that State with dual responsibility in medical administration.

²⁴ Arizona, California, Florida, Georgia, Illinois, Iowa, Massachusetts, Nevada, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Virginia, Washington, and West Virginia.

²⁵ Discussions of the necessity for and duties of a medical staff are found in U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 577 (pp. 159 et seq.) and in U. S. Department of Labor, Division of Labor Standards Bull. No. 4 (pp. 134 et seq.).

medical committees, disability ratings by expert consultants, and independent medical examinations. Most of the commissions, in case of medical dispute or apparent prejudice, have authority to select an independent physician to examine the worker, but in several instances commissions reported lack of funds to pay for examinations which they did not consider properly chargeable to the employer or insurance carrier. One remedy for such deficiencies is an improved method of financing the administration.

Notwithstanding the notable progress made in many States and Provinces in the extent and quality of medical care provided for injured workers, much remains to be gained by further improvement. A necessary step in this direction, in most jurisdictions, is more ample support for medical supervision and research. In the States the salary scale for medical officers is seldom sufficient to enable the commissions to secure and retain the highest type of medical personnel on other than a part-time basis. In the existing situation such attention as medical officers can give to the broader problem of the type of medical aid received by workers is usually incidental to the examination of bills and rating of injuries. Attention to the organization of medical aid to injured workers is left to insurance carriers, employers, and others who have a stake in this field of service. In the circumstances it is inevitable that while some of the medical care is excellent and well organized, in other instances the care is haphazard and inferior.

Costs Under Alternative Types of Supervision

In the United States measurements are not available to show the effect upon compensation cost of alternative types of supervision. Comparisons of European industrial accident statistics emphasize the importance of well-organized and qualified medical service in preventing loss to employers and undue suffering and disability on the part of injured workers. In the *Monthly Labor Review* for February 1938 (p. 435) Dr. Alfred Manes invited attention to a "very instructive comparison" in compensation cost "between two countries which seem completely comparable—the Netherlands and Switzerland."

The legal requirements of the insurance system covering industrial accidents are very similar in the two countries and the few deviations which do exist are negligible. A comparison of the insurance costs of both countries for the years 1932-34, however, shows the following differences:²⁶

²⁶ It was explained by Dr. Manes that the differences in wage levels and medical fees in the jurisdictions compared were not sufficiently significant to vitiate these figures.

TABLE 3.—*Net Cost of Insurance for Industrial Accidents in Netherlands and Switzerland, 1932-34*

Industry	Net costs (percentage of wages)	
	Netherlands	Switzerland
Shoe manufacture.....	3.9	6.1
Paper manufacture.....	5.1	10.3
Mills.....	9.3	23.3
Breweries.....	9.7	18.7
Building.....	19.7	35.6
Generation and distribution of electricity.....	7.0	23.6

The Netherlands seem to have a most efficient medical service and this may be the reason that the time of treatment in case of an accident is comparatively short. Ninety-five percent of all workmen's accidents there require less than 6 weeks of medical attention before the worker is able to return to work. Such a favorable result is probably due to the fact that in the Netherlands all accidents, even the least serious, are inspected by official experts, and, if necessary, the injured persons are attended by specialists.

Impact of Inexperience Upon Medical Supervision

In the course of the Bureau of Labor Statistics' survey of compensation administration it was apparent that insufficient attention has been given in the States to the study of loss prevention through medical supervision. As to the use of statistics in such supervision, a compensation officer of long experience summed up the situation by saying that "this is a matter upon which the commissions require education." In part, the cause of this lack of development is inexperience. In many States the prevailing practice with regard to appointment, qualifications, and tenure of compensation administrators and personnel has had an adverse effect upon medical supervision. Almost from the start of compensation administration in the States, commissioners have deplored the rapid turn-over of personnel. At the 1937 convention of the International Association of Industrial Accident Boards and Commissions, Donald D. Garcelon, chairman of the Maine Industrial Accident Commission, said in his presidential address:

The rapid changes of personnel in compensation administration in this country is nothing short of appalling. * * * Continuity of service, especially in a highly technical branch such as this, is absolutely essential if we are to have really efficient administration of existing laws, or the mature experience that would warrant us in endeavoring to better them. (U. S. Department of Labor, Division of Labor Standards Bull. No. 17, p. 4.)

Where there is periodic turn-over of personnel, appointees facing the medicolegal problems of workmen's compensation often find themselves in need of specialized knowledge which at the outset they lack. Compensation officers have said that not less than 2 years of special study and experience are needed for understanding the medical phase

of administration. In some jurisdictions compensation officers are replaced, sometimes before they have completed their apprenticeship, by others who may have to learn the subject anew. In consequence, defects of supervision resulting from inexperience are inevitable in many States.

In several of the Provinces of Canada where compensation administration has actually been upon a merit basis, though not under civil service, and in Wisconsin where under a thorough application of civil service the administration closely approaches a "career service," experience indicates that with consistent adequate supervision abuses incident to medical aid can be minimized and reasonable satisfaction given to workers. Observation of the situation in the United States and Canada indicates that this factor, after the legal provision for unlimited aid has been enacted, is the controlling one. With consistent adequate supervision under an ample grant of authority, the problems incident to medical aid are understood as they arise and solved before they become chronic.

In the present situation there is little indication that significant improvement is to be expected, in many States, until compensation administration has been recognized as a special profession offering a career to those qualified for this exacting branch of public service. In the circumstances, indiscriminate criticism of the performance of compensation officers overlooks the cause of the difficulty; better service cannot be had until its basis has been provided.

Attitude of Insurance Carriers

Since the supervision, if any, of the cure of injured workers (as distinguished from supervision of medical expense) is often left almost completely to the insurance carrier or employer, the attitude, organization, and equipment of the carriers, for supervision, is of the greatest importance to the worker and the State. This factor has seldom received adequate consideration in administrative studies. The impression has found currency that most insurance companies rate more highly a physician's skill on the witness stand than in the curative art.²⁷ Such an attitude on the part of the insurance carrier, where it prevails, is an inheritance from the employer's liability insurance practice which was the predecessor of compensation insurance. A few carriers, for a number of years, have recognized that "it is not only good ethics but also good business to supply the best of medical attention for the period it is needed."²⁸

²⁷ "The conclusion is inescapable that most of these doctors are selected or retained for their legal ability in defeating employees' claims rather than for their medical skill in healing their injuries." (Dodd, Walter F., Administration of Workmen's Compensation, New York, Commonwealth Fund, 1936, p. 491.) This statement is based upon surveys in industrial centers.

²⁸ *Idem*, p. 491.

From time to time the medicolegal service of insurance carriers is complained of at legislative hearings on proposals for amending the compensation laws. Commonly, the service of all carriers is considered as a unit, when such complaints are made. It should be remembered that in many jurisdictions there are 40 or 50 carriers writing compensation insurance policies, some of them with a very small volume of business. Such insurance is sometimes accepted reluctantly, or only where it accompanies other types of casualty insurance written for the client. In the circumstances, adequate servicing is sometimes difficult and the standing of all carriers is affected by unfair competition. But so far no joint arrangements have been made by insurance carriers for maintaining, by all insurers, minimum standards of medical supervision applicable both to the treating service and the conduct of medical witnesses.

The carriers which have superior medical supervision, based upon high standards of performance and ethics, naturally look upon this superiority as one of their competitive advantages over other carriers, to be stressed when presenting their service features to employers who are interested in securing fair and competent attention both to the injuries and claims of workers. On the other hand, until more uniformly fair medicolegal service is rendered by all insurers, the report of unfairness at the hands of any carrier causes workers to look upon insurance adjusters and doctors with suspicion, and at times to be noncooperative in the curative program. The element of suspicion has consequently become a factor in the medical care of workers, and is a recognized and costly source of neurosis and delayed recovery. In the absence of legislation imposing upon carriers minimum standards as to organization for service to injured workers, the solution of this problem awaits, in part, the realization by compensation-insurance carriers that they have common interests in the supervision of the medical phase of the compensation system. But in the absence of cooperative action for maintaining standards of service and practice, attention may be directed to the example of those insurance carriers which, instead of making their medical supervision a subordinate feature of the claims department, have set up their medical department as a scientifically minded agency for supervision, research, and preventive activity, and which give both preemployment and continuation training to their claims examiners.

Chapter 7.—Claims Administration ¹

In establishing the workmen's compensation system one of the main purposes was to provide a prompt, simple, convenient, and inexpensive method of settling the claims of injured workers. This purpose has not been completely realized in the States, although the system, especially where administrative agencies have been created, has demonstrated its superiority over common-law and statutory "liability" remedies in the courts.

In examining the details of workmen's compensation administration, the needs and purposes the system was designed to meet should be kept in mind at every point. Injured workers require not only support during their period of incapacity but also specialized service for restoring them to health and working opportunity. Twenty-five or more years ago, it was apparent that such needs could be efficiently met only through an administrative agency. In practice, the routine of such agencies is to be judged by the degree to which it fits the condition and needs of injured workers.

Existing measurements of the kind of claims-settlement service now rendered by the State agencies show that there has been little change in performance since the survey made by the Bureau of Labor Statistics in 1919-20. The situation could hardly have improved in many jurisdictions under the prevailing circumstances as to legislation, support, staffing, and personnel policies. Especially during the years 1930-35 there was a marked increase in the number of controverted cases, which necessarily caused a widening lag in the payment of compensation.²

In the States the main methods of settling workmen's compensation claims are: By direct settlement, as in Wisconsin; by the agreement system, as in Pennsylvania; and by the hearing system, as in New York. In seven jurisdictions (including Alaska) court procedure remains, as a survival of earlier practice. In Canada, the Provinces have adopted what may be called the Ontario plan. Before describing these systems in detail a brief explanation is given of fundamental differences between the Canadian and the State systems of procedure.

¹ This chapter was published as an article in the Monthly Labor Review for June 1933, p. 1321.

² Illustrative of the situation in many jurisdictions are the following figures, from a table in the report of the Idaho Industrial Accident Board, 1932-34, which show the average number of days between date of disability and date of first payment of compensation:

	<i>Average interval (days)</i>		<i>Average interval (days)</i>
1928.....	35.32	1932.....	46.12
1929.....	37.97	1933.....	46.30
1930.....	41.41	1934.....	42.31
1931.....	43.84		

In the legislative plan for setting up a compensation agency the crucial question is whether or not to give the administration final authority. The answer to this question affects profoundly the routine of claim settlement. The administration that is given final authority has a free hand in simplifying its procedure, but if decisions are subject to court review it is necessary to develop a system that in appealed cases will furnish the courts an acceptable basis for the administrative decisions. The State systems are complicated by a statutory provision for appeals to the courts. The Ontario Workmen's Compensation Act gave the compensation board final authority. The Ontario plan proved satisfactory and was adopted in all the other Provinces having workmen's compensation acts, except that in New Brunswick and Nova Scotia there is a very limited appeal on questions of law.

Since giving final authority to a compensation agency is the most far-reaching step affecting procedure that has been taken in compensation legislation, it is well to examine the considerations which led to the adoption of the plan in Ontario.

Background of Ontario Act

The Ontario act was drafted by Sir William Ralph Meredith, Chief Justice of Ontario, after an exhaustive study of workmen's compensation systems in Europe and America. His guiding principle was "to get rid of the nuisance of litigation" and "to have swift justice meted out to the great body of men" even though some mistakes might be made. He was shocked by some of the English cases in which workmen had failed to recover, though, as he said, the court decisions might from a legal point of view be technically sound. The worker, apparently, was at a disadvantage in litigating his claim in a court of law. Some mistakes are inevitable under any system of procedure, but the Chief Justice's study convinced him that the mistakes made by an expert administrative board with final authority would be fewer and less costly than those made by the courts. He therefore opposed any compromise giving the courts even the most limited control over the administrative process: "Half measures which mitigate but do not remove injustice are, in my judgment, to be avoided."³

³ The discussion of such points is found in the Final Report made by Sir William Ralph Meredith, vol. 2, pp. 510, 512 (1913), which is one of the most valuable documents in compensation literature. The crux of the debate is in the lines quoted:

Mr. WEGENAST. I would suggest that there might be an enumeration of what might be classed questions of fact (as a basis for appeal to the courts).

Mr. MEREDITH. I would not complicate it that way.

Mr. WEGENAST. You have to shut off appeal entirely?

Mr. MEREDITH. Certainly.

Mr. BANCROFT. (P. 510.) Then of course the constitution of the board becomes of great importance.

Mr. MEREDITH. Of course everything depends on the constitution of the board; if it is a bad board the whole thing will be a failure.

Section 67 (1) of the Ontario Compensation Act, defining the jurisdiction of the board, gave the administrative agency final authority.

The board shall have exclusive jurisdiction to examine into, hear and determine all matters and questions arising under this part and as to any matter or thing in respect to which any power, authority or discretion is conferred upon the board, and the action or decision of the board thereon shall be final and conclusive and shall not be open to question or review in any court and no proceedings by or before the board shall be restrained by injunction, prohibition, or process or proceeding in any court or be removable by certiorari or otherwise into any court.

With complete emancipation from court interference or control over its decisions, the workmen's compensation authority was free to develop its own routine, and virtually has no problem in relation to procedure. In the light of experience, it adopts the most convenient, economical, and swift methods of finding out what the injured worker is entitled to and then mailing his compensation check. In all the Provinces the claims-settlement routine is much the same, subject to minor variations in forms and practice reflecting local peculiarities of geography, population, and industry.⁴ The first important contrast to bear in mind, when examining methods of claims settlement in the United States and Canada, is, then, that the Provincial boards have complete control over their routine, while the State administrations do not.⁵

Contrast Between Procedure of States and Canadian Provinces

The Situation in the States

Although there is a fairly uniform system of claims administration in Canada, adopted on its proved merits by all the Provinces having workmen's compensation acts, there is in the United States a variety of systems ranging from the court administration found in seven States (including Alaska) to the highly developed claims administration methods of Wisconsin set up under civil service or the "merit system." Between these two extremes there is the widest diversity of mechanism and practice. One compensation statute, the United States Employees' Compensation Act, closely resembles the Ontario plan in regard to freedom from court appeals.

In some States, because of the deficient staffing of the administration and inexperience resulting from rapid turn-over, the actual claims administration is in effect left in the hands of the private insurance carriers, with only nominal supervision from the State agency.

⁴ For example, in Quebec the forms and reports are printed in two languages, English and French. Since lawyers are often appointed as compensation administrators, it was inevitable that for a time in one or two Provinces technicalities were overemphasized, and this led to personnel changes. But especially in Ontario and British Columbia the routine, from the beginning of the administration, was informal, and the employment of lawyers by claimants was discouraged as an unnecessary expense.

⁵ An explanation is given later of how the courts, through their right to review administrative decisions, can to some extent control the procedure of the compensation commissions.

In such States the claimant may actually get what the insurance adjuster decides to give him, unless he requests a hearing before the State agency. Under this situation, as indicated by State investigations, injured workers lose millions of dollars annually.⁶ In strong contrast to such methods, which sometimes approximate nonadministration by a State agency, New York installed what until recently was a virtually universal "hearing system" under which an effort was made to have every injured worker attend, in person, a hearing upon his possible claim. Such attendance on the whole, however, cost workers a vast loss of time and much money in lost wages.⁷ The system was modified in April 1936 and the number of hearings curtailed.⁸

In some States the procedure is formal and technical like that in the courts; in other States it is relatively informal. In all the States except Nevada there is the right of court appeal, in some jurisdictions with a new trial before a jury if desired, while in others the appeal is restricted to questions of law. In Nevada the commission may be sued in the courts. Where there is a wide latitude for appeal both upon fact and law with a trial *de novo* in the courts, the hearing before the commission may become a mere perfunctory gesture as the first step toward a court trial. In this medley of methods the guiding principles of compensation practice, as distinguished from litigation, are often lost from sight.

Difference in Objectives

A second major contrast between the simple pattern of claims administration in Ontario and that found in most of the States arises from a difference in the object of the administrations. On the one hand, the task of the Ontario claims administration is payment, while on the other hand the task of all the State administrations, except in exclusive-fund jurisdictions, is the supervision of payments to be made by an employer or insurance carrier.⁹ To a certain extent, the claims administration of the compensation agency in all private insurance States duplicates the work of claims examination done by the insurance carriers.

So far as the payment of compensation is concerned, the purpose of such supervision by the State agency is to make certain that injured workmen are paid, by employers or insurance carriers, what they are

⁶ The best-known examples of studies of losses by claimants on settlements are the Connor investigation in New York, and the 1934 Pennsylvania survey. The investigation by Jeremiah F. Connor was made as early as 1919, but similar conditions as to inadequate supervision are still found in a number of States. (U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 275, p. 117; Dodd, Walter F., Administration of Workmen's Compensation, New York, Commonwealth Fund, 1936, p. 108, Pennsylvania Department of Labor and Industry, Special Bulletin No. 40, Pt. I-b, (1934).)

⁷ Bureau of Labor Statistics Bull. No. 511, p. 303.

⁸ New York. Industrial Commissioner. Report, 1936, p. 7.

⁹ In exclusive-fund States and Provinces which permit self-insurance by employers, the claims administration of course has a supervisory function as to the self-insured or "own risk" employers.

entitled to under the law. All the types of public supervision of claims administration, whether by a commissioner, a board or commission, or the courts, are expected to check upon the payments made by private agencies or by competitive State funds. Their administrative routine or procedure, however different it may be in form, is for this primary purpose. And however it may be simplified it remains a partial duplication of work done by private agencies. The duplication is least in jurisdictions where there is virtual nonadministration by the State agency, and it is greatest in the jurisdictions where the work of the State agency in claims supervision is diligent, thorough, and comprehensive. With present methods this is the dilemma faced by compensation administration under the private insurance system; the closer the supervision the greater the duplication.

Principal Types of Claims Administration

The main features of the several types of claims administration may be covered by a brief description.

Claims Procedure in Ontario

An account of the Ontario method of settling workmen's compensation claims was given in the *Monthly Labor Review* for January 1936, as follows:

The Ontario system has developed a brisk claims routine, in the hands of veteran employees who have been carefully trained for their special tasks.

Within 3 days after the occurrence of an industrial injury the employer must send a report to the workmen's compensation board. A short, simple "notice of accident" form is sent in by the employer in cases in which it is apparent that the disability will be less than 7 days, i. e., the "waiting period" during which indemnity is not paid but "medical aid" is furnished. In cases involving medical aid only no further report from the employer, and none from the employee, may be necessary. In the compensable cases a fuller report is made by the employer, with details about the employee's earnings. In such cases a report is also required from the workman and the physician.

When the employer's report of a compensable accident is received, a form letter is immediately sent to the workman, instructing him what to do. At the same time, he is sent a form to be filled out by himself, and another to be filled out by his attending physician. The physician usually mails in his report separately.

Whenever there is any appreciable lag in payment by the workmen's compensation board, it arises from the employee's neglect to send in his claim. Delay at this point is guarded against by a vigilant follow-up system. Tardiness in the handling of claims received by the board is minimized by a close check on the daily flow of work.

If the routine work preliminary to the payment of a "straight" claim is not completed within the working day, somebody must remain overtime. A summary of the flow of business is made each day and the percentage of claims that have not moved to their destination is so small as to be negligible.

It is estimated that between 80 and 90 percent of the claims received are "straight" cases. There is no question about them. Such claims pass auto-

matically and immediately through the hands of the claims clerks and computing clerks, so that practically all of the first payments are placed in the mail within 2 days after the receipt of the necessary reports.¹⁰

The claims involving medical aid only are scrutinized by a "claims clerk"; the compensable cases, in which indemnity is paid, are passed upon by senior members of the personnel called "claims officers." Promptness is assured by a rule that "all compensable claims in which the investigation is completed must be ready for payment the day following the completion of the investigation."

The somewhat doubtful claims may be handled by a clerk or may be referred to the chief claims officer. Some of these may be referred to the workmen's compensation board for a ruling or decision.

Formerly, the award made by a claims officer came to the desk of the chairman for signature. But Mr. George Wilkie refused to sign decisions which he lacked time to study carefully, and placed final responsibility for an award on the claims officer who makes it. Such a procedure leaves the chairman with a fresh mind when a disputed award is brought to him for a decision; he is not then placed in the embarrassing position of having to reverse himself if he concludes that the original decision of the claims officer was wrong.

The thoroughness of the labor of the clerical staff, medical officers, and claims officers is attested by the very small number of cases which require field investigation. When more than 4½ million dollars are paid out in a year on compensation and medical aid, and the number of disputed cases calling for field investigation is so small that one man can handle them all—with only occasional aid in pinches—an extraordinary achievement in administration is apparent.

Procedural Methods in the States

In the private insurance States the main patterns of claims administration, nominal or actual, are known as the direct-settlement system, the agreement system, and the hearing system. In most jurisdictions the three methods are mixed, while in a few the hearing system co-exists either with direct-settlement or the agreement system. Under the direct-settlement plan, employers or insurance carriers begin payment to the injured worker of their own initiative, subject to a supervisory check by the administering agency. The injured worker is not asked to sign any papers other than receipts for his money, nor does he have to agree to anything. He does not have to make any bargain whatever with the employer or insurance carrier; the law specifies what he is entitled to receive, and if he does not get it the supervisory agency is supposed to correct the discrepancy either by checking upon reports and receipts or through a conference or hearing, formal or informal, attended by the interested parties. Under the agreement system the employer or insurance carrier has the injured worker agree to a certain settlement. Thereupon payment is made to him, either immediately or after approval of the settlement by the State agency.

Under lax or inadequate supervision, gross abuses may arise in either of these informal systems of claims administration. Because of such abuses, shown to have existed in New York by the Connor

¹⁰ Exact computations of promptness are not available.

investigation in 1919, a drastic change was made in the New York claims-administration routine and a public hearing was required in all cases of industrial injury. In successful operation, such a system would afford the most complete conceivable supervision of claims adjustments by private agencies or the competitive fund. In practice, it was never possible to get all the injured workers to whom notices of hearings were sent to attend the hearings, and many of those who did attend were bitterly disappointed to learn, after coming to the hearing room, that they would get no money at all or no more money than they had already been paid.

In between the supervisory procedure found in States where there is direct settlement or the agreement system with inadequate supervision, and the New York experiment with a universal hearing system, is the Wisconsin routine. In this State most of the claims are paid under the direct-settlement method, a limited number under "compromise settlements," and the remainder as a result of conferences and hearings, informal or formal. The supervisory methods are flexible, and diligent attention is given to the injured worker's rights. But, as has been said, the routine does not represent the maximum of simplicity or economy, since it is inevitably in part a duplication of work done by the insurance adjusters.

The direct-settlement method.—Most of the claims in Wisconsin are disposed of by the direct-settlement method. Payment is made in uncontested cases upon the initiative of the employer or insurance carrier, under close supervision by the industrial commission. The effort of the administration is to provide, through this plan, a "speedy, simple, and inexpensive procedure." But in speeding up the procedure, there is no relaxing of standards applicable to thoroughness in the examination of reports or in the inquiries and hearings. In this respect Wisconsin presents as good an example for study as may be found in private insurance jurisdictions. The system has been described in a study of the Industrial Commission of Wisconsin, by A. J. Altmeyer,¹¹ and more briefly in the 1932-34 report of the Industrial Commission of Wisconsin on Workmen's Compensation. In describing its practice, the commission groups the claims under the heading "uncontested" and "contested" cases.

Uncontested cases.—This term is applied to all cases in which applications for the adjustment of the claim are not filed, although they may have given rise to serious disputes between the parties. If these disputes are adjusted through correspondence or through informal conferences, then the case is termed "uncontested."

It has always been the policy of the commission not to formally approve any settlements in "uncontested" cases. In all such cases the commission tries to determine whether the settlement is made in accordance with the requirements of the law and when it discovers that this has not been done the employer or insur-

¹¹ University of Wisconsin Studies in the Social Sciences and History, No. 17, 1932, p. 35.

ance carrier is advised to pay additional compensation. Since the commission does not formally approve the settlement, the case can be reopened at any time within 6 years if it develops that the full liability of the employer has not been discharged.¹²

In checking settlements the commission relies principally upon the reports of the employers and insurance carriers. Employers are required to make a report on the fourth day after the beginning of disability upon every accident and occupational disease entitling an injured employee to compensation. It also requires that the insurance companies or self-insured employers, on the eleventh day after an injury occurs, shall file a report showing that payment has commenced or the reason for not making payment. At the time payments are discontinued for any reason, another report must be submitted, and, if a dispute exist, a memorandum must be attached advising of the nature of the dispute. When a final settlement is made this must be promptly reported to the commission and such final report must be accompanied by a copy of the final receipt signed by the injured employee. The commission also requires the filing of doctor's reports in all cases in which there is any permanent partial disability, or in which the temporary disability exceeded three weeks. These several reports are used as a check against each other, and a follow-up system is employed to see that they are supplied promptly to the commission.

In addition to this system of reports from employers and insurance carriers, the commission establishes direct contact with injured employees. As soon as the commission receives knowledge from any source of an accident to an employee entitling him to compensation, it sends him a circular letter advising him of his rights and duties under the compensation act, which suggests also that he write the commission, if a dispute develops, or if he is in doubt upon any point.

The commission has also developed a plan for investigating and systematically following up cases in which there is a probability that injured employees are entitled to increased compensation. Every case which the commission's safety department believes may possibly involve a violation of a general safety order is investigated by one of the commission's deputies. If his investigation indicates that the accident was due to the employer's failure to comply with a general order of the commission, the employer is advised of this fact. If the employer admits liability, the commission sees to it that the increased compensation is paid. If he disputes liability the matter is brought on for formal hearing before the commission.

Cases involving the employment of minors in violation of the child labor law, which entitles them to either "double" or "treble" compensation, are handled by the commission in a similar manner.

Contested cases.—Contested cases are initiated by an application for the adjustment of the claim, coming usually from the injured employee, but sometimes from the employer or insurance carrier. Hearings upon these contested cases are conducted at county seats and industrial centers throughout the State, to avoid the expense to the interested parties of bringing witnesses to Madison. These hearings are conducted either by an examiner or by one member of the commission. A complete stenographic record is made of all testimony taken, although the proceedings are otherwise informal.

Since October 1, 1933, examiners have made findings and orders upon matters heard by them. This has obviated much of the delay which previously occurred because of the necessity of the commission as a body deciding compensation matters. The law permitting examiners to make findings and orders in contested

¹² In some cases the commission permits a compromise settlement, which, if approved, cannot be set aside after 1 year from the date of approval.

cases has resulted in speedier and more carefully considered decisions than otherwise could have been the case in view of the multifarious demands made upon the time of members of the commission.

The agreement system.—A description of the agreement-system routine, as it operates in Pennsylvania, is found in the November 1937 Laborgraphic, published by the Pennsylvania Department of Labor and Industry.

If a Pennsylvania employee is injured in the course of his employment, he should notify his employer at once. The employer shall notify the department of labor and industry of the accident within 15 days. If the injury disables the worker for more than 7 days, an agreement should be made with the employer for compensation. Two copies of such agreement shall be sent within 30 days to department for approval. If the agreement is approved, the employee and employer are notified. The employee is sent a copy of the approved agreement and compensation shall be paid accordingly. If disapproved, compensation shall be paid according to first agreement until case is finally settled by revised agreement or decision of workmen's compensation board. If employee and employer fail to reach such an agreement, the employee may file a claim petition with the board. The board will assign the case for hearing and decision by workmen's compensation referee. The referee's decision may be appealed by either party to the board. Further appeal may be made to a court of common pleas, and then to the superior court, whose decision is final unless appeal is allowed by the State supreme court.

The agreement system is slower than the direct-settlement method. In theory, it has the advantage of giving the injured worker a chance to look over the proposed settlement and correct possible errors or injustice in computing the payment. In practice, the worker may not know his rights under the compensation law; neither is he in a position to bargain with the employer or insurance carrier; and consequently it is open to question whether he should be required to sign an agreement before receiving the benefits specified in the statute. Investigations have shown that in the absence of vigilant supervision by the State agency, the agreement system affords little protection to the injured worker.

The hearing system.—The only example in the United States or Canada of a claims system under which hearings have been scheduled for all claims was established in New York after the Connor investigation in 1919. This "hearing system," as it has been called, was explained to the conference of the International Association of Industrial Accident Boards and Commissions in 1929 by V. A. Zimmer, the compensation director:

We receive in New York State every year upwards of 500,000 reports of accidents sent in to the department by the employers. The compensation bureau sends every one of these injured workmen a claim form; and we make up a case folder and index it, even though we have no claim, if the paper indicates a possible or probable prima-facie disfigurement or anything of any serious nature on the face of it, even though the disability is indicated as being less than 7 days. Then, on every single claim that comes in, even though the claimant may allege disability

of only 2 days and no permanent disability, we automatically make up claims on that form, and they are all indexed, numbered, and listed for calendar hearing.¹³

The compensation director said that a series of facts had indicated the advisability of curtailing the number of hearings. In the annual report of the New York Industrial Commissioner for 1936, it was said that the division of workmen's compensation was weeding out the noncompensable injury cases and forestalling the useless filing of claims.

The new procedure is as follows: Upon receipt of reports on minor injuries which indicate that the worker will not lose more than 1 week's time or suffer any permanent injury, a letter of advice, rather than a compensation claim form, is sent to the injured worker. In simple language the letter informs the worker that the nature of his injury appears to be such that he will not be eligible for compensation, but that if this information is inaccurate he should promptly file a claim, or if he desires to protect himself against any future complication resulting from the injury he may file a claim and a hearing will be held on it. This change in procedure was the result of a study of a number of cases which clearly indicated that many workers suffering only slight noncompensable injury accepted the receipt of a compensation claim form as an invitation for filing a claim.

In its conception, the New York hearing system provides the worker an ironclad protection against an unjust settlement. In practice, the disadvantages of the system are: The worker's loss of time and money in attending hearings; delays and continuances arising from congested hearing dockets; the pressure of minor cases, making it difficult for the referees to give adequate consideration to the serious injury cases;¹⁴ inconvenience to physicians having to attend the hearings; and expense to the employers and insurance carriers for attendance or representation.

Methods of Claim Settlement Under Court Administration

Court administration of compensation claims is still found in Alabama, Alaska, Louisiana, New Hampshire, New Mexico, Tennessee, and Wyoming. So far as is known, no constructive contribution to the theory and practice of compensation claims-settlement methods has been made by any American jurisdiction under court administration. On the contrary, the merit of the systems displacing court administration may, as a rule, be gaged by the relative completeness of their departure from court attitudes and practices. Except in the State of Wyoming, where the judges have installed a form of administration under their clerks or stenographers, the court administration of workmen's compensation is virtually nonadministration except in contested cases. The judges seldom have time, in most jurisdictions, either for examining the files relating to workmen's compensation claims, or for giving special study to workmen's compensation legisla-

¹³ U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 511, p. 302.

¹⁴ Compensation referees conducted 378,883 hearings throughout the State during 1936. (Report of the New York Industrial Commissioner, 1936, p. 8.)

tion and the intricate problems peculiar to this branch of administration. Under court administration, as a rule, there are no accessible records (outside the private files of the insurance carriers) of the majority of the cases in regard to which no court action is sought by the parties. If accident reports are sent in at all to any public agency, they are seldom used for statistical purposes or as an aid to accident prevention or a check on violations of labor laws. In the cases in which a record of a claim agreement is filed with the courts for approval the customary routine is for the clerk of the court to examine the document to see if both parties have signed and acknowledged it in proper form. If so, he "rubber stamps" it and that is the end of the transaction as far as any public supervision is concerned. Under this system, the abuses, especially as to delay and flagrant underpayment, are more serious and prevalent than under any other form of claims administration.¹⁵

Contested Cases

While uncontested claims commonly receive no further attention from the State agency than a supervisory check as to correctness of settlement, made by clerks, claims officers, and in rare instances by the medical staff of the commission, a hearing system is provided for contested cases. Few compensation commissions have exact figures as to the percentage of contested and uncontested claims. Estimates given by administrators in the States as to the percent of cases settled without contest range from "probably 80 percent, including 'medical only' cases" in Colorado to more than 99 percent in Arizona. The basis upon which the percentage of contested and uncontested cases is estimated is seldom exactly the same in any two jurisdictions, hence it should be understood when interstate comparisons are attempted that the figures range from broad guesses to fairly precise calculations.¹⁶ As noted, the New York plan was until recently a virtually universal hearing system regardless of contest. Payments in compensable cases start without waiting for the hearing.

The available figures, while faulty for purposes of interstate comparison, show clearly that the actual work of administration is or should be mainly supervisory, even though the compensation agency is described as a "quasi-judicial" body. But where the administration is inadequate the demands upon its time made by the contested cases may unbalance its working program and seriously impair the supervision required by the majority of the claims.

¹⁵ This statement is not applicable to Wyoming, where the court administration is reinforced by the claims administration of an exclusive State fund and some defects of court administration are counteracted. Alaska was not visited in the course of the survey made by the Bureau of Labor Statistics.

¹⁶ Tables covering this and other points in administration will be suggested in the Manual on Industrial Injury Statistics, Bureau of Labor Statistics Bull. No. 667.

Under the Ontario plan the type of contested hearing that prevails in the States is unknown. There are no controversial hearings before a referee. Instead, in the very few cases requiring unusual investigation, a claims officer visits the claimant, interviews him, and then, without taking more of the injured worker's time, talks with the doctor, the employer, and other persons who know anything about the case. His report and findings are then submitted to the chief claims officer as the basis for a decision. If the claimant is not satisfied with the result he can appeal to the board. Although the decision of the board is final as far as court appeal is concerned, the case can be reopened at any time if fresh evidence is discovered or new phases of the injury develop. In British Columbia it was estimated in 1936 that hearings on disputed cases were required only in from one-tenth to one-twentieth of 1 percent of the claims. In Manitoba so few disputes remain unadjusted after informal conferences that it has not been necessary to report a hearing in shorthand oftener than once in 6 months.

In most of the States the proportion of contested cases, and also the time consumed in the controversies, increased during the depression. In Minnesota it was said by a compensation officer, in 1936, that contested "cases running 3 and 4 days are now as common as were cases running 1 day before the depression. Many cases consume an entire day." The increasing tendency of insurance carriers to contest claims during the years 1930-35 arose from an attempt to "save the last 10 percent" at a time when losses instead of profits were experienced. As for the claimants, the desperate situation of many workers during this period explains their determination to get all possible benefits after an injury. The situation was expressed in these words by a labor leader: "They [the insurance companies] gyp us and we try to gyp them." In such an atmosphere it is difficult for the commission to make prompt and just settlement of claims.

Hearings

Place of Hearings

Compensation laws provide that if a hearing upon a claim is required, it shall be held at a place reasonably accessible to the worker. To meet this need, the commissioners in a body, or a commissioner, or an officer authorized to conduct hearings (variously known as an "examiner," "referee," "arbitrator," or "deputy commissioner") travel in a circuit and hold hearings in the towns nearest to places where accidents have occurred. In Connecticut and New York, there is regional decentralization as to hearings. In New York the officers travel out from the branch offices, but are subject to a centralized authority, while in Connecticut the commissioners are appointed

by the Governor for separate districts. Under a 1937 amendment in Ohio there is now partial decentralization as to hearings, through the creation of four boards of claims, composed of three members each, appointed by the Governor.¹⁷ The desirability of decentralization is open to question. In the absence of central control, cleavages appear in a type of administration that demands, for success, harmony of viewpoint and uniformity of action upon many matters of law and practice; and the services of the main office, if any, are deficient especially in regard to safety work, claim supervision, records, and statistics.

Procedure in Hearings Upon Claims

As already noted, one of the original aims of compensation legislation was to provide a simple, swift, and inexpensive method by which an injured worker could receive financial and medical aid. The passage of compensation statutes marked a revolt against the delay, uncertainty, and costliness of court remedies. The change from court to commission determination of claims was, however, a step into an unexplored field of administration. The technique essential to the success of the new procedure was imperfectly understood, if not distrusted. In the States the original purpose of compensation legislation to provide prompt and inexpensive service was impaired by halfway measures which left compensation procedure with one foot, so to speak, still in the courts. In Canada, as it has been explained, there has been virtually complete emancipation from court rules and practices in most of the Provinces. The Ontario act provides:

SECTION 64. The commissioners shall * * * conduct their proceedings in such manner as they may deem most convenient for the proper discharge and speedy dispatch of business.

SEC. 67. * * * The action or decision of the board * * * shall be final and conclusive and shall not be open to question or review in any court and no proceedings by or before the board shall be restrained by injunction, prohibition, or other process or proceeding in any court or be removable by certiorari or otherwise into any court.

In the States, the desirability of making the administrative decision conclusive has seldom been discussed, and it is commonly supposed that there would be constitutional obstacles to such a development.¹⁸

¹⁷ In Hawaii (not visited in the course of the present survey) there are 4 industrial accident boards each consisting of 5 members.

¹⁸ Downey's argument against appeals from the administrative agency to the courts has had no influence upon compensation development in the States. He said: "The grounds for allowing an appeal from the administrative board to a court are rather a matter of constitutional fetishism than of reasoned policy * * *. It nowhere appears that court review of compensation cases has served any useful end * * *. The commissioners ought to be, and often are, fully equal to the judges in intellectual ability and general attainments. They are daily deciding compensation cases and are familiar as no court of law can be with the practical effect of particular interpretations." (Downey, E. H.: *Workmen's Compensation*. New York, Macmillan Co., 1924, pp. 73-75.)

There can be no complete break with court methods in passing upon workmen's compensation claims as long as it is necessary for the compensation commissions to build up paper records of cases with a regard to the kind of evidence that may be required by the courts as a basis for sustaining the decisions made by the commissions. In their work, the commissioners in the States have been compelled to keep one eye upon the courts. This has warped the development of compensation administration in most of the States, giving the commissions a legalistic twist that has hampered their full development as social-service agencies.

Most of the compensation acts specifically provide that the compensation officers, in conducting hearings, shall not be bound by court rules of evidence, and that the procedure shall be informal.

Where the compensation procedure is made cumbersome and technical, serious delays are inevitable. Official and unofficial investigations in Illinois, Ohio, and New Jersey have shown the abuses that thrive in such a situation.¹⁹

The report of the Joint Commission on Study of the Workmen's Compensation Act and Practices, submitted to the New Jersey Legislature, April 12, 1935, said:

This (compensation) act never contemplated that agreements of settlements should be reached in a room that is a replica of a courtroom and following as nearly as it can court procedure. The referees are looked upon as judicial officers, when they in fact should not be so. Many of the unfortunates that are called before them in formal hearings are not versed in court procedure, some are illiterate, a number cannot even speak English. They stand alone, unrepresented, while an alert, well-versed, and informed representative of an employer, who knows his rights, is opposed to him.

This statement is subject to modification at the point where the claimant is described as "unrepresented." In some instances he may be so, but under the system prevailing in Illinois, New Jersey, and Ohio, it is often necessary for the claimant to have an attorney at formal hearings since he is in no position to "stand alone, unrepresented," and he is frequently represented at a cost he can ill afford to bear, especially as the service rendered by some attorneys engaged by claimants is inexpert or slipshod, according to the universal report of commissioners.

The Ohio act fastens upon the compensation agency a cumbersome and costly procedure in "rehearings" prefatory to court appeals. Attorneys in Ohio are active in securing business from compensation claimants, and as a result there is an excessive number of controverted

¹⁹ It is not the purpose of the present study to expose the abnormal shortcomings of any particular administration but to evaluate the working of types of administration and their desirability. Where there has been gross laxity in the appointment of hearing officers, no system, of course, would be efficient. A fuller discussion of handicapped hearing systems, with specific reference to alleged abuses, may be found in Administration of Workmen's Compensation, by Walter F. Dodd, New York, Commonwealth Fund, 1936, under the topic "Hearings."

and appealed cases. A "rehearing" is required before an appeal may be taken to the courts, and under the Ohio law an entirely new record must be made, under court rules of evidence, at such rehearings. The impact of this provision upon the entire Ohio compensation system is highly detrimental. An undue amount of the attention of the more expert compensation personnel and also of the commissioners is consumed by the controversial aspects of claim settlement, and in consequence the commissioners are deprived of time needed for adequate attention to the major business of their vast insurance enterprise. The handicapping of the Ohio fund by such an undesirable feature in the law is especially unfortunate, because the fund has been publicized as a "model" and consequently exposed to attack by opponents of State insurance. Prompt performance is not possible under a cumbersome procedure, the remedy for which is primarily a change in the law.

Workmen's Compensation Personnel

To guard against bias in the conduct of claims administration and hearings, in most jurisdictions the appointing authority takes care that both employees and employers are represented on the commission. In practice, if compensation administration is perceptibly affected by "bias," the leaning is usually favorable to the claimant. With but few exceptions, compensation officers report that they give the claimant "the benefit of the doubt," in deciding upon the preponderance of the evidence. Several compensation officers report that they are impartial and favor neither one side nor the other. In general, the administrators and the courts hold that the compensation act is social legislation to be liberally interpreted. On the one hand, some labor organizations criticize an administration or certain of its officers as "employer minded," but on the other hand insurance carriers insist that the administrations are either liberal or "ultra liberal."

Personal observation of hearings leads to the conclusion that where there is dissatisfaction with the manner of conducting hearings (under the rules applicable to the existing type of hearings), the difficulty arises not so much from bias but from the hearing officer's inexperience, lack of especial fitness for this type of work, or imperfect understanding of the social phases of compensation insurance. There are hearing officers whose work is notable, and in several jurisdictions the hearings are conducted on a high level of efficiency. But some hearing officers bring to bear upon their tasks a business or legal experience insufficiently ripened by acquaintance with the medical and vocational problems which in the main are the substance of compensation situations. Consequently, there has been a sterile legalistic drift in compensation administration in many of the States. The things done may be skillfully done, without being the most desirable

things to do in the circumstances. In some cases the procedure may be obviously harmful to an injured worker.

In general, the officers conducting hearings are hard-working and capable persons. In some instances, their travel and hearing routine is exhausting. Some of the deficiencies in the conduct of hearings arise from the overcrowded hearing schedules. In certain jurisdictions or in some circuits it is not possible for any officer to give adequate attention to the volume of business awaiting disposal. There have been charges that some compensation officers are slackers. In a few instances the charges are well attested, but on the whole such a situation is so exceptional in compensation administration as scarcely to deserve mention in a Nation-wide study. Some such administrative failures are inevitable wherever many appointments are made upon a political basis regardless of the special qualifications for compensation work of the persons appointed to office.

Medical Controversies ²⁰

The most serious and common defect in the conduct of compensation hearings in the States arises from the toleration of prolonged medical controversies. Many compensation officers do not know the best method of handling, or preferably stopping, public medical controversies over the condition of injured workmen in the presence of the unfortunate victims of industrial accidents. If some injured workers are not already "shell shocked" or neurotic before they attend a hearing and listen to the medical testimony, they are indeed hardy and nonsuggestible if they leave the hearings in other than a hopeless state of mind. It is a common occurrence for medical witnesses, in order to obtain a maximum disability rating for the worker, to testify loudly and emphatically that the injured man will never be able to resume his accustomed occupation, that he is seriously and permanently disabled, that his condition will get worse instead of better, and as an occasional climax that the worker may die soon.²¹ Such a

²⁰ See also ch. 6 (p. 98).

²¹ This statement rests upon personal observation of medical controversies, which, in some jurisdictions, may continue for 2 or more entire days in a single case.

Joseph A. Parks, Chairman (1937) of the Massachusetts Department of Industrial Accidents, in U. S. Bureau of Labor Statistics Bull. No. 577, p. 172, commented on the harmful effect upon the injured worker of listening to medical testimony about his disability as follows:

The doctors will testify very glibly in order to establish the man's case so that he may get compensation, forgetting entirely that they are doing everything they can to put the man on the shelf where he will not be able to work any more. In their endeavor to help the attorney put the case across so that the commissioner will award compensation, physicians often do the man an injustice.

Let me give you an illustration of this. A man in one of the large cities of Massachusetts, who was a woodworker, had a serious injury to one of his hands, the hand that was needed in his work. Five doctors, one after the other, got up and testified that that man could never be a woodworker again. He was a man, not yet 45 years of age, who had never done anything but woodworking in this particular city * * * and these doctors were advertising broadcast to that city that he was through as a woodworker—let anybody take notice that this man cannot work as a woodworker any more.

Why were they doing this? To establish the fact that he should get \$18 a week compensation, and he was a man accustomed to making about \$45 a week.

When the doctors were through, I called the man over and said, "Here, I will tell you what I would do if I were you. Don't take any notice of these doctors who are condemning you to oblivion." The tears came in his eyes, he liked his work. I said, "You go back to work; do the best you can." He burst into tears and said, "I will." Within 2 weeks that man was back at work as a woodworker. For all I know, he is working today. That was some years ago.

practice in connection with hearings has long been recognized as highly detrimental to the worker and sometimes responsible for irreparable harm. But in spite of its condemnation the abuse is widely prevalent in the States.

In Canada, commissioners said that public medical controversy in the presence of the injured worker is unknown in their compensation practice. Under the procedure in the States the proper practice is for the hearing officer, as soon as a medical controversy begins, to refer the injured worker either to the medical staff of the commission or to an impartial medical expert for examination. Controversial medical testimony is an outstanding example of "hang-overs" from court procedure grafted upon compensation practice by legislatures and administrators acquainted with court methods but less familiar with the more scientific method of inquiry and the care needed by injured persons. A drastic reform at this point awaits the public recognition, in the States, that workmen's compensation administration is a new professional specialty and not a revamping of the accustomed phases of law practice. Examples of the proper handling of medical controversies may be found in several of the more advanced jurisdictions, especially in Massachusetts and New York, but nowhere in the States has controversial testimony been completely eliminated.

Appeals to Courts

A study of claims procedure in the States shows that the main chronic difficulty in regard to uncontested cases is the loss sustained by injured workers through deficient supervision of the process, while in regard to contested and especially the appealed cases the chronic difficulty is the delay and cost incident to the type of procedure that is provided for handling controversies. From time to time these deficiencies are measured and also investigated. There is underlying some of these measurements or exposures the assumption that the kind of administration being measured would be satisfactory if some of the slack could be taken up. In the light of a comprehensive survey, however, it is apparent that the defects arise in large part from the basis of the administration.

A reconsideration of the basis of compensation procedure in the States is long overdue and urgently needed, because it is evident that the principles best suited to the settlement of claims of injured workers are not generally understood either by compensation administrators, legislatures, or the constituencies having most to do with securing amendments of the compensation acts. The most common example of such misapprehension is the sporadic introduction of bills in legislatures to widen the scope of appeals from administrative decisions to the courts. Those who reap a profit from litigation have in many localities led workers to overestimate the value of their constitutional

right to court controversy in compensation cases, and the worker has seldom examined the argument either as to its applicability to compensation procedure or the cost of such "rights" to him.

If the so-called constitutional right of appeal had proved advantageous to injured workers, its unsuitability to the compensation system might be overlooked. But court appeals in compensation cases have proved, on the whole, to be both harmful to the administration and costly to the workers. It is unfortunate that the compensation commissions have not presented in their reports statements and tables which would make plain to workers their losses on court appeals. The report of the Industrial Commission of Minnesota for the years 1933-34 shows that of 87 cases appealed to the supreme court, 46 were affirmed, 6 modified, 7 reversed, 8 dismissed, and 20 were still pending. From such a statement it is apparent that all parties lost, in Minnesota through appealing, because the few revisions of awards by the supreme court would have amounted to less than the attorneys' fees and court costs. To the workers, however, the information is meaningless as presented, because it does not show in dollars and cents the difference between amounts awarded by the commission and by the court decisions.

In Nevada and Virginia, workers have discovered that they have more to lose than gain in the courts and have almost ceased appealing.

The Nevada Industrial Commission claims that it has "by far the lowest percentage of controverted claims" (meaning court trials) "of any State in the Union, and this results in a saving to the taxpayers of many thousands of dollars in court costs each year. During this biennium" (1934-36) "two cases, which were filed in the previous period by dissatisfied claimants against the commission, have been adjudicated, resulting in a victory for the commission in one instance, an adjustment without having to resort to final court action in a second case, and a third is still pending in the United States District Court."²²

In Virginia in the year 1932 there were 13 cases appealed to the State supreme court of appeals. In nine of these cases the appeal was denied, in two cases the decision of the commission was affirmed, in no case was the commission's decision reversed, and two cases are pending. In 1934 out of 14 cases appealed, the appeal was denied in 10 cases, two cases were pending, and there were two reversals of the decision. The Virginia report, like the Minnesota report, does not show whether the appeals were mainly taken by claimants or by the insurance carriers, hence it is impossible to tell which parties lost the most by appeals, but it is apparent that the percentage of reversals of the commission by the court is so small that it would be more than counterbalanced by the aggregate court costs and attorneys' fees, leaving a net loss for all parties on the prolonged controversy.

²² Nevada Industrial Commission. Report, 1934-36, p. 7.

In certain jurisdictions the widest possible latitude of appeal is found, sometimes secured through the influence of workers upon the legislature, and occasionally through the influence of attorneys. The Texas Workmen's Compensation Act allows complete freedom of appeal from the decision of the commission both upon questions of fact and law, followed by a trial *de novo* in the lower courts with further opportunity for appeals to the higher courts. A study of the cost to the workers of such appeals was made for the Texas State Federation of Labor. Tables prepared in that study show that in all Texas Employers Insurance Association cases appealed from the award of the industrial accident board during the years 1932-34, the board's awards totaled \$685,102, the court judgments \$623,828, the claimants' legal expense \$207,943,²³ and the claimants' net recovery \$415,885. These figures, showing a net loss to claimants of \$269,216, exclusive of incidental expenses and interest, confirms the conclusions upon which the Ontario plan for the settling of claims was based.²⁴

The Texas experience with court appeals from the administrative decision is of vital interest to workers because in that State there is the latitude of appeal, both upon fact and law, with trial *de novo* which some local organizations of workers are seeking to obtain in other States. The industrial accident board commented upon the situation in its biennial report September 1, 1932, to August 31, 1934:

During the year ending August 31, 1932, a total of 1,265 cases were appealed from the industrial accident board * * *. It was just slightly more than 43 percent of the contested cases passed on by the board. * * * Of the 1,265 cases appealed to the courts only 745 had been tried on January 1, 1933. The remaining 520, or 41 percent, are still pending in the courts. Of the above-mentioned 745, in which judgments were rendered, many were settled by agreed judgment immediately after they were appealed, and a number have now been appealed to the court of civil appeals. Practically every one of these settlements on agreed judgments could have been made before the industrial accident board

²³ "Claimants' legal expense" is based on the statutory legal fee of one-third of the amount recovered. It does not include additional expense incurred by the claimant for witness fees and other necessary incidental expenses of a trial which undoubtedly are very considerable.

²⁴ From time to time the desirability of barring appeals to the courts, in compensation practice, is reexamined by legislatures in Canada. In Manitoba, in March 1935, all 15 members of a special committee for studying the act and administration voted against changing this provision of the act. Reasons for continuing the existing plan under which the board's decisions are final were given in the *Winnipeg Tribune*, Mar. 12, 1935:

The present system provides greater and more certain benefits to the injured workmen than would a system of unlimited appeal. In 9 cases out of 10, the workmen cannot afford to appeal, and the costs of appeal would be out of all proportion to the added damages he might collect.

The practice, uniform throughout Canada, of making the Provincial compensation board the final arbiter * * * is at once the most efficient and the most reliable method of securing adequate compensation for those who are injured in industrial pursuits.

It is quite true that such a system has a tendency toward rigidity, and that it theoretically conflicts with a canon of British common law. But periodical revisions such as that now being carried out in Manitoba are an adequate safeguard against undue rigidity, and until costs of appeal cease to be in themselves a handicap to claimants, it is better to have the claims promptly and finally adjudicated.

It is of especial interest in this connection that the chairman of the Manitoba board took the initiative in proposing to allow court appeals, saying that the board could not be right every time. This gave workmen and employers the opportunity for a unanimous vote of confidence in administrative decisions.

and court costs would have been eliminated and attorneys' fees decreased. The result would have been beneficial both to the employers who paid premiums, and to the employees who were entitled to the compensation.

From every point of approach it is plain that constitutional rights to litigation, superimposed upon compensation administration in the States, are a burden instead of an advantage to the claimant. Labor's main chance for more satisfactory handling of compensation claims is not through appeals to the courts, but through a program for improving the compensation law and administration.

Mr. Downey has said that "the grounds for allowing an appeal from the administrative board to a court are rather a matter of constitutional fetishism than of reasoned policy." On the other hand it has been said that "under our conditions it would be unwise to remove the restraint of judicial review unless we could build up a personnel with an independence and a tenure comparable to that of the courts." But it is apparent that the judicial review of a small percentage of the cases handled by a compensation board is not a satisfactory remedy for an undesirable personnel situation. In the present survey no instance has been found where the deficiency of an administration has been made good by advantages derived from the court review of decisions. A cumbersome procedure intensifies instead of cures the evils in such a situation, while the chance for an appeal to the courts has sometimes diverted the attention of workers from more suitable remedies for an intolerable situation.²⁵

If an examination of the law shows that in any jurisdiction the constitution makes it necessary to superimpose litigation upon the service methods of settling compensation claims, it is of course possible to change constitutional provisions at points where they block socially desirable developments. In Idaho in 1936, by a referendum vote, the State constitution was amended so as to eliminate intermediate appeals and to provide that in compensation cases the supreme court shall have jurisdiction to review questions of law only upon direct appeal from orders of the industrial accident board. National conferences on labor legislation have recommended that "appeals from decrees" of the compensation agency "should not be allowed except on questions of law and should be carried direct to the highest court."²⁶ In the face of such a recommendation and the accumulated experience of a quarter of a century, some local labor groups have continued to advocate statutory changes to widen instead of restrict appeals to the courts.

²⁵ For a statement of these contrasting viewpoints, see Downey, E. H., *Workmen's Compensation*, New York, Macmillan Co., 1924, pp. 73-74, and Dodd, Walter F., *Administration of Workmen's Compensation*, New York, Commonwealth Fund, 1936, p. 785, footnote 3.

²⁶ U. S. Department of Labor, Division of Labor Standards Bull. No. 12, p. 98.

Chapter 8.—Allied Services of Workmen's Compensation Administration

Broadening Scope of Service of Compensation Administration

The history of workmen's compensation in the States and Provinces shows a marked increase in liberality of benefits and also in the spread of service to workers. The early compensation acts were experimental, and their main object was to give the worker a substitute for damage suits for personal injuries. Because of high estimates of the cost of the new remedy, the scale of payment was low, and in some jurisdictions not even medical aid was included. Outstanding compensation administrators maintained, however, that it was not only humane but economical to provide accident-prevention service, to furnish ample medical care, and to aid in restoring permanently disabled workers to vocational usefulness.

In several jurisdictions the broadening of the law and administration was stimulated by examination of the leading compensation systems of the world and also by case studies, made by the commissions, into the situation and needs of injured workers and their dependents. Before the close of the first decade of workmen's compensation, some of the commissions were rendering a wide range of service. The capstone of the legal provision of aid to injured workers by the compensation commissions and related agencies is the Federal Vocational Act of 1920, under which the Federal Government cooperates in the State programs for the rehabilitation of disabled workers.

Statutory Basis of Related Services in Compensation Administration

There are few examples in the jurisdictions of an inclusive provision in the act for coordinating the related services in compensation administration, although there may be found isolated references to safety or rehabilitation activities. In California, however, a well thought out plan of action emerged within a few years after the beginning of the compensation system. In 1917 the commission's plan for developing a complete program of service was embodied in a preamble (Scope and Intent) superimposed by legislative enactment upon the earlier section 1. This declaration of purpose, a striking departure from the perfunctory clauses with which compensation

acts usually begin, provides a summary of the main services of compensation administration.¹

SECTION 1. This act and each and every part thereof is an expression of the police power and is also intended to make effective and apply to a complete system of workmen's compensation the provisions of section 17½ of article 20 and section 21 of article 20 of the Constitution of the State of California.

A complete system of workmen's compensation includes adequate provision for the comfort, health, safety and general welfare of any and all employees and those dependent upon them for support, to the extent of relieving from the consequences of any injury incurred by employees in the course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment, full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury, full provision for adequate insurance coverage against the liability to pay or furnish compensation, full provision for regulating such insurance coverage in all its aspects, including the establishment and management of a State compensation insurance fund, full provision for otherwise securing the payment of compensation and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any matter arising under this act, to the end that the administration of this act shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character; all of which matters contained in this section are expressly declared to be the social public policy of this State, binding upon all departments of the State government.

It is plain from an examination of this section of the California act that all the services mentioned can hardly be rendered by a compensation authority without the help of other public agencies. Under such a development in the legal base of administration, it becomes a part of the commission's task to arrange for cooperation with other governmental units having related purposes. The last clause of the section, also unusual in a compensation act, makes the rendering of the related services by other agencies obligatory, and pledges the united power of all departments to the task of safeguarding and assuring justice to those within the scope of the compensation act. The administration, of course, determines whether such a preamble turns out to be rhetoric or a vital force, but no better legal basis for the coordination of related services has ever been written into compensation statutes.

Administrative Basis of Related Services Under Workmen's Compensation

Although in most States there has been an incomplete development of the coordinated services, an example of comprehensive arrangements for securing the varied services needed in compensation administration

¹ The explicit statement of the elements of a complete system of services contained in sec. 1 of the California act has been omitted from the consolidation and revision of the compensation law as published in the Labor Code of 1937. The section may be found, however, in earlier editions of the act, and appears on p. 7 of the 1933 edition. This is an illustration of the fact that the most advanced developments of compensation legislation are not always found in the latest publications or legislation.

is found in Wisconsin. In this State distinct administrative units, both within and outside of the industrial commission, furnish specialized attention at points involving relationships of claim settlements with the safety, rehabilitation, and child-labor laws.² The plan of cooperation proceeds under a carefully formulated routine which assures prompt reference of reports and attention to inquiries and requests for action.

In the following discussion of the related activities of compensation administration, each type of service will be spoken of as though it had its own administrative unit, as in the Wisconsin plan. This is for convenience only. In some jurisdictions there has been little specialization in the arrangements, and a number of services would be rendered by the same members of the staff. In this chapter the emphasis is on the administrative arrangements for obtaining the related services rather than on the services themselves.

In the jurisdictions the provision for administrative service under the workmen's compensation act, other than claims adjudication, ranged in 1937 from one clerk employed by an ex officio commissioner³ to the highly specialized arrangements in New York, where the division of workmen's compensation is one of the many divisions of the department of labor, with the varied labor activities integrated under a single head. In some jurisdictions not highly industrialized, the labor functions are rudimentary and their administration is merged with the work of the department of agriculture, the department of commerce, or the department of industry. In a few instances, vigilant and well-informed compensation commissioners render broad service without the help of specialized units or personnel, while in other instances the service available to a compensation commission through specialized agencies has not been utilized.⁴

In practice, the mobilizing of needed services to injured workers by the compensation commission depends largely upon the commission's knowledge of the various things to be done and the approved ways

²In a study of the Industrial Commission of Wisconsin (1932), (p. 103), A. J. Altmeier, then secretary of the commission, says: "The Commission is to be commended for the close correlation existing in the administration of the workmen's compensation act, rehabilitation law, the safety law, and the child-labor law. It is questionable whether any other State excels Wisconsin in the correlation of workmen's compensation, rehabilitation, and safety. Certainly, no other State excels it in the correlation of workmen's compensation and child labor or, perhaps, even approaches it." (See also U. S. Department of Labor, Children's Bureau Publication No. 214 (1932): *The Illegally Employed Minor and the Workmen's Compensation Law*, for information on this latter phase of administration in Wisconsin.)

³As in Alabama.

⁴An example of the absence of coordinated services is given in the report on a survey of administration in Oklahoma made in 1935 by the Brookings Institution (*Organization and Administration of Oklahoma*, The Brookings Institution, p. 195):

Closely related activities are carried on by different and separate organizations. No method has been devised to coordinate them. Influenced by the Federal Government, the rehabilitation unit in the department of education has two cooperative agreements, one with the department of labor covering employment service, and the other with the industrial commission. The former has a breath of vitality, but the latter, entered into with due formality on November 23, 1920, is so much a dead letter that certain responsible officers of the present organization did not even know of its existence. Experience in public administration indicates that such cooperative agreements tend to become mere scraps of paper unless some definite organization is provided to give them effect.

of doing them, and also upon teamwork on the part of each official having a share in the program. In some jurisdictions, because of periodic turn-over of personnel, cooperation that had been well started has lapsed, and even the existence of a formally accepted plan has been forgotten. In a number of jurisdictions there is no program under which an outgoing administration instructs the incoming one in regard to the arrangements for coordinating the related services of workmen's compensation, and literature on all phases of this subject has not been at hand for use in training the personnel.

The four main fields in which arrangements are usually found for coordinating administrative activities under workmen's compensation are vocational rehabilitation, child-labor regulation, safety service, and insurance supervision.

Cooperation With Rehabilitation Agency

Rehabilitation Coordination in the United States

Rehabilitation coordination is considered in detail in chapter 9, Cooperation of Workmen's Compensation Administrations with Rehabilitation Agencies, but is also examined in this connection to indicate its place in the system of allied services.

A distinctive feature of rehabilitation coordination in the States is the statutory basis for joint action found in both Federal and State laws. This feature of allied compensation administration is encouraged by Federal grants to the States in the form of matched appropriations for rehabilitation. As a prerequisite to Federal aid, it is stipulated that "in those States where a State workmen's compensation board, or other State board, department, or agency exists, charged with the administration of the State workmen's compensation or liability laws, the legislature shall provide that a plan of cooperation be formulated between such board, department, or agency, and the State board charged with the administration of this act, such plan to be effective when approved by the governor of the State." Several States incorporated in the compensation act a provision for the required cooperation; as, for example, this paragraph in the North Dakota act:

It is hereby declared to be the intent of this act to restore to industry those injured in the course of employment; and the bureau shall aid in carrying out the intent, assisting industrial cripples to obtain appropriate training, education, and employment, by cooperating with the Federal Board of Vocational Rehabilitation.

In the plan of cooperation between State and Federal governments under the Vocational Rehabilitation Act a formal agreement for coordinating compensation and rehabilitation services is required. The vitality of such an agreement depends mainly upon what arrangement is made for furnishing the rehabilitation agency prompt and systematic information in regard to permanent disabilities resulting from industrial injuries. If such information is furnished by the compensation

commission, and if a plan is developed for the rehabilitation of injured employees, the compensation authority may facilitate the program by making advancements of compensation or, as in some States, by awarding extra allowances for maintenance during retraining, since the major problem in many cases is that of support during retraining. The compensation commission may seek the assistance of the rehabilitation official in such matters as the selection of artificial members and appliances for disabled workers, and consult him before making lump-sum settlements. The rehabilitation agency may report to the compensation authority the steps taken and results achieved in the retraining and placement of workers under the joint program.

The variety of practice in the various States in regard to furnishing to the rehabilitation office information relating to disabilities is shown by typical answers given during the administrative survey in 1934-37 to the question: "Does the commission systematically notify the [rehabilitation agency] of all cases of major scheduled permanent disability?" In 11 jurisdictions the answer was "no," without qualification; in 3, "not systematic"; in 2, "temporarily lapsed"; in 2, "sporadic"; in 2, "just starting"; in 1, "a bit indefinite"; in 1, "almost inoperative." In 9 jurisdictions the answer was "yes." To the 9 affirmative answers may be added 4 others, subject to the explanation that in such cases the rehabilitation officer comes for the information at intervals ranging from daily to once a month.

In one jurisdiction a local survey disclosed that the compensation commission was not aware when interviewed, that an agreement for cooperation existed. Moreover, in most of the court-administration States there is no arrangement by which cooperation for rehabilitation can take place through a central workmen's compensation authority. In some jurisdictions it was explained that the practice of notifying the rehabilitation agency of disability cases lagged or lapsed because the rehabilitation office was "swamped," had "a long waiting list," and was "understaffed." During 1934-36 the difficulty of finding employment for partially disabled workers was mentioned in some jurisdictions as a reason for neglecting the cooperation of compensation and rehabilitation agencies.

The most effective arrangement found for supplying the rehabilitation agency with the information needed in disability cases was for the compensation authority to notify the rehabilitation office promptly when accident reports indicating permanent disabling injuries were received by the compensation commission. In some jurisdictions an alternative plan, under which the rehabilitation authority secures information directly from the reports and files in the compensation office, has worked well, and such an arrangement may be preferable if the compensation agency is understaffed. In isolated instances the

compensation commission and the rehabilitation agency have jointly maintained a liaison clerk.

The survey disclosed that in many instances delay in notifying the rehabilitation office of injury cases was an obstacle to the rehabilitation of workers. In a number of jurisdictions there was need for closer and more cordial contact between the compensation and rehabilitation agencies, and a reexamination of the opportunity for fuller service to disabled workers through a more active program. In most jurisdictions the benefit system of the compensation acts makes no special provision for the maintenance of disabled workers during the period of retraining.⁵

At the 1938 meeting of the International Association of Industrial Accident Boards and Commissions, John A. Kratz, chief of the Vocational Rehabilitation Division, United States Office of Education, outlined the fundamentals of an effective system of cooperation between workmen's compensation and rehabilitation agencies.⁶ Such a system would provide for the following activities:

BY THE COMPENSATION COMMISSION

1. Report to the rehabilitation service promptly and regularly: (1) Cases of major physical impairment; (2) cases of minor physical impairment who are potential rehabilitation cases; (3) controversial compensation cases, probably in need of rehabilitation service.
2. Furnish to the rehabilitation service such supplementary reports on cases as are needed to determine eligibility and feasibility; and inform the rehabilitation service on major decisions or actions by the compensation commission with respect to those cases.
3. Consult the rehabilitation service regarding cases in which there may be an adjustment of compensation schedules in order to facilitate rehabilitation of the client.
4. Consult the rehabilitation service regarding awards of lump sums or commutations of compensation which would affect rehabilitation of the client.

BY THE REHABILITATION SERVICE

1. Report periodically to the compensation commission the rehabilitation service rendered to cases reported by the commission.
2. Make investigations for the commission of cases applying for lump-sum awards or commutation of compensation who are eligible for or in process of rehabilitation.
3. Advise the commission regarding the advisability of extending medical treatment to special cases.
4. Upon request make special investigation of compensation clients for the commission, when such can be handled advantageously.

JOINT COOPERATION

1. Each agency to keep informed relative to the provisions of the other's laws and policies of administration, and to support improvements in both laws.

⁵ See also ch. 5 (p. 85).

⁶ Cooperation of Workmen's Compensation and Rehabilitation Agencies, by John A. Kratz, in U. S. Department of Labor, Division of Labor Standards Bull. No. 24, Washington, 1939.

2. Each agency to participate, whenever feasible, in meetings and conferences called by the other for the purpose of pooling information and exchanging experiences.

With respect to joint cooperation, it is my opinion that the two agencies may be mutually helpful in advice and support regarding needed changes in compensation and rehabilitation acts.

Machinery of cooperation:

* * * A liaison officer or clerk [should be] employed by the commission, or by the rehabilitation department or jointly, with the following duties:

1. To review all reports of injuries and bring to the attention of the rehabilitation department all cases potentially eligible for and in need of rehabilitation.
2. To furnish additional information regarding any case when requested by the rehabilitation department.
3. To advise the rehabilitation department as to changes or adjustments in awards on all cases reported.

Rehabilitation in Canada

In Canada the rehabilitation of injured workers is not aided by the Federal Government, but depends upon the initiative of the Provincial workmen's compensation boards. The Ontario act (sec. 51) provides:

To aid in getting injured workmen back to work and to assist in lessening or removing any handicap resulting from their injuries, the Board may take such measures and make such expenditures as it may deem necessary or expedient * * * provided that the total expenditure under the provisions of this section shall not exceed \$100,000 in any calendar year.

In spite of this broad authorization, it was reported in 1936 that little had been expended upon rehabilitation.⁷ Provisions similar to section 51 of the Ontario act are found in several other Provinces, but in 1936 were almost or entirely inoperative. In most of the Provinces it was said that no specialized staff or institution was available for rehabilitation purposes. In some instances the commissioners or the chief claims official gave personal attention to rehabilitation cases. On the whole, the rehabilitation program in Canada is undeveloped. It is evident that amendments to the laws, beginning in 1924, contemplated greater activity in this field on the part of the compensation administrations than has been realized.

Cooperation With the Child-Labor Unit in the United States

In some jurisdictions when reports of accidents to children 18 years of age or less are received by the compensation commission, investigation is made to ascertain the child's actual age and whether there has been compliance with the laws relating to work permits and prohibited employments. If there is no specialized administrative unit for

⁷ The term "rehabilitation," in this study, means retraining and placement or vocational supervision during readjustment, rather than the use of physiotherapy, which in the United States is usually considered a feature of medical aid. The Ontario fund and the Oregon fund, have facilities for furnishing physiotherapeutic treatment to injured workers, and usually refer to such service as rehabilitation. A complete program may include both physiotherapy and vocational features.

enforcing child-labor legislation, any investigation undertaken is made by some other agency or directly by the compensation commission.

In a number of jurisdictions there is a specialized administrative unit for such purposes, although the arrangements and the names used vary from State to State. In Wisconsin, there is a woman-and-child labor department; in New Jersey, there is a bureau of women and children; in New York, within the division of women in industry, there is a bureau of enforcement of woman- and child-labor laws; in Delaware there are separate child-labor and women's labor divisions under the labor commission; in California, there is a division of industrial welfare and a division of labor statistics and law enforcement. But even the presence of specialized units for safeguarding the welfare of children in industry does not necessarily mean that the compensation commission requests them to aid in the investigation of certain accidents. There may be no legal basis, in the compensation statute, for action by the compensation authority in case of injuries to children involving a violation of the child-labor law.

In 25 States compensation officials interviewed in the course of this survey said that reports of injuries to minors were not referred to any other agency for special investigation, and in most instances such a reply meant that no special investigation was made by the compensation authority. Typical replies given by administrators in States where the compensation agency does not call upon any special administrative unit for investigating injuries to children are: "There is no coordination"; "there are no prohibited occupations mentioned in the compensation act"; "we have no jurisdiction"; "would recommend suit for damages"; "we have no child-labor problem."

The report upon a recent study of work accidents to minors in Illinois emphasizes, among other things, the necessity for comprehensive and adequate provisions in workmen's compensation acts relating to injuries to minors, placing the initiative in the administering agency rather than the courts; for close supervision of claims adjustment, medical aid, and attorneys' fees; and for competent, supervised guardianship of the disposition of money awarded to injured minors, in order that it may be conserved or expended in such a way as to advance the restoration, education, and rehabilitation of injured minors.⁸

The procedure in Wisconsin when an accident report is received either showing directly or indicating that the injury involves the illegal employment of a minor is described in A. J. Altmeyer's study of The Industrial Commission of Wisconsin:⁹

⁸ Klein, Earl E.: *Work Accidents to Minors in Illinois*. Chicago, University of Chicago Press, 1938. See especially the summary of findings and conclusions, pp. 207-223.

⁹ University of Wisconsin. *Studies in the Social Sciences and History* No. 17 (1932), pp. 60 et seq.

It has already been stated that reports of accidents to children 18 years of age or less are referred to the woman and child labor department for attention. The child-labor permit records are first checked to ascertain whether there was a permit in effect at the time of injury, or if a permit had ever been issued for the employment of the child. Permits are not required for the employment of children 17¹⁰ years of age or older. However, it has been found that a considerable proportion of the children whose ages are reported as 17 years are in reality under 17 years and that a small percentage of the children whose ages are reported as 18 years are really under 17 years. If the correct age of the child cannot be ascertained from the commission's records, the employer is asked for a special report of age. This report gives date of birth, place of birth, names of parents, and the kind of proof of age secured when the child was hired. The additional information is used to check the records of the bureau of vital statistics of the State board of health. If these records do not contain the information sought, the commission communicates directly with the child to secure definite proof of his age. If he fails to furnish it, the child-labor permit officer in the locality is asked to secure it. However, if all these attempts prove fruitless, a deputy of the commission attempts to secure the information when in the locality.

The woman and child labor department also scrutinizes the report of accident to determine whether the occupation at which the child was injured is one prohibited by statute. If it is found that the child should have a child-labor permit, or was employed at a prohibited occupation at the time he was injured, a letter is sent to the employer requesting an explanation of the violation. The employer's attention is called to the fact that he is required to pay increased compensation because of such violation in addition to the fact that he has placed himself liable to a penalty because of violation of the child-labor law. The commission points out in this letter that while it has discretion as to whether it shall commence legal action for the imposition of the penalty, it has no power to waive payment of the increased compensation.

The merits of this plan as a scheme of compensation to be compared with common-law damages will not be discussed. Necessarily, it possesses the same advantage claimed for compensation in general as contrasted with employers' liability. Its merits as a device for securing better compliance with the child-labor law are obvious. It is practically automatic in its application, whereas legal action for the imposition of a penalty requires that the commission request the attorney general to commence prosecution. Moreover, judges and juries are not always sympathetic with restrictions placed upon child labor, so that convictions are not certain and fines actually imposed are small.

The Wisconsin experience supports the advocacy of a provision in compensation laws for extra compensation to children injured while illegally employed. The provision was inserted in the Wisconsin law in 1917. There has been a marked decline in the proportion of children employed in Wisconsin since 1920, and there may be some connection between the compensation program and that decline. The following statement of increased compensation paid by employers for injuries to illegally employed minors, over a period of 15 years, indicates that where such a provision is consistently enforced its educational effect upon employers leads to improved employment

¹⁰ Changed to 18 by a 1931 amendment.

practices and safer working conditions, which avert a burdensome increase in compensation costs.

	<i>Total increased compensation</i>
1921-----	\$24, 499. 37
1926-----	22, 434. 24
1931-----	8, 787. 20
1936-----	392. 01

In the absence of a child-labor program the fact that a compensation agency knows little or nothing about work injuries to children illegally employed is not satisfactory evidence that such injuries are not occurring, since in many jurisdictions the reporting practices are lax, and in some instances injuries to illegally employed minors might not be reported or the age might be incorrectly stated.

Although studies have been made of experience in one or more States, there has been a lack of data upon the Nation-wide experience of injuries to minors. In United States Children's Bureau Publication No. 214 (1932), *The Illegally Employed Minor and the Workmen's Compensation Law* (p.1), it is said: "It is estimated that at least 1 in every 10 persons reported as injured in the course of employment in the United States is under 21 years of age. Many of these are mere children."¹¹ Occasional local estimates appear in publications of the State compensation commissions. For instance, a safety bulletin issued by the Oregon Industrial Accident Commission in April 1938 contains the warning: "Approximately 8 percent of the 410,000 people employed in Oregon are under the age of 17 years. Hundreds of them will be injured during the coming year."

Apparently there has been a decline in the proportion of children employed in industry, and certainly this is so since 1930, according to the statements of compensation commissioners. One difficulty in estimating the Nation-wide extent of the decline is that the most dependable information upon injuries to children is furnished by a few States, in which there is an advanced development of child-labor legislation, while in jurisdictions not paying extra compensation in case of injuries to minors illegally employed little information is available, as a rule, in regard to the extent and seriousness of injuries to minors. The relative decline in the employment of children in States having advanced labor legislation may be greater than in other areas, since it may be due in part to effective law enforcement.

¹¹ Citing the Nineteenth Annual Report of the Chief of the Children's Bureau, 1931 (p. 13), which says that the estimate is made upon "a comparative summary of the information now available from published reports and from unpublished sources for 17 States. * * * These States, according to the 1920 census, employed three-fourths of the minors both under 16 and under 18 years of age who were reported at work in nonagricultural occupations in the United States."

Coordination in Canada for Enforcing Child-Labor Provisions

In the course of the survey of compensation administration in Canada in 1935-36 no cooperation with specialized woman and child-labor units was reported by the officials interviewed. In none of the Provinces was there a provision for special compensation to minors illegally employed. In Saskatchewan the administration doubted its right to compensate for injuries arising out of illegal employment. In Manitoba the bureau of labor gets copies of all accident reports directly from employers, in addition to the report sent to the compensation administration. In New Brunswick the compensation board has its own factory inspector, who investigates work permits.

Cooperation With Safety and Sanitation Services in the United States

Wherever compensation administration is developed as a complete system of services, the program for the prevention of injuries involves activity in the field of safety and sanitation. Where there are no specialized units supervising the safety and health of workers, it becomes necessary for the compensation authority to render what service is possible with the means at its disposal. In a number of States the authority and personnel for safety service are lodged in the labor department or its equivalent. In Wisconsin, under the industrial commission, there is a safety and sanitation department.

With the increasing emphasis upon the study and prevention of occupational disease, specialized service relating to industrial hygiene is emerging. For example, in New York, there is a division of industrial hygiene; in Connecticut, a bureau of occupational disease; in Massachusetts, a division of occupational hygiene; in Ohio, a division of safety and hygiene. Whether the specialized service in safety and hygiene is lodged in the workmen's compensation authority or elsewhere, it is desirable to recognize in the compensation act the connection of accident prevention with compensation administration. For a model provision, reference is made to the 1917 preamble of the California compensation act (new section 1, Scope and Intent).

In the course of the Bureau of Labor Statistics survey during 1934-37, compensation officials in 25 States ¹² said that the compensation act did not authorize them to perform safety work. In two other jurisdictions it was reported that while the act authorized safety work, there was "no special appropriation for it" and "no personnel was provided." In the absence of a plan for cooperating with safety and sanitation units, the compensation authority in most of these States

¹² The States are not named here, because to do so might create a wrong impression of the safety work in certain jurisdictions. The situation is complicated; for instance, the authority administering the compensation act and also other labor laws may be active in accident prevention, but through units other than the compensation department and under other legislation.

would have no accident-prevention program. Such answers indicate the desirability of having the scope of compensation service stated in the statute.

In 24 States compensation officials said that accident reports, or information prepared from them, were referred to the inspection units or safety and sanitation department, but in some instances the furnishing of information was limited and unsystematic. Typical replies in States where the safety coordination was limited are that information is given only in very serious or fatal cases; only where there are violations of regulations; where we suspect a dangerous condition exists.

The methods by which the safety units received information relating to compensation-accidents reports varied widely. In one State the compensation authority sent cards monthly to the inspection office; in other States, the safety director called or sent for the desired information daily or at less frequent intervals. In some States a duplicate accident report was sent directly to the factory or mine inspector by the employer or insurance carrier.

In Wisconsin, New York, and a few other jurisdictions, there is a well-developed plan for promptly furnishing adequate information upon accident reports to the inspection and research units. In Wisconsin the original accident reports are sent to the safety department as soon as they are received. After checking, the reports are returned to the compensation office. The importance of prompt investigation is emphasized, because the employer is more receptive to safety suggestions immediately after an accident has occurred in his plant than at any other time. In several States the value of the information furnished to inspectors is much impaired by the lag in its transmission. In New York a copy of the pertinent part of the accident report is made available to the division of factory inspection. For New York City, in which 60 percent of the claims arise, a photostat machine is used; in the up-State cities the information is copied on cards by hand.

Important developments in Pennsylvania in 1938, in the use of accident statistics in the program of prevention, are described in the *Keystone*¹³ for July 1938. Because of its informational value to all jurisdictions, the account is quoted in full.

Accident Statistics Used for Accident Prevention

In the past, one of the difficulties with the use of accident statistics for accident-prevention purposes has been that it has not been possible to secure from them the *real* accident cause. Frequently accident statistics were designed primarily for workmen's compensation purposes and stressed the nature of the injury rather than the cause of the accident.

¹³ A review published monthly by the Pennsylvania Department of Labor and Industry.

This difficulty has been recognized by the department of labor and industry, and since January 1, 1938, a new accident-report form and a new accident-cause code have been used. Both of these have been designed to give a picture of the *real* cause of the accident. This code is a modification of the well-known Heinrich Cause Code. The new report form and the cause code have been developed by the department with excellent technical assistance from the U. S. Bureau of Labor Statistics, and that Bureau continues its cooperation in the development of the present program.

It was also recognized that no matter how meritorious the cause code used might be, it could only be of real value as a means of preventing accidents if the accident causes were coded *accurately*. A safety engineer, who is a graduate mechanical engineer with wide inspection and other industrial experience, has been placed in charge of cause coding to insure this accuracy.

The accident statistics secured as a result of this new cause code, it is believed, present the best picture of the *real* causes of industrial accidents thus far secured in any State.

However, the statistical tables showing the *real* causes of accidents in themselves could never prevent accidents. It is the use of this information by the interested bureaus and divisions of the State government and by industry that makes them valuable.

The department has, therefore, placed in charge of the analysis of these data a trained statistician, who devotes his entire time to analyzing the causes of accidents for the purpose of making recommendations for removing them. This analysis involves concentration upon individual accident causes as well as the study of the accident records of specific industries and individual establishments. The recommendations of this statistical analyst are made to the accident prevention division of the bureau of inspection.

In order to make these recommendations effective, an accident prevention engineer has been appointed in each of the seven supervising factory inspectors' offices scattered throughout the State. The recommendations of the statistical analyst are submitted to these men through the chief of the accident-prevention section, together with such safety-promotion material or programs of accident prevention as may have been developed by him to make the recommendations effective and otherwise promote the cause of safety.

The accident-prevention engineers in the various supervising factory inspectors' offices are also responsible for working with the factory inspectors in the district, assisting them in the investigation of accidents, and in promoting an interest in safety in the individual plants, industries, and communities in their territories.

In the manner described above, the department believes that it will make effective use of the accident statistics which have been prepared, and the employer, when making out an accident report, can feel assured that he is not only fulfilling a requirement of the law, but also, to the degree that he uses care in answering all the questions asked on the report, he is making a substantial contribution to the prevention of accidents in the future.

In this manner, accident reports and accident statistics are prepared, not to be filed away unused, but for the purpose of eliminating, as far as humanly possible, the cause of suffering and misery which follows in the wake of accidents.

What is accomplished through cooperation with the safety unit depends mainly upon the personnel available for inspection and educational purposes and also upon the funds provided for traveling expenses. In some States the safety work is just beginning or in an early stage of development on a basis of very meager support and with relatively

untrained personnel. In many States in 1935 the inspection service was at a low ebb on account of economy cuts. The service was deficient in extent or quality in virtually all jurisdictions.¹⁴

In the foregoing paragraphs emphasis has been placed on bringing the original report materials to the eye of the factory inspectors. No human mind, however, can digest and interpret all of the implications of such a mass of information without tabulation and condensation, which are part of the statistician's work. But in many of the States, especially during 1935-37, there was no statistician of professional rank available in the compensation departments or the labor departments. In a few jurisdictions the commissions felt no need for a trained statistician; in some others, this official had been dropped in the early stages of the "economy" programs which prevailed in the administrations during 1930-36. In a number of States the statistical work was done by clerks who were following rule-of-thumb methods; some of them knew the reason for what they were doing, and others did not.

In short, the coordinating of related services for the prevention of injuries, in recent years, has been deficient, except in a few jurisdictions, because of: (1) Lack of statutory authority in some States; (2) lack of a systematic plan of cooperation; and (3) inadequate personnel and support.

Difficulties arising from inadequate appropriations for safety service under workmen's compensation could be minimized, so far as some commissions are concerned, by a change in the method of support, whereby the administrative expense of the commission would be assessed upon insurance carriers and self-insurers, or, in the case of State funds, taken directly out of the premium income.¹⁵

Safety Coordination in Canada

Some of the Provincial compensation boards cooperate for the purpose of accident prevention, both with the inspection service of the departments of labor and with employers' safety associations.¹⁶ In other Provinces, information relating to accident reports is sent only to the safety associations. In Saskatchewan, an abstract of every case is sent to the inspector of the department of labor. In British Columbia, the boiler and machinery inspection department and the electrical-energy inspection department are under the workmen's compensation board. In Alberta, the pay-roll inspectors are used as

¹⁴ A statement in the 1935-36 report of the Pennsylvania Department of Labor and Industry (p. 37) is applicable to the entire situation: "The performance of the growing duties (of the bureau of inspection) was made harder by the fact that the bureau's personnel was smaller in 1935 and 1936 than in previous years. At no time since the creation of the department have there been enough inspectors to enforce the laws as thoroughly as desired."

¹⁵ See ch. 9 (p. 153).

¹⁶ Most of the interviews with Canadian administrators were in 1936.

safety inspectors, but the fund's accident prevention officer is an engineer by profession with 7 years' experience in safety work.

A distinctive feature of Canadian administration is the arrangement, in four Provinces,¹⁷ by which the compensation funds support the employers' safety associations. These are organized along the lines of industrial classification. Groups of employers, or "classifications," who do not desire to cooperate are not required to do so; consequently, there may be gaps in this type of safety work. One compensation board using this system has its own inspector to check on the work of the safety associations. The most highly developed employers' safety organization in Canada is found in Ontario; it is the Industrial Accident Prevention Associations, with headquarters in Toronto.

The plan and methods of the organized safety work of the Ontario Industrial Accident Prevention Associations are described in the report of the Proceedings of the 1928 Annual Meeting of the International Association of Industrial Accident Boards and Commissions. The practices mentioned by R. B. Morley, general manager, are in the main the present routine. According to Mr. Morley, there is a close coordination with the workmen's compensation board:¹⁸

We are enabled to keep a close check on the general experience of the industries included in our membership, as we receive from the workmen's compensation board, with which there is, of course, the closest kind of contact, brief reports known as accident memos, which give information regarding accidents on which claims have been made and which, in most cases, involve a loss of 7 days time or more and, consequently, mean compensation to the injured worker. These accident memos are invaluable to us in enabling us to check the experience of the various firms on our lists, and the information sent to industries whose accident frequency was running too high has frequently resulted in a complete change in the experience of that plant.

In some Provinces the absence of specialized units or coordinated arrangements does not necessarily indicate lack of attention to accident prevention. As a rule, the compensation personnel has been relatively permanent in tenure, understands the local problems, and watches closely the accident experience of insured employers. In some areas, however, the need of further development in safety work was frankly admitted.

Effectiveness of Safety Work Under Compensation System

When compensation legislation was first proposed in the United States, some advocates of the system argued that the provision of definite payments for injuries would automatically reduce the number of accidents, because the employer would see that unsafe working conditions were costly to him. Attempts to find out whether the early expectation, put in this broad and general way, has been realized

¹⁷ New Brunswick, Nova Scotia, Ontario, and Quebec.

¹⁸ U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 485, pp. 157-161.

are inconclusive. Sweeping comparisons, on a scientific basis, of accident experience before and after the passage of compensation acts cannot be made. Neither is it possible to compare the experience of industry covered by compensation legislation with that of employments not covered. It is known that the accident experience of many employments not now within the scope of compensation statutes is bad, and in some jurisdictions their unsatisfactory experience is precisely the reason some of these employments are outside the compensation coverage. It is also true, however, that the accident experience of some employments within the compensation coverage is bad.

Some compensation administrators soon realized that instead of depending upon the benefit system to make working conditions safe, it was necessary to develop a broad program including accident prevention, and some of the statutes were amended to authorize or require safety activities. Even in the absence of a compensation law an employer has ample incentives, from considerations of self-interest, for adopting a safety program, for the amount paid as compensation to injured workers has been estimated to be only one-fourth the cost of accidents to employers.¹⁹ Not all employers however, have a farsighted viewpoint of their self-interest, and a number of them cling to old habits and are not apt to change to new practices in the absence of contact with persuasion or constraint. The experience under workmen's compensation has amply shown that the State cannot afford to neglect to provide other incentives to safety than the self-interest of employers. The omission from an earlier compensation act of specific provisions relating to accident prevention is understandable, but it is now apparent that the absence of safety mandates in some compensation acts should be remedied, even in those cases where the labor department is empowered to make regulations and provide inspection services. In the course of the survey, a compensation official of one State said, "We are not concerned with safety." On the other hand, many compensation officers are of opinion that the administration should be "safety conscious," and that a reference to accident prevention in the act may stimulate such a state of mind.

Not only is the self-interest of employers an insufficient assurance of safe practices,²⁰ but the self-interest of insurance carriers cannot altogether be relied on to assure an adequate check upon the employers' equipment or methods by the carriers' safety specialists. Although some insurance carriers have done notable work in accident prevention, in the judgment of compensation officers their inspection service is

¹⁹ Cost of Industrial Accidents to the State, the Employer, and the Man, by H. W. Heinrich, in U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 536, (1930), p. 173.

²⁰ Even in the case of employers having a highly developed safety program, the safety engineer is usually less influential in determining practices than the production engineer, and there are instances where the safety engineer's decision has been overruled, with disastrous results.

at times biased by business-getting considerations, and needs to be supplemented by impartial public inspection service. Wide-scale effectiveness in safety work necessitates, therefore, not only a provision for the payment of compensation in cases of industrial injury, but also properly drawn laws relating to safety, together with an administrative program, personnel, and adequate financial support for research, inspection, and enforcement of regulations. In this program the compensation administration, in most jurisdictions where there is advanced development, has a significant part either by independent or coordinated action.

A rating officer, in explaining the difficulty of securing adequate appropriations or other support for a complete safety program, said that what is saved by such measures cannot be shown.²¹ But while such savings cannot be demonstrated by broad and general comparisons, they are amply established by specific examples.

Instances of the effectiveness of safety work are given in articles entitled, respectively, "Accident Experience of Federal Civilian Employees" and "Injury Experience in the Iron and Steel Industry," which appeared in the *Monthly Labor Review*, August 1936 and May 1938. In the examination of the accident experience of Federal civilian employees, the example of the Navy Department is cited:

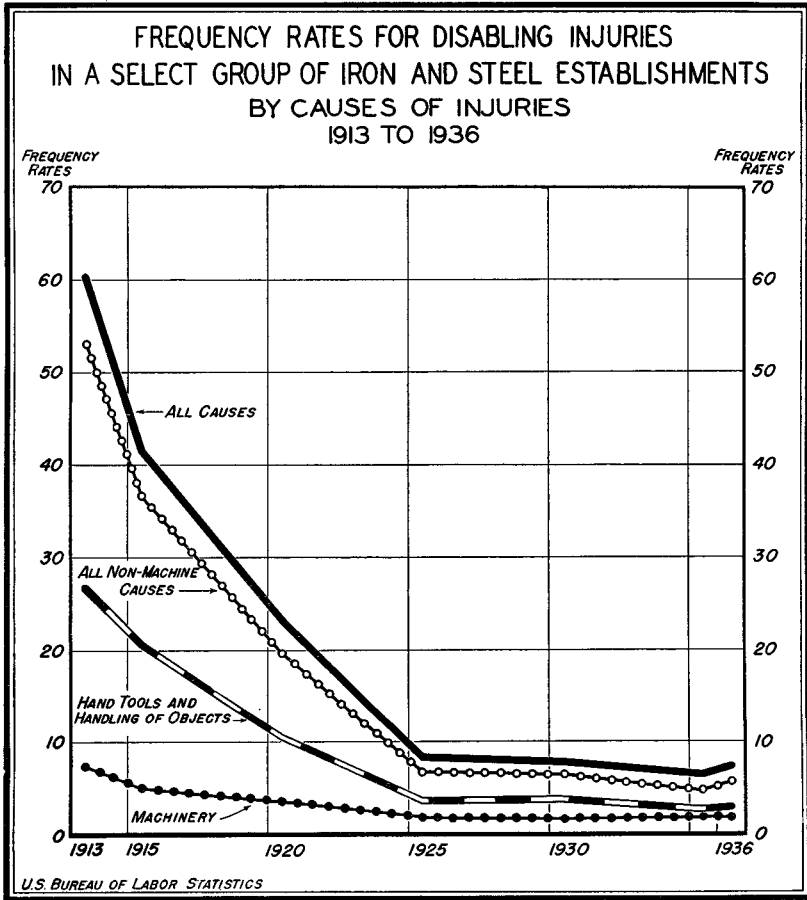
In 1921 an office of safety engineering was established there, with a department safety engineer in charge and a local safety engineer in each of the 37 navy yards and stations. A program which at first centered on the elimination of dangerous conditions and the introduction of safety devices was subsequently enlarged to include an educational program, and later competitive safety awards. The result of these efforts * * * has been a reduction of the frequency rate from 20.3 in 1926 to 5.17 in 1935, and a reduction in the severity rate from 2.09 in 1926 to 0.62 in 1935. In other words, for every 4 accidents per million man-hours worked in 1926, only 1 accident occurred in 1935, and for every 2 days lost per 1,000 man-hours in 1926, only 0.6 of a day was lost in 1935. Roughly, then, both the frequency and severity rates of 1926 have been reduced three-fourths over a period of 10 years.

Other examples of very effective safety programs are cited in this publication. The endeavor to provide safer working conditions for employees in the iron and steel industry resulted in a notable decline in the injury frequency rate from 1913 to 1936, as shown in the accompanying chart.

In the face of monumental examples of the saving of both life and property by an adequate safety program, it is plain that the small economies effected, especially from 1930 to 1935, by deficient

²¹ A discussion of probable savings through increased expenditures upon accident prevention is found in U. S. Department of Labor, Bureau of Labor Statistics Bull. 536, pp. 182-183 (1930). Dr. Leonard W. Hatch, then a member of the Industrial Board of New York, said that the State of New York was spending \$500,000 a year "pecking away" at a loss of \$250,000,000, that if the State would spend \$5,000,000 a year and reduce accidents 2 percent, the State "would not only save its additional \$4,500,000 but would have \$500,000 over to cover all it is now expending for safety work."

support of safety service were more than offset by heavy concealed losses borne by employers, insurance carriers, the public, and injured workers.



Cooperation with the Insurance Commissioner

A complete system of workmen's compensation, as outlined in section 1 of the California act (1917), includes full provision for adequate insurance coverage against the liability to pay or furnish compensation, and full provision for regulating such insurance coverage in all its aspects. The legal basis for the participation of the compensation agency in the supervision of insurance ranges from the broad grant of authority in the California act to none in some of the court-administration States. The actual supervision is comprehensive and systematic in a few jurisdictions, but elsewhere the attention of the compensation commissions to insurance matters is

too often limited to action upon specific complaints and serious deficiencies in service. In some States the compensation and the insurance administrations cooperate in supervising compensation insurance, while in others the compensation officers act independently.

In the course of the survey a wide variety of practice was found in regard to the extent of coordinated supervision of insurance. Moreover, many of the officials interviewed were recent appointees some of whom were not familiar with all aspects of the control of insurance operations. In 13 States, compensation officials said that there was no cooperation with the insurance department. In some of these States there was little actual supervision of compensation insurance by any public authority. In a few States, as for example Arizona, the compensation commission has such complete control of insurance operations that little or no recourse to another State department was necessary for obtaining supplementary action.

The approach to this feature of compensation administration is complicated, not only by differences in the compensation statutes, but also by the departmental organization of the State governments. For example, an Arizona compensation official, when asked to describe the cooperation of his agency with the insurance commissioner, replied "we are both," and that the licensing of insurance companies to write workmen's compensation policies was done by the corporation counsel. In Alabama, the workmen's compensation clerk is an employee under the superintendent of insurance. In Maine and Montana the insurance commissioner is an ex officio member of the compensation commission, but in each instance the connection is virtually nominal. In Michigan the State fund (competitive) is under the supervision of the insurance department, while in Pennsylvania the insurance commissioner is a member of the board that manages the fund. Cooperation between exclusive funds and insurance commissioners goes little farther than checking upon occasional substitutions of accident and liability insurance for workmen's compensation coverage.

While most of the compensation commissions have independent authority to penalize insurance carriers for failure to pay compensation promptly, it is desirable that in extreme cases recourse may be had to the insurance department for canceling a carrier's license to write compensation-insurance policies. Under the Illinois act the industrial commission, after a hearing, may order the offending carrier to discontinue writing compensation insurance in the State.

In States where the direct supervision of compensation insurance by the compensation commission is limited, it is essential that there should be cooperation between the compensation and insurance departments in regard to rates, terms of coverage, and policy forms. In some States the regional compensation rating and inspection bu-

reau is an intermediary in such a plan. In isolated instances the insurance department may designate its own actuary to work with the rating and inspecting bureau. Under one arrangement or another, the insurance department needs independent data upon workmen's compensation costs at the time rate changes are requested by the insurance carriers, and in most instances data for checking upon the figures compiled by the insurance carriers can be supplied, if at all, only by the statistician of the workmen's compensation commission.

The compensation commission usually needs cooperation in the task of making certain that employers desiring insurance can secure it upon a reasonable basis. When carriers refuse to accept a risk, the employer may communicate with the compensation commission. In some States the compensation official who is appealed to for help may lack authority to do more than plead with an insurance carrier to write the policy. Such informal attention has often proved unsatisfactory and has been superseded in many jurisdictions either by joint agreements with insurance carriers or by statutory requirements for full coverage of all employers requesting insurance. Under such arrangements coverage is usually secured, in case of difficulty, through the rating and inspection bureau, upon request either of the compensation commission or the insurance department. The rating bureau, in assigning the risk to a carrier or group of carriers, usually takes into account any exceptional hazard involved and adjusts the rate accordingly.

In supervising insurance coverage the compensation commission must have ready access to a record of all insurance policies. In Wisconsin, prior to 1927 a copy of all policies was filed with the commission, but since that time a card containing the necessary information has been furnished the commission by the rating and inspection bureau, which also furnishes a card for each policy not renewed upon expiration.

An account of the experience and practice of the Industrial Commission of Wisconsin as to insurance supervision is given in A. J. Altmeier's *The Industrial Commission of Wisconsin* (pp. 77-84).²² Parts of this account have wide application.

Insurance companies are required to report directly to the commission all cancellations of policies prior to date of expiration. If a policy is not renewed upon expiration or notice of cancellation before expiration is received, the commission communicates with the employer. If he is still employing anyone, the commission requires that he immediately secure insurance.

In this manner, when once the commission has a record of an employer being subject to the act, it is possible to obtain continuous coverage. Sometimes an employer who has gone out of business resumes operations. In such cases, as in the cases of employers who have never carried insurance, the commission is obliged to rely upon other sources of information. All field employees are in-

²² University of Wisconsin, *Studies in the Social Sciences and History* No. 17 (1932).

structed to make inquiries as to insurance coverage. Directories and information furnished by competitors are also utilized.

Of great assistance to the commission in its supervision of insurance coverage is an amendment passed in 1921, providing that every insurance policy shall be construed to grant full coverage of all liability of the assured, notwithstanding any agreement of the parties to the contrary, unless the industrial commission specifically grants permission for partial insurance coverage. This eliminates all controversy as to whether or not particular operations of the assured were or were not covered by the terms of the policy. * * *

The commission resorts to prosecution when it cannot induce an employer to insure or when it is convinced that past failure to insure has been deliberate. The law provides both a criminal penalty and a forfeiture which may be collected as in an action for debt. * * * The commission has also resorted to the use of the injunction to restrain an employer from employing anyone so long as he fails to carry insurance. This procedure is expressly authorized by an amendment to the law passed in 1921.

In the Provinces of Canada the insurance operations are an integral part of the work of the compensation boards.

Other Fields of Coordination

The four main fields of coordination that have been discussed, linking related services of rehabilitation, safety, child welfare, and insurance, are the only ones that have virtually universal application in the States. There are other related services which can be made more effective through a plan of cooperation. In many jurisdictions the commission secures legal representation in the courts through the attorney general's office, the most acceptable arrangement being for the attorney general to allocate to the compensation office some attorney who can specialize in compensation law. In rare instances there is an informal cooperation with the department of health. State funds cooperate with the State auditor or controller and treasurer with reference to the signing of vouchers and handling of deposits. Where the cooperation has to do with the signing of vouchers, it is important to plan an arrangement that will avert a delay of several days in getting compensation vouchers signed after an award has been made.

Chapter 9.—Methods of Financing Workmen's Compensation Administrations and Funds ¹

A workmen's compensation commissioner said recently, "If the workmen's compensation commissions are to give satisfactory service, we must have more money." This remark raises two questions: How much money does a workmen's compensation commission need? What is the best way to get the support that is necessary? Especially during the depression, many compensation commissions have suffered severely from insufficient provision for doing the work expected of them. The distinction between "cheap" administration and economical administration is often overlooked. As a test of the merit of an administration, it is useless to ask how little it costs unless one is shown what service is rendered.

It is easy to understand how a layman may be misled at this point. A letter published by the *California Standard* ² shows how simple the matter seems to a workman.

In Oregon the State plan there allows only 10 percent for overhead. Injured workmen and their dependents get 90 percent in Oregon, while California pays 52 percent or less.

An analysis of this statement, in the light of all the facts, shows a fallacy in the reasoning. The statement is quoted here not as a basis for comparisons between the two States mentioned, but as an interesting specimen of confused thinking upon measurements of service. What the workman receives, and what the administration costs, are two different things. What he receives is provided in the workmen's compensation act of his State. The scale of benefits provided by such acts is seldom the same in any two States. Because of such erratic variations, strange as it may seem, in one State the workman may get 90 percent of the dollar the employer pays for insurance and still receive less than is paid the workman in an adjoining State where the injured man is said to receive only "52 percent or less" of the amount paid as insurance premium. The benefits actually paid to the workman depend upon the standard of liberality set by the State workmen's compensation law and the interpretation of the law. At present, in the two States mentioned in the newspaper article, it happens that while in one State the administrative cost is low, in the other State the liberality of the act is high, so that the workmen who "get 90 percent" in one State may actually receive less than do the workmen in the other State which "pays 52 percent or

¹ This chapter was published as an article in the *Monthly Labor Review*, March 1936, p. 592.

² *California Standard*, Eureka, Calif., Apr. 26, 1935.

less"³ of the dollar expended by employers for workmen's compensation insurance.

The patterns of workmen's compensation law and insurance are so varied that they have to be examined carefully before attempting to make comparisons. Even the correction, set forth above, of the newspaper's comparison may also be misleading, without further explanation. It must not be mistaken for an assertion that administrative cost has nothing to do with what the workman receives. Low administrative cost, other factors being equal, makes possible increased benefits by easing the competitive burden upon employers and making them more disposed to join with labor in favoring a generous workmen's compensation act. But whenever low administrative cost is considered, as a desirable goal for labor, the factor of "service" must be scientifically scrutinized. If this is not done, the worker may lose instead of gain by the cheapening of the administration of the workmen's compensation act.

Cost in Relation to Service

Labor's primary needs in this field are generous benefits and efficient administration. While it is important to know whether the "overhead" in the administration of the compensation law and insurance is 10 percent, or 50 percent, of the insurance premium, it is much more important for the worker to know what he is getting for the 10 percent or the 50 percent overhead expenditure. The safe thing to do, at this point, is to start by asking the question: What services should be rendered by the workmen's compensation administration and the insurance carrier? Emphasis should be put, first, on the actual rendering of essential service, and second, on reasonable cost for that service. Comparisons of administrative expense should be checked against a schedule of services rendered, for instance, in claims adjustment, insurance supervision or underwriting, investigating solvency of carriers, administration of "second injury" fund, accident prevention, and rehabilitation. To afford a scientific basis of comparison, definite weightings would have to be given for specific items of service. Otherwise, in a scrutiny of relative administrative cost, one may be comparing an administration that renders services "x, y, and z" with an administration that renders only services "x and y." Such a comparison, instead of penalizing the deficient administration, might exhibit it favorably as the more economical of the two. This caution is needed in regard to the method of approach to the subject. But at the same time that attention is

³ The comparison of actual benefits provided by the acts of the two States mentioned, made by the National Council on Compensation Insurance, as of January 1935, shows that the benefit liberality of Oregon is 0.768 as compared with New York (1.000), while the liberality rating of California is 0.802. Such comparisons are approximate, and do not take into account local variations in the liberality of the administration, as distinguished from the liberality of the provisions of the act itself.

called to the danger of assuming that low-cost administration is economical, it must also be said that a high administrative cost is not necessarily proof of adequate service. In each case the administrative values received by the public which is served can be determined only by checking the items of expense loading against the kind and amount of service actually rendered.

In 1919-20 the Bureau of Labor Statistics made a study of workmen's compensation insurance systems. One of the points upon which information was sought was the "relative cost" of the various types of insurance carriers. "The question of costs included both the cost of insurance and the cost of administration." The results of that study, which covered 20 States and 2 Canadian Provinces, were given in a bulletin published in April 1922.⁴ That report compared the administrative cost of exclusive State funds, competitive State funds, and private insurance. A striking contrast, drawn between the "expense ratios" ⁵ of State insurance and stock-company insurance, focused attention and debate upon the possibility of eliminating waste or private profit in this branch of social insurance. The most controversial factor in this comparison was "service." In order to make a dollar-for-dollar comparison in administrative cost, it was considered necessary to assume "that each type of insurance has furnished the same kind of service." Upon that assumption, certain averages were arrived at. "Using one figure only, the average expense ratios are as follows: Stock companies, 38 percent; mutual companies, 20 percent; competitive State funds, 10.6 percent; and exclusive State funds, 4 percent."⁶

That comparison of administrative cost, made upon the assumption that the same type of service had been rendered by the carriers compared, has sometimes been detached from its hypothetical basis and mistaken for a statement of what the administrative cost of a commission and/or ⁷ State fund should be. As attention was drawn to the very low administrative cost of State funds, especially exclusive State funds, some legislatures came to look upon reduced administrative cost as the most important objective in workmen's compen-

⁴ U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 301: Comparison of Workmen's Compensation Insurance and Administration, Washington, 1922.

⁵ The "overhead" cost of insurance and administration, as distinguished from the "pure premium" or charge for the cost of compensation and medical aid received by injured workmen.

⁶ U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 301: Comparison of Workmen's Compensation Insurance and Administration. Washington, 1922, p. 10.

⁷ In some States and in some Provinces of Canada, the administrative functions of the commission and fund are merged; in other cases, they are distinct. This difference of pattern causes one of the difficulties in comparing the cost of workmen's compensation administration and insurance. One cannot make a clean-cut comparison of cost as between the operations of a State fund and private insurance. It is sometimes as difficult to compare the cost of operation of two State funds as it is to compare the costs of State and private insurance, because all funds do not render the same kind or amount of service. Thus, if comparisons are made on the basis of administrative cost alone, without knowing what service is rendered, it is like comparing the price tags on several packages without knowing exactly what is in the packages. To make an intelligent choice, both cost and content of the package must be known.

sation administration. On the other hand, well-informed students of the subject understand that mere cheapness of administration is a delusive goal which has often ended in a quagmire of waste, non-service, and very costly inefficiency. Because there are controversial phases of any discussion of administrative cost involving comparison between types of insurance carriers, it must be said again, at this point, that high cost of insurance is not, in itself, proof of satisfactory service, any more than low cost of insurance is, in itself, proof of economical administration.⁸

Effect of the Depression in Impairing Workmen's Compensation Service

In 1919 something was to be gained, especially as a starting point for further study, by comparing the administrative cost of certain types of administration and insurance upon the assumption "that each type of insurance has furnished the same kind of service." But the impact of the historic period 1929-34 makes it necessary to place the emphasis elsewhere in the present study.

In the year 1935 the outstanding feature of workmen's compensation administration was the impairment of service by deficient support of the administrative agencies. There are other causes of impaired service, but in 23 States visited only one State was found where the support was considered adequate by those responsible for the administration. And even that State had severely cut one essential phase of workmen's compensation service, resulting in a level of performance below the attainment of former years.⁹

This impairment of service in workmen's compensation administration and insurance by deficient support is not a new condition, except in the degree of impairment resulting from the difficulties of the States in financing expenditures during the past 5 years.

Probably the greatest handicap suffered by State funds and industrial commissions is inadequate appropriations and salaries. An industrial commission cannot perform its functions properly nor furnish adequate service if it does not have sufficient appropriations to carry on its work and if the salaries provided are so low that high-grade employees cannot be retained.¹⁰

⁸ Some of the factors involved in the wide variation in the "overhead" cost of workmen's compensation insurance are: Acquisition cost, duplication of service, excessive competition, small volume of business in proportion to fixed overhead cost, differences in the provision for inspection service, auditing of pay rolls, and adjustment or claim service, organization and coordination of service, regional geographical variations with thinly scattered risks in some areas, etc. Especially during the depression, excessive overhead, where it existed, was due to such causes rather than to the loading of cost with "profit" since it is claimed that most of the stock companies lost money on workmen's compensation insurance during recent years.

⁹ In the Bureau of Labor Statistics survey of workmen's compensation administration and insurance, some of the tests of administrative cost and adequacy are objective, while others are subjective and involve expressions of opinion from qualified experts actually in charge of the operations studied. For example, the officer in charge of a department may be asked, at the close of the factual study, if in his opinion his personnel is adequate, measured by an ideal standard of service. Replies to such questions are confidential; hence when such an opinion is quoted, the name of the State is not disclosed.

¹⁰ U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 301, p. 5.

This deficient support, which in most States had been bad enough but enduring prior to 1929, was further reduced during the depression. In consequence, many State administrations were slowed down and weakened. Some branches of service were lowered from a professional to a clerical status, or were altogether wrecked. Indeed, it is greatly to the credit of the workmen's compensation commissions that, in the face of such difficulties, they were able to carry on their administration well enough to avoid a revolt of the labor movement against the commission administration of workmen's compensation.

As long as it seemed necessary, the workmen's compensation commissions accepted salary cuts and curtailment of personnel. The year 1935, however, was marked by a trend toward the restoration of essential services. Some commissions, surveying the impairment of service in their States, are now giving thought to the renovation and perfecting of workmen's compensation administration and are seeking methods of financing which will not be subject to destructive fluctuations such as those experienced in recent years.

The outstanding question is, What service shall be rendered and how is it to be financed? From this point of view, it is apparent that the depression years 1929-34 have made a distinct contribution to the development of workmen's compensation administration in the United States, by so exaggerating certain existing defects in the law and administration as to compel attention to the necessary remedies.

Chief among the constructive contributions made by the depression to the development of workmen's compensation administration are the investigations or audits¹¹ made in certain States by outside actuaries of accredited ability. The most striking feature of such audits was the uncovering of heavy losses, traceable to deficient administration, which outweighed the cost of the administration itself. Such evidence that an adequate administration is more economical than a deficient, poorly supported administration, gives impetus to the movement to place the administrative cost of workmen's compensation service upon an efficiency basis.¹²

In a recent report the statement is made: "It is distinctly apparent

¹¹ Since the administrative functions in most exclusive fund States are a unit, an audit of the fund would usually result in recommendations relating to the administration as a whole as well as to the conduct of the specific insurance functions.

¹² As samples of actuarial reports and reports of investigating committees made in States at the instance of governors, legislatures, or voluntary groups, see Actuarial Survey, Ohio State Insurance Fund, Report to Governor's Investigating Committee, Workmen's Compensation Law, Nov. 26, 1934, New York, Woodward & Fondiller, Inc.; and Ohio Government Survey Committee, Booklet No. R7, The Industrial Commission, Columbus. In other States there have been important actuarial reports made directly to workmen's compensation commissions. Some of these reports are held to be confidential, but most of them reach the same conclusions. As contributions to the literature of workmen's compensation administration and insurance, some of the actuarial reports are especially valuable because they are the work of specialists in this type of insurance. While some of the reports of investigations made by others than specialists in workmen's compensation administration contain excellent material, such reports are sometimes vitiated by the lack of expert knowledge, and may contain suggestions which if acted upon would make a bad situation worse.

that the major difficulty [of compensation administration] has been inadequate legislative appropriations for proper functioning." As a typical instance of losses due to undermanned departments, that report points out that "a test study in Cuyahoga County indicates that \$1,500,000 annually would accrue to the fund if pay-roll audits were kept up to date." This one item of loss is greater than the entire legislative appropriation for the support of the commission and fund in that State. "The appropriation measure carried \$933,593 for the industrial commission for 1935," of which amount items totaling \$58,700 were vetoed.¹³ This report is the more significant as a recognition of the imperative need for adequate financing of workmen's compensation administration, because it recommended increased appropriations for that service at the same time that the agency which made the report was urging economies in certain other State departments.

In view of the fact that many branches of public service have been cut to the bone, in the name of economy, workmen's compensation commissions have been reluctant to demand preferential treatment in the matter of appropriations. But the function of insurance is to act as a stabilizer. Such a function is especially needed in times of industrial fluctuation. To cut an insurance administration drastically at such a time hampers its power to render the very service for which it was created. If the depression experience in relation to the financing of workmen's compensation administration has taught any one lesson, that lesson is the necessity for permitting commissions and funds to be self-supporting, for at times the willingness or ability of State legislatures to support the service by general appropriations has failed.

Methods of Financing Workmen's Compensation

The crisis in workmen's compensation administration, precipitated in some States during the depression by the dwindling of appropriations, has emphasized the main division in methods of financing workmen's compensation commissions and funds—the difference between support by legislative appropriations and self-support either through an assessment on the insurance or by the direct use of part of the insurance income for administrative purposes. The simplest way to explain the different effects upon workmen's compensation administration of the two methods of financing is to say that under one method the administration must give what service it can out of a fixed sum of money allowed it, while under the other method the commission ascertains what service it should render and makes up its budget accordingly. In the first case the criterion is what the commission can get; in the second case the criterion is what it should do.

¹³ Ohio Government Survey Committee. *Workmen's Compensation*. Columbus, 1935, pp. 8, 17.

In the first case the commission must "muddle along" as best it can; in the second case the service can be put upon an efficiency basis.

The first method—support by legislative appropriations—almost invariably produces "deficient" administration. It is most unjust to the workmen's compensation commissions in many States to say that their administration is "inefficient" when they are doing all that is possible with the means at their disposal. The correct characterization of the type of administration usually found where the commission and/or fund is supported by legislative appropriation is "deficient" administration.

It is not the purpose of the present study to draw attention to the condition of administration in certain regions by naming the States in which different types of financing are found. To do so would distract attention from an impersonal consideration of the main patterns of financing observed in the course of the Bureau of Labor Statistics' survey. But because so many expert and costly studies have been made of the Ohio administration, there is some justification for citing, by name, the Ohio experience.

It has been said that the support of a commission and/or fund by legislative appropriation almost invariably results in deficient service. The investigators of the Ohio Government Survey Committee examined the service rendered by the divisions of the workmen's compensation administration and found it deficient. A correct measure of that deficiency would show the financial margin between deficient support and adequate support of each phase of the service and of the service as a whole. For such measurements, the ground had been prepared by thorough actuarial studies previously made. In the light of such knowledge, the increased appropriation which would make possible an adequate administration was recommended. The investigation showed that the Ohio commission and fund were rendering the State a service of such great value as to warrant increased expenditures upon administrative operations.

The method of checking the work of a compensation administration, division by division, against a standard of service, is an excellent way of arriving at a correct figure for the budget. The Ohio Government Survey Committee, by this method, sketched a long-range plan and reached the following conclusion:

To carry out the program detailed in these recommendations, including the long-range view, these appropriations will be required:

1935	\$1, 200, 000
1936	1, 442, 800
1937	1, 442, 800
1938	1, 142, 800

These figures represented a large increase over previous appropriations.

It is most unusual to find such an example of long-range planning of administrative allowances or expenditures. But the entire past experience in Ohio, and in most State administrations dependent upon legislative support, proves that it is one thing to make up a budget, and quite a different thing to obtain an appropriation. The long-range planning of administrative expenditure emphasizes the necessity for a different method of financing, since the legislature which makes the appropriation for 1936 has no power over the legislature which will meet in 1938.

There is but one way of assuring progress from deficient to adequate administration, i. e., by changing the method of financing from legislative support to self-support. Such a change at one stroke removes a tax item from the general appropriation list, makes the commission financially autonomous, and helps to remove workmen's compensation administration from the recurring political struggle for the means of survival.

The accumulated experience upon this feature of workmen's compensation administration prompted the formulation of a new "plank" in the platform of standards recommended by the Second National Conference on Labor Legislation, held at Asheville, N. C., October 1935:

Administration. * * * Cost of administration to be defrayed, not by legislative appropriation, but by an assessment on insurance companies and self-insurers. Administrative cost of State funds to be taken directly out of insurance premiums or income.

Because of the desire to simplify, it would be gratifying if one could dispense with further elaboration of the principle that the standard method of financing workmen's compensation commissions and/or funds is now self-support either by assessment or by the use of insurance income for administrative purposes. Unfortunately, workmen's compensation acts and administrative machinery in the States cannot be divided into two main groups or patterns, for they are complicated by the variations in the State acts and practice and sometimes by constitutional obstacles.¹⁴ Mixed patterns are often found. Occasionally, also, the manner in which a plan is carried out nullifies the value of a plan which, on paper, resembles a "standard." The possibility of continuous adequate support of the workmen's compensation administration and/or fund is determined, not by the letter

¹⁴ The effect of constitutional provisions upon workmen's compensation law and administration is a study in itself, upon which a volume could be written. The main difference in constitutional patterns is that between the relatively brief and general form of constitution and the constitution which undertakes to cover every phase of State experience and which is in effect a code of massive proportions. Since social-security legislation represents a relatively new and unforeseen stage of American experience, some of the older State constitutions, especially those which undertake to regulate legislation in detail, present difficulties which are from time to time met by amendments.

of the law alone, but also by the local practice in regard to the resources and expenditures of State agencies.¹⁵

Adjustment to Changing Conditions

The present situation of workmen's compensation administration in the United States as a whole cannot be understood unless one bears in mind the change, which began about 25 years ago, in the scope of State functions. In the nineteenth century State governmental activity was almost exclusively regulatory. At the beginning of the second decade of the twentieth century, many of the States were extending their functions to include certain "service" activities. But the existing constitutions and laws had been framed, perhaps in the eighteenth century, for use in a government restricting itself to regulatory action. Workmen's compensation administration is mainly a "service" function. In some States the necessity for making constitutional and statutory changes was recognized as soon as the demand arose for the enactment of workmen's compensation laws. The process of adaptation to a new function was experimental, and some of the new provisions were necessarily imperfect. Changes made at one point sometimes caused unforeseen difficulties at other points. In studying the present condition of workmen's compensation law and administration in the United States, it is of the utmost importance to understand that what is now taking place in many jurisdictions is the attempted adjustment of the imperfect adaptation of the old body of law and practice to new social and industrial conditions.

This adaptation has taken place more rapidly in some States than in others, but it has already gone far enough to enable all the States to benefit by the experience of those jurisdictions which have made the most successful adaptation of their law and administrative machinery to the exigencies of such a service agency as workmen's compensation administration. Most of the present difficulties of workmen's compensation administration arise out of a transition period of development. The chief imperfections in the adaptation of old legal patterns or in the framing of new patterns may now be clearly seen and expertly remedied.

Some of the earlier laws setting up workmen's compensation commissions and/or funds were marked by the fear of delegating ample authority to those responsible for the conduct of compensation administration and insurance. The habit of restricting the delegation

¹⁵ An interesting illustration of such a local practice, found in some States during the depression, is the "self-denying" clause requiring all State agencies to place themselves upon a parity or equal footing, in a time of shortage of State revenues, regardless of their separate departmental resources for support (if any). Under such a clause, employees in a well-financed departments or agencies were expected to share the vicissitudes of the employees in departments suffering from a deficiency of support. Where this "self-denying clause" was found, the professional employees of workmen's compensation administration were sometimes compelled to accept nominal salaries, while clerical salaries would be reduced to the subsistence level, and "service" was cut to a minimum.

of authority to regulatory agencies was applied to the mechanism of the new service agency. Experience soon showed that the new mechanism, when it was so tied up with detailed mandates and restrictions, would not work satisfactorily.¹⁶

Necessity for Self-Direction Plus Self-Support

The method of financing workmen's compensation commissions and/or funds, in any jurisdiction, is the specific method prescribed by the law, as affected by the practice in that jurisdiction either to subject the agency to detailed control or to allow it ample scope for self-direction in its operations. In some States, the compensation act may seem to give a commission powers of self-direction in budget making, which in fact the commission may not exercise. Partial attempts to put workmen's compensation administration upon a better financial basis have shown that, without an elastic provision for budget making, a change in the source of the support of a commission may not remedy the difficulties of the situation. The commission's needs for the power of self-direction and for self-support go together; one without the other does not help much.

The attempt to ease the administrative difficulties of a workmen's compensation administration and/or fund is nullified when the act provides for self-support by assessment or by use of insurance funds for administrative expense, but compels the commission nevertheless to have its budget approved or an appropriation made by the legislature. This is especially true where the budget to be approved by the legislature is a "line item," i. e., a detailed analysis of proposed expenditures. In such a case, a workmen's compensation commission, even though its expenditures are reimbursed by an assessment upon insurance carriers, may be unable to hire an additional stenographer or increase the salary of an employee until the next session of the legislature convenes and a new budget is approved and a covering appropriation is made.¹⁷ Some States have avoided

¹⁶ For example, one of the first acts providing for a State fund contained detailed instructions upon rate making and the handling of insurance revenues. A business cycle, with the attendant acute fluctuation in receipts, was not foreseen by the lawmakers. The need for elasticity in emergencies was overlooked. In consequence, many of the classifications into which the fund was rigidly divided became insolvent during the depression, yet there was no method by which the fund as a whole could lend to its own subdivisions without overstepping the law. Such detailed regulation put the commission in a most embarrassing situation. It was compelled to throw a maximum burden of insurance cost upon employers when these were least able to bear it. Moreover, to escape the risk of complete insolvency, it was constrained to guard its compensation awards so closely as to antagonize labor. The hostility of both employers and workmen was incurred, and the existence of the fund itself was threatened by bills introduced in the legislature.

In sharp contrast with this experience is that of a certain fund, unhampered by detailed restrictions, which was able to take the unusual step of reducing its insurance rates, at the depth of the depression, without curtailing its awards, and thus ease an emergency condition without impairing its solvency. The names of these two funds are withheld because the aim of the present study is to compare methods rather than point out conditions in different jurisdictions.

¹⁷ Abundant examples of the crippling of the functions of workmen's compensation administration by "line-item" budgets may be found. For instance, one commission had discontinued its former practice of notifying injured workmen of their rights because the appropriation had not allowed the office sufficient postage stamps.

such difficulties by adopting a policy which frankly recognizes a difference between service agencies and regulatory agencies, allowing the service agency a maximum of self-direction. Some of the competitive State funds have benefited by such a change of policy in regard to their operations and budget making. The viewpoint is gaining acceptance that if the State goes into the insurance business, the efficient operation of the business necessitates the delegation of responsibility and authority to a properly safeguarded administration. What is involved in the change of legislative attitude toward the powers of workmen's compensation commissions and/or funds is not an abandonment of safeguards upon the administration, but a choice between old methods of safeguarding and new methods adapted to present conditions. For example, prior to the depression of 1929 the auditing of State funds in some jurisdictions was intermittent, weak, and inexpert, while at the same time there was strict legislative control of the budget. The present tendency is to place more reliance on competent audits, while relaxing legislative control of the budget. In short, the trend of development stresses the importance of nonpolitical rather than political checks upon the operations of the commission, and of "locking the door" before "the horse is stolen" instead of afterward. Another example of the newer type of checks upon administration is the provision of an advisory committee for the commission and/or fund. The exigencies of workmen's compensation administration and of the insurance business arise from day to day, and cannot satisfactorily await the convening of a legislature 1 or 2 years hence. The checks necessary for the efficient conduct of such operations are those which are available in the course of the daily business, rather than checks which are applied at intervals of 1 or 2 years with no direct contact during the intermission.

In the case of State funds which have been set up alongside the existing system of private insurance, without displacing stock-company and mutual insurance but on a competitive basis with them, autonomy in budget making has often been allowed. The theory upon which this has been done is that the "competition" of the State fund with private insurance carriers will of itself furnish a check upon its administrative expenditures, which may take the place of a control over the budget by the legislature. But in some cases this autonomy may be subject to an arbitrary maximum limit of expenditure. A typical device is a provision in the act that the fund may not expend, for administrative purposes, more than 10 percent of premium income. This check upon the budget may be further complicated by a specific provision for calculating the percentage; as, for instance, 10 percent of the premium income for the preceding fiscal year.

Such detailed provisions have caused great difficulties. Thus, the budget of a State fund for the year 1934 had to be calculated upon a

percentage of the premium income for 1933. In 1933, the premium income dropped to a very low level. In 1934, the increase of employment naturally expanded the business of the fund, and, in addition, the fund had to take on a heavy load of insurance covering emergency relief workers. In consequence, the administrative expense of the fund leaped beyond the legal maximum. The administrators faced the alternative of refusing to protect the workers by insurance or of violating the law by spending more than the maximum allowed. The commission chose to protect the workers and take the personal risk incident to violating the legal restriction upon administrative expense.

Specific limitations of administrative expense written into workmen's compensation acts have failed to take into account two things: (1) Business cycles with the attendant acute fluctuation in the volume of insurance coverage and consequent fluctuation in receipts; and (2) the scope of service which, according to advancing standards, should be rendered by commissions and funds. Such arbitrary limitations upon budgets have compelled sudden reductions in the working personnel of commissions and funds, especially during the depression. As an illustration of the difficulties caused by such detailed limitations in acts, one may cite the experience in a State where the commission was compelled to drop from its working force all of the referees.¹⁸ Fortunately, after this commission had operated for a period of 6 months without the services of referees for adjudicating claims, a change in receipts or in legislative authorization made possible the reemployment of these indispensable agents in workmen's compensation administration.

Among the mixed patterns of financial support is the method of self-support for a competitive fund, coexisting with support of the workmen's compensation commission by legislative appropriation. This may result in a fluctuating provision for the commission administration alongside a relatively stable administration of the fund.

There are historic examples of the effect of this dual method. In one State, the early popular enthusiasm for workmen's compensation administration, following the enactment of the law, assured adequate appropriations. An unusually expert administration was built up. Later, at one stroke, the appropriation was cut in two. Some features of the compensation administration had to be discontinued, with the wholesale dismissal of employees. More than 10 years later the uncertainty of appropriations to pay the salaries of employees led the personnel of the workmen's compensation administration to adopt the plan of paying into a common pool a percentage of their salaries, so that if the appropriation failed, some of the employees, instead of

¹⁸ Officers who conduct hearings upon claims for compensation. To do such work intelligently, a considerable period of training is needed.

being forced out, could get their support from the common pool. The fluctuation of legislative appropriations has not only seriously hampered the work of the commission at times, but has made uncertain the tenure of employment even for employees with a civil-service status.

One of the chief defects in the legislative-appropriation method is the lack of continuity of gubernatorial policy in the States. At the present stage of development of our administrative technique, there may be a reversal of fiscal policy with each change in occupancy of the governor's chair. Such variations of policy have had at times disastrous effects upon the relatively fixed needs of the workmen's compensation system, and at all times have introduced an element of insecurity not conducive to the development of personnel efficiency.¹⁹

The chief methods of supporting the workmen's compensation administration and funds may be summarized as follows:

Legislative appropriation from general funds, without reimbursement from an assessment upon the insurance or in any other way. (Such a provision is, in effect, a subsidy to employers, relieving them of a customary part of the expense of workmen's compensation coverage.)

Legislative appropriation from general funds for the support of the commission, the expenditure to be repaid by an assessment upon insurance carriers and self-insurers. (States have been found where self-insurers are overlooked in the taxing provision and consequently contribute nothing to the administration.)

Support of the commission by assessment upon insurance, with the amount of the budget, or expenditure, fixed by legislative determination, or limited by the act.

Self-support subject to approval of the budget by the Governor, budget committee, legislature, or other control agency.

The Ontario Method

An example of almost complete autonomy, in regard to administrative expense, is found in the Workmen's Compensation Act of Ontario (sec. 95).

The board shall in every year assess and levy upon the employers in each of the classes such percentage of pay roll * * * as it shall deem sufficient to pay the compensation during the current year in respect of injuries to workmen * * * and to provide and pay the expenses of the board in the administration.

No budget is made up for submission to any outside authority. The expenses of administration are taken out of the insurance receipts. The act authorizes the board to appoint the necessary officers and employees, and "subject to the approval of the lieutenant-governor in council," fix their salaries (sec. 66). As a matter of policy the board also submits to the lieutenant-governor in council, for approval, any appreciable new expenditures.

¹⁹ Employees in some States have come to accept such a condition of insecurity as a necessary aspect of their employment. An employee in one State, which was visited during an election, said: "We never resign or are discharged. We all go out automatically after each election."

The Ontario practice shows how experience has led to the selective use of only one out of two available means of support. The Ontario act has since its passage in 1914 permitted a dual method of support, i. e., self-support, supplemented by aid from the consolidated revenue fund (sec. 77):

To assist in defraying the expenses incurred in the administration * * * there shall be paid to the board out of the consolidated revenue fund such annual sum not exceeding \$100,000 as the lieutenant-governor in council may direct.

This provision for supplementary support is now inoperative. In the main it was discontinued in 1923, although the salaries of the board members were so provided for until 1928. The Ontario administration chose complete self-support rather than self-support plus aid from the Province. This is of interest because in some States the question is asked, when the standard of self-support is considered, whether the commissioners or board should not be excepted from the rule and continue to receive their salaries from the general appropriation.

Experience points to complete administrative self-support as essential to efficiency in workmen's compensation administration and the management of funds. This need has been crystallized into a specific recommendation by the Second National Conference on Labor Legislation. The general adoption of the correct legal and administrative devices needed for freeing compensation administration from dependence upon legislative support will put an end to a condition which, as long ago as 1922, was recognized as "probably the greatest handicap suffered by State funds and industrial commissions."

Chapter 10.—Cooperation of Workmen's Compensation Administrations With Rehabilitation Agencies¹

When the first workmen's compensation laws were enacted in the United States, more than 20 years ago, the main task in the minds of the legislators was to find a way to provide prompt medical and financial aid to injured workmen. These laws gave great impetus to the "safety" or accident-prevention movement, because the excessive number and severity of accidents meant high insurance costs to the employer. For the first time in our history a definite money value was set upon the loss of a worker's limb or life, and humane sentiments were reinforced by economic considerations. The work of the board or commission administering the workmen's compensation act expanded to include either direct activity in accident prevention or cooperation with State and private agencies charged with that task. But even with accident-prevention activity and attention to giving injured workmen medical and financial aid the program of service to victims of industrial accidents was still incomplete.

The rehabilitation of soldiers wounded during the World War threw a strong light upon the lack of such service to injured workmen. A demand that injured workers be put upon the same basis as wounded soldiers and given equal opportunities for restoration to vocational activity compelled the workmen's compensation administrations to consider the injured worker's need for "rehabilitation." Such rehabilitation is defined as "the rendering of a physically handicapped person fit to engage in a remunerative occupation. The goal is to adapt such persons by special training, advice, and assistance, to an occupation in which they may find employment."²

As a rule, the early compensation acts provided meager financial benefits and limited medical aid. The workmen's compensation often stopped before his reemployment began. Liberalizing the financial benefits to injured workers did not completely fill this gap. If the workman was to be restored as nearly as possible to his condition before he was injured, it was evident that something more than a pension was needed. He must be refitted for an active, productive life, instead of being left a dependent invalid.

A few States, acting independently took prompt steps to include rehabilitation in the scope of service rendered by the workmen's compensation administration. But such service was upon an uncertain basis of support, was in danger of being cut off by fluctuating

¹ This chapter was published as an article in the *Monthly Labor Review*, February 1936. It has been revised to harmonize with data available in 1938.

² Bowers, E. L.: *Is it Safe to Work?* Boston and New York, Houghton Mifflin Co., 1930, p. 115.

appropriations, and also lacked an adequate personnel and supervision. The necessity for Federal cooperation in the program was soon recognized.

The Federal Vocational Act of 1920 met this need. It provided a means for the vocational rehabilitation of disabled persons, whatever the cause of their disability, and encouraged the organization of a service in which the States and the Federal Government would cooperate. After the national Vocational Rehabilitation Act became effective in June 1920 and the States began to accept its benefits and to organize their rehabilitation services, State boards for vocational education and State compensation agencies entered into agreements to cooperate to the end of making the rehabilitation service practical and effective for persons disabled as a result of industrial accidents.³

A suggested plan of cooperation between the workmen's compensation administration and the rehabilitation agency was drawn up by the Federal Board for Vocational Education.⁴ The plan called for the interchange of certain information by the rehabilitation and compensation agencies and the joint promotion of a program of service to injured persons.

Such cooperation in rehabilitation is the newest and one of the most promising phases of workmen's compensation administration. The degree to which this plan succeeds is one measurement of the efficiency of workmen's compensation administration in the rehabilitation service. The technic and devices employed in such cooperation were, therefore, given detailed study in the survey of workmen's compensation administration and insurance. This survey was begun in 1934, and before the close of the following year 23 States and the Province of Ontario had been visited. In some cases it was found that coordination was "on paper" only. In other instances, however, excellent cooperation prevailed. Further progress is now being made.

The purpose of the Bureau's study is to throw light upon the effectiveness of legal and administrative devices, rather than to invite comparison between localities. Conclusions arrived at are based upon the entire experience in all the regions visited.

The first step in the survey was the preparation of a comprehensive outline of the points to be covered. This was submitted, for criticism, to outstanding specialists in workmen's compensation administration. The revised outline was used as a guide during personal interviews and conferences. In studying the rehabilitation coordination all of the allied agencies were visited. Clinics were inspected. Tentative conclusions, arrived at after visiting 12 States, were subjected to the test of conference presentation and discussion. After

³ Federal Board for Vocational Education Bull. 126: Workmen's Compensation Legislation in Relation to Vocational Rehabilitation. Washington, 1927, p. 9.

⁴ The Federal Board furnishes information and supervisory service to the States through regional supervisors, and has on its staff an officer who specializes in workmen's compensation problems.

23 States and the Province of Ontario had been visited, conclusions were submitted in writing to supervisory officers and specialists in rehabilitation. The conclusions so tested and approved are presented in this article.

An outline of the situation as a whole makes the details of an adequate cooperative program more easily understood. A general and comprehensive view of existing conditions shows that the main reasons for the incomplete utilization of rehabilitation opportunities are:

(1) Failure of States to accept the Federal legislation; failure of States accepting that legislation adequately to match the Federal funds available for rehabilitation work; insufficient rehabilitation staffs in such States for handling the case loads; lack of sufficient diversified equipment for rehabilitation needs.

(2) Understaffing of workmen's compensation personnel, caused by cuts in budgets as an economy measure or by the unsatisfactory method of financing the compensation administration.

(3) Recurrent political turn-over of personnel in some States, with the resulting inexperience and lack of knowledge about either workmen's compensation or rehabilitation administration.

(4) Imperfect understanding of the technique of cooperation; and, to a minor degree, jurisdictional conflicts. In some cases, neglect of the rehabilitation agency to cultivate a close relationship with the compensation commission. In some cases, lump-sum settlements which have proved to be obstacles to rehabilitation.

(5) Gaps in the workmen's compensation acts, such as lack of second injury funds or of special rehabilitation funds.

(6) Provisions in the workmen's compensation acts or rules for rating of injuries and wage computations, as a result of which the workmen do not cooperate in their own rehabilitation for fear of losing part or all of their compensation.

(7) Popular ignorance in regard to the provision for rehabilitation.

This, as noted above, is an administrative study. It is still too early in the history of rehabilitation experience in the United States to make a satisfactory statistical study of the subject. The reason for this is that the statistical proof or measurements must take into account the earnings of rehabilitants over a period of 10 to 20 years, in order to show adequately the relation of administrative cost to results. Since we do not have records, on a large scale, of the earnings of rehabilitated persons during a long period of years, most of the present statistical efforts to show the great social gains effected by rehabilitation have been based upon an assumption that probable future earnings of persons rehabilitated will amount to the figure shown in the tabulations. There is, however, sufficient evidence of a nonstatistical type, partly in the world-wide recognition of the principle of rehabilitation and partly from numerous case studies in which earning power has clearly been the result of a rehabilitation program. In this study information has been gained mainly from wide observation of administrative performance and the consideration of many different points of view. The success of such a method depends upon the coop-

eration in the study of local and regional officials. The readiness of workmen's compensation and rehabilitation officials to show what they are doing and to explain their methods and the results obtained has expedited the survey and supplied the factual basis upon which its conclusions rest. Proper means were used to safeguard against any bias or undue optimism on the part of the officials.

The law and practice essential to efficient administration will here be considered point by point.

Effect of State Law Upon Cooperation for Rehabilitation

A prerequisite to complete cooperation for rehabilitation is a workmen's compensation act with standard provisions affecting rehabilitation. Some of the points which should be included are discussed below.

(1) Where the act defines the scope of duties of the workmen's compensation commission, cooperation in the rehabilitation of injured workmen should be mentioned. The act should indicate in general terms the full scope of service to be rendered by a workmen's compensation administration. The reason therefor is evident from the fact that in one State the scope of service to be performed by the compensation commission was so narrowly defined by the act as to lead an administrative officer to say, when describing his duties: "I am not interested in accident prevention." The language of the act should make it plain to everyone that the workmen's compensation commission is interested not only in passing upon claims for compensation but in preventing accidents and in fostering the rehabilitation of injured workers.

(2) A satisfactory workmen's compensation act should provide for a "second-injury fund" and a "rehabilitation fund," to be supported from death benefits in cases where there are no dependents, and from payments in first major-injury cases.⁵

The "second-injury fund" facilitates the reemployment of an injured worker. A workman who has lost one eye or one arm, for instance, will be given a total-disability rating if he loses the second eye or the second arm. Consequently, where there is no "second-injury fund" to take care of the excess liability in such cases, employers and insurance carriers may object to reemploying a partially disabled workman, because the compensation award in event of a second injury may be out of proportion to that injury considered by itself.

There are two stages in the recovery of an injured workman—his physical recovery and his restoration to earning capacity and oppor-

⁵ In most instances such special funds are maintained by payments in no-dependency fatal cases. But under the Wisconsin act (sec. 102.59) there is a payment of \$75 in some permanent partial injury cases. In Idaho there is an additional payment of 2 percent in specific injury cases (sec. 6234a). In Minnesota there is a payment into the "special compensation fund" both in no-dependency fatal cases and in case of some permanent partial disabilities (sec. 4276).

tunity. The latter means something more than the mere return of the injured person to work, since, without the aid of rehabilitation, he may have to go back to work on too low a basis or at tasks unsuited to his ability. The "rehabilitation fund" facilitates the vocational recovery of an injured workman by providing extra compensation to cover his increased living expenses during the period of vocational readjustment or retraining. Such a fund may also be drawn upon for supplementary or extraordinary expenses connected with rehabilitation, which are not provided for by the routine appropriations of the State rehabilitation agency. Thus, the existence of such a special fund, in the State of Arizona, provided a training trip to Chicago and New York for a policeman whose trigger finger had been shot off in an encounter with a burglar, so that he was disabled for the duties of a patrolman. The special training fitted the injured man for successful "identification work" with the police department.⁶

In several jurisdictions special rehabilitation funds controlled by the workmen's compensation commissions have been looked upon as reserve funds and allowed to pile up unused. Such accumulations attract the attention of budget makers and legislators, and may be diverted from their special objectives and used as a substitute for legislative appropriations for general administration. In drafting the section of a workmen's compensation act which sets up a "rehabilitation fund," the purposes for which the fund may be used should be carefully defined. Freer expenditure of this special fund for current rehabilitation needs is of course one of the best safeguards against the loss or diversion of the rehabilitation assets.

(3) In addition to surgical care, the workman who has suffered an amputation may need an artificial limb, and he will not be altogether ready for retraining until this has been supplied. A provision in the workmen's compensation act for furnishing, as a part of the medical aid, such artificial members and appliances as may be needed, expedites the work of the rehabilitation agency in handling industrial-injury cases and relieves the strain upon rehabilitation funds, because the injured workmen then come to the supervisor of rehabilitation prepared for immediate training or placement.

(4) On the average, the financial compensation received by an injured worker is at best only about two-thirds of his customary wages. As a rule the entire earnings of the worker are needed for the support of his family if he has dependents. So the workman has to deprive

⁶ To persons not familiar with the terminology of workmen's compensation the various uses of the word "fund" may be confusing. The literature of the subject contains frequent reference to "competitive State fund," "exclusive State fund," "second-injury fund," and "rehabilitation fund." The first two terms are applicable in those States in which a State agency has been set up for the underwriting of workmen's compensation risks. Where private insurance carriers are also in the field, as in New York, the State fund is "competitive." Where, as in Ohio, the law does not permit operations in the field of workmen's compensation by private insurance carriers, the fund is "exclusive." The "second-injury fund" and the "rehabilitation fund" are funds for meeting the special needs implied by their names, and are raised as described above.

his family of necessities if he makes any special expenditures upon himself during his period of disability. He may, therefore, refuse the offer of a rehabilitation training course, especially if he has to go elsewhere for it, because of his distress over the problem of maintenance. Again, if the workman's healing period is prolonged, his compensation payments will expire, under the legal provisions now in effect in some States, before he has had time to complete his course of retraining, and, facing destitution, he will quit the training course. For example: If a workman loses part of his hand, and because of infection or for other reasons the hand is very slow in healing, all his compensation may be used up before he is ready for retraining, if he is paid only for the loss of part of his hand. But if he is also paid for his loss of earning power during the healing period, the payments continue for a longer time. This gives him a better chance to retrain himself before the payments stop. A standard workmen's compensation act takes care of this emergency, by providing that compensation shall be paid, not only for the loss of a member, but also for the loss of earning capacity during the healing period.

(5) The method of determining what an injured workman shall receive is called the rating system. A workman may lose his earning power as well as his limb, as the result of an industrial accident. His compensation may be based upon either or both of these losses. The practice varies in different States. If a workman loses a limb or the use of it, and he is paid no compensation for the injury itself but receives only a certain percentage of the difference between what he earned before the injury and what he can earn afterward, he may not be eager to retrain himself and take another job promptly. Under such a law, he thinks that an injustice is done him if his compensation is taken away when he is reemployed, because, even though he may get a job, he has lost a limb and will continue to suffer that deprivation for the remainder of his life. But if he is paid a definite amount for any permanent physical disability, regardless of his pay for whatever work he can obtain thereafter, the injured man has every reason for retraining himself and returning to work promptly.

Because some workmen's compensation acts contain provisions which seem unjust to the injured workman and consequently discourage his participation in the plan for his rehabilitation, one unfinished task in the workmen's compensation field is the formulation of a rating system that will accelerate instead of hinder rehabilitation. Such a system should use both incentives and constraint. One incentive would be a specific amount to be paid in case of loss of members or permanent disability without any deduction, from compensation, on the basis of what the injured person may earn in some future-employment. An additional allowance to cover increased living expenses during retraining is an incentive used in some jurisdictions.

New Jersey has tried the method of constraint, recognizing that "a very serious impediment is encountered in the fact that some disabled persons are unwilling to submit to training. * * * In New Jersey the permanent total disability award ceases after 400 weeks unless the worker shall have submitted to such rehabilitation as may have been ordered by the rehabilitation commission of that State."⁷

Workmen's compensation acts usually provide that if an injured workman refuses to cooperate in the medical plan for his restoration to health, his compensation may be suspended. It seems reasonable also to authorize the workmen's compensation authorities to modify or suspend the compensation of a workman whose refusal to cooperate with his rehabilitation is in their opinion unjustifiable. Research into the best means of securing the hearty cooperation of injured workmen in the program of rehabilitation is needed, to guide the further progress of workmen's compensation legislation and practice at this point.⁸

Necessity for Adequate State Appropriations

Many of the States have not taken full advantage of their opportunity under the plan of cooperation between States and the Federal Government. In States which have only partially matched the available Federal grants, the rehabilitation agency may be undermanned or unsatisfactorily staffed, and the instruments available for rehabilitation relatively meager. Such a condition limits the cooperation between the workmen's compensation commission and the rehabilitation agency, because of the inability of the rehabilitation staff to take care of the cases referred to it.⁹

⁷ Bowers, E. L.: *Is it Safe to Work?* Boston and New York, Houghton Mifflin Co., 1930, p. 127.

⁸ Dr. H. H. Kessler, medical director, New Jersey Rehabilitation Commission, has employed a psychologist who assists in making personality studies of physically handicapped workmen, to determine the psychological factors which are obstacles to eliminating their dependency.

⁹ At the close of 1937, 2 States had not accepted the Federal legislation relating to rehabilitation, 21 had partially matched the available Federal funds, 7 States had completely matched, and 17 States had more than matched the available Federal aid. These States are shown below:

<i>States partially matching Federal allotment</i>			
Alabama	Massachusetts	Oregon	Texas
Arizona	Missouri	Pennsylvania	Utah
Arkansas	Montana	Rhode Island	Washington
Colorado	Nevada	South Carolina	Wyoming
Connecticut	New Hampshire	South Dakota	
Maryland	New Mexico		
<i>States fully matching Federal allotment</i>			
Florida	Louisiana	New York	West Virginia
Idaho	Ohio	North Dakota	
<i>States overmatching Federal allotment</i>			
California	Kentucky	Nebraska	Virginia
Georgia	Maine	New Jersey	Wisconsin
Illinois	Michigan	North Carolina	
Indiana	Minnesota	Oklahoma	
Iowa	Mississippi	Tennessee	
<i>States not cooperating in rehabilitation program</i>			
Delaware	Kansas		

The ability of the rehabilitation agency to serve the workmen's compensation commission meets its most severe test when the so-called "problem" industrial injury cases are faced. Typically difficult cases include the uneducated laborer who has lost an arm, the middle-aged workman who has suffered a back injury and must shift to lighter work for the remainder of his life, the older workman who is nearing unemployability for the heavy work he has always done and which is the only work he understands, and the workman who is rebellious because of his injury and is drifting into a so-called neurosis. These are hard cases for vocational restoration, but the purpose of the rehabilitation program is to provide experts who have learned how to handle difficult cases. Unfortunately, some rehabilitation supervisors avoid the more difficult portion of their case load, accepting the youth of high-school age and rejecting the older injured man who often has a family dependent upon him for support.¹⁰

Where the appropriation for the maintenance of the State rehabilitation agency is inadequate, State directors of rehabilitation are compelled to limit the scope of the work. They will prefer to give attention only to the younger, better-educated, and eager candidates for rehabilitation on the lists furnished by the workmen's compensation commission. It will be impossible to give sufficient study to the problems of placement, or to the perplexities of the injured middle-aged worker who has already reached the border line of industrial obsolescence even though his children may not yet be in high school. No thorough study can be made of the situation of applicants for lump-sum settlements from the workmen's compensation commission. When because of reduced resources the rehabilitation director must "pick and choose" the cases he accepts and must reject many, the workmen's compensation commission may abandon the rehabilitation coordination in discouragement, explaining that it is no use to send injured workmen to the rehabilitation agency because that office is unable to handle its case load.

The Workmen's Stake in the Rehabilitation Program

The emergencies of a technical age are putting a new emphasis upon the value of rehabilitation. A workman no longer is placed securely

¹⁰ California undertook, some years ago, to follow up the awards to widows of industrial accident victims, and give these women vocational guidance if necessary, but because of a drastic cut in appropriations for the workmen's compensation commission this plan could not be carried out. Very inadequate consideration has been given to the problem of vocational readjustment often encountered by the widow of a workman who has been killed. In many States the widow's compensation payments cease after a few years. Such payments are seldom large enough for complete support, especially when the amount of the award has been computed on the workman's part-time employment. In such cases, the widow's allowance is sometimes a mere pittance. The widow may be compelled to change from her vocation of homemaker and seek remunerative employment, for self-support or the support of dependent children, at a time when she is least able to face the ordeal. Where a special rehabilitation fund exists, an allowance for maintenance, during retraining at a vocational school or elsewhere, may well be recommended in such cases. Consideration of an amendment to compensation acts to permit attention to the rehabilitation of the widow of a killed workman is in order.

for life in some small vocational compartment. He may be dislodged at any time from one occupation and compelled to acquire new skills, as old techniques become obsolete and consumer demands change. It is therefore probable that the labor movement may become more and more interested in the rehabilitation agencies.

The injured worker who retrains himself gets a new lease on life. His readiness to remake himself protects him from premature obsolescence. The point of the old saying, "Jack of all trades and master of none," is blunted by the current demand for flexibility, versatility, and the readiness to learn something new. A successful rehabilitation is of benefit to a workman not only vocationally, but also mentally and physically.

Labor has a vital stake in the rehabilitation program. A successful rehabilitation means that the worker who has lost an arm or a leg in the course of his employment does not pay the added penalty of losing also his chance for an active and useful career, or sink into the condition of a passive and dependent member of society. Adequate rehabilitation service costs something but the lack of it costs much more.

Administrative Aspects

The workmen's compensation act and the legislative appropriations may provide a satisfactory basis for efficient rehabilitation service to injured workmen, but even so, the results secured will depend upon the attention given to administrative details of cooperation.

The most common cause of deficient rehabilitation service to injured workmen is delay on the part of the compensation commission in furnishing the rehabilitation agency with the reports of certain types of injuries. This delay may be accidental or intentional. If intentional, it arises out of a theory, sometimes held by compensation commissions, that an injured workman is not a subject for rehabilitation until the physicians and surgeons have finished their service to him and a final award has been made. One may call this a "closure" rehabilitation coordination, as distinguished from a "reporting" coordination. An unfortunate result of this theory and practice is that many injured workmen will have become chronic cases before the rehabilitation officials find them, if they ever find them. Injured workmen frequently move, and where the "closure" coordination is the administrative practice, rehabilitation officials sometimes have great difficulty in locating the disabled men. A timely visit from the rehabilitation officer would save some of these handicapped men from chronic and hopeless drifting.

A prompt reporting coordination is desirable. As soon as accidents of certain types are reported to the workmen's compensation commission, the rehabilitation agency should be notified. A rehabilitation agent can then call on the injured and help, early in the course of the

disability, to start planning the route to vocational recovery. This contact is of great value in maintaining morale as well as in shaping recovery plans.

The rehabilitation agency can render valuable service to the workmen's compensation commission by assisting in the placement of certain types of injured workmen, especially where preliminary job training is necessary. The compensation commission also has much to gain by furnishing the rehabilitation agency the names of applicants for lump-sum settlements, in order that the rehabilitation experts may give the commission advice in such cases if they care to do so. Where that is not done, too often the workman gets the lump sum, spends or loses the money and is then reduced to destitution if not thrown upon relief. The compensation commission, in desperation, sometimes awards lump-sum settlements to troublesome claimants as a means of curing a so-called neurosis. The therapeutic value of lump-sum payments has, however, been challenged.¹¹ The competent rehabilitation agent may in some cases be able to suggest or provide a better means of curing the neurosis by diverting the mind of the sufferer from himself and focusing his attention upon some useful activity. Early attention to injured workmen by rehabilitation agents will prevent many cases of so-called neurosis, especially if a curative workshop is available.

In a satisfactory coordination, the rehabilitation agent will cooperate with the compensation commission by furnishing reports on progress and end results of cases referred to him. The agent will also watch carefully to avoid conflicts of authority. Thus, before telling an injured workman the amount or kind of compensation he should receive, the rehabilitation agent will take up such points with the compensation commission or with the referee handling that particular case. Occasional conferences participated in by the compensation commission, the rehabilitation agent, and the Federal supervisor of rehabilitation for the region will promote a better understanding of the subject and more cordial cooperation of all parties to the rehabilitation plan.

The mechanism available for rehabilitation needs expansion and diversification. There should be more rehabilitation clinics combining, under competent professional direction, physiotherapy and the curative workshop. If special rehabilitation funds controlled by the workmen's compensation commissions are to be used at all for administrative purposes, the maintenance of such clinics should be a pre-

¹¹ New York State Department of Education. Rehabilitation Division. Lump-Sum Settlements in Workmen's Compensation, by Carl Norcross. New York, 1936. The author points out that a distinction must be made between the effect of finality in a settlement and the form in which money is paid. See also Lump-Sum Settlements in Workmen's Compensation in New York in Monthly Labor Review for December 1936, reprinted as U. S. Bureau of Labor Statistics Serial No. R. 481.

ferred expenditure. There should be, of course, an adequate staff of skilled rehabilitation agents, prepared not only to direct the injured workman's vocational retraining, but to help him in employment placement and give him sound advice upon his economic opportunities.

The Bureau of Labor Statistics' survey shows, not only that additional personnel and facilities are needed, but also that the existing facilities are sometimes not used promptly and to the limit of their service. Very cooperative relationships are found in States where frequent contacts are maintained between the workmen's compensation commissioners and the rehabilitation officers. The excellent results obtained in many cases justify the extension and better support of the rehabilitation program.

The task of directing and supervising the cooperation in rehabilitation work between the States and the Federal Government is vested in the Rehabilitation Division of the United States Office of Education. That office aids the perfecting of administrative technique by publications, conferences, personal contacts, and supervision.

Cost of Rehabilitation

The need of aid for persons disabled by injuries is not a new thing, but the World War presented this need on a scale vast enough to arouse public opinion and compel attention to a duty that society had long neglected. Social duty to the handicapped is the true basis of rehabilitation work. But there are still some social duties which are neglected because they are looked upon as expensive and a burden upon the taxpayers. If the theoretical basis of rehabilitation work is social duty, its cash basis is the appropriation that may be voted by a legislative body. For this reason, persons and agencies promoting rehabilitation programs try to show not only that rehabilitation service is a duty but that it is profitable to the individual and to society. In the main, statistics used to show the relation between the cost of rehabilitation and the wage values produced are frankly promotional.

Estimates of the relation of the increased earning power of rehabilitants to the cost of rehabilitation are usually based upon the assumption of continued earning power over a period of 10 or 20 years. If, for the purpose of making an estimate, this assumption is permitted, the analyses prepared or cited by the Rehabilitation Division, United States Office of Education, "show that the cost of rehabilitation was only an insignificant percentage of the increased earning capacity resulting therefrom."¹² On the same conjectural basis one writer has estimated that "the cost of rehabilitation to the govern-

¹² See printed folder, *Why Your State Should Adopt Vocational Rehabilitation (1928)*, also *Vocational Rehabilitation of Disabled Persons*, pp. 8, 9, published by that office.

ments concerned was only a little more than 2 percent of the probable increased earning power during the life of the rehabilitant."¹³

In the field of rehabilitation, one is dealing with a long-term process. Satisfactory precision measurements of results may be available by 1946. Meantime, if scientific accuracy is required, computation must be limited to a comparison of administrative cost with the case load handled by the rehabilitation agencies. This is done in the following table:

TABLE 4.—*Number of Cases and Cost of Rehabilitation, Fiscal Year Ending June 30, 1937*¹

[Data cover States operating under Rehabilitation Act of 1920, exclusive of 2 States not accepting Federal grants in aid, for which the figures are not available]

Item	Number
<i>Number of rehabilitation cases</i>	
Cases of all types, eligible and feasible, in process of training or placement, contacted by rehabilitation agencies.....	42,055
Cases of all types rehabilitated and placed.....	11,091
Industrial accident cases rehabilitated and placed in jobs ²	2,371
Percentage of all cases.....	21.4
<i>Appropriations and expenditures</i>	
Amount	
Federal appropriations available to States, fiscal year 1936-37, for rehabilitation purposes:	
Total.....	\$1,813,116.71
Amount expended in States.....	1,534,552.01
Total amount spent by States accepting Federal law for purposes covered by act (including State appropriations and gifts but excluding amount of Federal aid).....	1,784,544.13
Total expenditures for rehabilitation.....	3,319,096.14

¹ Data by Rehabilitation Division of U. S. Office of Education, from advance figures for the Digest of Annual Reports of State Boards for Vocational Education to the Office of Education, Division of Vocational Education, for the fiscal year ending June 30, 1937.

² Rehabilitation is not considered complete until the person being rehabilitated is placed in employment.

¹³ Bowers, E. L.: *Is it Safe to Work?* Boston and New York, Houghton Mifflin Co., 1930, p. 124. That author is reluctant to apply quantitative measurements to results achieved in rehabilitation, and does so only to meet the demand for such tentative estimates. ("Only the absence of any other method of measurement has led us into a pecuniary valuation of rehabilitation." Pp. 118, 121.)

Appendixes

Appendix 1.—Experience with Silicosis Under Wisconsin Workmen's Compensation Act, 1920 to 1936 ¹

By MAX. D. KOSSORIS, *U. S. Bureau of Labor Statistics*, and O. A. FRIED, *Chief Statistician, Industrial Commission of Wisconsin* ²

Wisconsin was one of the first States to legislate in the field of workmen's compensation, its law becoming effective in 1911. In keeping with the philosophy of the time, the law applied to accidental injuries and proceeded on the theory that compensation for such injuries should be considered as part of the cost of production.

In 1919 the law was amended to include as compensable injuries occupational diseases growing out of and incidental to the employment. The determination of what were occupational diseases was left to the industrial commission. The power of the commission to make such determinations as findings of fact, and apply to them the existing law, was upheld as constitutional by the Supreme Court of Wisconsin in 1924. ³

The second occupational-disease case to reach the State supreme court involved silicosis with superimposed tuberculosis. The court held that in the stonecutting industry, the filling of the lungs with granite dust made employees of this industry "much more, and particularly, susceptible to pulmonary tuberculosis," thus recognizing tuberculosis developed under such circumstances as within the occupational-disease provisions of the workmen's compensation law. ⁴

The *Schaefer case* in 1924 raised a point peculiar to many occupational diseases, and particularly to silicosis—that of lengthy exposure. Generally, in an accidental injury the damage to a worker is inflicted quickly. He falls and breaks an arm. An explosion occurs and he is killed. But silicosis, making the lungs particularly susceptible to pulmonary infections—usually tuberculosis or pneumonia—develops over an extended period of time. The current medical opinion is that the time necessary to develop silicosis depends on several factors: (1) The amount of free silica dust of harmful size in the air breathed by the worker, (2) the rhythm of work on which depends

¹ This section was published as an article in the *Monthly Labor Review*, May 1937.

² For the data dealing with the discussion of the legal phase of Wisconsin's silicosis experience, the Bureau of Labor Statistics is indebted to C. J. Otjen, attorney, of Milwaukee, Wis.

³ *Schaefer & Co. v. Industrial Commission* (1924), 185 Wis. 317, 201 N. W. 396.

⁴ *Wenrich v. Industrial Commission* (1924), 182 Wis. 379, 196 N. W. 824.

the depth of breathing, (3) the length of exposure, and (4) the individual's own power of resistance. While the length of exposure varies for different industries, and within these industries for various occupations, the exposure period necessary to develop a disabling stage of silicosis usually runs into years. During this period, a worker may be exposed to harmful silica dust while working successively for two or more employers. If all of them contributed to ultimate disability resulting from silicosis, which one should be held liable for the benefits to be paid under the workmen's compensation act?

In the *Schaefer case*, the industrial commission had before it the situation of a worker who was suffering from tuberculosis superimposed upon silicosis. The disabled worker, a tool sharpener, was employed concurrently by three separate concerns, each of which exposed him to dangerous silica dust. He had been employed before then by two other employers in the same industry. The commission decided that the compensation due the injured employee should be prorated among the three concerns employing the injured at the time the disability became effective, but denied the contention of these employers that the two earlier employers should be also held liable. The Supreme Court of Wisconsin affirmed the award of the industrial commission, and in connection with this particular point held that "liability attached as of the date of disability," as in the case of traumatic injuries. On the basis of this rule, the industrial commission continued to hold that liability for compensation attached to that employer in whose employment the disabled worker was at the date of disability, even though employment was as short as 3 months in one case and 2 months in another.

The question came up for decision again in 1928, in a case which arose because of a change of insurance carriers during the period of exposure of a worker who had been awarded compensation. The second insurer maintained it was not liable because the time it had carried the risk was too short to have permitted the causation or aggravation of the case of silicosis in question. The supreme court, however, held to its rule and decided that the relative length of exposure was not important, and that inasmuch as the second insurer covered the risk at the date the disability developed, it was liable. The court maintained that any other rule would make it very difficult to administer the occupational-disease provision of the workmen's compensation act. If liability were to be determined as of the date of the inception of disease, the worker would be under the necessity of giving notice of every slight ailment which might be due to incipient stages of occupational diseases and which, sooner or later, might cause disability.⁵ As for the hardship on the insurance

⁵ *Employers Mutual Liability Insurance Co. v. McCormick* (1928), 195 Wis. 410, 217 N. W. 738.

carrier who was caught in such a risk, the court thought that in the long run no harm would be done because the law of averages would equalize such burdens among employers and insurance carriers.

New questions arose, however: If a worker had contracted silicosis while working for one employer, but did not become disabled until after he had entered the employ of a second employer who in no way had contributed to the development or aggravation of silicosis, was the second employer liable just because the date of disability occurred during employment with him? The court answered in the negative, insisting that there must be a causal relationship between the disease and the work of the employee.⁶

But if the second employer was not liable for compensation, could the disabled worker have recourse against the first employer, even though no longer employed by him? The supreme court dealt with this issue in 1933⁷ in a case involving not silicosis but another occupational disease, dermatitis. The worker in this case, although experiencing discomfort, kept on working. He did not become disabled until after the employer-employee relationship had terminated. Although there was apparently little question of the existence and cause of the disability, the court held that the former employer was not liable because the employer-employee relationship did not exist on the date when the disability began. In this type of situation, then, the disabled worker had no recourse against anybody.

This decision came during a period when the industrial commission had before it a great many claims for disability resulting from silicosis. Workers who had been exposed to silica dust but were now unemployed or employed only part time, filed claims in the hope of obtaining some income in lieu of wages. Perhaps even more important were the claims filed by workers who had been discharged or refused employment because physical examinations—not always competent—had indicated some silicotic condition. Current public concern with silicosis and relatively large compensation awards had caused employers and insurance carriers to center their attention on silicosis. A considerable number of insurance carriers refused to write or renew policies unless employers subjected their workers to physical examinations and discharged all those with any symptoms indicative of silicosis. Such workers, although not disabled at the time, might later become claimants for compensation. Employment was refused to applicants if they could not pass medical examinations for silicosis. Some self-insurers followed the same practice. As a result, many workers who had been discharged or refused new employments, on the ground that they had silicosis, filed claims.

⁶ *Hayes v. Industrial Commission* (1930), 202 Wis. 218, 231 N. W. 574.

⁷ *Kimmark Rug Corp. v. Industrial Commission* (1933), 210 Wis. 319, 246 N. W. 424.

In 1935, the supreme court had occasion to study this problem and came to the conclusion that an employer could discharge his workers for any silicotic condition, even though developed in his employment.⁸ This ruling meant that an employer could have his employees examined, discharge them for any silicosis discovered, and be free from any liability thereafter, unless a worker could prove actual disability due to silicosis while still in his employment. If the disability occurred while the worker was unemployed, or while he was employed by another company at an occupation free of any silicotic hazard, the worker had lost his right to compensation.

The harshness of these rules led to attempts on the part of claimants to find ways out of the dilemma. Obviously, meritorious claims were being barred. The right of recovery was perceived to hinge on the meaning of "disability." Ingenious attempts were made to distinguish between physical disability and medical disability. "Physical disability" was interpreted to mean actual physical inability to carry on. "Medical disability" was defined as a physical condition such that a medical adviser would have recommended stoppage of work although the employee continued at work. The industrial commission allowed compensation on this theory, interpreting "disability" to mean "medical disability." The court put an end to this procedure, however, by refusing to recognize "medical disability" in the absence of an actual wage loss in the regular course of employment.⁹

Part-time employment, staggered employment, and temporary lay-offs, however, facilitated recovery in compensation for silicotic disability, even though workers could not prove disability while actually working. It was a relatively simple matter to date medical testimony back to a period of temporary idleness of the employee, so as to prove that the disability did occur while the employer-employee relationship existed. Such testimony was hard to disprove. Backed up by medical opinion, the additional point was made that the employee was able to continue at work only because it was staggered, and that he could not have continued under steady work. The court met these contentions by interpreting "disability" to mean wage loss when work was available.¹⁰

To provide for cases in which disability arose subsequent to discharge, the Workmen's Compensation Act was amended in 1933 defining, for occupational diseases, the date of injury as "the last day of work for the last employer whose employment caused disability" (sec. 102.01 (2)). The court, however, held that even under this amendment, wage loss had to be shown, and that in the absence of

⁸ *Motor Castings Co. v. Industrial Commission* (1935), 219 Wis. 204, 262 N.W. 577.

⁹ *Schaefer & Co. v. Industrial Commission* (1936), 220 Wis. 289, 265 N.W. 390, and *North End Foundry Co. cases* (1935), 217 Wis. 363, 258 N.W. 439.

¹⁰ See *Kimlerk Rug Corp. case* and *North End Foundry Co. cases* already cited. There were a number of other cases to the same effect.

wage loss, there was no disability and consequently no recovery in compensation. Before an employee was entitled to compensation, therefore, it was not sufficient to prove medical disability. It was also necessary to prove wage loss, and not simply potential wage loss.¹¹

Summarizing, the effects of the legislative enactments applied by the commission, as approved, modified, or reversed by the Supreme Court of Wisconsin, are as follows:

1. Prior to the amendment in 1935, to have a valid claim, a worker had to prove that his disability occurred while the employer-employee relationship existed.
2. Subsequent to the amendment in 1935, making the date of liability "the last day of work for the last employer whose employment caused disability," an employee who became disabled subsequent to discharge had a valid claim against the last employer whose employment was a contributing factor to his silicosis.
3. Disability prior and subsequent to the 1935 amendment must be demonstrable in wage loss, and not simply potential wage loss or medical disability.
4. The employer in whose employment a worker is at the time of his disability, or the last employer whose employment was a contributing factor in his disability, must bear the full cost of compensation even though that period of employment was not sufficiently long to cause the condition, it being sufficient if it contributed thereto.

As a result of these rules, the 1935 legislature enacted the following amendments to the compensation law:

1. A final award dismissing a claim because the disease had not as yet caused disability was not to be a bar to a claim for disability developed subsequently. (Sec. 102.18.)
2. In cases of discharge from employment because of nondisabling silicosis, thus occasioning wage loss, the commission may allow compensation not to exceed 70 percent of the employee's average annual earning; but a payment of such a benefit was to bar any subsequent recovery from silicotic disability. (Sec. 102.505.)

The purposes of these amendments obviously were (1) to safeguard the right of an employee to be entitled to compensation when actually disabled, even though an earlier claim had been dismissed because no disability could be proved at the earlier date, and (2) to provide for a method of rehabilitating workers barred from following their regular occupations because they had contracted silicosis, even though not disabled. They represent an attempt to couple wage loss with the termination of employment, and thus to meet the standard prescribed by the supreme court.

Neither of these two amendments has as yet run the gauntlet of judicial opinion.

Incidence of Silicosis ¹²

During the 17-year period from 1920 to 1936, 799 claims ¹³ for disability resulting from silicosis were filed and passed upon by the

¹¹ See *Schaefer case* cited above.

¹² The statistical data upon which this discussion is based were obtained from a preliminary tabulation of a comprehensive survey of Wisconsin's silicosis experience by the statistical division of the Industrial Commission of Wisconsin.

¹³ A subsequent recheck has raised this figure to 893.

Industrial Commission of Wisconsin. The 10 cases shown as settled by the commission in 1936, in the preliminary survey, fall short of the number of cases actually filed or settled during that year, estimated to be between 40 and 50. In 469 of the 799 cases compensation was paid, although sometimes in small amounts as compromises in what may be called nuisance cases fostered by ambulance-chasing attorneys. In 330 the claims were disallowed or, in some instances, withdrawn by the claimants themselves. Fully 55 percent of all compensated claims and 62 percent of those rejected were filed in the 2 years 1933 and 1934.

Distribution of Cases, by Industry

The distribution of compensated claims for silicotic disability is shown in table 5 for eight general industry groups. The largest number of cases for any one group is in the machinery industries, with foundries second and stonecutting and quarrying ranking third. This distribution is not particularly significant, however, for the number of cases is obviously dependent upon the number of workers exposed to the danger of developing silicosis. But due to the fact that silicosis is a disease developed over a period of years, it is practically meaningless to compute any exposure rates on the basis of the number of workers exposed at any one time.

It will be noted that about one-third of all cases resulted in death. The highest ratios of fatal to nonfatal cases occurred in the miscellaneous manufacturing and stone industries other than cutting and quarrying—both small in total number of cases. Out of 46 cases in the enameled-ware industry, 27 resulted fatally. In stonecutting and quarrying, 47 out of 99 cases resulted in death. In iron mining exactly one-third of all compensated cases were fatal. These data, however, are not indicative of the relative hazards in the industries covered. The compromised and nuisance cases appeared more largely

TABLE 5.—*Compensated Silicosis Cases in Wisconsin, Classified by Industry, 1920 to 1936*

Industry	Number of cases		
	Fatal	Nonfatal	Total
All industries.....	159	310	469
Mining.....	14	28	42
Stonecutting and quarrying.....	47	52	99
Allied stone industries.....	9	6	15
Enameled-ware industry.....	27	19	46
Foundries.....	14	87	101
Other metal industries.....	5	28	33
Machinery industry (including transportation equipment).....	36	89	125
Miscellaneous manufacturing industries.....	4	1	5

in some industries than in others. The employment status of possible claimants, together with the activity of lawyers who interested themselves in developing claims, should be kept in mind in reading the ratios of fatal to nonfatal cases.

Distribution of Cases, by Occupation

The 469 compensated cases have been classified by occupation in table 6. Molders headed the list with a total of 86 cases, 10 of which were fatal. Stonecutters followed with 69 cases, and of these, 29, or 42 percent, were fatalities. Sand blasters and sandblast-machine operators in foundries accounted for 57 cases, but 52 percent of these were deaths. The death rate of 58 percent for sand blasters, including two cases in the stone industries, was higher than that of any other occupation.

More than half of both fatal and nonfatal cases in the enameled-ware industry occurred to sand blasters, with 3 fatalities for molders. Most of the molder cases were in the foundry group. Also high in the foundry group was the laborer classification with 17 cases, 3 of them fatal, and unclassified occupations with 18 cases, of which 5 were fatal. In other metal industries, molders again

TABLE 6.—Compensated Silicosis Cases in Wisconsin,¹ Classified by Occupation,¹ 1920 to 1936

Occupation	Number of cases		
	Fatal	Nonfatal	Total
All occupations.....	159	310	469
Blacksmiths.....		1	1
Carvers, hand (stone).....	1		1
Chippers.....	12	20	32
Core markers, core blowers.....	2	7	9
Cutters (stone).....	29	40	69
Drillers, machine.....	1		1
Enamellers.....	2	3	2
Foremen, superintendents.....	1	3	4
Grinders, finish.....		6	6
Grinders, rough (machine shop).....	5	5	10
Grinders, snag, rough grinder hands, swing grinders.....		10	10
Laborers.....	10	22	32
Letterers and engravers (stone).....	2	1	3
Miners.....	14	28	42
Molders.....	10	76	86
Polishers, hand (stone).....	4		4
Polishers, machine (stone).....		3	3
Polishers (metal).....	1		1
Sand blasters and sand blast-machine operators (foundry).....	32	25	57
Sand blast-machine operators (stone).....	2		2
Sand dryers.....	1		1
Sand mixers.....	1	7	8
Shake-out men.....		5	5
Stone-crusher operators.....	2		2
Welders, acetylene cutters.....	1	5	6
Unclassified.....	26	46	72

¹ The data to be published by the Industrial Commission of Wisconsin also was to contain an analysis by length of exposure. Errors in the preliminary data made inadvisable the inclusion of such an analysis here.

accounted for 19 out of 36 cases. As in the case of foundries, the proportion of fatalities for this occupation was low, with only 1 out of 19 cases. Sand blasters, on the other hand, had 3 fatalities out of a total of 5 cases.¹⁴

In the machinery group, molders and chippers accounted for 25 and 24 cases respectively, out of a total of 125 cases of silicosis for all occupations. Four out of the 25 molder cases were fatalities, as were 8 out of 24 for chippers. Sand blasters accounted for 18 cases, but of these, 13 were fatal.¹⁴

Table 6 indicates that it is not necessary to work directly with materials involving free silica in order to contract silicosis. That nothing further than exposure is required is shown by the four cases concerning foremen and superintendents. In the reading of this table, however, the above comment concerning the indication of relative hazard is again in point. The filing of claims was influenced by various factors, among them the employment status of possible claimants, attitude of employers and insurance carriers, and activities of claim adjusters and lawyers.

Employment Status When Filing Claim

The number of cases involving claim for disability from silicosis rose slowly until 1932. In that year 62 claims were filed with the industrial commission, 22 of which were disallowed. In the next year, 167 claims were filed, and in 1934, the peak was reached with 298 cases. More than half of these, incidentally, were disallowed, even when early stages of silicosis were found. No compensation was allowed in such cases because the workers concerned could not prove any disability.

Why this concentration of claims in these 2 years, with the relatively sharp drop from 298 claims in 1934 to 100 claims in 1935? The distribution according to the employment status of the claimants when first filing claim with the industrial commission, as shown in table 7, throws some light on the question.¹⁵

In 1933 and 1934, 168 out of 465 claimants, or 36 percent of the total for the 2 years, were unemployed due to lack of work. In 73 of these cases, compensation was paid. In 95 cases, the claims were disallowed, indicating that in perhaps one-third of the total cases in these 2 years workers filed claim in the search of some means of income.

Another high concentration of claims was in the group in which employment was terminated or refused because medical examinations indicated some stage of silicosis. There were 124 such claims in 1933

¹⁴ Because of lack of space, the tabulations upon which these statements are based have been omitted.

¹⁵ Subsequent check of the preliminary data revealed some changes in the distribution of the data, but not sufficient to disturb the general setting or conclusions.

and 1934, more than one-quarter of the total claims filed during these 2 years. In 94 of these cases compensation was paid, and in 30 cases it was disallowed. The practice of discharging employees because a medical examination revealed silicosis, although rarely in a form producing total disability, appears to have been a boomerang, for such employees promptly filed claims for silicosis, and in 76 percent of these cases were able to prove actual disability and to collect compensation.

During these 2 years only 54 claimants were unemployed because of voluntary stoppage of work attributed to silicotic disability. In about half of these cases, compensation was paid. In the other half, compensation was disallowed, usually on the ground that whatever disability there was could not be attributed to silicosis.

TABLE 7.—*Employment Status of Workers in Wisconsin at Time of Filing Claim, 1920 to 1936*

Year	Claimant employed—			Unemployed because of—				Employment status unknown	Claims filed after death, by dependents	Total
	With respondent employer	With subsequent employer	On relief work	Lack of work	Medical examination ¹	Disability ²	Other reasons ³			
Total silicosis claims, 1920 to 1936	29	5	4	190	186	177	30	142	36	799
Compensated claims	21	2	1	89	130	108	18	75	25	469
1920					1					1
1921										
1922					1	2		1		4
1923						2		3		5
1924					2	4		1	2	9
1925	1					2		3		6
1926	1					2	1	3		7
1927	1				1	3		1		6
1928						7		2	1	10
1929	1				2	9		2	1	15
1930	3				1	11		5		20
1931	3			3	4	10		6	4	30
1932	2			5	5	13	2	8	5	40
1933	4	2	1	32	49	9	4	14	1	116
1934	2			41	45	19	9	22	6	144
1935	3			8	18	12	1	3	4	49
1936 ⁴					1	3	1	1	1	7
Noncompensated claims	8	3	3	101	56	69	12	67	11	330
1920										
1921										
1922	1					2		1		4
1923						2				2
1924					1	1				2
1925					1	1		2	1	5
1926		1				2		2		5
1927						1		2	3	6
1928					1	2			1	4
1929					1	2	1	1		5
1930					1	3		1		5
1931					2	7		2		11
1932	2	1			6	7		6		22
1933	2		1	18	10	6	6	8		51
1934	1	1	2	77	20	20	4	28	1	154
1935	1			6	13	12		14	5	51
1936 ⁴	1					1	1			3

¹ Discharge; rejection from available employment. ² Voluntary stoppage of work charged to disability.

³ Discharged as inefficient, out on strike, etc.

⁴ Data incomplete.

The over-all picture for the 17-year period tells much the same story. Out of a total of 799 claims, only 29 were filed by workers still in the employ of the respondent employer. There were five claimants who were employed with an employer subsequent to the one against whom claim was filed, and four claimants were on relief work. In 36 cases, claims were filed by dependents of deceased workers, and in 11 of these compensation was denied.

Fully 190 cases, or nearly one-quarter of the total claims, were filed by workers unemployed because of lack of work. More than half of these cases were disallowed. In nearly again as many cases, 186 claims were made by workers who had been discharged or refused employment after medical examinations disclosed silicosis. In 70 percent of such cases compensation was paid.

In 177 instances claimants had stopped working because of disability. But nearly a third of their claims were refused compensation because the disability was held not due to silicosis. In 30 cases, unemployment was due to such causes as strikes, discharge for inefficiency, and other miscellaneous reasons. Claimants were given compensation in 18 such instances. In 142 claims, the employment status at the time of filing claim could not be determined from the records of the industrial commission.

Cost of Silicosis Cases

The amounts of compensation paid in compensated cases during the period of 1920 to 1936 are shown in table 8. Approximately one-third of the 469 cases were fatalities.

For these 469 cases \$1,614,648 was paid or awarded.¹⁶ Approximately 40 percent of this was paid in compromised settlements. About 28 percent, \$452,138, was paid as compensation for fatalities, and an additional \$18,735 for funeral expenses. Slightly in excess of \$400,000 was paid for permanent, and about \$119,000 for temporary disabilities. The amount paid for medical aid was \$26,589, or 1.6 percent of the total paid for silicotic disability.

The number of claims for fatalities increased from 1 in 1920 to a maximum of 27 in 1934. That same year also saw the peak of non-fatal claims for which compensation was paid, 117.

Of particular significance is the heavy concentration of compensated claims in the 2 years 1933 and 1934. During these 2 years alone were filed more than half of the total compensated cases during the 17-year period analyzed. The average amount per case was lowest in 1934, with \$2,137, and 1933 followed closely with \$2,891. The only other year to show an average as low as these was 1923, during which only five claims were filed. One reason for these low aver-

¹⁶ Recheck of the preliminary data showed a total of \$1,856,663 paid for all silicosis cases from 1920 through 1936. The difference is accounted for mainly by the discovery of 94 additional claims.

ages in 1933 and 1934 was the large number of compromised settlements. It will be noted that the total amount paid in this manner was higher in each of these 2 years than in any other year.

The highest average cost per case was found not for one of the later years during which the public was "silicosis conscious," but for 1925. For six claims filed during that year, the total average cost per case amounted to \$7,291; four of these six cases, however, were fatalities.

The attention paid to the silicosis problem is reflected in the fact that of the allowed claims filed during 1933 and 1934, only 13 and 19 percent, respectively, involved death. In contrast, in the earlier years the percentage of fatal cases to total cases filed was very much higher: 90 percent in 1928, 80 percent in 1929, 85 percent in 1930, 60 percent in 1931, and 60 again in 1932. In 1935, however, the trend of 1933 and 1934 continued, with fatalities only 18 percent of the total.

TABLE 8.—*Compensated Silicosis Cases in Which Payments Were Made in Wisconsin, 1920 to 1936*

Year of first information to industrial commission	Number of cases			Payments for—							Average per case
	Fatal	Non-fatal	Total	Death	Perma-nent dis-ability	Tempo-rary dis-ability	Medi-cal care	Funeral ex-penses	Compro-mise ¹	Total ²	
All cases.....	159	310	469	\$452, 138	\$408, 879	\$119, 313	\$26, 589	\$18, 735	\$588, 994	\$1, 614, 648	\$3, 443
1920 ³	1	—	1	—	—	—	185	200	3, 750	4, 135	4, 135
1922.....	3	1	4	6, 529	—	5, 639	95	200	3, 350	15, 813	3, 953
1923.....	2	3	5	—	—	2, 829	1, 533	—	6, 650	11, 012	2, 202
1924.....	7	2	9	16, 366	—	2, 147	511	600	12, 441	32, 065	3, 563
1925.....	4	2	6	20, 992	14, 050	3, 636	1, 765	800	2, 500	43, 743	7, 291
1926.....	4	3	7	15, 711	2, 500	12, 703	742	600	1, 550	33, 806	4, 829
1927.....	4	2	6	17, 200	20, 809	2, 723	420	800	500	42, 452	7, 075
1928.....	9	1	10	36, 205	1, 950	4, 982	3, 120	1, 350	6, 800	54, 407	5, 441
1929.....	12	3	15	65, 130	4, 742	11, 358	2, 706	2, 200	7, 000	93, 136	6, 209
1930.....	17	3	20	68, 004	—	14, 095	4, 073	2, 795	15, 800	105, 367	5, 268
1931.....	18	12	30	71, 467	30, 681	15, 162	4, 541	2, 550	21, 225	145, 626	4, 854
1932.....	24	16	40	55, 443	46, 219	28, 670	2, 043	2, 640	58, 440	193, 455	4, 836
1933.....	15	101	116	36, 288	102, 987	10, 876	1, 177	1, 800	182, 261	335, 389	2, 891
1934.....	27	117	144	32, 272	80, 063	1, 534	1, 299	1, 400	191, 226	307, 794	2, 137
1935.....	9	40	49	4, 531	78, 836	1, 869	2, 176	400	71, 501	159, 313	3, 251
1936 ⁴	3	4	7	6, 000	26, 042	490	203	400	4, 000	37, 135	5, 305

¹ It was not possible to separate the amounts paid as compromise into payments for various types of disabilities and medical and funeral expenses.

² More complete data showed a total of \$1,856,663 paid from 1920 through 1936.

³ No silicosis claims filed in 1921.

⁴ Data incomplete.

A comparison is given for the cost of all injury cases and silicosis cases in table 9 for the period from 1920 through 1934. The total paid as indemnity for 285,742 compensated claims was \$47,968,891. The total paid for 413 silicosis cases was \$1,393,990. The entire cost for all injuries, i. e., all indemnities plus medical aid, was \$63,201,928. The cost for silicosis cases was \$1,418,200. Whereas the average total cost per nonsilicosis injury was \$216.54, the average cost per case of silicosis was \$3,433.90—nearly 16 times as high.

Of interest also is the comparison of total silicosis cost with total all injuries cost. In 1920, the cost of silicosis claims filed during the year was 0.16 percent of the total cost for the year. The percentage climbed steadily, reaching 1.06 in 1928, 3.17 in 1931, 4.75 in 1932, 9.40 in 1933, and then declined somewhat to 8.80 in 1934. For the entire 15-year period, silicosis averaged 2.23 percent of the total cost. But until 1931, for 11 years, the percentage remained at less than 2, and for 8 of these years, below 1 percent. Contrasted with these figures, the percentages for the 4-year period from 1931 through 1934 show very large increases. The most significant reasons for these increases no doubt were unemployment and the rather general practice of discharging employees for silicosis indicated by medical examinations.

TABLE 9.—Comparison of Cost of All Injury Cases and Silicosis Cases in Wisconsin, 1920 to 1934¹

Year	Number of cases		Compensation		Cost of medical care		Total cost			Average cost per case	
	All injuries	Silicosis	All injuries	Silicosis	All injuries	Silicosis	All injuries	Silicosis ¹		Non-silicosis ²	Silicosis
								Amount	Percent of total		
Total	285,742	413	\$47,968,891	\$1,393,990	\$15,233,037	\$24,210	\$63,201,928	\$1,418,200	2.24	\$216.54	\$3,433.90
1920	16,246	1	1,970,513	3,960	569,571	185	2,540,084	4,135	.16	156.11	4,135.00
1921	15,898	1	2,257,255	—	661,562	—	2,918,817	—	—	183.60	—
1922	16,705	4	2,410,529	15,718	746,429	95	3,156,958	15,813	.50	188.08	3,953.25
1923	20,941	5	2,794,998	9,479	924,032	1,533	3,719,030	11,012	.30	177.11	2,202.40
1924	22,766	9	3,047,147	31,554	1,153,332	511	4,200,479	32,065	.76	183.17	3,562.78
1925	21,137	6	3,490,021	41,978	1,100,852	1,765	4,590,873	43,743	.95	215.19	7,280.50
1926	22,177	7	3,725,860	33,064	1,122,624	742	4,848,484	38,806	.70	217.17	4,829.43
1927	20,473	6	3,662,406	42,032	1,114,056	420	4,776,462	42,452	.89	231.30	7,075.33
1928	21,818	10	3,885,850	51,287	1,250,216	3,120	5,136,066	54,407	1.06	233.02	5,440.70
1929	22,630	15	4,308,571	90,430	1,433,552	2,706	5,742,123	93,136	1.62	249.79	6,209.07
1930	20,070	20	4,447,141	101,294	1,398,338	4,073	5,845,479	105,367	1.80	286.29	5,268.35
1931	16,943	30	3,486,195	141,085	1,101,978	4,541	4,588,173	145,626	3.17	262.67	4,854.20
1932	16,195	40	3,126,912	191,412	945,953	2,043	4,072,865	193,455	4.75	240.14	4,836.38
1933	14,563	116	2,711,320	334,212	857,992	1,177	3,569,312	335,389	9.40	223.85	2,891.28
1934	17,180	144	2,644,173	306,495	852,550	1,299	3,496,723	307,794	8.80	187.19	2,137.46

¹ Data on all injuries apply to cases settled during the year. Silicosis data apply to settled cases tabulated according to year of filing of claim with industrial commission. The tabulation was made to disclose general trends, but is not to be taken as an accurate measure of annual silicosis cost relative to over-all injury cost, even though percentages to that end are given.

² To arrive at the nonsilicosis data, the silicosis data were deducted from the all injuries data.

In connection with such discharges, three interesting instances may be cited, two of which account for much of the compensation paid or awarded during 1933 and 1934.

One of the self-insured iron-mining companies became very much interested in the silicosis problem and had all of its men examined. Where advanced stages of silicosis were found, fairly good-sized settlements were made with the workers. Where silicosis was found in incipient and less advanced stages, minor settlements were made, even though no disability was present. In all, this one company

made payments in about 100 cases, in most instances without waiting for claims against it to be filed with the industrial commission.

The second instance, with a different motivation, occurred in the metal-industry group and accounted for about 56 claims. The company was discontinuing operations in the State. It had all of its employees examined, and wherever any silicosis was found, advised the filing of claims against its insurance carrier. This one company is reported to have cost its insurance carrier over \$100,000, paid mostly in compromise settlements.

In contrast with the general practice of discharging men wholesale whenever any trace of silicosis was indicated by medical examination—according to reliable reports, a practice often insisted upon by insurance carriers under threat of not renewing coverage—a large, self-insured foundry followed a procedure both more humane and much less costly. All of its employees were examined, and those with silicosis but with no disability were shifted to other occupations devoid of the silicosis hazard. Only one case of advanced silicosis was found, compensation was paid, and the services of the employee terminated. Whereas other concerns in the industry were deluged by claims of silicosis in the wake of their wholesale-discharge policy, this establishment enjoyed peace. And whereas other companies had to hire new workers, this firm kept its experienced men and enjoyed both better efficiency and a better morale among its workers.

Appendix 2.—Principal Features of Workmen's Compensation Laws as of July 1, 1940¹

By CHARLES F. SHARKEY, *U. S. Bureau of Labor Statistics*

At the beginning of 1940 all of the States except two (Arkansas and Mississippi) had compensation laws in effect. In addition, such laws are operative for the benefit of employees in the District of Columbia, Puerto Rico, Alaska, Hawaii, and in the Philippines, and for civil employees of the Federal Government, and for longshoremen and harbor workers. As a result, there are now in operation in the United States no less than 53 independent compensation laws which have been drafted and put into effect over a period of some 30 years. All agree in their main objective, which is the payment of benefits to injured employees or to the dependents of those killed in industry, without regard to the question of negligence. But similarity almost ends here, for the application of the principle presents a great diversity of details in the various laws. This extends not only to the primary factors of the scope of the laws and the amount of compensation payable under them, but also to the matter of making the laws compulsory or voluntary, the securing or not securing of the payments of benefits, the mode of securing such payments (where required), the methods of administration, and the question of election or rejection of the act.

The Legislature of Arkansas adopted a workmen's compensation law in 1939, the effective date of which has been held in abeyance pending the outcome of a referendum vote of the people in November 1940. The principal provisions of the law, however, have been included in this study.

The following comparative analysis touches, as it were, only the high spots, and is limited strictly to the compensation features of these laws, many of which also include provisions regarding safety. The information contained herein has been obtained from a study of the workmen's compensation laws of the various jurisdictions and in some cases by correspondence with the agency administering such laws. In some instances the laws have been modified or clarified by court decisions and administrative rulings; hence, some of the information contained in this article may not follow strictly the text of the law.

For convenience, all workmen's compensation laws in existence at the present time, irrespective of whether the act applies to State,

¹ For report of legislation as of January 1, 1940, see *Monthly Labor Review*, March 1940, pp. 574-600. Current analysis of principal features of workmen's compensation laws appear from time to time, usually at intervals of 1 year, in the *Monthly Labor Review*.

Territorial possession, the District of Columbia, or the Federal Government, are referred to as "State" acts.

Insurance

It has become recognized generally that the only satisfactory method of financing the payment of benefits to injured workmen is through insuring the employer's liability. This may be effected through insurance with a private company or in a State fund. Self-insurance is authorized in most of the States. In such cases an employer must be able to satisfy the compensation board that he is financially able to cover his risks before he is allowed to carry his own insurance.

In the majority of States the employer is allowed to insure in private insurance companies. However, in Nevada, North Dakota, Ohio, Oregon, Puerto Rico, Washington, West Virginia, and Wyoming an exclusive State fund is maintained, and the employers coming under the coverage of the workmen's compensation law are required to insure their risks in this fund, although in Ohio and West Virginia self-insurance is permitted under certain circumstances. In 11 States competitive State funds are maintained; and the employers have the choice of insuring their risks either in the State fund or with private insurance companies or by self-insurance.

Of the acts listed in table 10, it will be noted that 22 are compulsory and 32 are elective. Some of the elective acts, however, are compulsory as to public employees.² In Massachusetts, Nevada, and Pennsylvania contractors on public works are compulsorily covered. In 4 States (Illinois, Maryland, Montana, and Washington) the acts are compulsory as to hazardous employments and elective as to other occupations. The Indiana and Iowa laws are compulsory as to coal mining, while in Massachusetts the statute is quasi-compulsory as to certain industries using dangerous machinery. In Texas the statute is compulsory as to motorbus companies.

State insurance systems exist in 19 States. Of these 8 are monopolistic, and 11 operate on a competitive basis. The Idaho statute seems to contemplate an exclusive State fund, but with an option for self-insurance and the deposit of a surety bond or guaranty contract as the means of satisfying the industrial board as to the security of payments. The reports of the board indicate, however, that in practice the system is competitive, and that approved private companies are permitted to do business in the State. The Ohio and West Virginia laws provide for self-insurance as well as for a State fund; they are, however, listed here as having monopolistic State funds, as no other means of insurance is provided.

² Colorado, Georgia, Indiana, Iowa, Louisiana, Maine, Massachusetts (State only), Michigan, Nebraska, Nevada, New Jersey, North Carolina, Oregon, Pennsylvania, Rhode Island (State only), South Carolina, South Dakota, Vermont, Virginia, and West Virginia.

TABLE 10.—Insurance Requirements of Workmen's Compensation Laws

State	Compensation compulsory or elective	Insurance required in—	
		State fund: Exclusive or competitive	Private companies or by self-insurance
Alabama	Elective		(1).
Alaska	do		(2).
Arizona	Compulsory ³	Competitive	Either.
Arkansas	do		Do.
California	do	Competitive	Do.
Colorado	Elective	do	Do.
Connecticut	do		Do.
Delaware	do		Do.
District of Columbia	Compulsory		Do.
Florida	Elective		Do.
Georgia	do		Do.
Hawaii	Compulsory		Do.
Idaho	do	Competitive	Do.
Illinois	do		Do.
Indiana	Elective		Do.
Iowa	do		Do.
Kansas	do		Do.
Kentucky	do		Do.
Louisiana	do		Do.
Maine	do		Do.
Maryland	Compulsory	Competitive	Do.
Massachusetts	Elective		Private companies.
Michigan	do	Competitive	Either.
Minnesota	Compulsory		Do.
Missouri	Elective		Do.
Montana	Compulsory	Competitive	Do.
Nebraska	Elective ⁴		Do.
Nevada	do	Exclusive	
New Hampshire	do		Self-insurance.
New Jersey	do		Either.
New Mexico	do		Do.
New York	Compulsory	Competitive	Do.
North Carolina	Elective		Do.
North Dakota	Compulsory	Exclusive	
Ohio	do	do	Do.
Oklahoma	do	Competitive	Do.
Oregon	Elective	Exclusive	
Pennsylvania	do	Competitive	Do.
Philippine Islands	Compulsory		Do.
Puerto Rico	do	Exclusive	
Rhode Island	Elective		Do.
South Carolina	do		Do.
South Dakota	do		Do.
Tennessee	do		Do.
Texas	do		Private companies.
Utah	Compulsory	Competitive	Either.
Vermont	Elective		Do.
Virginia	do		Do.
Washington	Compulsory	Exclusive	
West Virginia	Elective	do	Self-insurance.
Wisconsin	Compulsory		Either.
Wyoming	do	Exclusive	
United States: Longshoremen's Act	do		Do.
Civil employees	do	(5)	

¹ No security is required. Insurance is optional.

² No security is required, but in case beneficiary files notice of death claim employer may deposit \$9,000 with clerk of district court or give bond for that amount. In other cases claimant may have writ of attachment issued unless employer files an undertaking in an amount double that sued for.

³ As to employers.

⁴ The State compensation court has ruled that all public employees are subject to the act, without right of election by either the employer or the employee.

⁵ By direct appropriation of Congress.

In the following States exclusive State funds were established when the original laws were enacted: North Dakota (March 5, 1919); Ohio (June 15, 1911); Oregon (November 4, 1913); Washington (March 14, 1911); West Virginia (February 22, 1913); and Wyoming (February 27, 1915). The original act of Nevada did not provide for any insurance, but on July 1, 1913, a new act became effective providing for an exclusive State fund. The Puerto Rico law, as

enacted on April 13, 1916, provided for an exclusive State fund, but in 1928 a new statute authorized employers to insure either in the State fund or with private companies. However, in 1935 this act was repealed and an exclusive State fund was again established.

The laws of the following States as originally enacted provided for a State fund, but in addition permitted insurance with private companies: Colorado (April 10, 1915); Idaho (March 16, 1917); Maryland (April 16, 1914); Michigan (March 20, 1912); Montana (March 8, 1915); New York (December 16, 1913)³; Pennsylvania (June 2, 1915); and Utah (March 15, 1917). The original statute of Arizona did not provide for insurance, but a new law, adopted November 2, 1925, established a competitive State fund. In California a State fund was created, but employers were not required to insure in it or with private companies. However, in 1917 this was remedied by requiring insurance in the fund or with private companies. The original act of Oklahoma provided for private insurance, but by an amendment adopted in 1933, a competitive State fund was established.

Coverage

The compensation laws do not attempt to cover all employments. Railroad employees and other persons engaged in interstate commerce are not covered by the State laws, as interstate commerce comes within the jurisdiction of the Federal Government. Certain employees are also specifically excluded by the various acts. Some laws apply only to employees engaged in hazardous employments. Casual employees are usually excluded, and generally the laws do not apply to persons engaged in agriculture and domestic service. Most of the State laws cover minors and 14 of the acts (Alabama, Illinois, Indiana, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, and Wisconsin) provide extra compensation in the case of injury to minors who were employed illegally. The United States Employees' Compensation Act applies to all civil employees of the United States, employees of the Alaska and Panama Railroads, Panama Canal, and employees of the government of the District of Columbia. Enrollees of the Civilian Conservation Corps are included, as well as relief employees. The Act also covers employees of the Tennessee Valley Authority, and members of the Army and Navy Reserve Corps.

Numerical exemptions.—In 28 States, employers of less than a stipulated number of employees are exempt. However, voluntary elections are usually permitted in such cases and also in regard to those employments classed as not hazardous, when the law covers only hazardous occupations. Table 11 lists the States in which the number of employees determines the coverage.

³ Reenacted on March 16, 1914, because of doubt as to the constitutionality of the former measure.

TABLE 11.—States Making Numerical Exemptions ¹

Employers are exempt who have fewer than—								
2 employ- ees	3 employ- ees	4 employees	5 employees	6 employ- ees	10 employ- ees	11 employ- ees	15 employ- ees	16 employ- ees
Oklahoma	Arizona Florida ³ Kentucky Ohio Texas Utah Wisconsin	Colorado New Mexico ⁴ New York ⁴ Puerto Rico Rhode Island	Alaska Arkansas ⁴ Connecticut Delaware Kansas ⁷ New Hampshire ⁸ North Carolina ⁹ Tennessee	Maine	Georgia	Missouri ² Vermont Virginia	South Caro- lina	Alabama

¹ The following States do not make numerical exemptions: California, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, North Dakota, Oregon, Pennsylvania, Philippines, South Dakota, Washington, West Virginia, Wyoming, and United States (Civil Employees' and Longshoremen's Acts). In some of these States, however, coverage is limited to certain enumerated industries.

² At option of Workmen's Compensation Commission, numerical exemption does not apply in case of hazardous employments.

³ Tractor sawmills and other sawmills employing 10 or less are excluded.

⁴ Numerical exemption does not apply if injury occurs when at work upon any derrick, scaffolding, or pole, or such structure, 10 feet or more above ground.

⁵ Contract for building or building repair work is covered if contractor employs 2 or more employees at any one time.

⁶ Numerical exemption applies only in case of nonhazardous employments. However the 14 groups of hazardous industries are so comprehensive that the numerical exemption seldom applies.

⁷ Numerical exemption does not apply in employment in mines and in building construction.

⁸ Numerical exemption applies only in case of nonhazardous employments.

⁹ Sawmills and logging operators with less than 15 employees are excluded.

Hazardous employments.—In 9 States ⁴ the compensation laws apply only to hazardous employments, but in all of these, except Oklahoma and Wyoming, employers and employees in other occupations are permitted to come under the act. The laws of Kansas, Louisiana, and New Mexico are elective, while those of the other States are compulsory. In Illinois and New York the workmen's compensation acts are compulsory as to hazardous industries and elective as to other employments. In New York, however, the lists of hazardous industries are so comprehensive that practically all employments are compulsorily covered. The New Hampshire act applies only to employers having a specified number of employees, but in hazardous industries the numerical exemptions do not apply. In Missouri the commission may require coverage of hazardous industries without regard to the numerical exemption. In most of these States the industries covered are enumerated, but the list is not complete in several States and in some a blanket clause is used, while in others additions have been made by administrative agencies and the courts.

Public employments.—Employees of the State and its subdivisions and of municipalities are included in 31 States. In several of the States compensation for public employees is compulsory, although it is elective as to private employments. In the following jurisdictions practically all public employees are covered:

⁴ Kansas, Louisiana, Maryland, Montana, New Mexico, Oklahoma, Oregon, Washington, and Wyoming.

Arizona (if receiving not over \$2,400)	Kentucky	Pennsylvania
California	Louisiana	Puerto Rico
Colorado	Maine	South Carolina
Connecticut	Michigan	South Dakota
Florida	Minnesota	Utah
Hawaii (if receiving not over \$2,400)	Montana	Virginia
Idaho	Nebraska	West Virginia
Illinois	Nevada	Wisconsin
Indiana	New Jersey	United States: Federal employees ⁶
Iowa	North Carolina	
	North Dakota	
	Ohio	

Public employees are partially included in the laws of 15 additional States:

Delaware	New Mexico	Rhode Island
Georgia	New York	Texas
Kansas	Oklahoma	Vermont
Maryland	Oregon	Washington
Massachusetts	Philippines	Wyoming

In four States (Alaska, Arkansas, Missouri, and New Hampshire) public employees are excluded, although in Missouri the law authorizes an affirmative acceptance of its provisions by the State, county, etc., and in New Hampshire, the governor and council, upon petition and hearing, may award compensation to State employees. In Alabama, Arkansas, and Tennessee public employees may be covered by voluntary action.

Employments Excluded Specifically

Agriculture and domestic service.—Agricultural employees are excluded, either expressly or impliedly, from the operation of all workmen's compensation laws except in California (but agricultural employment is included in this State only when the employer's pay roll has exceeded \$500 in the preceding year), Connecticut, Hawaii, Illinois, New Jersey, Ohio, Puerto Rico, and Vermont. Domestic servants are also excluded in all States except Connecticut and New Jersey. In California, however, domestic servants working over 52 hours a week are covered, and in New York in cities of over 2,000,000 population private or domestic chauffeurs are subject to the act. In most States employers in these occupations may elect to come within the coverage of the compensation law, although in some States it appears that their exclusion is intended to be absolute. Employees engaged in threshing grain, etc., are specifically covered in Kentucky and Minnesota (commercial threshermen and balers). In South Dakota

¹ This act also covers employees of the District of Columbia

the operation of certain farm machinery for profit is covered, and the Arizona and Philippine acts cover employees engaged in the operation of mechanical implements in agriculture.

Other exclusions.—Employees whose employment is casual and not in the usual course of the employer's trade or business are generally excluded. In a few States employees receiving more than a designated wage are also excluded, and in some States clerical and certain other occupations not considered to be hazardous are not included. Questions involving the coverage of loaned employees, casual employees, and independent contractors have caused much dispute and have been settled in various ways by court decision. The common-law rules determining the master-servant relation or the question of agency have been followed in most instances.

Occupational Diseases

As originally enacted, none of the workmen's compensation acts provided for the payment of benefits for disability resulting from an occupational disease. It is now generally realized, however, that it is just as important for workmen to be protected from occupational diseases as from accidental injuries.

There are three usual methods of covering disability resulting from occupational diseases. Some of the States compensating for occupational diseases list the specific diseases which are compensable, while in other States the law provides compensation for any disability resulting from an occupational disease. In a few States, the workmen's compensation act uses the word "injury" instead of the word "accident" and the courts in some cases have construed this to mean that any injury resulting from an occupational disease is compensable. In Missouri occupational diseases are compensable when both employer and employee elect to be covered, and in Oklahoma the State insurance fund is authorized to insure employers against liability for occupational diseases.

The following 30 States provide for compensation for all occupational diseases or for certain specified ones:

Arkansas	Massachusetts	Philippines.
California	Michigan	Puerto Rico
Connecticut	Minnesota	Rhode Island
Delaware	Missouri	Washington
District of Columbia	Nebraska	West Virginia
Hawaii	New Jersey	Wisconsin
Idaho	New York	United States:
Illinois	North Carolina	Civil Employees' Act
Indiana	North Dakota	Longshoremen's Act
Kentucky	Ohio	
Maryland	Pennsylvania	

Election

There are 32 States which have elective workmen's compensation laws. In the following 23 States election is presumed in the absence of positive rejection, this presumption affecting both the employer and employee:

Alabama	Iowa	Oregon
Alaska	Kansas	Pennsylvania
Colorado	Louisiana	South Carolina
Connecticut	Missouri	South Dakota
Delaware	Nebraska	Tennessee
Florida	New Jersey	Vermont
Georgia	New Mexico	Virginia
Indiana	North Carolina	

In the other elective States the employer must take positive action, but, if he acts, the employee's acceptance is presumed, except in Kentucky, where he must sign an acceptance. The acceptances are filed with designated State authorities in 6 States (Kentucky, Maine, Michigan, Nevada, New Hampshire, and Rhode Island), while the act of securing insurance signifies election in Massachusetts, Texas, and West Virginia.⁶ In Arizona the law is compulsory as to the employer, but the employee may elect not to be covered.

Extraterritorial Effect of the Law

In about two-thirds of the States the workmen's compensation laws are applicable to accidents happening outside of the State. Generally, the law specifies that the contract of hire shall have been made within the State and either that the employee is a resident of the State or that the employer's place of business is within the State. In the other States, the law contains no statement as to whether it applies to accidents happening outside the State, but the courts of some of these States have interpreted the law as being applicable to such accidents.

The different States have various other provisions, presumably enacted in an effort to limit the extraterritorial application of the law, but Indiana declares that the law applies to an accidental injury occurring in another State or in a foreign country; Hawaii provides that jurisdiction of the several boards extends to injuries occurring on vessels operated by residents of the Territory; and Maryland holds the law applicable to miners working in parts of mines extending underground into another State. In Delaware and Pennsylvania the laws are applicable to employees temporarily outside the State for not more than 90 days and performing service for an employer whose place of business is within the State. The Utah law, after stating that the act applies to injuries received outside the State if the workman was hired in the State, also declares that a workman hired outside

⁶ Notice must be posted in place of business.

the State is entitled to compensation under the laws of the State in which he was hired, and is entitled to enforce his rights against his employer in the courts of Utah.

Suits for Damages

Where both parties have accepted the act, suits for damages are generally forbidden, but in New Hampshire (an elective State) after an injury the employee may choose whether he will proceed under the workmen's compensation act or sue for damages at common law. In most of the States having an elective act, if the employer has accepted the act, an employee who has rejected it may sue, but in this case the employer retains the common-law defenses.

Upon failure of the employer to secure payment of compensation or to provide the insurance required by the act or to pay the premiums, the employee may bring an action for damages, with the common-law defenses removed, in the following States:

Arizona	Michigan	Puerto Rico
Arkansas	Minnesota	Rhode Island
California	Missouri	South Carolina
Colorado	Montana	South Dakota
Connecticut	Nebraska	Tennessee
Delaware	Nevada	Texas
District of Columbia	New Mexico	Utah
Florida	New York	Virginia
Indiana	North Carolina	Washington
Iowa	North Dakota ⁷	West Virginia
Kentucky	Ohio	Wyoming
Maryland	Oklahoma	United States: Longshore-
	Oregon	men's Act

In 9 States, if there is an "intent" on the part of the employer to injure, or if the injury is due to his gross negligence or willful misconduct, the employee may bring suit. These States are as follows:

Arizona	New Hampshire ⁸	Utah
Kentucky ⁷	Oregon	Washington
Maryland	Texas	West Virginia.

In the following 15 States, no suits are permitted after both the employer and the employee have accepted the provisions of the compensation act:

Alabama	Illinois ⁷	New Jersey ⁹
Alaska	Kansas	Pennsylvania
Georgia	Louisiana	Philippines
Hawaii	Maine	Vermont
Idaho	Massachusetts	Wisconsin

⁷ An illegally employed minor may elect after injury.

⁸ An employee has option after injury to sue at law or to collect compensation under the act.

⁹ An illegally employed minor may elect after injury. Suits are permitted for a disease not covered by the law (*Smith v. International High Speed Steel Co.*, 120 Atl. 138).

Waiting Period

All of the States except Oregon provide that during a specified period of time immediately following the injury, compensation shall not be paid. This "waiting" time ranges from a minimum of 1 day to a maximum of 14 days, with the majority of the States requiring a 7-day waiting period. The period for which no compensation is paid has no relation to the requirement that medical and hospital care shall be provided, as the employee is entitled to these benefits immediately. In most of the States if the disability continues for a certain number of weeks, the payment of compensation is retroactive to the date of the injury. The number of waiting days required by each State is presented in table 12, and the last column shows the number of weeks of disability required for the payment of compensation from the date of the injury.

TABLE 12.—Waiting Time Required by Each State

No waiting time	1 to 6 days	7 days	10 or 14 days	Compensation paid for waiting period if disability lasts specified time
Oregon	Alaska (1) Florida (4) Illinois (6) Maryland (3) Missouri (3) Oklahoma (5) Rhode Island (3) South Carolina (3) Utah (3) Washington (3) Wisconsin (3) United States: Civil Employees (3)	Arizona Arkansas California ² Connecticut Delaware District of Co- lumbia Georgia Hawaii ³ Idaho Indiana Kansas Kentucky Louisiana Maine ⁴ Massachusetts Michigan ⁵ Minnesota ¹ Montana ³ Nebraska Nevada New Hampshire New Jersey New Mexico New York North Carolina North Dakota Ohio ⁶ Pennsylvania ¹⁰ Philippines ⁴ Puerto Rico ¹¹ South Dakota Tennessee Texas Vermont Virginia West Virginia Wyoming ⁶ United States: Longshoremen	Alabama (14) ¹ Colorado (10) Iowa (14) ³	Alabama (4 weeks) Arizona (2 weeks) Arkansas (4 weeks) Connecticut (4 weeks) Delaware (4 weeks) District of Columbia (7 weeks) Hawaii (7 weeks) Idaho (4 weeks) Illinois (30 days) ⁴ Iowa ⁵ Kentucky (4 weeks) Louisiana (6 weeks) Massachusetts (2 weeks) Michigan (6 weeks) Minnesota (4 weeks) Missouri (4 weeks) Montana (3 weeks) Nebraska (6 weeks) Nevada (1 week) New Hampshire (1 week) New Jersey (7 weeks) New York (5 weeks) North Carolina (4 weeks) North Dakota (1 week) Rhode Island (2 weeks) South Carolina (2 weeks) South Dakota (6 weeks) Tennessee (6 weeks) Texas (4 weeks) Virginia (6 weeks) West Virginia (3 weeks) Wisconsin (10 days) Wyoming (15 days) United States: Longshoremen (7 weeks)

¹ Applies only to temporary disability.
² In case of death, compensation is payable from date of death.
³ Compensation begins on date of injury in case of permanent partial disability.
⁴ If disability period exceeds 4 weeks, waiting period is to be reduced by 4 days, and by 1 additional day for each week the total disability exceeds 4 weeks.
⁵ Total disability, but compensation payable from first day of disability in case of partial disability.
⁶ Applies only to temporary total incapacity.
⁷ If compensation extends beyond such number of weeks after injury, compensation for fifth, sixth, and seventh week is increased by two-thirds.
⁸ In case employee has beneficiary or dependent residing in United States. If there is no such beneficiary or dependent, waiting period is 2 weeks, but if disability continues 6 weeks, compensation payable from date of injury.
⁹ Also, no compensation allowed for the first week of total disability, whenever it may occur.
¹⁰ No compensation to injured "work-relief employees" during first 26 weeks of disability, except in cases of permanent injuries in specific schedule or death.
¹¹ Applies to temporary disability only. No compensation is allowed for first 7 days following date on which employee presents himself to physician for treatment.

Second Injuries

All of the compensation laws except those of Alaska, Louisiana, New Hampshire, Pennsylvania, the Philippines, Puerto Rico, Vermont, and the United States (civil employees) contain specific provisions regarding payment of compensation in second-injury cases.

When an employee has sustained an accident causing the loss of a member of the body and subsequently loses another in a second accident, he may become permanently and totally disabled, thus increasing the amount to be paid in the form of workmen's compensation. The States have enacted certain second-injury provisions to cope with this situation. About half of the State laws provide that compensation shall be apportioned according to the disability resulting from the injury, the last employer paying only that amount which is attributable to the second injury, while other States provide that in determining compensation for the second injury the decreased earning power (because of the first injury) shall be used as a basis in rendering the award.

"Second-injury funds" have been established in a number of States (Arkansas, District of Columbia, Hawaii, Idaho, Illinois, Massachusetts, Minnesota, New Jersey, New York, North Carolina, North Dakota, Ohio, South Carolina, Utah, Wisconsin, and the United States (Longshoremen's Act)). These funds were created so that when a second accident occurs the employer will have to pay only for the second injury, yet the employee is compensated for the disability resulting from the combined injuries, the remainder of the award being paid from the second-injury fund.

The method of raising revenue to sustain the second-injury fund differs in the several States. One method which appears popular and satisfactory is to place in the fund the amounts awarded in fatal cases in which it has been determined that there are no surviving dependents entitled to compensation under the law.

Scale of Compensation

The amounts actually payable under the various compensation acts are determined by three factors: The rate, usually a percentage of the wages; the term or period of payment; and in most States a fixed maximum or weekly total payment. The amount and method of payment also differ according to the type of the injury. The acts prescribe certain payments in case of death and in case of permanent total disability, and also have specific provisions covering permanent partial disability and temporary total disability.¹⁰

¹⁰ For a discussion of the effect, upon the amount actually paid, of the method of determining the wage base of compensation, see chapter 5 of this bulletin.

Percentage of wages.—Alaska,¹¹ Oregon,¹¹ Washington, and Wyoming are the only States which do not base the amount of compensation on the wage received by the injured worker. A few States provide fixed lump sums or pensions for certain injuries, but apply the percentage system to all others. In other States, there are varying percentages for different types of injuries and in some the percentage varies with the conjugal condition and the number of children, but in most cases the prescribed percentage remains uniform for all injuries.

Maximum term and amount.—In the great majority of the laws, different maximum terms or amounts are established. It is obvious that the reduction of a workman's income by one-half or even one-third leaves a large portion of his loss uncompensated. The burden on the employer is restricted further (and transferred necessarily to the injured employee and his family), since the term of payment is fixed in most States not by the period of disability but by an arbitrary maximum; death benefits likewise rarely continue for the period of probable need, as only about 8 or 10 States provide for payment of benefits during widowhood or during the minority of children.

Table 13 shows for the various States the percentage of wages paid, the maximum number of weeks during which benefits are paid, and the limitation of payments as to weekly and total amounts. This information is given in tabular form for injuries causing death, permanent total disability, permanent partial disability, and temporary total disability. In the case of permanent partial disability, in many States compensation is based on a percentage of the wage loss instead of a percentage of average weekly wages.

The limitations are in many cases more restrictive for temporary total disability than for permanent total disability, though where the latter is compensated for life, the former is as a rule compensated during the period of disability. In a few cases the rates for temporary disability are higher than for permanent disability.

Death benefits.—It will be noted that the methods provided for determining compensation for death vary considerably and do not in all cases depend upon the fact that the deceased was an actual financial benefit to his dependents. Most of the States have not been very liberal in prescribing the amount of compensation to be paid to dependents, although several of the laws have been amended in recent years to increase the amount. In Arizona, Nevada, New York, Oregon, Washington, West Virginia, and the United States (Civil Employees' Act), the law provides for the payment of benefits to a widow for life or until remarriage, and in the case of children until a specified age is reached. The majority of the other States have a similar provision but limit the total amount payable. In Utah the industrial commission is given authority to pay benefits indefinitely in meritorious cases. Oklahoma pays no death benefits.

¹¹ Except for temporary disability.

In a few States, the death benefits are limited to monthly payments for a specified period, while others set a total maximum ranging from \$3,000 to \$15,000. The remarriage of the widow usually terminates the benefits in about half of the States, although in a few jurisdictions a lump sum is payable upon remarriage. The experience of some State commissions, as shown in their reports, indicates that a life benefit to the widow with additional amounts for each child under the age of 18 is the best system to adopt in rendering assistance to the dependents following the death of a workman from an industrial accident or disease.

Funeral benefits are provided in all States except Oklahoma, which does not compensate for death. In some States such benefits are given only when there are no beneficiaries.

Disability benefits.—Compensation is paid in four designated classes of disability—permanent total, permanent partial, temporary total, and temporary partial. The term “disability” has been defined in varying ways by the courts in interpreting State compensation laws. Some hold that it means inability to earn wages, or full wages, at the work in which the employee was working at the time of the injury, while other courts have held that it means the inability to perform any kind of work which might be obtained. A few courts have interpreted the term to mean inability to obtain work.

It will be observed that there is an apparent tendency to recognize the greater economic loss in case of permanent total disability than in case of death. Although death benefits continue for life or until the remarriage of the widow in only 7 States, life benefits are paid for permanent total disability in 17 jurisdictions.¹²

TABLE 13.—*Minimum and Maximum Benefits Under Workmen's Compensation Laws, by Extent of Disability and by State, July 1, 1940*

DEATH					
State	Percent- age of wages	Maximum period	Limit of payments		
			Per week		Total maxi- mum ¹
			Minimum	Maxi- mum	
Ala.....	25-65	300 weeks.....	\$5 (or actual wage, if less) ..	\$18. 00	
Alaska.....					\$9,000
Ariz.....	15-66½	Widowhood, or specified minority age of children			
Ark.....	15-65	450 weeks.....	\$7.....	20. 00	3 7,000
Calif.....	65		\$6.50.....	25. 00	7,275
Colo.....	50	312 weeks.....	\$5.....	14. 00	4,375
Conn.....	50	do.....	\$7.....	25. 00	7,800
Del.....	15-60	285 weeks; thereafter, to children till specified age.	Weekly wage deemed not under \$10.	18. 00	5,130

¹ Total maximum payments computed by Bureau of Labor Statistics, where not stipulated by law.

² In case of uncomplicated silicosis or asbestosis, maximum is \$500 if death or disablement occurs in first month set becomes effective and maximum increases \$50 each month until limits provided for accidents are reached.

¹² Arizona, California (for 70 to 100 percent total disability), Colorado, Idaho, Illinois, Massachusetts, Missouri, Nebraska, Nevada, New York, Ohio, Oregon, Utah, Washington, West Virginia, Wisconsin, and United States (civil employees).

TABLE 13.—Minimum and Maximum Benefits Under Workmen's Compensation Laws, by Extent of Disability and by State, July 1, 1940—Continued

DEATH—Continued

State	Percent- age of wages	Maximum period	Limit of payments		
			Per week		Total maxi- mum
			Minimum	Maxi- mum	
D. C.	15-66%	Widowhood or specified minority age of children.	Weekly wage deemed not under \$12.	\$25.00	\$7,500
Fla.	35-60	350 weeks.	\$6 (or actual wage, if less).	18.00	5,000
Ga.	42½	300 weeks.			
Hawaii	25-60	312 weeks; thereafter to children to age 16 (for 104 weeks more, if unmarried and incapable).	Weekly wage deemed not under \$5.	30.00	5,000
Idaho	10-55	400 weeks (in case of incapacitated, unmarried child, 400 weeks more after reaching 18 years).	\$6 (or actual wage, if less).	12.00	
Ill.		417 weeks.	\$7.50	³ 20.00	5,500
Ind.	55	300 weeks.	\$8.80 (or actual wage, if less).	16.50	5,000
Iowa	60	do	\$6	15.00	4,500
Kans.			Total minimum not less than \$2,000.	18.00	4,000
Ky.	65	400 weeks.	\$5	12.00	4,800
La.	32½-65	300 weeks.	\$3 (or actual wage, if less).	20.00	6,000
Maine	66%	do	\$6	18.00	4,000
Md.	66%	416 weeks.	\$8 (or actual wage, if less).	18.00	5,000
Mass.		400 weeks; thereafter to children till specified age; other dependents, 66% percent—maximum period, 500 weeks.	\$4	⁴ 10.00	
Mich.	66%	300 weeks.	\$7	18.00	5,400
Minn.	30-66%	300 weeks; thereafter, if dependent wife and children to total of \$7,500.	\$8 (or actual wage, if less).	20.00	7,500
Mo.	66%	692¼ weeks.	\$6	20.00	13,845
Mont.	30-66%	400 weeks.	\$8	21.00	8,400
Nebr.	66%	325 weeks.	\$6 (or actual wage, if less).	15.00	4,875
Nev.	10-66%	Widowhood, or specified minority age of children.		18.46	
N. H.	(⁵)				5,400
N. J.	35-60	300 weeks; thereafter to children till specified age.	\$10 (or actual wage, if less).	20.00	
N. Mex.	20-60	300 weeks.	\$5	18.00	5,400
N. Y.	15-66%	Widowhood, or specified minority age of children unless blind or crippled.		23.05	
N. C.	60	350 weeks.	\$7	18.00	6,000
N. Dak.	10-66%	Widowhood, or specified minority age of children.	Weekly wage deemed not under \$18.	20.00	15,000
Ohio	66%	Period between death and 8 years after date of injury.		18.75	6,500
Okla.					
Oreg.		Widowhood, or specified minority age of children.		⁶ 30.00	
Pa.	15-66%	300 weeks; thereafter, reduced payments to children to age 16.	Weekly wage deemed not under \$15.	18.00	
P. I.	25-60	208 weeks.	Weekly wage deemed not under 4 nor over 30 pesos.	⁷ 18.00	⁷ 3,000
P. R.					3,000
R. I.	50	500 weeks.	\$8	16.00	8,000
S. C.	60	350 weeks.	\$5	25.00	6,000
S. Dak.					3,000
Tenn.	50	400 weeks.	\$5 (or actual wage, if less).	16.00	5,000
Tex.	60	360 weeks.	\$7	20.00	7,200
Utah	60	Period between death and 6 years after date of injury.	Total minimum not under \$2,000.	⁸ 16.00	7,500
Vt.	15-50	260 weeks.	Weekly wage deemed not under \$5.	13.46	3,500
Va.	55	300 weeks.	\$6	16.00	5,000

³ For injuries occurring after July 1, 1939, the installment rate, but not the aggregate amount, shall be increased 10 percent.

⁴ For widow, plus \$2 for each child under 18, or over 18 and incapacitated.

⁵ 150 times average weekly earnings.

⁶ Per month, for widow, plus \$8 for each dependent child.

⁷ Pesos.

⁸ Plus 10 percent for each dependent child (not to exceed 5) under 18 years. Benefits may be extended indefinitely in meritorious cases.

TABLE 13.—Minimum and Maximum Benefits Under Workmen's Compensation Laws, by Extent of Disability and by State, July 1, 1940—Continued

DEATH—Continued

State	Percent- age of wages	Maximum period	Limit of payments		
			Per week		Total maxi- mum
			Minimum	Maxi- mum	
Wash.....		Widowhood, or specified minority age of children.		\$ 55.00	
W. Va.....		do		30.00	
Wis. ¹⁰	(11)		\$10.	15.00	
Wyo.....			\$180 per year to 1 child	50.00	\$8,500
U. S.: Civil em- ployees.	10-66%	Widowhood, or specified minority age of children.	Monthly pay deemed not under \$87.50.	26.92	
Longshore- men.	15-66%	do	Weekly wage deemed not under \$12.	25.00	7,500

PERMANENT TOTAL DISABILITY

Ala.....	55-65	550 weeks	\$5 (or actual wage, if less)	\$18.00	
Alaska.....					\$9,000
Ariz.....	¹² 65	Life			\$7,000
Ark.....	65	450 weeks	\$7.	20.00	
Calif.....	65	241 weeks; thereafter 40 percent of wages for life.	\$6.50	25.00	
Colo.....	50	Life	\$5	14.00	
Conn.....	50	520 weeks	\$7	25.00	13,000
Del.....	50	475 weeks	\$5 (or actual wage, if less)	15.00	4,000
D. C.....	66%	Whole period of disability	\$8 (or actual wage, if less)	25.00	7,500
Fla.....	50-60	350 weeks	\$6 (or actual wage, if less)	18.00	5,000
Ga.....	50	do	\$4 (or actual wage, if less)	20.00	7,000
Hawaii.....	60	312 weeks	\$5	25.00	5,000
Idaho.....	¹³ 55-60	400 weeks; thereafter \$6 weekly (\$8, if dependent children).	\$6	16.00	
Ill.....	50-65	417 weeks	\$7.50 (\$11 if 1 child under 16, \$12 if 2, \$13 if 3, and \$14 if 4 or more).	20.00	(²⁰)
Ind.....	55	500 weeks	\$8.80 (or actual wage, if less).	16.50	5,000
Iowa.....	60	400 weeks	\$6 (or actual wage, if less)	15.00	6,000
Kans.....	60	416 weeks	\$6	18.00	7,488
Ky.....	65	520 weeks	\$5	15.00	7,500
La.....	65	400 weeks	\$3 (or actual wage, if less)	20.00	8,000
Maine.....	66%	500 weeks	\$6	18.00	6,000
Md.....	66%	Whole period of disability	\$8 (or actual wage, if less)	20.00	6,000
Mass.....	66%	500 weeks	\$9 (or actual wage, if less; but not under \$7 for normal weekly hours of 15 or over).	18.00	4,500
Mich.....	66%	do	\$7	18.00	9,000
Minn.....	66%	Whole period of disability	\$8 (or actual wage, if less)	20.00	10,000
Mo.....	66%	300 weeks; thereafter 25 percent of wages for life.	\$6	20.00	
Mont.....	50-66%	500 weeks	\$8	21.00	10,500

² In case of uncomplicated silicosis or asbestosis, maximum is \$500 if death or disablement occurs in first month act becomes effective and maximum increases \$50 each month until limits provided for accidents are reached.

³ Per month for widow with 2 children, plus \$5 for each additional child under 16 years.

⁴ Amounts are increased or decreased up to 15 percent for employers or employees violating safety regulations; triple compensation for minors illegally employed.

⁵ Compensation equals 4 times average annual wage, payable in installments of 50 percent of average weekly rate, but total for death, plus disability compensation, may not exceed 70 percent of weekly wage for from 280 to 1,000 weeks, depending on age. Additional compensation allowed to dependent spouse with dependent children, according to age.

⁶ Per month, to widow, plus \$5 for each child under 16 years.

⁷ Per month, for widow or invalid widower (total \$3,500), plus \$180 per year per child (total \$5,000).

⁸ \$5 (or actual wage, if less) after 400 weeks.

⁹ Plus additional allowance for constant attendant if necessary.

¹⁰ Additional compensation at same rate for maximum of 104 weeks for serious and permanent disfigurement of face, neck, head or hands, but combined compensation not to exceed 520 weeks.

¹¹ In addition to compensation, employee undergoing vocational rehabilitation is paid cost of maintenance, maximum \$10 weekly.

¹² Award is increased 5 percent for each dependent child.

¹³ In case of injuries occurring after July 1, 1939, compensation is increased 10 percent.

¹⁴ Benefits are paid until amount equals death benefit. Thereafter annual life pension of 8 percent or 12 percent of total previous payments.

¹⁵ Thereafter 50 percent of wages during disability.

TABLE 13.—Minimum and Maximum Benefits Under Workmen's Compensation Laws, by Extent of Disability and by State, July 1, 1940—Continued

PERMANENT TOTAL DISABILITY—Continued

State	Percent- age of wages	Maximum period	Limit of payments		
			Per week		Total maxi- mum
			Minimum	Maxi- mum	
Nebr.....	66%	300 weeks; thereafter, for life 45 per cent of wages (but not under \$4.50 (or actual wage, if less) and not over \$10).	\$6 (or actual wage, if less)	\$15.00	.....
Nev.....	60	Life	\$6.92	13.85	(14)
N. H.....	50	300 weeks	\$8	18.00	\$5,400
N. J.....	66%	400 weeks; thereafter at reduced rate (in proportion to earning capacity) if submitting to rehabilitation.	\$10 (or actual wage, if less)	20.00	.....
N. Mex.....	60	550 weeks	do	18.00	9,900
N. Y.....	66%	Life	\$15 (or actual wage, if less)	17 25.00	.....
N. C.....	60	400 weeks	\$7	18.00	6,000
N. Dak.....	96%	Whole period of disability	\$5 (or actual wage, if less)	20.00	16,000
Ohio.....	66%	Life	\$8 (or actual wage, if less)	18.75	.....
Okla.....	66%	500 weeks	do	18.00	9,000
Oreg.....	66%	Whole period of disability	\$6.92	22 8.08	.....
Pa.....	66%	500 weeks	\$9 (or actual wage, not under \$5).	18.00	7,500
P. I.....	60	208 weeks	4 pesos	7 18.00	7 3,000
P. R.....	50	340 weeks	\$3	10.00	3,000
R. I.....	50	1,000 weeks	\$7	20.00	10,000
S. C.....	60	500 weeks	\$5	25.00	6,000
S. Dak.....	55	.....	\$7.50	15.00	3,000
Tenn.....	50	550 weeks	\$5 (or actual wage, if less)	14 16.00	5,000
Tex.....	60	401 weeks	\$7	20.00	8,020
Utah.....	60	Whole period of disability	\$7	16.00	(23)
Vt.....	50	260 weeks	\$7 (or actual wage, if less)	15.00	4,000
Va.....	55	500 weeks	\$6	16.00	6,000
Wash.....	66%	Whole period of disability	\$4.62	24 60.00	.....
W. Va.....	66%	Life	\$8	16.00	.....
Wis. ¹⁰	70	do	\$14	21.00	(26)
Wyo.....	.....	.....	\$50 per month; additional benefit for disfigurement.	26 70.00	27 10,000
U. S.: Civil em- ployees.	66%	Whole period of disability	\$13.46 (or actual wage, if less)	18 26.92	.....
Longshore- men.	66%	do	\$8 (or actual wage, if less)	17 25.00	7,500

PERMANENT PARTIAL DISABILITY

[Maximum period for specific injuries is given, followed by maximum period (if greater) for disabilities not listed in schedule of specific injuries (here referred to as "nonlisted disabilities")]

Ala.....	55-65	400 weeks	\$5 (or actual wage, if less)	\$18.00	.....
Alaska.....	.....	.....	.....	.....	\$7,200
Ariz.....	15 55	260 weeks; during disability, for non-listed disability.	.....	.....	(28)
Ark.....	65	200 weeks; 450 weeks for nonlisted disability.	\$7	20.00	26 7,000
Calif.....	65	240 weeks	\$6.50	25.00	(29)
Colo.....	50	208 weeks	\$5	14.00	30 2,912

¹ Pesos.

¹⁰ Amounts are increased or decreased up to 15 percent for employers or employees violating safety regulations; triple compensation for minors illegally employed.

¹⁴ \$5 (or actual wage, if less) after 400 weeks.

¹⁵ Plus additional allowance for constant attendant if necessary.

¹⁷ In addition to compensation, employee undergoing vocational rehabilitation is paid cost of maintenance, maximum \$10 weekly.

²² Plus \$8 monthly for each dependent child.

²³ Compensation for 260 weeks, then 45 percent of average weekly wages for life. In addition, award is increased 5 percent for each dependent child (not to exceed 5) under 18 years.

²⁴ Per month if wife and 2 children, plus \$5 for each additional child, plus \$25 for constant attendant if necessary.

²⁵ In addition employee receiving rehabilitation instruction is paid cost of maintenance, maximum \$10 weekly, for maximum of 20 weeks.

²⁶ Per month, plus \$180 per year for each child.

²⁷ Additional benefit for disfigurement.

²⁸ In addition to compensation for temporary total disability. There is an additional amount for disfigurement.

²⁹ Plus life pension of from 10 to 40 percent for over 70 percent disability.

³⁰ In addition to compensation for temporary total disability. For nonlisted permanent partial disability maximum is \$3,640. There is an additional amount for disfigurement.

TABLE 13.—Minimum and Maximum Benefits Under Workmen's Compensation Laws, by Extent of Disability and by State, July 1, 1940—Continued

PERMANENT PARTIAL DISABILITY—Continued

State	Percent- age of wages	Maximum period	Limit of payments		
			Per week		Total maxi- mum
			Minimum	Maxi- mum	
Conn.....	50	225 weeks; 520 weeks for nonlisted disability.	\$7.....	¹⁶ 25.00	\$13,000
Del.....	50	194 weeks; 285 weeks for nonlisted disability.	\$5 (or actual wage, if less) ..	15.00	4,275
D. C.....	66%	288 weeks; during disability, for nonlisted disability.	\$8 (or actual wage, if less) ..	¹⁷ 25.00	²⁸ 7,500
Fla.....	50-60	200 weeks; 350 weeks for nonlisted disability.	\$6 (or actual wage, if less) ..	18.00	²⁷ 5,000
Ga.....	50	200 weeks; 300 weeks for nonlisted disability.	\$4 (or actual wage, if less) ..	20.00	³¹ 5,000
Hawaii.....	60	312 weeks.....	.....	12.00	²⁸ 5,000
Idaho.....	55	238 weeks.....	.....	16.00	³¹ 3,808
Ill.....	50-65	225 weeks; 417 weeks for nonlisted disability.	\$7.50 (\$11 if 1 child under 16, \$12 if 2, \$13 if 3, and \$14 if 4 or more).	¹⁹ 20.00	²² 5,500
Ind.....	55	250 weeks; 500 weeks for nonlisted disability.	\$8.80 (or actual wage, if less).	16.50	5,000
Iowa.....	60	225 weeks.....	\$6 (or actual wage, if less) ..	15.00	3,375
Kans.....	60	210 weeks; 415 weeks for nonlisted disability.	.....	18.00	³¹ 7,470
Ky.....	65	200 weeks; 335 weeks for nonlisted disability.	\$5.....	12.00	4,000
La.....	65	400 weeks.....	\$3 (or actual wage, if less) ..	20.00	8,000
Maine.....	66%	150 weeks; 300 weeks for nonlisted disability.	\$6.....	18.00	5,400
Md.....	66%	200 weeks.....	\$8 (or actual wage, if less) ..	18.00	²⁸ 3,750
Mass.....	.....	175 weeks.....	.....	³³ 10.00	1,750
Mich.....	66%	200 weeks; 500 weeks for nonlisted disability.	\$7.....	18.00	9,000
Minn.....	66%	450 weeks (including 25 weeks each for healing and rehabilitation).	\$8 (or actual wage, if less) ..	20.00	²⁸ 9,000
Mo.....	66%	232 weeks; 400 weeks for nonlisted disability.	\$6.....	20.00	²⁷ 8,000
Mont.....	50-66%	200 weeks; 500 weeks for nonlisted disability.	\$8.....	21.00	10,500
Nebr.....	66%	225 weeks; 300 weeks for nonlisted disability.	\$6 (or actual wage, if less) ..	15.00	³¹ 4,500
Nev.....	50	260 weeks.....	\$6.92.....	13.85	²⁸ 3,600
N. H.....	50	300 weeks.....	\$8.....	18.00	5,400
N. J.....	66%	230 weeks; cumulative for 2 or more specified injuries, to maximum of 500 weeks.	\$10 (or actual wage, if less).	20.00	³¹ 10,000
N. Mex.....	60	180 weeks.....	do.....	18.00	²⁸ 3,240
N. Y.....	66%	312 weeks; during disability, for nonlisted disability.	\$8 (or actual wage, if less) ..	¹⁷ 25.00	(²⁸)
N. C.....	60	200 weeks; 300 weeks for nonlisted disability.	\$7.....	18.00	²⁷ 6,000
N. Dak.....	66%	234 weeks; 450 weeks for nonlisted disability.	\$6.....	20.00	9,000
Ohio.....	66%	215 weeks.....	.....	18.75	²⁸ 4,000
Okla.....	66%	250 weeks; 300 weeks for nonlisted disability.	\$8 (or actual wage, if less) ..	18.00	²⁷ 4,500
Oreg.....	.....	208 weeks for married workman.....	\$8.08.....	11.54	³¹ 2,400
Pa.....	66%	215 weeks; 300 weeks for nonlisted disability, weekly maximum \$15	\$9, or full wage, but not under \$5.	18.00	4,500
P. I.....	50	208 weeks in addition to compensation for temporary total disability; benefit for certain disfigurement.	.....	.....	7,300

¹ Pesos.

¹⁶ Additional compensation for total disability, and 104 weeks for serious and permanent disfigurement of face, neck, head, or hands, but combined compensation not to exceed 520 weeks.

¹⁷ In addition to compensation, employee undergoing vocational rehabilitation is paid cost of maintenance, maximum \$10 weekly.

¹⁹ In case of injuries occurring after July 1, 1939, compensation is increased 10 percent.

²⁷ Additional benefit for disfigurement.

²⁸ In addition to compensation for temporary total disability. There is an additional benefit for disfigurement.

³¹ In addition to compensation for temporary total disability.

³³ In addition to payments for total disability, for not to exceed 64 weeks. There is an additional amount (not to exceed death benefit) if disfigured where no specific loss.

³³ In all cases, in addition to all other compensation. For nonlisted disability, 66% percent of weekly wages during disability, maximum \$18, total maximum \$4,500.

TABLE 13.—Minimum and Maximum Benefits Under Workmen's Compensation Laws, by Extent of Disability and by State, July 1, 1940—Continued

State	Percent- age of wages	Maximum period	Limit of payments		
			Per week		Total maxi- mum
			Minimum	Maxi- mum	
P. R.-----	50	300 weeks.....	\$1.50-----	\$10.00 ²³	\$2,000
R. I.-----	50	150 weeks; 700 weeks for nonlisted disability, weekly maximum \$13.	\$8-----	20.00 ²¹	9,100
S. C.-----	60	200 weeks; 300 weeks for nonlisted disability.	\$5-----	25.00 ²⁷	6,000
S. Dak.-----	²⁴ 55	200 weeks; 312 weeks for nonlisted disability.	\$7.50 (or actual wage, if less)	15.00 ²⁵	4,680
Tenn.-----	50	400 weeks.....	\$5 (or actual wage, if less)	16.00	6,400
Tex.-----	60	200 weeks; 300 weeks for nonlisted disability.	\$7-----	20.00	6,000
Utah.-----	60	200 weeks; 312 weeks for nonlisted disability.	-----	²⁵ 16.00 ²⁸	6,250
Vt.-----	50	170 weeks; 260 weeks for nonlisted disability.	\$7 (or actual wage, if less)	15.00 ³¹	3,900
Va.-----	55	200 weeks; 300 weeks for nonlisted disability.	\$6-----	16.00 ²⁷	6,000
Wash.-----	-----	-----	-----	-----	^{25a} 3,000
W. Va.-----	66 $\frac{2}{3}$	240 weeks; 340 weeks for nonlisted disability.	\$8-----	16.00	5,440
Wis. ¹⁰ -----	70	500 weeks, plus 70 percent of earnings for healing period. Maximum, for nonlisted disability, 1,000 weeks.	\$14-----	²⁷ 21.00	²⁵ 21,000
Wyo.-----	-----	-----	\$50 per month.....	²⁶ 70.00	²³ 2,500
U. S.: Civil em- ployees.	66 $\frac{2}{3}$	Whole period of disability.....	-----	26.92	-----
Longshor- men.	66 $\frac{2}{3}$	288 weeks; during disability, for non- listed disability.	\$8 (or actual wage, if less)	¹⁷ 25.00 ²⁸	7,500

TEMPORARY TOTAL DISABILITY

Ala.-----	55-65	300 weeks.....	\$5 (or actual wage, if less)	\$18.00	-----
Alaska-----	65	Whole period of disability.....	-----	-----	-----
Ariz.-----	²⁷ 65	433 weeks.....	-----	20.00	² 7,000
Ark.-----	65	450 weeks.....	\$7-----	25.00	5,975
Calif.-----	65	239 weeks.....	\$6.50-----	14.00	-----
Colo.-----	50	Whole period of disability.....	\$5-----	14.00	-----
Conn.-----	50	520 weeks.....	\$7-----	25.00	13,000
Del.-----	50	475 weeks.....	\$5 (or actual wage if less)	15.00	4,000
D. C.-----	66 $\frac{2}{3}$	Whole period of disability.....	\$8 (or actual wage, if less)	¹⁷ 25.00	7,500
Fla.-----	50-60	350 weeks.....	\$6 (or actual wage, if less)	18.00	5,000
Ga.-----	50	do.....	\$4 (or actual wage, if less)	20.00	7,000
Hawaii-----	60	312 weeks.....	\$5 (or actual wage, if less)	25.00	5,000
Idaho-----	¹⁸ 55-60	400 weeks; thereafter \$6 weekly (\$8, if dependent children).	\$6-----	16.00	-----
Ill.-----	50-65	Whole period of disability.....	\$7.50 (\$11 if 1 child under 16, \$12 if 2, \$13 if 3, and \$14 if 4 or more).	¹⁹ 20.00	5,500
Ind.-----	55	500 weeks.....	\$8.80 (or actual wage, if less).	16.50	5,000
Iowa.-----	60	300 weeks.....	\$6 (or actual wage, if less)	15.00	4,500
Kans.-----	60	415 weeks.....	\$6-----	18.00	7,483

² In case of uncomplicated silicosis or asbestosis, maximum is \$500 if death or disablement occurs in first month act becomes effective and maximum increases \$50 each month until limits provided for accidents are reached.

¹⁰ Amounts are increased or decreased up to 15 percent for employers or employees violating safety regulations; triple compensation for minors illegally employed.

¹⁷ In addition to compensation, employee undergoing vocational rehabilitation is paid cost of maintenance, maximum \$10 weekly.

¹⁸ Plus 5 percent for each dependent child.

¹⁹ In case of injuries occurring after July 1, 1939, compensation is increased 10 percent.

²⁵ In addition employee receiving rehabilitation instruction is paid cost of maintenance, maximum \$10 weekly, for maximum of 20 weeks.

²⁷ Additional benefit for disfigurement.

²⁸ In addition to compensation for temporary total disability. There is an additional amount for disfigurement.

³¹ In addition to compensation for temporary total disability.

²⁴ For nonlisted disability, 50 percent of wages.

^{25a} Plus 5 percent for each dependent child (not to exceed 5) under 18 years.

²⁶ Where there are 2 or more injuries, an employee may receive compensation in excess of maximum given.

²⁶ Per month.

²⁷ Plus \$10 per month for total dependents residing in the United States.

TABLE 13.—Minimum and Maximum Benefits Under Workmen's Compensation Laws, by Extent of Disability and by State, July 1, 1940—Continued

TEMPORARY TOTAL DISABILITY—Continued

State	Percent- age of wages	Maximum period	Limit of payments		
			Per week		Total maxi- mum
			Minimum	Maxi- mum	
Ky.....	65	520 weeks.....	\$5	\$15.00	\$7,500
La.....	65	300 weeks.....	\$3 (or actual wage, if less)	20.00	6,000
Maine.....	66½	500 weeks.....	\$6	18.00	6,000
Md.....	66½	312 weeks.....	\$8 (or actual wage, if less)	20.00	3,750
Mass.....	66½	500 weeks.....	\$9 or actual wage if less; but not under \$7 for normal weekly hours of 15 or over).	18.00	4,500
Mich.....	66½	500 weeks.....	\$7	18.00	9,000
Minn.....	66½	300 weeks.....	\$8 (or actual wage, if less)	20.00	6,000
Mo.....	66½	400 weeks.....	\$6 (or actual wage, if less)	20.00	8,000
Mont.....	50-66½	300 weeks.....	\$8	21.00	6,300
Nebr.....	66½	do.....	\$6 (or actual wage, if less)	15.00	4,500
Nev.....	60	433 weeks.....	\$6.92	16.62 ¹⁷	7,200
N. H.....	50	300 weeks.....	\$8	18.00	5,400
N. J.....	66½	do.....	\$10 (or actual wage, if less)	20.00	6,000
N. Mex.....	60	550 weeks.....	do.....	18.00	9,900
N. Y.....	66½	Whole period of disability	\$8 (or actual wage, if less)	25.00	5,000
N. C.....	60	400 weeks.....	\$7	18.00	6,000
N. Dak.....	66½	Whole period of disability	\$6 (or actual wage, if less)	20.00	2,000
Ohio.....	66½	312 weeks.....	\$8 (or actual wage, if less)	18.75	3,750
Okla.....	66½	300 weeks.....	do.....	18.00	5,400
Oreg.....	40-66½	Whole period of disability	\$6.92 (or actual wage, if less).	22.38	---
Pa.....	66½	500 weeks.....	\$9 (or actual wage, but not under \$5).	18.00	7,500
P. I.....	60	208 weeks.....	4 pesos (or actual wage, if less).	18.00	7,300
P. R.....	50	104 weeks.....	\$1.50	10.00	1,040
R. I.....	50	1,000 weeks.....	\$7	20.00	10,000
S. C.....	60	500 weeks.....	\$5	25.00	6,000
S. Dak.....	55	do.....	\$7.50 (or actual wage, if less).	15.00	3,000
Tenn.....	50	300 weeks.....	\$5 (or actual wage, if less)	16.00	4,800
Tex.....	60	401 weeks.....	\$7	20.00	8,020
Utah.....	60	312 weeks.....	\$7 (or actual wage, if less)	16.00	6,250
Vt.....	50	260 weeks.....	do.....	15.00	3,900
Va.....	55	500 weeks.....	\$6	16.00	6,000
Wash.....	66½	Whole period of disability	do.....	(¹⁸)	---
W. Va.....	66½	78 weeks.....	\$8	16.00	1,248
Wis. ¹⁰	70	Whole period of disability	\$7.35	21.00	(¹⁷)
Wyo.....	do.....	do.....	\$50 per month.....	¹⁹ 90.00	---
U. S.: Civil em- ployees.	66½	do.....	\$13.46 (or actual wage, if less).	26.92	---
Longshore- men.	66½	do.....	\$8 (or actual wage, if less)	¹⁷ 25.00	7,500

⁷ Pesos.¹⁰ Amounts are increased or decreased up to 15 percent for employers or employees violating safety regulations; triple compensation for minors illegally employed.¹¹ In addition to compensation, employee undergoing vocational rehabilitation is paid cost of maintenance, maximum \$10 weekly.¹² Plus 5 percent for each dependent child (not to exceed 5) under 18 years.¹³ Plus \$10 per month for total dependents residing in United States.¹⁴ Same as for permanent total disability; special schedule of monthly payments for first 6 months of disability, for married or widowed employee.¹⁵ Per month; additional benefit for disfigurement.

Period of Benefits for Permanent Partial Disability

Awards of compensation for injuries causing permanent partial disability are made by two methods—payment of a percentage of the wage loss and payment for fixed periods for specified injuries. These two methods exist side by side, as the laws have schedules covering certain specified injuries, and those not included therein are compensated on a percentage basis. In Alaska, Washington, and Wyoming

the payments are fixed sums, but in all other States the schedule payments are weekly amounts based on wages, except in California where the amount of the benefit depends on the age and occupation of the employee.

In some States the scheduled provisions provide for payments in addition to the period of total disability (healing period) or they may cover the entire allowance for the injury other than medical aid. Such payments are exclusive in 25 States¹³ and in addition to the healing period in 29 jurisdictions.¹⁴ In Maine the payment prescribed in the schedule is in lieu of payments for temporary total disability, but a subsequent partial disability is compensated for not more than 300 weeks from the date of the injury. The New Hampshire law provides for additional compensation for the healing period except in the case of loss of hearing.

Under the Massachusetts law, compensation is paid for the period of total disability and also for partial disability after the scheduled period; the same is true in Rhode Island, subject to a maximum number of weeks. Schedule payments are normally in lieu of all other payments under the New York act, but if the period of total temporary disability is protracted beyond designated periods the schedule period is extended correspondingly. In Georgia a uniform period of 10 weeks is allowed as healing time. The number of weeks provided by law during which compensation is payable for a specified injury under the compensation laws of the several States is shown in table 14.

TABLE 14.—Number of Weeks for Which Compensation is Payable for Specified Injuries, by States

State	Loss or loss of use of—													
	Arm (at shoulder)	Hand	Thumb	Index finger	Middle finger	Ring finger	Little finger	Leg (at hip)	Foot	Great toe	Other toe	Sight of an eye	Hearing, 1 ear	Hearing, both ears
Ala. ¹	200	150	60	45	30	20	15	175	125	30	10	100	-----	150
Ariz. ²	³ 260 ⁴ 217	³ 217 ⁴ 173	65	39	30	22	17	217	173	30	11	⁴ 130	87	260
Ark. ²	200	150	60	35	30	20	15	175	125	30	10	100	40	150
Calif. ⁵	³ 240 ⁴ 220	³ 180 ⁴ 160	³ 40 ⁴ 36	³ 32 ⁴ 28	² 24 ⁴ 20	² 24 ⁴ 20	³ 16 ⁴ 12	240	160	32	8	80	40	160
Colo. ²	208	104	50	26	18	11	13	208	104	26	11	⁴ 139	35	139
Conn. ²	225	175	60	38	30	25	20	208	156	38	13	208	52	156
Del. ¹	194	158	60	35	30	20	15	194	135	30	10	113	-----	-----
D. C. ²	280	212	51	28	18	17	7	248	173	26	8	140	52	200
Fla. ¹	200	150	60	35	30	20	15	175	125	30	10	100	40	150
Ga. ²	200	150	30	35	30	20	15	175	125	30	10	100	-----	150
Hawaii ²	312	244	60	46	30	25	15	288	205	38	16	128	60	312

See footnotes at end of table.

¹³ Alabama, Alaska, California, Delaware, Florida, Indiana, Iowa, Kentucky, Louisiana, Maine, Michigan, Missouri, Montana, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, and United States (civil employees).

¹⁴ Arizona, Arkansas, Colorado, Connecticut, District of Columbia, Georgia, Hawaii, Idaho, Illinois, Kansas, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, Ohio, Oregon, Philippines, Puerto Rico, Rhode Island, South Dakota, Utah, Vermont, Wisconsin, Wyoming, and United States (Longshoremen's Act).

TABLE 14.—Number of Weeks for Which Compensation is Payable for Specified Injuries, by States—Continued

State	Loss or loss of use of—												Hear- ing, 1 ear	Hear- ing, both ears
	Arm (at shoul- der)	Hand	Thumb	Index finger	Mid- dle finger	Ring finger	Little finger	Leg (at hip)	Foot	Great toe	Other toe	Sight of an eye		
Idaho ⁶	240	200	70	40	40	30	20	180	125	30	12	^{4a} 140	35	150
Ill. ¹	225	170	70	40	35	25	20	190	135	35	12	120	50	125
Ind. ¹	250	200	60	40	35	30	20	200	150	60	(?)	150	-----	200
Iowa ¹	225	150	40	30	25	20	15	200	125	25	15	100	50	150
Kans. ¹	210	150	60	37	30	20	15	200	125	30	10	110	25	100
Ky. ¹	200	150	⁸ 60	⁸ 45	⁸ 30	⁸ 20	⁸ 15	200	125	30	10	100	-----	-----
La. ¹	200	150	50	30	20	20	20	175	125	20	10	100	-----	-----
Maine ⁹	150	125	50	30	25	18	15	150	125	25	10	100	-----	-----
Md. ¹	200	150	50	30	25	20	15	175	150	25	10	100	50	100
Mass. ¹⁰	⁸ 75 ⁴ 50	⁸ 75 ⁴ 50	⁸ 40	⁸ 20	12	12	12	50	50	12	12	50	-----	-----
Mich. ¹	200	150	60	35	30	20	15	175	125	30	10	100	-----	-----
Minn. ¹	200	175	60	35	30	20	15	200	150	30	10	100	52	156
Mo. ¹	⁸ 232 ⁴ 212	⁸ 175 ⁴ 160	⁸ 60	⁸ 45	⁸ 35	⁸ 35	⁸ 22	⁸ 207	150	40	14	^{4a} 118	44	168
Mont. ¹	200	150	60	30	30	20	12	200	125	30	12	^{4a} 120	20	120
Nebr. ¹	225	175	60	35	30	20	15	215	150	30	10	125	50	100
Nev. ¹	⁸ 260 ⁴ 217	⁸ 217 ⁴ 173	65	39	30	22	17	217	173	30	11	^{4a} 130	87	260
N. H. ¹¹	170	140	40	25	20	15	10	170	120	20	8	100	42	170
N. J. ¹	230	175	65	40	30	20	15	175	125	30	10	100	40	160
N. Mex. ¹	180	110	50	25	20	15	12	180	100	30	12	^{4a} 125	35	135
N. Y. ¹²	312	244	75	46	30	25	15	283	205	3 ^c	16	160	60	150
N. C. ¹	200	150	60	35	30	20	15	175	125	30	10	100	70	150
N. D. ¹	234	195	45	29 ¹	24 ²	15 ³	13 ⁴	234	136 ⁵	19 ⁶	7 ⁷	100	29 ⁸	156
Ohio ¹	215	165	⁸ 60	⁸ 35	⁸ 30	⁸ 20	⁸ 15	190	140	30	10	125	-----	-----
Okla. ¹	250	200	60	35	30	20	15	175	150	30	10	100	-----	-----
Oreg. ¹³	208	165	52	35	20	17	13	191	139	22	9	87	78	208
Pa. ¹	215	175	60	35	30	20	15	215	150	-----	-----	125	-----	150
P. I. ²	208	160	40	30	25	20	10	190	130	25	10	100	40	208
P. R. ³	300	⁸ 200 ⁴ 180	50	35	25	25	15	250	160	25	15	^{4a} 160	25	200
R. I. ⁴	100	80	50	36	26	20	18	100	80	30	10	80	-----	-----
S. C. ¹	200	150	60	35	30	20	15	175	125	30	10	100	0	150
S. D. ¹	200	150	50	35	30	20	15	160	125	30	14	100	-----	-----
Tenn. ¹	200	150	60	35	30	20	15	175	125	30	10	100	-----	150
Tex. ¹	200	150	⁸ 60	⁸ 45	⁸ 30	⁸ 21	⁸ 15	200	125	30	10	100	-----	150
Utah ¹	200	150	60	30	30	20	12	180	125	30	12	^{4a} 120	-----	-----
Vt. ¹	170	140	40	25	20	15	10	170	120	20	8	100	¹⁴ 22 ⁵	170
Va. ¹	200	150	60	35	30	20	15	175	125	30	10	100	50	-----
W. Va. ¹	240	200	80	40	28	20	20	240	140	40	16	132	-----	-----
Wis. ¹	500	333 ¹	125	50	40	30	30	500	250	83 ¹	¹⁶ 25	^{4a} 275	50	333 ¹
U. S.:Long- shoremen ¹	280	212	51	28	18	17	7	248	173	26	8	140	52	200

¹ Payments under this schedule are exclusive of or in lieu of all other payments.
² Payments under this schedule are in addition to payments for temporary total disability during the healing period.
³ For major member.
⁴ For minor member.
⁵ By enumeration.
⁶ Payments under this schedule are exclusive of or in lieu of all other payments. Amounts depend on age and occupation of employee. Figures given are for unskilled workman 39 years old.
⁷ Payments under this schedule are in addition to payments for temporary total disability during healing period; 99 percent of specific schedule to be paid employee. Employer must pay 2 percent additional to special indemnity fund.
⁸ For loss of second toe, 30 weeks; third toe, 20 weeks; fourth toe, 15 weeks; and fifth toe, 10 weeks.
⁹ For loss of a metacarpal bone for corresponding thumb, finger, or fingers, 10 weeks is added.
¹⁰ Payments cover total disability for period specified. Partial disability based upon wage loss may be compensated at end of period given for not over 300 weeks in all.
¹¹ Payments under this schedule are in addition to all other compensation.
¹² Plus compensation for actual healing period not in excess of specified number of weeks, except in case of loss of hearing.
¹³ In lieu of other payments unless period of temporary total disability exceeds fixed periods for each class of injury.
¹⁴ Computations based on compensation payable to a married man or a man with dependent child. Payments are in addition to payments for temporary total disability during healing period.
¹⁵ For additional loss of 1 or more toes other than the great toe, an additional period of 10 weeks.
¹⁶ In lieu of all other benefits except medical and hospital.
¹⁷ For loss of second toe, 30 weeks.

Medical Benefits

In all the States medical aid is required to be furnished to injured employees, usually in addition to compensation payments. In some States additional amounts are allowed for hospital expenses, while in others artificial limbs and other appliances are furnished. As indicated in table 15, 17 States limit neither the amount nor the time during which aid shall be rendered; 12 other States limit the amount but not the time; 12 States limit the time but not the amount; and in 13 States there is a restriction on both the amount and the time.

TABLE 15.—States Limiting the Period and Amount of Medical Benefits

Neither time nor amount limited	No limitation on amount	No limitation on time	Both amount and time limited
Arizona California Connecticut District of Columbia Hawaii Idaho Illinois Minnesota Nebraska New York ³ North Dakota Philippines Puerto Rico Washington ⁴ Wisconsin ⁴ United States: Civil employees Longshoremen	Alaska Arkansas Indiana Massachusetts Michigan Nevada New Hampshire North Carolina ² Oklahoma South Carolina Texas Virginia	Florida Iowa Louisiana Maryland New Jersey New Mexico Ohio Oregon Rhode Island Utah West Virginia Wyoming	Alabama Colorado Delaware ¹ Georgia ¹ Kansas ¹ Kentucky ¹ Maine ¹ Missouri ¹ Montana Pennsylvania South Dakota Tennessee Vermont

¹ Additional services in special cases or in discretion of commission.

² Except in case of treatment for silicosis or asbestosis.

³ In case of disability resulting from inhalation of harmful dust, period of treatment is limited.

⁴ Virtually unlimited under administrative practice.

Medical benefits are without cost to the workmen in the great majority of the States, but in Alaska the employer may deduct from the employee's wages \$2.50 per month to maintain a medical fund. In Arizona and Nevada one-half the cost but not over \$1 per month may be deducted, while in Washington one-half of the cost must be paid by the workman. Table 16 presents in greater detail the provisions regarding medical benefits.

TABLE 16.—Maximum Periods and Amounts of Medical Service, by States

State	Maximum period	Maximum amount	State	Maximum period	Maximum amount
Alabama.....	90 days ¹	\$200.	New Hampshire.....	30 days.....	Unlimited.
Alaska.....	1 year.....	Unlimited. ²	New Jersey.....	Unlimited.....	\$100. ³
Arizona.....	Unlimited.....	Do. ²	New Mexico.....	.....do.....	\$400.
Arkansas ⁴	60 days ²	Do.	New York ⁷.....	.....do.....	Unlimited.
California.....	Unlimited.....	Do.	North Carolina ⁸	10 weeks ²	Do.
Colorado.....	4 months ⁴	\$500.	North Dakota.....	Unlimited.....	Do.
Connecticut.....	Unlimited.....	Unlimited.	Ohio.....	.....do.....	\$200. ³
Delaware.....	30 days ²	\$150. ³	Oklahoma.....	60 days ²	Unlimited.
District of Columbia.....	Unlimited.....	Unlimited.	Oregon.....	Unlimited.....	\$250. ³
Florida.....	.....do.....	\$250. ⁵	Pennsylvania.....	60 days.....	\$150. ⁹
Georgia.....	10 weeks ²	\$500.	Philippines.....	Unlimited.....	Unlimited.
Hawaii.....	Unlimited.....	Unlimited.	Puerto Rico.....	.....do.....	Do.
Idaho ⁵.....	.....do.....	Do.	Rhode Island.....	.....do.....	\$200. ¹⁰
Illinois ⁶.....	.....do.....	Do.	South Carolina.....	10 weeks ²	Unlimited.
Indiana ⁸	90 days ¹	Do.	South Dakota.....	20 weeks.....	\$300.
Iowa.....	Unlimited.....	\$600.	Tennessee.....	30 days ¹	\$200.
Kansas.....	60 days.....	\$100. ³	Texas.....	4 weeks ^{2*}	Unlimited.
Kentucky.....	90 days ²	\$200. ³	Utah.....	Unlimited.....	\$500. ³
Louisiana.....	Unlimited.....	\$250.	Vermont.....	2 weeks.....	\$50. ¹¹
Maine.....	30 days ²	\$100. ³	Virginia.....	60 days ¹²	Unlimited.
Maryland.....	Unlimited.....	\$500.	Washington.....	(13).....	Do.
Massachusetts.....	2 weeks ²	Unlimited.	West Virginia ³	Unlimited.....	\$800.
Michigan.....	90 days.....	Do.	Wisconsin.....	.....do.....	Unlimited.
Minnesota.....	Unlimited.....	Do.	Wyoming.....	.....do.....	\$150. ¹⁴
Missouri.....	90 days ²	\$750.	United States:		
Montana.....	6 months.....	\$500. ⁶	Civil employees.....	.....do.....	Unlimited.
Nebraska.....	Unlimited.....	Unlimited.	Longshoremen.....	.....do.....	Do.
Nevada.....	6 months ²	Do. ²			

¹ Additional service may be given at option of employer.

² Employees contribute.

³ Additional service in special cases or at discretion of commission.

^{3*} Additional service may be authorized, not to exceed 91 days.

⁴ In case of hernia, if employee requires operation he is entitled to service without limitation of time.

⁵ In surgical cases maximum may be increased by order of commission to \$500.

⁶ A special operating fee of \$100 allowed in case of hernia.

⁷ In case of disability resulting from inhalation of harmful dust, period of treatment is limited to 90 days, but may be extended for an additional 360 days by the Industrial Board.

⁸ Special limitations upon medical benefits in case of certain occupational diseases.

⁹ Exclusive of hospital treatment.

¹⁰ In case of employee receiving hospital treatment for more than 14 days, the maximum is \$250.

¹¹ Also hospital first 30 days, maximum \$150.

¹² Extended in unusual cases. Not to exceed 180 days.

¹³ In case of temporary disability, continues not longer than period of compensation, and in case of permanent disability not beyond the date of award. Employees contribute.

¹⁴ Additional expenditure of not more than \$200 for medical service and \$300 for hospital treatment may be authorized by court.

Administration and Settlement of Claims

There are two general methods of administration of the workmen's compensation laws: (1) By an administrative commission or board created for the purpose of enforcing the provisions of the law, and (2) by the courts. When administration is left to the courts it is usually because no other machinery for administration has been created and this law, like other laws, is enforced in the various Federal, State, and county courts.

The desirability of an administrative agency charged specifically with the supervision of the compensation laws is recognized by all but seven States (Alabama, Alaska, Louisiana, New Hampshire, New Mexico, Tennessee, and Wyoming). However, in Alabama there is

limited supervision by the department of industrial relations, and in Wyoming the workmen's compensation fund is under the supervision of the State treasurer. In these seven States the agreement between the parties may be without supervision or there may be provision for approval by the court. Summary procedure is generally directed, but a trial jury may be demanded in certain cases.

It is generally agreed that administration of a workmen's compensation act by an administrative agency is more satisfactory than administration by the courts. The major difficulties of court administration have been summed up as (1) delay, (2) cost, and (3) the unfitness of the courts for the settlement of compensation claims. A complete understanding of industrial conditions is essential in successful administration of the laws. The vital factors in successful administration are the giving of prompt, honest, and full compensation and immediate medical aid, as required by the law. To achieve these purposes an administrative board or commission is almost essential.

In States where the law is administered by a commission or board, appeals to courts are usually limited to questions of law, the determination of facts being left to the exclusive jurisdiction of the commission.

Accident Reporting and Prevention

The workmen's compensation acts of only 25 States¹⁵ require that reports be made of all industrial accidents. In 13 States the acts require reports of accidents which cause disability of 1 day or more,¹⁶ and Rhode Island requires reports of all accidents causing disability for more than 2 days. In North Carolina and South Carolina employers must report accidents causing disability for more than 3 days. The Maryland law provides that accidents causing disability for more than 3 days must be reported, and by recent enactment notice must be given promptly after knowledge of disability caused by an occupational disease.

¹⁵ Arizona, Arkansas, Colorado, Delaware, District of Columbia, Florida, Massachusetts, Michigan, Missouri, Montana, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Dakota, Utah, Virginia, Washington, Wyoming, and the United States (Civil Employees' and Longshoremen's Acts).

¹⁶ 1 day: California, Connecticut, Hawaii, Idaho, Maine, Philippines, and Vermont. More than 1 day: Indiana, Iowa, Kansas, Kentucky, New York, and Texas.

Notice must be given when the disability lasts 1 week in Georgia¹⁷ and Tennessee,¹⁸ and in Illinois notice must be given when the injury is fatal or the disability is for more than 1 week. In Alabama employers must give notice when the disability lasts for more than 2 weeks. Under the New Jersey law insured employers are required to report all accidents and compensable occupational diseases, whereas uninsured employers need report only those causing disability for more than 1 week or causing any permanent disability. The Minnesota act requires reports of all accidents causing death or serious injury, as well as other accidents causing disability for more than 1 day. In Nebraska, New Hampshire, West Virginia, and Wisconsin, accident reports are submitted in the manner and at the time required by administrative authorities. Although there is no provision requiring reports in the Alaska law, a separate act provides for the reporting of accidents in coal mines.

These provisions of the State compensation laws clearly illustrate the lack of uniformity on the subject of accident reporting. The importance of complete reports showing causes, nature, severity, and costs has been too little recognized, even among those charged with the administration of the laws, while the employer has been too prone to minimize or disregard the occurrence of accidents except as an unfortunate incident involving some form of liability.

Existing deficiencies in the compensation laws in regard to accident reporting and prevention are offset to some extent by the fact that a few industrial States have inspection agencies which are charged with the duties of prevention of accidents, chiefly by way of enforcing safety statutes, although some agencies also prescribe standards. Some attempt has been made in the direction of combining compensation administration with the enforcement of labor laws generally, although the majority of the States distribute the responsibility among several agencies. However, in some States¹⁹ the agency administering the compensation law is also given certain additional powers as to safety devices, inspection, etc.

Cost of Compensation

In almost all of the States, the cost of compensation is borne entirely by the employer, although in some of the States having a State insurance fund a small part of the cost is shifted to the public.

¹⁷ Or accident requires medical aid.

¹⁸ Or accident results in death.

¹⁹ For example, Alabama, Arizona, California, Colorado, Florida, Hawaii, Idaho, Maryland, Montana, North Dakota, Ohio, Oregon, Puerto Rico, Utah, Washington, West Virginia, and Wisconsin.

In the following States the employees are permitted to make contributions: Oregon, in which deductions of 1 cent per day are made to help cover the cost of compensation; Alaska, Arizona, Nevada, and Washington, where employees contribute to the medical benefit fund; and Colorado, Idaho, Kentucky, Montana, and Oregon, where the employees may contribute toward cooperative hospitals, etc. The original occupational-disease law of Washington required equal contributions by employers and employees, but in 1939 an amendment was adopted repealing this provision.

Nonresident Alien Dependents

None of the workmen's compensation acts makes any distinction between resident aliens and resident citizens, but a large number have discriminatory provisions in the laws affecting nonresident alien dependents. Under the liability system, the rule had become almost universal that such dependents should have the same status as residents or citizens of the States; but of the 22 State compensation laws on the statute books at the close of the year 1913, nearly one-third (7) made discriminations unfavorable to such claimants, while in 1916, of 35 States, nearly one-half effected discriminations. At the present time, of 54 laws analyzed, 39 have provisions more or less discriminatory. Thus an increasing tendency in the direction of less favorable treatment is noted. Such discrimination may be by way of exclusion, reduced benefits, permitting commutations to lump sums in reduced amounts, restricting possible beneficiaries to persons of a designated relationship (a provision that may exist alone or in connection with reduced benefits), not extending the presumption of dependency to aliens who are nonresidents, or excluding payments to beneficiaries in countries with which the United States does not maintain diplomatic relations.

Nonresident aliens are placed on the same footing as residents in 5 States, while in 10 they are not mentioned. The laws of a number of States except residents of Canada from the discriminatory provisions, or declare such provisions subject to conflicting terms of any treaty, or deny all benefits to aliens whose national laws would exclude citizens of the United States in like circumstances. Table 17 analyzes the provisions regarding nonresident alien dependents.

TABLE 17.—States Having Discriminatory Provisions Regarding Nonresident Alien Dependents ¹

Exclusion	Reduced benefits	Permitting commutations to lump sums in reduced amounts	Restricting possible beneficiaries
Alabama Hawaii New Mexico Pennsylvania Philippines South Dakota West Virginia	Alaska Arizona Colorado Delaware Florida Georgia Idaho ² Illinois Iowa ³ Kansas Kentucky Maine Michigan Montana ³ Nevada Oregon Utah Virginia Washington Wyoming	Arkansas District of Columbia Kentucky Maryland Nebraska New York North Carolina Oklahoma South Carolina United States: Civil employees Longshoremen	Arkansas Delaware District of Columbia Florida Illinois Kentucky Maryland Montana Nebraska New York North Carolina Oregon South Carolina Washington Wisconsin Wyoming United States: Longshoremen
Presumption of dependency destroyed	Excluding payments to dependents in countries not maintaining diplomatic relations with United States	Placed on same footing as resident dependents	No provision
California	Washington	Connecticut ³ Minnesota Ohio Tennessee Texas	Indiana Louisiana Massachusetts Missouri New Hampshire New Jersey North Dakota Puerto Rico Rhode Island Vermont

¹ The provisions are subject to change by treaties between the United States and foreign countries.

² If foreign government excludes payment to United States citizens then payments are excluded under State law.

³ If dependents as defined under the law are nonresidents and there are residents who are dependents in fact, compensation may be apportioned between them.

Chronological Development of Workmen's Compensation Legislation in the United States

The first legislation in the United States providing for benefits for accidental injury in industry without suit or proof of negligence was a cooperative insurance law enacted in Maryland in 1902. However, this law, as well as the one adopted in Montana in 1909, was adopted without adequate regard for either legal or economic principles. The first official recognition of the true principle of workmen's compensation by the Congress of the United States was the Federal act of 1908, providing limited benefits for designated classes of employees of the United States, though acts of 1882 (Life Saving Service) and 1900 (Postal Service) had made some provision of a limited nature.

In the field of State control, investigative commissions were provided as early as 1903 (Massachusetts) and 1905 (Illinois), but no

tangible results immediately followed. Later commissions in both of these States, and two and even three commissions in other jurisdictions, indicate the degree of caution with which approach to the subject was made. Tables 18 and 19 show the progress of such action, both in the appointment of commissions and in the enactment of the laws.

TABLE 18.—States in Which Commissions Were Appointed and in Which Compensation Laws Were Enacted, by Years.

State	Year first commission was appointed	Year compensation law was enacted	State	Year first commission was appointed	Year compensation law was enacted
Alabama	1915	1919	Nebraska	1911	1913
Alaska		1915	Nevada		1911
Arizona		1912	New Hampshire		1911
Arkansas	1919	1939	New Jersey	1910	1911
California		1911	New Mexico		1917
Colorado	1911	1915	New York	1909	⁵ 1910
Connecticut	1907	1913	North Carolina	1929	1913
Delaware	1911	1917	North Dakota	1911	1929
District of Columbia:			Ohio	1910	1919
Public employees		1919	Oklahoma		1911
Private employees		1928	Oregon	³ 1911	1915
Florida		1935	Pennsylvania	1911	1913
Georgia		1920	Philippine Islands		1915
Hawaii		1915	Puerto Rico	1913	1927
Idaho		1917	Rhode Island		1916
Illinois	1905	1911	South Carolina		1912
Indiana	1913	1915	South Dakota		1935
Iowa	1911	1913	South Dakota		1917
Kansas		1911	Tennessee	1913	1919
Kentucky	¹ 1915	² 1914	Texas	1911	1913
Louisiana	1912	1916	Utah	1915	1917
Maine		1914	Vermont	1913	1915
Maryland	³ 1913	1915	Virginia	1916	1918
Massachusetts	1903	1914	Washington	² 1910	1911
Michigan	1911	1911	West Virginia	³ 1911	1913
Minnesota	³ 1909	1912	Wisconsin	1909	1911
Missouri	1910	1913	Wyoming		1915
Montana	² 1910	⁴ 1919	United States:		
		1925	Public employees	1910	⁵ 1908
		² 1909	Longshoremen		1916
		1915			1927

¹ Voluntary.

² Law declared unconstitutional.

³ Appointed by the Governor.

⁴ Rejected on referendum.

⁵ 2 laws, 1 (compulsory) declared unconstitutional.

TABLE 19.—Number of Workmen's Compensation Commissions and Laws, by Years

Year	Commissions formed or provided for	States enacting original law	Year	Commissions formed or provided for	States enacting original law	Year	Commissions formed or provided for	States enacting original law
Total	41	54	1911	12	10	1919	1	4
			1912	1	4	1920		1
1903	1		1913	7	7	1927		2
1905	1		1914		2	1928		1
1907	2		1915	3	9	1929	1	1
1908		1	1916	1	1	1935		2
1909	3	1	1917		5	1939		1
1910	8	1	1918		1			

The 41 commissions listed operated in 34 jurisdictions. Laws have been enacted by the legislatures of 47 States, the Territories of Alaska and Hawaii, the Philippines, and Puerto Rico, and by Congress for the civil employees of the Federal Government, for the District of Columbia, and for longshoremen and harbor workers. It is evident, therefore, that every law has not been preceded by a commission, but every commission has been followed by the enactment of a law, though in some cases so remotely as to suggest a lack of any real connection between the two events.

Reference to the foregoing tables discloses both the progress and extent of compensation legislation. The first law of general application was enacted in New York in 1910. It was declared unconstitutional after a very brief term of existence, but following an amendment to the constitution a new law was passed which has been sustained by both the State and the Federal courts. Compensation legislation was concurrently enacted in other States, and by 1936 the only States without such legislation were Arkansas and Mississippi. The 1939 legislature of Arkansas passed a workmen's compensation act, but, as previously stated, it has been held in abeyance pending a referendum.

Table 20 shows in chronological order the States which have enacted compensation laws.

TABLE 20.—States Having Compensation Laws, With the Date of Their Enactment and Coming Into Effect

State	Approved	Effective	State	Approved	Effective
United States ¹	May 30, 1908	Aug. 1, 1908	Vermont.....	Apr. 1, 1915	July 1, 1915
Washington.....	Mar. 14, 1911	Oct. 1, 1911	Maine.....	do.....	Jan. 1, 1916
Kansas.....	do.....	Jan. 1, 1912	Colorado.....	Apr. 10, 1915	Aug. 1, 1915
Nevada.....	Mar. 24, 1911	July 1, 1911	Hawaii.....	Apr. 28, 1915	July 1, 1915
New Jersey.....	Apr. 4, 1911	July 4, 1911	Alaska.....	Apr. 29, 1915	July 28, 1915
California.....	Apr. 8, 1911	Sept. 1, 1911	Pennsylvania.....	June 2, 1915	Jan. 1, 1916
New Hampshire.....	Apr. 15, 1911	Jan. 1, 1912	Kentucky ²	Mar. 23, 1916	Aug. 1, 1916
Wisconsin.....	May 3, 1911	May 3, 1911	Puerto Rico.....	Apr. 13, 1916	July 1, 1916
Illinois.....	June 10, 1911	May 1, 1912	South Dakota.....	Mar. 10, 1917	June 1, 1917
Ohio.....	June 15, 1911	Jan. 1, 1912	New Mexico.....	Mar. 13, 1917	June 8, 1917
Massachusetts.....	July 28, 1911	July 1, 1912	Utah.....	Mar. 15, 1917	July 1, 1917
Michigan.....	Mar. 20, 1912	Sept. 1, 1912	Idaho.....	Mar. 16, 1917	Jan. 1, 1918
Rhode Island.....	Apr. 29, 1912	Oct. 1, 1912	Delaware.....	Apr. 2, 1917	Do.
Arizona.....	June 8, 1912	Sept. 1, 1912	Virginia.....	Mar. 21, 1918	Jan. 1, 1919
West Virginia.....	Feb. 22, 1913	Oct. 1, 1913	North Dakota.....	Mar. 5, 1919	July 1, 1919
Oregon.....	Feb. 25, 1913	July 1, 1914	Tennessee.....	Apr. 15, 1919	Do.
Texas.....	Apr. 16, 1913	Sept. 1, 1913	Dist. of Columbia ¹	July 11, 1919	Do.
Iowa.....	Apr. 18, 1913	July 1, 1914	Alabama.....	Aug. 23, 1919	Jan. 1, 1920
Nebraska.....	Apr. 21, 1913	Dec. 1, 1914	Georgia.....	Aug. 17, 1920	Mar. 1, 1921
Minnesota.....	Apr. 24, 1913	Oct. 1, 1913	Missouri.....	Apr. 30, 1925	Nov. 2, 1926
Connecticut.....	May 29, 1913	Jan. 1, 1914	United States:		
New York ²	Dec. 16, 1913	July 1, 1914	Longshoremen.....	Mar. 4, 1927	July 1, 1927
Maryland.....	Apr. 16, 1914	Nov. 1, 1914	Philippines.....	Dec. 10, 1927	June 10, 1928
Louisiana.....	June 18, 1914	Jan. 1, 1915	Dist. of Columbia.....	May 17, 1928	July 1, 1928
Wyoming.....	Feb. 27, 1915	Apr. 1, 1915	North Carolina.....	Mar. 11, 1929	July 1, 1929
Indiana.....	Mar. 8, 1915	Sept. 1, 1915	Florida.....	May 25, 1935	July 1, 1935
Montana ³	do.....	July 1, 1915	South Carolina.....	July 17, 1935	Sept. 1, 1935
Oklahoma.....	Mar. 22, 1915	Sept. 1, 1915	Arkansas.....	Mar. 15, 1939	(³)

¹ Public employees only.

² Earlier laws of Montana (1909), New York (1910), and Kentucky (1914) were declared unconstitutional.

³ Law is held in abeyance pending referendum to be voted upon at next national election (Nov. 5, 1940).

Appendix 3.—Reading and Reference List

The following brief list of publications is submitted as a reader's guide to further study of workmen's compensation. The list, in the main, is limited to publications that are most generally in use and usually available at local libraries. The omission of a publication from the list does not imply that it is not valuable or has not been taken into consideration in this survey report. This is especially true with regard to actuarial reports, which are confidential, and reports of State or Provincial investigations, which are of interest but seldom readily available in libraries.

Survey Reports

General

UNITED STATES. *Bureau of Labor Statistics.*

Comparison of workmen's compensation insurance and administration, by Carl Hookstadt. Washington, 1922. 194 pp. (*Its Bulletin No. 301.*)

Now out of print, but available in many public libraries.

This report covers the first major survey of workmen's compensation in the United States and Canada. Hookstadt visited 20 States and 2 Canadian Provinces during the years 1919-20. The survey is recognized as a landmark in American compensation studies, and the three tests applied, "cost, service, and security," reappear in most of the subsequent surveys.

DODD, WALTER F.

Administration of workmen's compensation. New York, The Commonwealth Fund, 1936. 845 pp.

This study of administration was undertaken by The Commonwealth Fund in 1929. It is based upon field studies mainly in the more important industrial States, but is in part the result of collaboration. The report has an excellent index, and is a readily available source of information and opinion upon most of the features of workmen's compensation.

State Surveys

PENNSYLVANIA. *Department of Labor and Industry.*

Outline of needed changes in the Pennsylvania workmen's compensation system. Harrisburg, 1934. (*Its Special Bulletin No. 40, part I-a.*)

— — — The results of workmen's compensation in Pennsylvania. Harrisburg, 1934. (*Its Special Bulletin No. 40, part I-b.*)

— — — The results of workmen's compensation in Pennsylvania—Statistical tables. Harrisburg, 1934. (*Its Special Bulletin No. 40, part I-c.*)

— — — Self-insurance of workmen's compensation in Pennsylvania, by Howard M. Teaf, Jr. Harrisburg, 1934. (*Its Special Bulletin No. 40, part II.*)

— — — Pennsylvania labor and industry in the depression. Harrisburg, 1934. (*Its Special Bulletin No. 39.*)

The above bulletins, relating to the survey of workmen's compensation in Pennsylvania in 1933-34, were published with the aid of Federal funds. This is the most extensive study ever made within a single jurisdiction.

Digests or Analyses of Compensation Laws

UNITED STATES. *Bureau of Labor Statistics.*

Principal features of workmen's compensation laws. (*In its Handbook of Labor Statistics and in its Monthly Labor Review.*)

For many years the Bureau of Labor Statistics has published summaries of the principal features of the workmen's compensation laws, either in the Handbook of Labor Statistics or in the Monthly Labor Review. Reprints of such summaries are available in serial form. An example of the data included in such summaries is included in this survey report as Appendix 2.

The Bureau has discontinued the publication of complete digests of the workmen's compensation laws of the United States and Canada. Bulletins Nos. 423 and 496, published, respectively, in 1926 and 1929, are of historical interest only, because of the rapidity of the changes in the laws. The Bureau continues to publish digests or texts of special features of legislation, as, for instance, occupational-disease provisions. Bulletin No. 652, Occupational-Disease Legislation of the United States, was published in 1938, and a 1939 revision is in preparation.

CANADA. *Department of Labor (Dominion).*

Workmen's compensation in Canada: a comparison of Provincial laws. Ottawa.

An analysis or "comparison" of the Provincial compensation laws is issued annually, in mimeographed form.

Association of Casualty and Surety Executives.

Digest of workmen's compensation laws in the United States and Territories. New York, 60 John St., 1937. 817 pp.

Published every 2 years.

Reports of Proceedings of Organizations

UNITED STATES. *Bureau of Labor Statistics.*

Proceedings of annual meetings of the International Association of Industrial Accident Boards and Commissions. (Until 1934, *in its* Bulletins.)

— *Department of Labor. Division of Labor Standards.*

Proceedings of International Association of Industrial Accident Boards and Commissions. (Beginning with 1934, *in its* Bulletins.)

A mine of information and viewpoints upon workmen's compensation is found in these reports of the meetings of this Association.

— — Cumulative loose-leaf index to the proceedings of the International Association of Industrial Accident Boards and Commissions. Washington, 1939. (*Its* Bulletin No. 29.)

Reference is made to this topical index as to many subjects not mentioned or inadequately covered in this list of references.

CASUALTY ACTUARIAL SOCIETY.

Proceedings. New York.

In these reports are found many discussions relating to workmen's compensation, usually from the point of view of the private insurance actuary.

International Labor Office Publications

INTERNATIONAL LABOR OFFICE.

(Lists of publications of the International Labor Office may be obtained from that office.)

— Workmen's compensation in the United States, by Ralph H. Blanchard. Geneva, 1926. 103 pp.

This publication is based in part upon U. S. Bureau of Labor Statistics Bulletin No. 275, Comparison of workmen's compensation laws of the United States and Canada up to January 1, 1920, by Carl Hookstadt, which is out of print.

INTERNATIONAL LABOR OFFICE. Workmen's compensation in Canada, by Margaret Mackintosh. (*In its International Labor Review* for July 1939.)

General Studies of Workmen's Compensation

DOWNNEY, E. H.

Workmen's compensation. New York, The Macmillan Co., 1924. 223 pp.

This book has been regarded as a classic in its field.

BOWERS, EDISON L.

Is it safe to work? A study of industrial accidents. New York, Houghton Mifflin Co., 1930. 229 pp.

This study of workmen's compensation emphasizes accident prevention and rehabilitation. In the course of his preparation for writing, Mr. Bowers visited many of the workmen's compensation commissions.

Case Studies in Administration Within a State

ALTMAYER, A. J.

The Industrial Commission of Wisconsin. Madison, University of Wisconsin, 1932. 324 pp.

An outstanding study, by an administrator, of the administration of workmen's compensation and other laws in a single State.

BROOKINGS INSTITUTION.

(Reports of surveys of administration in certain States.)

In these reports the Institution has at times included comment on workmen's compensation, as, for example, in the Oklahoma and Iowa studies (Survey of administration in Iowa, 1933; Organization and administration of Oklahoma, 1935).

Special Aspects of Workmen's Compensation

Insurance

(For early comparisons of various types of carriers, see U. S. Bureau of Labor Statistics Bulletins Nos. 212, 281, and 301.)

Private Insurance

MICHELbacher, G. F., and NIAL, THOMAS M.

Workmen's compensation insurance. New York, McGraw-Hill Book Co., 1925. 503 pp.

Public Insurance

MCCAHAN, DAVID.

State insurance in the United States. Philadelphia, University of Pennsylvania Press, 1929. 290 pp.

This author's viewpoint of the State funds is critical.

UNITED STATES. *Department of Labor. Division of Labor Standards.*

Discussions of industrial accidents and diseases, 1938. Washington, 1939. (*Its Bulletin* No. 24, pp. 10-43.)

Both sides of the subject of State funds are presented.

— — — Progress of State insurance funds under workmen's compensation. Washington, 1939. (*Its Bulletin* No. 30.)

Self-Insurance

PENNSYLVANIA. *Department of Labor and Industry.*

Self-insurance of workmen's compensation in Pennsylvania, by Howard M. Teaf, Jr., Harrisburg, 1934. 176 pp. (*Its Special Bulletin* No. 40, part II.)

McSHANE, O. F.

Under what conditions should the self-insuring privilege be granted, if at all. (In U. S. Bureau of Labor Statistics Bulletin No. 432, pp. 172-181. Washington, 1927.)

HOWARD, M. T.

Problems of self-insurance. (In U. S. Department of Labor, Division of Labor Standards Bulletin No. 17, p. 61. Washington, 1938.)

Rehabilitation

UNITED STATES. *Federal Board for Vocational Education.*

Workmen's compensation legislation in relation to vocational rehabilitation. (In its Bulletin No. 126, Civilian Vocational Rehabilitation Series No. 15. Washington, 1927.)

KESSLER, HENRY H.

The crippled and the disabled: rehabilitation of the physically handicapped in the United States. New York, Columbia University Press, 1935.

NORCROSS, CARL.

Vocational rehabilitation and workmen's compensation. New York, The Rehabilitation Clinic, 1936. 126 pp.

Mainly a study of lump-sum settlements, especially to ascertain whether or not these have therapeutic value or cure so-called neuroses.

Work Accidents to Children

UNITED STATES. *Children's Bureau.*

The illegally employed minor and workmen's compensation. (Its Publication No. 214. Washington, 1932. 226 pp.)

KLEIN, EARL E.

Work accidents to minors in Illinois. Chicago, University of Chicago Press, 1938. 256 pp.

Medical Relations

AMERICAN MEDICAL ASSOCIATION. *Bureau of Medical Economics.*

Medical relations under workmen's compensation. Chicago, 535 North Dearborn St., 1935. 176 pp.

Also subsequent publications to show developments to the present time.

AMERICAN COLLEGE OF SURGEONS.

Medical service in industry and workmen's compensation laws. 1938 revision. Chicago, 40 East Erie St.

Legal Aspects of Workmen's Compensation

UNITED STATES. *Bureau of Labor Statistics.*

Recent court decisions of interest to labor. (In its Monthly Labor Review.)

There appear currently, under this head, analyses of court decisions upon workmen's compensation cases, and also analyses of new legislation.

BROWN, RAY A.

The administration of workmen's compensation. (In University of Wisconsin Studies in the Social Sciences and History No. 19, Madison, 1933.)

See also articles in 7 Wisconsin Law Review, 15, 37 (1931-32), and 8 Wisconsin Law Review, 133, 217 (1933).

From time to time articles of interest appear in the law reviews issued by the leading universities, and also in the American Labor Legislation Review, published quarterly by the American Association for Labor Legislation, 131 East Twenty-third St., New York City.

See Dodd, Walter F., Administration of workmen's compensation, New York, Commonwealth Fund, 1936, for legal studies and references.

Rating of Disabilities**MCBRIDE, EARL D.**

Disability evaluation. Philadelphia, J. B. Lippincott Co., 1936. **623 pp.**
New edition is in preparation.

UNITED STATES. *Bureau of Labor Statistics.*

Proceedings of the International Association of Industrial Accident Boards
and Commissions. (*Its Bulletin No. 577, p. 162 et seq.*)

— *Department of Labor. Division of Labor Standards.*

Discussion of industrial accidents and diseases, 1936. (*Its Bulletin No. 10,*
pp. 78 and 99.)

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