

# Workmen's Compensation in the United States

**A General Appraisal**  
**Court Proceedings**  
**Federal Legislation**  
**Occupational Diseases**  
**Medical Services**  
**Accident Prevention**  
**Problems of Administration**  
**Rehabilitation**

**Bulletin No. 1149**

**UNITED STATES DEPARTMENT OF LABOR**

**James P. Mitchell, *Secretary***

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## Letter of Transmittal

UNITED STATES DEPARTMENT OF LABOR,  
BUREAU OF LABOR STATISTICS,  
Washington, D. C., February 12, 1954.

The Secretary of Labor:

I have the honor to transmit herewith a bulletin on workmen's compensation in the United States. The separate chapters appeared originally as eight articles in the Monthly Labor Review during 1953.

Workmen's compensation is our oldest form of social-security legislation. Like unemployment insurance, its purpose is to provide compensation for wage loss due to causes not directly within the control of individual workers. It is the only field of worker-benefit legislation in which State jurisdictions operate completely independent of the Federal Government.

The several parts are intended as an informed appraisal by competent observers of the status of the laws and their administration. They do not comprise a comprehensive survey of the field, an endeavor sorely needed. The contents of the present bulletin were limited to an appraisal of legislative and administrative progress, appeals, Federal legislation, occupational diseases, medical services, accident prevention, problems of administration, and rehabilitation.

The Bureau is grateful to the several authors for their useful contributions to the subject.

EWAN CLAGUE, *Commissioner.*

HON. JAMES P. MITCHELL,  
*Secretary of Labor.*

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### Contents

	Page
I—An Appraisal .....	1
II—Court Proceedings.....	9
III—Federal Legislation.....	13
IV—Occupational Diseases.....	20
V—Medical Services.....	25
VI—Accident Prevention.....	29
VII—Problems of Administration.....	34
VIII—Rehabilitation.....	40

# Workmen's Compensation in the United States

## I—An Appraisal

MAX D. KOSSORIS\*

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MORE THAN 40 years have elapsed since the first State workmen's compensation act was adopted in the United States. Since then, every State and Territory of the United States has adopted such legislation. The last State, Mississippi, passed its act in 1948.

The impetus for this type of legislation was public dissatisfaction with the hardship, delay, and uncertainty entailed in court procedures when a worker was injured or killed at his job. The rapid mechanization of our industrial system was accompanied by a widespread disregard for the safety and health of the workers involved—largely because of the ample labor supply. The injured workers seldom were able to afford the cost of litigation. Even if undertaken, damage suits frequently were unsuccessful or resulted in inadequate judgments. As a result, workers and their dependents, after exhausting their savings, often had to obtain assistance from private or public charities.

By the first decade of the 20th century, however, influential sections of the public had become thoroughly aroused over the situation and looked around for possible remedies. Applicable social legislation was found in Germany and England. Germany under Bismarck, to head off social discontent on the part of the German worker, had adopted a compensation act in 1884. Under this

law, a worker who was injured in the course of his employment was automatically paid benefits in lieu of wage loss, without following the former legal procedure of proving that his employer was at fault. The law was compulsory for employers and employees alike. Employers insured their liabilities for benefit payments and medical services through nonprofit mutual insurance funds.

By 1897, the English had adopted an act. Here too, injured workers were entitled to benefits without having to prove negligence or fault on the part of their employers. But the law was elective rather than compulsory, and insurance was a matter of private choice. In effect, the law established a legal principle, but did not provide a separate and distinct administrative mechanism. If a worker was dissatisfied with the treatment meted out by an employer, he could always take his case to court.

### Lack of Uniformity in Early Laws

The early attempts at State legislation in this country were based in large measure on the laws, administrative practices, and experiences of these two countries. But such examples were supplemented by special surveys in New York, Michigan, Pennsylvania, Wisconsin, and Illinois—to name only the more heavily industrialized States—to determine the scope of industrial injuries, the

\*Of the Bureau's Western Regional Office (San Francisco).

amounts paid to workers under employers' liability laws, the amounts paid in premiums for such insurance, the economic background of injured workers and their families, what happened to them as a result of injury to the breadwinners, etc.<sup>1</sup>

The framers of the new legislation were searching for remedial measures that would suit the particular situations in their States—frequently the problem was how to circumvent obstacles or prohibitions in the State constitutions or statutes. They realized that many of their solutions were makeshifts, pending the future removal of some legal barrier, but they hoped that in time both the makeshifts and the experimental devices would give way to sound and practical provisions and administrative practices. These hopes were seldom realized. No substantial modification in the original diverse compensation legislation was made during the intervening years. From about 1915 on, the compensation acts adopted by successive States took their form through emulation, modified by local considerations and the influence of the forces favoring them.

As a result, about half of the State laws are compulsory; the others are elective. Under some laws in the latter group, an employer and all his workers are presumed to be covered by the law unless the employer—and in some States, the worker himself—individually rejects it; and under others, an employer must positively elect to be covered by the workmen's compensation act so as not to come under the employers' liability laws with the common-law defenses abrogated. Some laws are in part compulsory and in part elective. Insurance is handled in three ways: in some States, through an exclusive State fund; in others, by private carriers; and in another group, by State funds competing actively with private carriers and operating under the same regulations.

The great variation in administrative practices in the various States is difficult to explain. One of the major purposes of the annual meetings of industrial accident commissioners is the exchange of information which would permit any State to benefit from progress in other States. Undoubtedly, many administrators learn much through

this device, although some administrators seem to be much more concerned than others with adapting the experience of other States. Still other administrators who wanted to introduce changes for better administration appear to have found the opposition too formidable to risk the effort.

After working in the compensation field for nearly two decades, one authority sadly concluded: "If, in the field of our mechanical contrivances, the same adherence to old models had prevailed as that which is found in respect to social arrangements, we should now be driving around in ox carts."<sup>2</sup>

Currently, there is little likelihood of eliminating these legislative diversities. A Federal act could hardly be more than a compromise between the more advanced and the less perfected State laws. Moreover, it is extremely unlikely that States would consent to relinquish a jurisdiction so deeply embedded in State operations.

### Administration

A law can only be as good as its administration. Poor administration can cripple the best of laws. Conversely, competent administrators can get reasonably good results with poor laws.

Outstanding examples of good workmen's compensation administration are found where attention is paid to the requirements for competent and experienced administrators. In some States, however, this complex and intricate piece of legislation is administered by persons who do not have the necessary qualifications. Some are appointees subject to the vicissitudes of administrative changes. This is remedied in part by appointments for overlapping terms, which preserve some continuity. But experience has shown that even this device can be subject to political influence.

*Objectives of Administration.* The primary purposes of a workmen's compensation act are to provide prompt benefit payments to an injured worker, to provide adequate and competent medical services, to rehabilitate the worker as

<sup>1</sup> Pioneer studies made by the Commissioner of Labor were *Workmen's Insurance and Benefit Funds in United States* (23rd Annual Report, Bureau of Labor Statistics, 1908); and *Workmen's Insurance and Compensation Systems in Europe* (24th Annual Report, Bureau of Labor Statistics, 1909).

<sup>2</sup> *The Development of Workmen's Compensation Claims Administration in the United States and Canada*, by Marshall Dawson, issued by the International Association of Industrial Accident Boards and Commissions, 1951 (p. 33).

promptly as possible for return to gainful employment, and to work for accident prevention. The primary objective of administration is to make sure that the law is observed and that an injured worker gets everything to which the law entitles him. For no matter how liberal the law, he will be worse off for having been injured. From the employers' viewpoint, a compensation act provides a definite schedule of liability in contrast to the uncertainties prevailing under the procedure of liability settlements.

One of the greatest problems of workmen's compensation administration is the frequent failure to act on these premises. It is important for the administrative agency to follow an injury from the first report of injury to the final closing of the case. Some States, for example, not only check the accuracy of total payments but also require signed receipts for every compensation payment to be filed with the State commission. Some require the filing of a final receipt which both spells out the total amount paid and gives a breakdown of what the payment was for, thus permitting a positive check on the accuracy of the payment.

But frequently the legislation itself requires the administrator to operate on the presumption that it is the responsibility of each injured person to look after his rights, and that it is the primary function of the administrative body to adjudicate *contested* claims.

No final reports as to the total amount paid or as to the method of computation are required in many States. It is obvious, however, that most workers are not familiar with the provisions of their workmen's compensation act. In only a few States does the administration get in touch with the injured worker soon after the injury has been reported to advise him of his rights—i. e., about benefits, medical services, the advice available at the commission's office, etc. Too many States do not insist on prompt reporting of accidents by employers, prompt payments of compensation benefits, and on final reports in which employers or their insurance carriers spell out the amounts paid to the injured workers for their disabilities and how these amounts were computed.

*Measurement of Performance.* Some jurisdictions do not know how much compensation has been paid by employers and insurance carriers, and for

what purposes payments were made. Some States follow through on fatal and serious permanent injuries, but do not obtain information on the end results of most of the injuries reported to them.

Many administrators see no need for detailed administrative or statistical information. A count of the number of cases reported during the year and of the number of decisions made in contested cases, in their opinion, suffices for statistical records.

How promptly are workers paid? Do they get what the law says they should? To what extent does the compensation rate, usually limited by a maximum, actually offset lost wages? How much is paid for medical services? How many cases are contested? Appealed? What issues cause most trouble? Where are the bottlenecks in the "judicial" process of hearing cases and making decisions?

Only a few States make a systematic effort to find reliable answers to these questions through reliable statistics. Wisconsin, for example, publishes statistics on promptness of first payments. The publicity of these tabulations, in which insurance carriers are identified by name and ranked according to promptness of performance, is credited by Wisconsin administrators for a very beneficial effect. In Illinois, routine checks of the accuracy of payments, made on the basis of reports filed by employers, insurance carriers, and physicians, have resulted in additional payments of many thousands of dollars yearly in order to meet the benefits prescribed by law. Statistical studies in Illinois have shown that compensation payments actually fell far below the two-thirds wage offset which the law provided. Statistics available from a few States have shown that the cost of medical care consumed an increasingly larger share of compensation costs; this information has raised serious questions about the provisions in many State acts covering medical fees and limiting medical services.

Again, when issues which cause much trouble in contested cases are clearly identified, clarifying language can be inserted in the act itself and thereby remove the cause for litigation. Administrative statistics revealing bottlenecks permit an administrator to pin-point his difficulties and provide the necessary remedies.

Few States have good yardsticks of performance.

The report of the Committee on Statistics of the International Association of Industrial Accident Boards and Commissions, 36th Annual Convention, 1950,<sup>3</sup> contains this language:

The survey revealed that adequate statistics on workmen's compensation administration are the exception rather than the rule . . . Very few commissions . . . have available details on the frequency and cost of various types of medical services such as hospitalization, artificial members, vocational rehabilitation, etc. . . . Detailed statistics of compensation and medical costs are considered of great value, not only for day-to-day administration, but for evaluating the cost of proposed legislative changes and for the promotion of accident prevention . . . Most States do not have statistics on the promptness of reporting injuries and of the first payment of compensation . . . few commissions have exact figures on the percentage of contested and uncontested cases . . . The present survey indicated that not much progress has been made during the past 10 years in developing the statistical facts concerning contested cases . . . While many jurisdictions have some statistics on the volume of contested claims, the committee found that very few keep statistics on issues involved, hearings required, place of hearings, attorney fees, carriers involved, and the time intervals in the processing of cases.

Oddly enough, there is no strong pressure for a different attitude on the part of the major groups—employers and workers—involved in this process. Many employers have come to consider the fact of carrying workmen's compensation a limitation on their responsibilities for work injuries. Anything beyond that is the concern of the insurance carrier. And labor leaders often seem to be content if they have succeeded in getting a compensation act on the statute books, and to bargain periodically with legislators (and in some States with employers) for changes in benefit provisions—a few more weeks of benefits or a better maximum benefit rate. Too often they overlook the desirability of able and conscientious administration.

### The Benefit Structure

Compensation benefits are paid in lieu of wages lost because of disabling work injuries. To discourage malingering or "false claims," compensation laws generally provide for a brief

<sup>3</sup> Workmen's Compensation Problems, Bulletin No. 142, Bureau of Labor Standards, U. S. Department of Labor (pp. 203-209). This report also contains a good discussion of the use of administrative statistics by the California administration.

waiting period—usually 3 to 7 days—so that injuries of short duration are not compensated. Furthermore, benefits are payable for only a portion of wages lost. With few exceptions, that proportion varies between 50 and 66½ percent and is limited by a fixed maximum.

An examination of our annual work-injury experience in all classes of employment reveals that out of about 2 million disabling work injuries, about 95 percent fall in the temporary-total disability category—i. e., workers are disabled beyond the day on which the injury occurred, but are able to return to work subsequently without any permanent impairment. About one-half percent of the injury total consists of fatalities; and the remainder, about 4½ percent, are permanent impairments, ranging all the way from the loss of the first digit of a finger to complete permanent physical disability. Although fatalities and permanent disabilities together account for only about 5 percent of the injury total, they account for between one-third to one-half of the total benefits paid under our workmen's compensation laws.

How much is a worker's life worth? What is the worth of an arm, a leg, a finger, a toe? Almost universally in the State compensation acts, a fixed schedule determines the amounts payable for each—not in terms of so many dollars, but in numbers of weeks of benefits, at a weekly rate related to the worker's wage. Rarely are these schedules adjusted to the occupation, age, and working-life expectancy of the injured worker.

The early framers of compensation laws attempted, in establishing benefit rates, to relate death to average working-life expectancy, and permanent-partial impairments to total physical work capacity. This is reflected specifically in the first attempts at the standardization of industrial accident statistics. By 1920, a committee had established a schedule relating the loss of various body parts to permanent total disability.<sup>4</sup> The dismemberment of an arm above the elbow, for example, was rated at 75 percent of permanent-total disability, with death, of course, at 100 percent. The loss of the arm at or below the elbow was rated at 60 percent, a hand at 50 percent, any one finger at 5 percent, with substantially higher

<sup>4</sup> Standardization of Industrial Accident Statistics, Bulletin No. 276, Bureau of Labor Statistics, U. S. Department of Labor, 1920.

rates for combinations of fingers; one eye at 30 percent, both eyes, 100 percent; loss of hearing in one ear, 10 percent, in both ears, 50 percent; and so on.

A life was evaluated at 6,000 days, which was then translated to 20 years of working-life expectancy at the average age of the worker fatally injured. (This figure was taken from European experiences, as no such data were available in the United States.)

The framers of early workmen's compensation legislation did not expect their early framework to remain unchanged during the next half century. They regarded much of it as experimental, and hoped that experience would lead to subsequent improvements. It is amazing, however, to find that so little basic change has occurred, and that so many of the early objectives have become obscured.

The extent to which wages are offset by compensation, i. e., the percentage of wages payable as benefits, has changed little over the years. But the maximum limits, which in the early years seemed quite reasonable, have lagged far behind increased earnings—in spite of some adjustments—so that by now the proportion of lost wages offset by compensation benefits has shrunk to less than one-half. In a few States, maximum weekly benefit payments for a married worker with children may exceed \$40, but most States specify a maximum between \$25 and \$30.<sup>5</sup> Weekly earnings in manufacturing employment averaged above \$66 during 1952. At 66% percent, this average calls for a weekly rate of better than \$43, regardless of marital status or dependents. Only Alaska and Arizona permit as much as this for a single worker, and only 5 more (Massachusetts, North Dakota, Washington, Oregon, and Wyoming) allow \$40 or slightly more for a worker with a large number of dependents. In more than half of the States, the weekly maximum benefit for a worker is \$30 or less. Consequently, \$35 or more of the current weekly wage loss remains uncompensated. The \$30 maximum, it will be noted, restores two-thirds of the lost wages only if this wage was \$45.

There is no question, therefore, but that today's injured workers suffer a much greater wage loss than the early lawmakers contemplated.

*Permanent Disability.* In determining the amounts to be paid for a man's life, arm, leg, eye, etc., a comparison of State compensation laws reveals a bewildering variety of provisions. Only one State attempts to relate for all injured workers the degree of permanent impairment to permanent-total disability, taking into account the worker's age, occupation, and the extent to which the impairment probably will limit future earning power. But guidance is hindered because of the lack of comprehensive survey data on worker experience.

The schedules of specific losses in the States vary greatly and may have no relation to changes in occupations forced by a permanent impairment or to the injured employee's working-life expectancy. If an 18-year-old boy, earning \$50 a week, loses an arm in a certain State, he is entitled to no more than \$27 a week for a period of 250 weeks—slightly less than 5 years—for a total of \$6,750. No attention is paid to a potentially higher earning capacity in later life if the youth had remained able-bodied. In the same State, a highly skilled mechanic—35 years of age, earning \$100 a week, and with a wife and three children—who has the misfortune to suffer the same injury, also receives the same weekly benefit and total aggregate payment of \$6,750. The fact that he is completely unfit to continue in his occupation and in all probability will have to drop to a less remunerative activity, is supposed to be compensated by the 250 weeks of compensation. And finally, if a man 70 years of age, earning \$50 a week as a watchman, should suffer the same impairment, he too will receive the same weekly benefit and total amount.

In Colorado, loss of a hand is worth 104 weeks of compensation—in New Jersey, 230 weeks. A New Jersey hand, in fact, is worth more than an entire arm in Alabama and 24 other States.<sup>6</sup> The value of an arm varies between 500 weeks of compensation in Wisconsin to 150 weeks in Maine. In only 6 States does it rate 300 weeks or more. A leg is worth 500 weeks in Wisconsin, 300 weeks in Rhode Island—but only 150 weeks in Maine, 160 in South Dakota, and 170 in Vermont. In Oregon, complete loss of hearing is worth 350 weeks; in

<sup>5</sup> Colorado, Delaware, Florida, Georgia, Illinois, Kansas, Kentucky, Louisiana, Maine, Maryland, Mississippi, Nebraska, New Hampshire, New Mexico, North Carolina, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, and Virginia.

<sup>6</sup> Benefits and other provisions are those in effect at the end of 1952.

Arizona, 260; and in Maine, as little as 65. And 15 States do not require additional compensation for the healing period when the injury calls for a "schedule" benefit, i. e., payment for a permanent impairment. In these States, as a rule, the benefit payments for temporary disability are subtracted from the amount due for the permanent impairment.

*Death.* Similar divergence in compensation benefits is shown in death cases. Many State laws provide, in addition to payments to widows, for increased benefits to minor children. Others simply specify a certain number of weeks of benefits, and many of them deduct from the total allowable maximum any payments already made to the worker for disability prior to death for the same injury—so that the widow and children get less than the specified maximum. Only 7 States provide for payments to a widow for life, or until remarriage, and for minor children until a specified age is reached.

In about two-thirds of the States, a worker's life is worth \$10,000 (about 2½ years' earnings) or less. The widow and four children of a worker who earned \$75 a week at the time he was killed will receive \$25 a week in Kansas up to a total of \$6,000. A widow in Indiana, under the same circumstances, would be paid \$10,000, but minus the benefits paid before her husband's death. In Ohio, the death benefits would amount to \$9,000; in Tennessee, \$7,500; Kentucky, \$9,500; Virginia, \$7,500; Vermont, \$6,500; and in Maine, \$6,000. But, if the widow remarries, she forfeits all or most of the unpaid benefits. Consequently, young widows often receive less than the specified maximum.

Additional amounts for burial expenses vary from no provision at all in Oklahoma and \$150 in Arizona, Colorado, and Florida, to \$400 in California, Michigan, Missouri, Ohio, and New York, and to \$500 in Connecticut and Rhode Island.

*Medical Benefits.* Similar wide variations are found in the State provisions for medical care and, even more glaringly, in those for the rehabilitation of permanently impaired workers. As already pointed out, prompt and adequate medical care is one of the cornerstones of the philosophy of workmen's compensation. Aside from the hu-

mane aspects, adequate and competent medical services may get a man back to his job more promptly if he is temporarily disabled, and may minimize permanent impairment—thereby reducing the amounts of compensation benefits that otherwise would be payable. The growing recognition of this fact has been the most striking improvement over the early statutory provisions which narrowly restricted medical benefits.

Only 12 States, Hawaii, and Puerto Rico, however, have specific provisions in the law calling for unlimited hospital and medical benefits for an injured worker. In 19 additional States, the administrative authority is sufficiently broad to permit virtually unlimited medical attention. But, in certain others, the additional amount of benefits that can be extended at the discretion of the administration is limited.

In 17 States and Alaska, however, medical benefits are strictly limited. Kentucky provides a maximum as high as \$2,500, but in most of the other States, it falls below \$1,000. Alabama, for example, allows 90 days or \$500, and Colorado, 6 months or \$1,000. Louisiana has a flat \$1,000 limit, and South Dakota provides for 20 weeks or \$300 and hospital costs not to exceed \$700.

Although employers and insurance carriers often exceed these maximum allowances—partly because to do so is good public and industrial relations, and partly because better medical care may minimize the extent of permanent impairment—many others limit their expenditures to the requirements of the law. Under such conditions, it is not hard to visualize the plight of the worker who must defray additional expenses out of compensation benefits which offset less than half of his normal earnings.

*Rehabilitation.* Only about a third of the State workmen's compensation acts contain specific provisions for tiding a permanently impaired worker over a period of vocational rehabilitation. Some statutes, such as the one for Arizona, permit the State commission to make any awards that may be necessary to rehabilitate the injured worker for useful employment. The Wisconsin act permits full compensation payments up to 40 weeks during rehabilitation training. (Such payments are in addition to the scheduled amounts payable for the impairment.) Under the Wisconsin law, payment

for the necessary maintenance and travel costs is also permitted if the training is away from the worker's place of residence. Further, compensation payments are not limited as to time while the worker is being trained in the use of artificial members. But, as a rule, State laws providing for benefits during the rehabilitation period impose specific, and less liberal, maximum limits on the amount of compensation or period of weeks. Arkansas, for example, allows up to \$400; Minnesota, 25 weeks; Mississippi, \$10 a week for not more than 52 weeks; Ohio, \$20 a week for not more than 52 weeks; and so forth.

Rhode Island for some years has provided a curative center to make available to injured workers "all possible modern curative treatment and methods"—following the model established some years earlier in some of the Canadian Provinces. In 1951, Ohio authorized its industrial commission to advance up to \$300,000 to Ohio State University to establish a rehabilitation center which is now in operation. In addition, Oregon, Washington, and Puerto Rico have such systems.

In two-thirds of the States—including such highly important industrial States as Illinois, Pennsylvania, Indiana, and California—the task of rehabilitating a permanently disabled worker is left to public or private agencies. In some of them, rehabilitation cases may be referred by the workmen's compensation administration to the appropriate agency as a matter of routine. In many of them, however, it is up to the worker—or a charity agency—to make this connection.

Here is an example of a service which a workmen's compensation administrative agency can perform—a service in keeping both with the original concept of rehabilitating workers to gainful employment and the modern concept of encouraging self-support rather than "welfare support."

### Accident Prevention

Advocates of early compensation acts argued that automatic payments to injured workers would create a greater safety consciousness on the part of employers. They believed that self-interest would prompt an employer to prevent accidents, because, by doing so, he would save money. Subsequent developments over more than 40 years have demonstrated that—in the main—this anticipation has not been fully realized. A sub-

stantial number of large employers, over the years, have developed comprehensive safety programs. But workmen's compensation costs have been only one of several considerations.

Relatively few plants have adequate safety programs. While estimates of the number of workers protected by such organized efforts necessarily are hardly more than informed guesses, it is believed that about two-thirds of all workers are not subject to planned, organized safety efforts. As a consequence, our injury toll in industry during 1952 was over 2 million disabling injuries, with an estimated direct economic loss of 206 million man-days—enough to provide full-time employment for 687,000 persons for a year.

Most workmen's compensation administrators readily agree that accident prevention is better than compensation. But relatively few can do much about it. Some have no such authority. Others lack the necessary funds. Still others believe that safety is not their concern.

As far back as 1912, the compensation commissioners of the State of Washington, in their first annual report,<sup>7</sup> specified that one of the objectives of the Washington act was to "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 of suffering thereunder."

Some of the States have carried out this aim creditably, especially where workmen's compensation and safety, along with other related functions, are effectively integrated into one administrative body under one administrative head. In other States, the two functions are assigned, by law, to two agencies separately enforcing the workmen's compensation act and the State's minimum requirements for industrial safety and health. As a rule, the safety or factory inspection agency receives no routine reports of work injuries from employers. Hence, many State factory inspectors routinely cover their assigned territories without regard to—and often not knowing—whether or not they are spending their time in establishments where they could do the most good.

Some States have arranged for an exchange of information between the compensation agency and

<sup>7</sup> First Annual Report, Industrial Insurance Department, State of Washington, 1912 (p. 6).

the safety arm. In some jurisdictions, the accident reports flow routinely through the safety agency, either before or after they have been handled for compensation purposes; and in others, the workmen's compensation agency sends to the safety group reports of serious accidents which employers have filed with the compensation commission. But rarely is there an attempt to point to the persistent and serious violations of accepted safety practices.

To the lack of systematic coordination and inadequate staffing must be added another and extremely important factor: few of the States obtain accident-cause information adequate for a guided, selective prevention effort.

The problem of how to obtain such information has long bothered various compensation administrators. One solution attempted in recent years was to add questions relating to accident causes to the compensation reports. This additional information dealt with these elementary facts: (1) What was done unsafely so as to precipitate the accident? (2) What was unsafe in the work environment? (3) What can be done to prevent a recurrence of the accident? (4) What has been done?

Such data on specific plants or industries—and, if possible, coupled with accident costs—would help safety men do a selective safety job.

Probably no compensation administrators disavow interest in accident prevention. But a large number insist that someone else do the job. The fact that the compensation administration can assist accident prevention substantially—regardless of where in State government responsibility lies—often is overlooked.

## Outlook

The history of workmen's compensation development in the States does not encourage an optimistic view of future growth. In many States, the basic statute is antiquated, holding fast (with some exceptions) to the more limited objectives of the experimental legislation of the early pioneers in this field. The laws, and the administration of them, generally have not grown with a more enlightened social point of view. Too many administrators continue to serve only as adjudicators of contested claims and—again with outstanding exceptions—are handicapped by the limited tenure of their appointments.

Few States have the necessary data to permit an adequate evaluation of what the law accomplishes, where it falls short, and what changes are necessary to keep it at socially desirable levels. Few States are in a position to gauge what, if any, additional costs would be involved in liberalizing the benefit provisions of their acts—both in terms of benefits to offset wage loss and more liberal provisions for medical care and hospitalization. Few States are concerned with the rehabilitation of permanently impaired workers, and fewer still, with an active part in accident prevention.

There is a need today for stronger public concern with the inadequacies of workmen's compensation legislation and its administration. In spite of the tremendous forward strides in other social and economic areas, our compensation legislation and administration, on the whole, lag far behind.

## II—Court Proceedings

WARREN H. PILLSBURY \*

With few exceptions, workmen's compensation jurisdictions in the United States have provisions for some form of appeal to the courts from the decisions of the compensation administrator or board. Until 1946, there was no provision for appeals from decisions of the present Bureau of Employees' Compensation in the U. S. Department of Labor.<sup>1</sup> In that year, however, in the course of an administrative reorganization, an Employees' Compensation Appeals Board was created to review the compensation decisions of the Bureau on applications of injured employees. The decisions of this Board are not appealable to the courts. In Nevada, the law makes no provision for court appeals. However, in a few instances, the Nevada Industrial Commission has been sued in the courts. The Ohio law has no provision for court appeals as to occupational diseases. The workmen's compensation boards of the Canadian Provinces supposedly are exempt from any appellate review; however, two recent decisions of the Canadian courts have held that a limited right of review exists in the courts. The scope<sup>2</sup> of the review seems broad enough to include most questions of law which may be involved in the Boards' decision.

### Types of Judicial Review

The types of judicial review existing in the United States vary. In some jurisdictions, pro-

vision is made for a right of trial *de novo* (comparable to a rehearing) before a judge or jury in a trial court. In others, the appeal may be by bill of equity in a trial court to enjoin enforcement of a compensation award or by petition for certiorari (writ of review) from such trial court. The appeal is to an appellate court only, in some States, and may be by certiorari.

Some of the monopolistic State-fund States provide for appeal to a trial court, with trial by jury, when the board denies compensation. The case is then retried in court. The Ohio law is of this type for accidental injuries. The justification offered for this procedure is that the compensation board is in substantially the same position as that of a private insurance company—its first interest allegedly being the protection of the funds contributed by the employers and distributed by it—and that, therefore, the injured worker should have a right of recourse to an impartial court if his claim is denied because the paying officer cannot at the same time be the impartial adjudicator.

In the States in which employers insure with private insurance companies, with or without competitive State funds, the judicial review provided is usually by petition for certiorari or equivalent proceedings, filed exclusively in an appellate court in many cases.<sup>3</sup> In general, this review is

\*Deputy Commissioner, Bureau of Employees' Compensation, U. S. Department of Labor.

<sup>1</sup> Formerly, the United States Employees' Compensation Commission, and later the Bureau of Employees' Compensation, Federal Security Agency.

<sup>2</sup> In *re* Manitoba Workmen's Compensation Board and Canadian Pacific Railway (1950), 58 Manitoba Reports, p. 16; in *re* Canadian Labor Relations Board (1951), 3 Dominion Law Reports, p. 162.

<sup>3</sup> New York, Wisconsin, and California are typical examples.

limited to consideration of the record made before the compensation board: it is confined to questions of law, but includes the question of whether there is any substantial evidence to support the Board's findings. The case is not retried in the appellate court nor does the court weigh the evidence, when it is conflicting, to determine whether it would have reached the same result on the same evidence.

The exercise of this power of review is discretionary in the court, in some States such as California. Proceedings commence with the filing of a petition. The court then determines whether it will hear the case or deny the petition outright, depending upon the documents submitted. If the court grants the petition, the Board then files its record and the case is set for argument.

Under the Federal Longshoremen's and Harbor Workers' Compensation Act and its extensions, known as the Defense Bases Compensation Acts, the procedure differs in form but is very similar in substance. It follows a type of judicial review provided for many Federal administrative bodies and is initiated by the filing of a bill in equity in the United States district court for an injunction to restrain enforcement of the award or determination of the Deputy Commissioner. The object of the proceeding is to determine whether the award or the denial of compensation benefits is "in accordance with law." The powers of the district court, the manner in which they are exercised, and the scope of the review are not prescribed by statute; nevertheless, in substance, the procedure of the State appellate courts in certiorari proceedings is very closely followed. The hearing record of the trial officer—the Deputy Commissioner of the Bureau of Employees' Compensation—is filed in court with his answer to the complaint. Except in a few classes of cases, in which the United States Supreme Court<sup>4</sup> has permitted trial de novo (which has largely fallen into disuse), the hearing is based upon the Deputy Commissioner's record. The court in its decision may either enjoin the enforcement of the award, dismiss the bill for injunction and thereby affirm the Deputy Commissioner's holding, or may remand the case to the Deputy Commissioner for further findings or further procedure. The reviewing court will consider whether the Deputy Commissioner correctly

applied the substantive law to the facts of the case, whether he deprived any party of due process of law in his conduct of the hearing, and whether there is substantial evidence to support any finding of facts challenged by the complainant. The court will not weigh the evidence, nor will it substitute its view of the weight of the evidence for that of the original "trier" of the facts.

The United States Supreme Court in recent decisions has also given some finality to the decisions of the Deputy Commissioner on mixed questions of law and fact, a somewhat greater degree of finality than that given in many States to decisions of the compensation boards.

The powers of the Employees' Compensation Appeals Board, for cases arising under the Federal Employees' Compensation Act, are not clearly stated in the instrument creating it; in practice, however, it seems to have adjusted its procedure to a considerable extent to that used in the proceedings in certiorari or by bill in equity set forth above. Its consideration is on the basis of the record and it does not take additional evidence.

The desirability of an appeal to a trial court, with trial by a jury following the decision of the Compensation Board, is dubious. Workmen's compensation administration is highly specialized. Final decision, which necessarily involves policy determination, should not be taken out of the hands of the board and given to a jury which has no specialization or continuity. The delays incident to a trial in court, the increased cost of court procedure including higher attorney's fees, jury fees, expert medical witness fees, etc., unnecessarily burden the administration of the compensation act and defeat the primary objects of efficient administration, i. e., speed and inexpensiveness of determination of controversies.

An appeal to a judge of a trial court, whether with or without a new trial by the judge, is but little improvement. The same delays and higher costs of administration remain, both to the injured worker and to industry. The varying determinations of the many trial judges of a State, often conflicting with each other, deprive workmen's compensation administration not only of the certainty which it should have but also of the ability to determine and enunciate policies. Trial judges, with their many other duties and problems

<sup>4</sup> *Crowell v. Benson*, 2-85, U. S. 22.

can never acquire the specialization in this field so necessary to efficient administration.

An appeal from the workmen's compensation board should always go directly to an appellate court of the State. By eliminating the trial courts, many months are saved in obtaining final decision in appeal cases, trial costs and expenses are reduced, and the State will obtain better decisions on compensation problems. Judicial review of a workmen's compensation board's decisions should be made upon the record taken before the board, without retrial in the reviewing court. The board's findings of fact should be conclusive in the court, if supported by any substantial evidence.

Appeal procedure by certiorari or by bill in equity to determine whether the board's decision is in conformity with law is commended as the most efficient mode of court appeal.

### **Negligence Liability**

The most fundamental characteristic of the workmen's compensation system is that it imposes liability upon the employer for work accidents without regard to the fault of either party. Efficient workmen's compensation administration also includes provision for swift and inexpensive determination of all controverted claims for compensation benefits. Workmen's compensation is now adopted almost universally and is effective in relieving the miseries of the injured worker and his dependents and in protecting society from injured workers becoming public charges; and, when a reasonably complete system is provided by law, it should be the exclusive remedy of the injured worker and prescribe the exclusive liability of the employer.

Unfortunately, some vestiges of the older liability for negligence and of the damage suit still remain. These arise from: (1) failure of the employer to secure payments of compensation by insurance or self-insurance, which may make him subject to damage-suit liability; (2) serious and willful misconduct or gross negligence of the employer resulting in injury for which the employee at times may elect either to sue for damages or to take compensation; (3) exclusion of some classes of workers from workmen's compensation in various jurisdictions, as for example, farm workers, household domestic servants, employees in speci-

fied occupations, employees of an employer having five or less workers, seamen, and railroad employees in interstate commerce; and (4) a movement, fortunately not strong as yet, in some quarters to restore the action for damages against the employer, either as an alternative or in addition to workmen's compensation rights.

Another field in which negligence liability infringes upon workmen's compensation is that of third-party liability. When the worker is killed or injured by the negligence of a third person, not the employer, he or his dependents may usually sue such third party for damages, and, if compensation is paid, the employer is given a certain interest therein. Further discussion of this third-party suit situation is, however, outside the scope of this paper.

The liability of the employer to a damage suit when he fails to insure serves only a punitive purpose to assist in compelling employers to insure. Instances of such suits are relatively rare. A damage suit is usually of no actual value to the injured employee, as the uninsured employer may be judgment-proof. A liability law should provide that the damage-suit rights shall be in addition to the employees' compensation rights and not an alternative to them, in order not to deprive the employee of maintenance and medical care during the period of his incapacity. In such case, the liability of the employer for negligence does not impinge appreciably upon the workmen's compensation system.

Excluded occupations are slowly being brought under workmen's compensation. Their original exclusion was due to political necessities encountered in the early passage of compensation acts.

The choice of a damage suit against the employer is occasionally found if the injury is due to his gross negligence or serious and willful misconduct. When such a damage-suit right is given as an alternative to a claim for compensation, it is unfortunate. In the early history of the California workmen's compensation law, cases were noted in which the employee who elected to sue for damages and lost his damage suit could not resume his claim for compensation. Protection of the worker and his dependents against the economic consequences of industrial injury should not have become a subject for his speculation and for the speculation of his lawyer for a contingent attor-

ney's fee. The California law was accordingly amended to take away this election of remedies and to substitute for it a right to claim 50-percent additional compensation from the employer, when the injury was due to his serious and willful misconduct, in the same workmen's compensation proceeding as that involving basic compensation. This change has worked successfully. Doubtless, the reason for the former election of remedies was to place a substantial incentive on employers to provide a safe place of employment by penalizing them through the imposition of heavy liability for failure to do so. The provision for 50 percent additional compensation for willful misconduct adequately serves the same purpose.

A proposal, advanced recently in Massachusetts, to restore an injured employee's right of action against his employer for damages for negligence has made little progress, even though it was worded to provide that such right should be in addition to the compensation right. It was advanced ostensibly as a means for securing greater cooperation by employers with accident prevention programs. The same result is accomplished with much less expense by the simple provision for additional compensation for serious and willful misconduct of the employer.

The possibility that a successful damage suit against the employer for his gross negligence would substantially enhance his interest in accident prevention programs is an argument lacking much merit. Such was not the case during the decades preceding workmen's compensation acts in which such damage suit was the sole recourse of the injured worker. The employer who is heedless of the safety of his workmen is likely to be the one to "take a chance" on the speculative possibility of a bad injury and successful suit against him. The accident prevention movement did not actually gain momentum until workmen's compensation legislation became general and inescapably dis-

tributed the entire cost of all industrial injuries to employers by compulsory insurance and merit rating.

The proposal for restoration of the damage suit would be a breach of faith with employers and industry. In return for being placed under the burden of compensating all injuries, whether due to their fault or not, by the payment of reasonable insurance benefits based on percentage of wages during incapacity, employers were given relief from the heavy burden of defending negligence damage suits and from occasional high verdicts. To retain the compensation remedy and to restore damage-suit costs against the employer violates this conception underlying all workmen's compensation legislation.

The cost of industrial injuries is passed on by the employer to the consumer as a part of the cost of production. The cost of an additional negligence liability would greatly increase the employer's insurance premium for compensation and liability insurance. The burden of damage-suit liability is not confined to the payment of judgments rendered against the employer, which now often run into very large sums of money. It also includes such hidden costs as maintaining legal staffs by employer or insurance carrier to defend such suits, paying court and jury fees, subpoenaing witnesses and paying witness fees (particularly expert medical witness fees), and salaries of investigators. Even though the employer wins the suit, he will have incurred all of such expenses.

The financial return to the injured employee of a sum additional to the compensation paid him, is speculative and largely illusory. A considerable portion of his recovery would go to contingent attorneys' fees and court costs. The compensation paid or payable would also be deductible. The writer's experience with third-party suits indicates that the average net recovery to the employee would not be of much value to him.

### III—Federal Legislation

JOHN PETSKO\*

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WORKMEN'S COMPENSATION BENEFITS for Federal employees, on the whole, are the most liberal in the country, but a direct and unqualified comparison with State laws cannot be made for reasons explained later in this article. Compensation legislation for Federal workers, enacted in 1908, was the first in this field.<sup>1</sup> With the gradual establishment of Federal responsibility, Congress subsequently enacted legislation to protect certain of the privately employed workers under Federal jurisdiction (some remaining under State law or unprotected by any compensation provisions). This later legislation—similar to State laws in type of coverage and financing—provides larger benefits than those authorized in all but a few States. Administration of the Federal compensation laws—in spite of the variation in benefits, types of workers covered, and method of financing—has been centralized in one agency, which has adjusted its organization as each new group was brought under coverage.

#### Development and Coverage

The need to furnish protection for Federal workers incurring injuries led to the initial Federal action in the workmen's compensation field. The

\*Of the Bureau's Office of Publications.

<sup>1</sup> Previously, two States had established investigative commissions but no legislation resulted. The original Federal act applied only to the relatively few United States Government employees engaged in hazardous occupations. The earliest Federal compensation law applying to private employment is the Longshoremen's and Harbor Workers' Act of 1927.

Federal Act of 1908<sup>2</sup> provided limited benefits for certain Federal employees engaged in hazardous work. In 1916, this act was superseded by the Federal Employees Compensation Act, which applied to all civil employees of the Government.<sup>3</sup>

In order to cover certain cases for which "workmen's compensation proceedings may not validly be provided by State law," Congress passed the Longshoremen's and Harbor Workers' Compensation Act in 1927. At first, it covered principally workers hired to load and unload vessels operating on the lakes, rivers, and other navigable waters of the United States. Although the title of the act implies limited coverage, other types of workers have been subsequently blanketed under its provisions. Functioning as the legislature of the District of Columbia, Congress extended the Longshoremen's Act in May 1928 to include employees of private industry in the District. Employees of certain private employers engaged in contractual work for the Government outside the United States—another group for whom Congress had sole legislative responsibility—were covered by an additional amendment in 1941.

Approximately 3.2 million workers were estimated to be covered by these two laws in May 1953. Of these, over three-fourths were civilian employees of the Federal Government.

<sup>2</sup> Acts of 1882 and 1900 had made some provisions for compensation for workers in the Life Saving Service of the Treasury Department and in the Postal Service, respectively.

<sup>3</sup> The bill was prepared jointly by the Bureau of Labor Statistics and the American Association for Labor Legislation.

Several other groups generally considered to be under Federal jurisdiction have not been included in Federal workmen's compensation coverage, but some are covered by State compensation laws. In 1936, Congress granted the States authority to apply their compensation laws to work done by employees of private contractors on Federal property situated within their geographical boundaries.

Certain employees of airlines and motor transportation companies engaged in either interstate or foreign commerce are also under State laws. In general, interstate jurisdictional problems have been avoided by the establishment—through agreements, court decisions, or provisions within the State laws—of certain rules to serve as the basis for deciding final jurisdiction. For example, a bus driver who is injured in State "A" but operating out of State "B" might be compensated in State "B" in accordance with the "point of origin" rule.

Workers not covered by any workmen's compensation law, but provided for by special Federal legislation, are employees of railroads engaged in interstate traffic and seamen of the American merchant marine. They may claim damages under a system of "rights" which has been established by tradition and by this special legislation—the Federal Employers' Liability Act of 1908.

Railway workers, under the Liability Act, may sue employers for damages but must prove employer negligence. Under the so-called "maritime rights," all injured or ill seamen are entitled to maintenance, cure or care, and wages to the end of the voyage.<sup>4</sup> In addition, they are entitled to indemnity for "pain and suffering," provided they can prove that the ship was "unseaworthy." Further, the Merchant Marine Act of 1920 (Jones Act) extended to seamen the rights which railway workers have under the Federal Employers' Liability Act. Under the Jones Act, a seaman may "elect" to recover damages for a work injury at law, with certain common-law defenses removed, provided he can establish that the injury resulted from negligence on the part of the employer. Such recovery is in addition to the "maritime rights."

Moreover, for both railway workers and seamen, contributory negligence by the injured worker diminishes the amount of damages he may obtain.

<sup>4</sup> For a discussion of workmen's compensation and the protection of seamen, see Bulletin No. 869 of the Bureau of Labor Statistics.

The litigation required by these arrangements may take some time in process, especially if appeals are involved, and the worker must pay for legal fees and court costs. In contrast, both State and Federal compensation laws are designed to provide benefits to injured workers or their beneficiaries upon proof of employment and loss of earnings; proof of employer negligence is not required.

The Federal Employees Compensation Act covers the following personnel: (1) civil officers and employees of all three branches of the United States Government; (2) employees of the Government of the District of Columbia;<sup>5</sup> (3) officers and enlisted personnel in the Reserve Corps of the armed services, including the Coast Guard, while on active duty or in training "in time of peace"; (4) commissioned personnel of the U. S. Public Health Service; and (5) those workers employed under various emergency relief acts.

Of current significance is the fact that all reservists, recalled to active duty as a result of the Korean conflict, are covered. As no war has been officially declared, this service is "in time of peace," and the reservist has the alternative of securing benefits under either Veterans Administration programs or under the Federal Employees Compensation Act. Depending upon the individual's rank, workmen's compensation benefits may be much larger than those paid by the Veterans Administration, since workmen's compensation is computed as a percent of salary but benefits under Veterans Administration programs are on a flat-rate basis.<sup>6</sup>

The other major Federal workmen's compensation law—the Longshoremen's and Harbor Workers' Act—covers the following: (1) Longshoremen, ship repairmen, ship servicemen, harbor workers, and others (excluding the master or crew members of a ship) performing maritime work upon the navigable waters of the United States, including dry and floating docks; (2) all persons in private employment in the District of Columbia (except domestics and casuals); (3) those employed at any military, air, or naval base acquired from any foreign government or occupied or used for military or naval purposes in the territories and possessions of the United States; (4) those engaged by United

<sup>5</sup> Except pensionable members of the Police and Fire Departments.

<sup>6</sup> The Veterans Administration's monthly rates for service-connected disability range from \$15.75 for 10-percent disability to \$172.50 for 100-percent disability. Death benefits (exclusive of the life insurance to which all servicemen's beneficiaries are entitled) range from \$75 monthly for a widow with no children, to \$121 for a widow with one child (each additional child, \$29).

States contractors in public work outside the continental United States; and (5) those employed by Government contractors during World War II who incurred injury, death, or detention as the direct result of a war-risk hazard, and the dependents of detained or captured employees.<sup>7</sup>

**Benefit Provisions**

All injuries or diseases incurred in the performance of duty, except those self-inflicted or caused by misconduct, are covered by both Federal

compensation laws. In practically all respects, however, the monetary benefits provided by the Federal Employees Compensation Act are more generous than those of the Longshoremen's Act; Federal employees also have the option of using accumulated sick or annual leave during disability until such leave is exhausted,<sup>8</sup> with compensation available thereafter. As shown in the accompanying table, the difference in the limitation on weekly compensation is outstanding: the limits set under the Federal Employees Act are

<sup>7</sup> The War Claims Act of 1948 authorized disability and death benefits to civilian American citizens interned by or in hiding from the Japanese Government.

<sup>8</sup> Federal employees are entitled to 13 days' sick leave and 13 to 26 days' annual leave on full pay each year. Sick leave may be accumulated, with no restriction as to total amount.

*Major benefit provisions of Federal and selected State workmen's compensation laws, December 1952<sup>1</sup>*

Federal and State acts	Maximum percentage of wages or of wage loss	Maximum period of payment	Maximum weekly amount <sup>2</sup>	Maximum total payment	Maximum period of payment			Nonschedule injuries
					Number of weeks for schedule injuries			
					Loss of sight of an eye	Loss of fourth finger	Loss of arm (at shoulder)	
<b>DEATH BENEFITS<sup>3</sup></b>								
Federal employees	45-75 <sup>4</sup>	Until remarriage	\$121.15					
Longshoremen	35-66 $\frac{2}{3}$ <sup>4</sup>	do	\$13.38-\$35.00					
Arizona	35-66 $\frac{2}{3}$ <sup>4</sup>	do	\$153.85					
California	61 $\frac{3}{4}$	200 weeks <sup>4</sup>	\$35.00-\$43.75 <sup>6</sup>	\$8,750 <sup>6</sup>				
Connecticut	50	520 weeks <sup>7</sup>	\$36.00					
Illinois	75-97 $\frac{1}{2}$ <sup>4</sup>		\$25.50-\$34.00 <sup>4</sup>	\$6,800-\$9,600 <sup>4</sup>				
Michigan	66 $\frac{2}{3}$	400 weeks	\$28.00-\$36.00 <sup>4</sup>					
Nevada	50-80 <sup>4</sup>	Until remarriage	\$13.85-\$27.70 <sup>4</sup>					
North Dakota	45-75 <sup>8</sup>	do	\$15.75-\$26.25 <sup>4</sup>					
Oregon		do	\$18.46-\$39.23 <sup>4</sup>					
Washington		do	\$23.08-\$40.38 <sup>4</sup>					
<b>PERMANENT TOTAL DISABILITY</b>								
Federal employees	66 $\frac{2}{3}$ -75 <sup>4</sup>	Life	\$121.15 <sup>9</sup>					
Longshoremen	66 $\frac{2}{3}$	Period of disability	\$35.00 <sup>9</sup>					
Arizona	65	Life	\$150.00					
Connecticut	50	780 weeks	\$36.00					
Idaho	55-60 <sup>10</sup>	Life <sup>11</sup>	\$20.00-\$37.00 <sup>4</sup>					
Illinois	75-97 $\frac{1}{2}$ <sup>4</sup>	do	\$25.50-\$34.00 <sup>4</sup>	\$6,800-\$9,600 <sup>4</sup>				
Michigan	66 $\frac{2}{3}$	750 weeks	\$28.00-\$36.00 <sup>4</sup>					
Nevada	70	Life	\$17.31 <sup>9</sup>					
North Dakota	66 $\frac{2}{3}$	do	\$25.00-\$42.00 <sup>4</sup>					
Oregon		Period of disability <sup>10</sup>	\$18.46-\$40.38 <sup>4</sup>					
Washington		Life <sup>10</sup>	\$23.08-\$46.15 <sup>4</sup>					
Wisconsin	70	do	\$37.00 <sup>9</sup>					
<b>PERMANENT PARTIAL DISABILITY<sup>12</sup></b>								
Federal employees <sup>12</sup>	66 $\frac{2}{3}$ -75 <sup>4</sup>		\$121.15 <sup>9</sup>		160	15	312	During disability.
Longshoremen <sup>13</sup>	66 $\frac{2}{3}$		\$35.00 <sup>9</sup>	\$11,000 <sup>13</sup>	140	7	280	Do.
Alabama	55-65 <sup>4</sup>		\$23.00	\$9,200	100	15	<sup>16</sup> 200	300 weeks.
Arizona <sup>13</sup>	55		\$126.92		130	17	260	During disability.
California <sup>13</sup>	61 $\frac{3}{4}$		\$30.00		120	12	<sup>16</sup> <sup>17</sup> 240	399 weeks. <sup>17</sup>
Connecticut <sup>13</sup>	50		\$36.00		208	20	275	780 weeks.
Idaho <sup>13</sup>	55-60 <sup>10</sup>		\$25.00-\$37.00		140	20	240	( <sup>19</sup> ).
Illinois <sup>13</sup>	75-97 $\frac{1}{2}$ <sup>4</sup>		\$25.50-\$34.00 <sup>4</sup>		140	20	225	417 weeks.
Louisiana	65		\$30.00		100	20	<sup>14</sup> 200	300 weeks.
Massachusetts	66 $\frac{2}{3}$		\$30.00 <sup>14</sup>	\$10,000 <sup>14</sup>	200		<sup>14</sup> 175	During disability.
Michigan	66 $\frac{2}{3}$		\$28.00-\$36.00 <sup>4</sup>		150	15	250	500 weeks.
Minnesota <sup>13</sup>	66 $\frac{2}{3}$		\$32.00 <sup>9</sup>		110	20	<sup>16</sup> 230	310 weeks.
New Jersey <sup>13</sup>	66 $\frac{2}{3}$		\$30.00		175	20	300	550 weeks.
New York <sup>13</sup>	66 $\frac{2}{3}$		\$32.00 <sup>9</sup>		160	15	312	During disability.
Oregon	( <sup>19</sup> )		\$25.38-\$45.00 <sup>4</sup>			( <sup>20</sup> )	( <sup>20</sup> )	( <sup>20</sup> ).
Rhode Island <sup>13</sup>	50-60 <sup>18</sup>		\$18.00-\$20.00 <sup>18</sup>		120	18	300	800 weeks.
Tennessee <sup>13</sup>	60		\$25.00	\$7,500	100	15	<sup>16</sup> 200	300 weeks.
Wisconsin <sup>13</sup>	70		\$37.00 <sup>9</sup>		275	28	500	1,000 weeks.

See footnotes at end of table

Major benefit provisions of Federal and selected State workmen's compensation laws, December 1952<sup>1</sup>—Continued

Federal and State acts	Maximum percentage of wages or of wage loss	Maximum period of payment	Maximum weekly amount <sup>2</sup>	Maximum total payment	Maximum period of payment			Nonschedule injuries
					Number of weeks for schedule injuries			
					Loss of sight of an eye	Loss of fourth finger	Loss of arm (at shoulder)	
<b>TEMPORARY TOTAL DISABILITY</b>								
Federal employees	66½-75 <sup>4</sup>	During disability	\$121.15					
Longshoremens	66%	do	\$35.00 <sup>9</sup>	\$11,000				
Arizona	65 <sup>21</sup>	433 weeks	\$150.00					
Connecticut	50	780 weeks	\$36.00					
Idaho	55-60 <sup>4</sup>	400 weeks <sup>22</sup>	\$20.00-\$37.00 <sup>4</sup>					
Illinois	75-97½ <sup>4</sup>	During disability	\$25.50-\$34.00 <sup>4</sup>	\$6,800-\$9,600 <sup>4</sup>				
Michigan	66%	500 weeks	\$28.00-\$38.00 <sup>4</sup>					
Nevada	80	433 weeks	\$24.23-\$34.62					
North Dakota	66%	During disability	\$25.00-\$42.00 <sup>4</sup>					
Oregon	50-66½ <sup>4</sup>	do	\$25.38-\$45.00 <sup>4</sup>					
Washington		do	\$23.08-\$42.69 <sup>4</sup>					
Wisconsin	70	do	\$37.00 <sup>9</sup>					
Wyoming		do	\$21.23-\$43.85 <sup>4</sup>					

<sup>1</sup> Only benefit provisions of State laws which exceed those of the Longshoremens' Act are shown. Benefit provisions of Federal Employees Compensation Act are included, but not as a basis of comparison.

<sup>2</sup> On overseas installations, compensation payments for noncitizens and nonresidents are computed on basis of prevailing local payments in similar cases.

<sup>3</sup> Lower limit for maximum percentage of wages applies to widow only; higher limit applies to widow with children.

<sup>4</sup> According to number of dependents.

<sup>5</sup> Period varies from 200 weeks for maximum benefits to 316 weeks for minimum benefits.

<sup>6</sup> Widow without children, \$35 and \$7,000; widow with one or more children, \$43.75 and \$8,750.

<sup>7</sup> Thereafter, reduced payments to children until age 18.

<sup>8</sup> According to number of dependents; in addition, lump-sum payment at death as follows: \$300 to widow and \$100 for each dependent child; maximum, \$600.

<sup>9</sup> Additional benefits in specific cases; e. g., vocational rehabilitation, constant attendant, etc.

<sup>10</sup> According to marital status and number of dependents.

<sup>11</sup> 400 weeks; thereafter \$10 per week (\$12, if dependents).

<sup>12</sup> For schedule injuries, maximum percentage is based on average weekly wages; for nonschedule injuries, on difference between wages before injury and wages after injury, i. e., wage loss. For loss of arm, maximum period shown is for schedule injuries unless otherwise specified.

<sup>13</sup> Compensation for both schedule and nonschedule injuries is in addition to that for temporary total disability.

<sup>14</sup> Weekly maximum is increased by \$2.50 for each total dependent, the total benefit being limited to the weekly wage. In addition to all other compensation for loss of members, hearing, or eyes, or for bodily disfigurement, payments of \$20 weekly are authorized for specified periods ranging from 100 to 500 weeks.

<sup>15</sup> For schedule injuries; \$10,000 for nonschedule injuries.

<sup>16</sup> Maximum period allowed for a number of combined losses, as follows: Alabama, 400 weeks; California, 399 weeks, based on State Permanent Disability Rating System; Louisiana, 400 weeks; Minnesota, 440 weeks; and Tennessee, 400 weeks.

<sup>17</sup> Four weeks of compensation for each 1 percent of permanent disability; thereafter, life pension of 1 percent of average weekly earnings for each 1 percent of disability in excess of 60 percent, if disability is 70 percent or more.

<sup>18</sup> In Idaho, 55 percent for nonschedule and 60 percent for schedule injuries; in Rhode Island, 50 percent and \$20 for schedule injuries, and 60 percent and \$18 for nonschedule injuries.

<sup>19</sup> In proportion to schedule injuries.

<sup>20</sup> No maximum period specified. Law provides for monthly payments (minimum, \$100) of \$45 for each degree of disability, ranging from 2 to 192 degrees for schedule injuries and from 2 to 132 degrees for nonschedule injuries.

<sup>21</sup> Additional benefits for dependents.

<sup>22</sup> \$10 per week thereafter; \$12 if dependents.

approximately 3 times greater than those of the Longshoremens' Act. A pending amendment to the latter act would reduce somewhat, but would not eliminate, the difference in benefits, which had been accentuated by the liberalization of the Federal Employees Act in 1949.<sup>9</sup>

The proposed amendment would also make identical the waiting-period requirements of the two laws; it is 3 days for the Federal Employees Act and 7 days for the Longshoremens' Act. Under existing law, compensation is paid for the waiting period if disability continues beyond 21 days for Federal employees and beyond 7 weeks for employees covered by the Longshoremens' Act.

The waiting period affects compensation only. In addition to monetary benefits, both laws provide for first aid, full medical care, and any hospitalization required—without limit as to time or amount. Rehabilitation is also provided for,

with a monthly payment up to \$50 for Federal employees and \$43 for workers under the Longshoremens' Act for maintenance during rehabilitation. The Federal Employees Act also covers the cost of employing an attendant, when required, up to \$75 monthly.

### Administration of the Program

Both of the Federal acts are administered by the Bureau of Employees' Compensation of the U. S. Department of Labor. Within the Bureau, however, the two acts are administered separately—one on a centralized and the other on a decentralized basis, for the most part. These administrative arrangements have been necessitated by the hybrid nature of the coverage and financing. Under one act, the workers of only one employer—the Federal Government—are involved, and the funds are provided by Congressional appropriation. Under the other act, as under State laws, the types of employers vary widely, the Govern-

<sup>9</sup> For discussion of the 1948 and 1949 amendments, see *Monthly Labor Review*, September 1949 (p. 278) and November 1949 (p. 518).

ment acts as an enforcement agency, and private employers are required to provide the protection.

Virtually all cases under the Federal Employees Act are processed at the main office of the Bureau of Employees' Compensation in Washington or at its district office in San Francisco. The district office was opened as a pilot installation to determine the feasibility of further decentralization.

In contrast, the Longshoremen's Act is administered by deputy commissioners of districts established by the Bureau in accordance with statutory provisions. Compensation for maritime employment is handled by 12 deputy commissioners assigned to 13 compensation districts covering the 48 States, Hawaii, and Alaska. An additional deputy commissioner administers private employment compensation cases in the District of Columbia. Compensation claims of workers overseas are also processed by these deputy commissioners. In servicing the claims of some workers employed overseas, the Bureau cooperates with and uses the facilities of military establishments at or near the worker's place of employment.

The Bureau acts as a quasi-judicial body in administering the Federal Employees Compensation Act, making findings of fact and awards for or against payment of compensation. Furthermore, when accidents occur under circumstances creating legal liability against a third party (i. e., other than the United States Government or its employee), the Bureau initiates action to collect necessary damages. No legal procedure for obtaining evidence is required, but generally the Bureau makes its decisions on the basis of written testimony filed by the parties concerned; hearings are not legally provided for. However, under the Longshoremen's Act, the functions of the deputy commissioners are to review the settlement of claims, all of which must be reported in writing. During this process, deputy commissioners may make any investigation deemed necessary and may order hearings, generally informal conferences. The Bureau's central office in Washington determines whether insurance companies selected by employers are qualified to write workmen's compensation insurance under the law and authorizes certain employers to act as self-insurers.

The appeals procedure also varies for the different groups covered. For Federal employees, Bureau decisions are subject to review by an

independent Employees Compensation Appeals Board, on questions of both law and fact—the right of appeal has been available only since 1946. The Board's decisions are not subject to review. Cases, however, may be reopened by the Bureau on the basis of new evidence; they are then processed as new claims. According to available records, an average of only about 4 or 5 percent of all claims filed for compensation receive adverse decisions which may result in appeals action. For employees covered by the Longshoremen's Act, appeal is to the appropriate Federal district court. Judicial review is limited to questions of law; determination of facts, when supported by the record, cannot be disturbed by the courts.

Both Federal laws provide for safety investigation, advice to employers on accident prevention, and the developing, supporting, and fostering of organized safety promotion. These functions are performed by the Bureau of Labor Standards of the U. S. Department of Labor. A safety supervisor and a small staff are available to assist the various Government agencies and the interested private employers with programs designed to prevent accidents and to remove unsafe working conditions. In the Federal Government, organized accident prevention programs are carried on regularly by 20 executive departments or independent agencies accounting for about 85 percent of all Federal employees. The results of these Government programs over the past 10 years indicate clearly that such efforts are practical and effective: the rate of occupational injury has been reduced 40 percent.

Because the majority of Federal employees have nonhazardous jobs, many people believe that none of them are engaged in hazardous work. In fact, however, Federal workers perform construction work, foundry work, lumbering, quarrying, wood-working, and marine, warehousing, and similar operations; in addition, Federal employment includes a large number of maintenance workers, mail handlers, laundry workers, firefighters, electricians, and printers. These groups account for about 85 percent of all Federal accident cases, with handling of material or equipment and falls causing nearly half of the injuries. By establishment, the Department of Defense, employing a little over half of all Federal personnel, had the largest number of injury cases—almost 40 percent in the fiscal year ended June 30, 1952; the

Post Office Department, with 20 percent of employment, had about 30 percent of all injuries.

Approximately 100,000 Federal employees reported injuries during fiscal year 1952. However, less than half involved loss of time, as shown in the figures below on final disposition of cases (exclusive of medical care). Of this group, nearly all (approximately 45,000) were temporary injuries, less than 3 percent (1,300) of which resulted in permanent disabilities. Further, the majority of those who were off the job beyond 3 days elected to utilize leave instead of compensation. (Some of those listed as receiving compensation also used leave, but how many is not known.)

	<i>Percent</i>
No loss of time <sup>1</sup> .....	52.9
1 to 3 days lost time.....	12.1
More than 3 days lost time.....	35.0
Covered by sick or annual leave.....	19.3
Compensated, nonfatal.....	11.4
Compensated, fatal.....	.2
Recovery from third party.....	.2
Claims disapproved.....	3.9
<b>Total.....</b>	<b>100.0</b>

<sup>1</sup> Workers off the job no more than 8 hours are regarded, for administrative purposes, as having lost no time.

Reports received by the Bureau of Employees, Compensation under the Longshoremen's Act for the same period indicated approximately 139,000 injuries. Of this number, 93,000 were in maritime employment; 17,000 were among defense-base workers overseas; and 29,000 were in private employment in the District of Columbia. Approximately 13,000, 1,500, and 4,000, respectively, were compensable cases.

Compensation benefits under the Federal Employees Act amounted to \$36 million for that year. The administrative costs were 3.6 percent of benefits. (During the entire operation of the act, administrative costs have never exceeded 6.5 percent annually.) For all private employment covered by Federal legislation, approximately \$9.5 million was spent by insurance companies or self-insured employers, exclusive of medical costs, in cases closed during the year.

### Relative Levels of Federal Provisions

Although the Federal Employees Act, as previously mentioned, provides more liberal benefits than any other law, it cannot in fairness be compared with the State laws. Financing of benefits

under the act are provided by congressional appropriation, in contrast with the insured-risk provisions of State compensation laws. In addition, the act covers a homogeneous group of workers under a single employer and permits employees to utilize accumulated sick or annual leave, with full pay, in lieu of compensation payments, and to take any such leave before receiving disability compensation. Not only is there no single Federal schedule of benefits, but the two basic Federal laws differ as to types of workers covered, method of financing, and administrative procedure; in addition, there is no standardized State workmen's compensation law.

On the other hand, benefits provided by the Longshoremen's Act exceed those of the majority of State laws but are exceeded by a few. However, inasmuch as the Longshoremen's Act provisions are similar in nature to those provided under State laws, exact differences between them can be ascertained, but only after lengthy and detailed comparison.

The actual amount of compensation for a given injury is determined by four factors, and provision for a single factor cannot be meaningfully compared: a more liberal provision for one factor may be canceled by a less liberal provision for another. The four determining factors are the maximum rate of payment (usually a percentage of the worker's earnings at the time of the accident), maximum period of payment, maximum weekly amount, and the maximum total payment. When the actual benefits which result from these four factors are computed and compared, it is then possible to determine the relative benefits of various laws.

Provisions under the Federal Employees Act are noted in the accompanying table—not as a basis of comparison, it is emphasized, but to indicate benefits provided in the law. The table shows that 20 States have provisions exceeding those of the Longshoremen's Act in at least one of the four factors. But, in many instances, one of the factors—especially the total weekly maximum—limits the actual benefits so that those under the Longshoremen's Act are higher. For example, suppose that an industrial worker with a wife and 2 children, earning \$70 a week, dies as a result of an on-the-job accident; his widow would receive \$35 a week if he were covered by the Longshoremen's Act and the workmen's compensation law of one of the States listed in the table under "Death Bene-

fits." In five of the States, the widow would receive more, but in three States, less. Similarly, if benefits for the various types of disability were calculated for such a worker, Longshoremen's benefits would equal those provided in one or two States and would be either above or below those provided by several States. The liberality of the Longshoremen's Act is even more striking, in view of the fact that provisions of the State acts outlined in the table provide higher benefits than those of laws in States not listed.

Differences in waiting-period requirements are less marked. In contrast to the 3-day Federal Employees requirement, one State has no waiting period. Under other State acts, the period varies from 1 to 10 days, with 7 the most frequent—the time allotted under the Longshoremen's Act.

Other features of Federal and State compensation legislation also vary widely. For example, only 31 State laws furnish full medical care and only 12 of these have no period or cost limitations on such care. Twenty-six States cover all occupational diseases, but 18 list only a limited number and 4 do not compensate for any occupational disease. While all States provide rehabilitation, only 16 augment it with some form of special allowance.

Over and above the variations as to benefits, many of the State laws are "elective"—i. e., employers may accept or reject the law. In the latter case, the employer is subject to suit in court and his rejection deprives him of certain common-law defenses. A court suit, however,

may still cost a worker time and money; whereas ordinarily, under the Federal laws, the worker simply files a claim. Both Federal laws are "compulsory" in nature; therefore all workers covered are automatically protected.

Also relevant in this connection is the extent to which workers are excluded from compensation coverage. While not all workers under Federal jurisdiction are protected, State coverage as a whole is even more limited. The difference in type of workers within Federal and State jurisdiction makes substantive comparison difficult. But, for the one like group—public employees—the United States Government protects all of its workers while some of the States do not.

The details of the above comparison are, of course, subject to constant change, as legislation is amended. In 1951 alone, over three-fourths of the States amended their compensation laws, and further amendments were enacted in 1952 or are currently pending. Past experience indicates, however, that while the State legislatures change individual provisions of compensation laws more frequently, amendments to the Federal acts are more comprehensive. For example, the 1949 amendment to the Federal Employees Compensation Act was the first to cover rates in over 20 years, but it resulted in the act's being considered by authorities in the field as "one of the most advanced workmen's compensation laws in the world." The 1948 amendment to the Longshoremen's Act also was the first in 20 years; it provided for benefit increases of approximately 40 percent.

## IV—Occupational Diseases

BRUCE A. GREENE\*

NONE of the early workmen's compensation laws in this country made any specific provision for the coverage of occupational diseases, although the term "personal injury" in the Massachusetts law was held by the courts to be broad enough to include occupational diseases. In some States, sporadic court decisions defined the term "accidental injury" or "injury" to include occupational diseases. The confusion resulting from the uncertainty of these court decisions led the States to gradually bring occupational diseases expressly under the workmen's compensation laws.

By 1930, all or certain types of occupational diseases were covered by 15 State or Federal workmen's compensation laws.<sup>1</sup> Today, it is generally accepted that the worker suffering disability through occupational disease should be entitled to the same protection of the workmen's compensation law as a worker disabled through accidental injury. Table 1 shows that some provision for such protection is made under 52 of the 54 laws in the United States and its Territories. More than half of these 52 laws cover all occupational diseases. The others limit the coverage to diseases specifically listed (scheduled).

An outstanding development in recent years has been the increasing use of full or general coverage. This trend was particularly notable in 1949 when Delaware, Nevada, New Jersey, Rhode Island, Utah, and West Virginia changed from schedule

to full coverage, and South Carolina, in providing for coverage of occupational diseases for the first time, adopted the general coverage pattern. Since 1949, two additional States (Maryland and Virginia) joined the full coverage group of States.

### Coverage and Costs

In the past, private insurance carriers, with few exceptions, have opposed the broad coverage of occupational diseases in workmen's compensation legislation. However, at the 1949 convention of the International Association of Industrial Accident Boards and Commissions, the representative of one of the largest workmen's compensation insurance carriers in the United States made a convincing statement in favor of full coverage of occupational diseases.<sup>2</sup> He pointed out that new industrial processes are constantly creating new occupational disease hazards and cited the following examples: the lung-cancer hazard discovered recently in the chromate industry; beryllium poisoning found in plants producing beryllium compounds as well as in plants using beryllium in manufacturing operations; and the poisoning caused by the increasing use of extremely dangerous elements found in insecticides, fungicides, rodenticides, and herbicides. He referred also to the expanding use of plastics and new chemicals which may cause occupational diseases not now

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<sup>1</sup> California, Connecticut, Illinois, Massachusetts, Minnesota, New Jersey, New York, North Dakota, Ohio, Wisconsin, District of Columbia, Hawaii, Puerto Rico, Federal Longshoremen's Act, and Federal Employees' Compensation Act.

<sup>2</sup> See Proceedings of the 35th Annual Convention of the IAIABC, Bureau of Labor Standards, Bull. 119 (pp. 70-79). This opinion was expressed by Ashley St. Clair, general counsel of the Liberty Mutual Insurance Co., Boston, Mass.

TABLE 1.—Coverage of occupational diseases, July 1953

Full coverage	Schedule coverage		No coverage
	Jurisdiction	Number of diseases <sup>1</sup>	
Alaska	Alabama.....	(2)	Mississippi. Wyoming.
Arkansas	Arizona.....	36	
California	Colorado.....	24	
Connecticut	Georgia.....	25	
Delaware	Idaho.....	11	
District of Columbia	Iowa.....	16	
Florida	Kansas.....	12	
Hawaii	Kentucky.....	(2)	
Illinois	Louisiana.....	6	
Indiana	Maine.....	14	
Maryland	Montana.....	(4)	
Massachusetts	New Hampshire.....	(2)	
Michigan	New Mexico.....	31	
Minnesota	North Carolina.....	26	
Missouri	Oklahoma.....	13	
Nebraska	Pennsylvania.....	13	
Nevada	Puerto Rico.....	17	
New Jersey	South Dakota.....	25	
New York	Tennessee.....	6 9	
North Dakota	Texas.....	45	
Ohio	Vermont.....	7	
Oregon			
Rhode Island			
South Carolina			
Utah			
Virginia			
Washington			
West Virginia			
Wisconsin			
United States: Civil Employees Longshoremen's Act			

<sup>1</sup> In some States, the number of diseases refers to "groups of diseases."  
<sup>2</sup> Covers pneumoconiosis, including silicosis, anthroco-tuberculosis, aluminosis, and other specified dust diseases.  
<sup>3</sup> Covers only injury or death by gas or smoke in mines and poisonous gas in any occupation. Voluntary as to silicosis.  
<sup>4</sup> Separate act provides for payment of \$60 a month from public funds to persons totally disabled from silicosis, if they have been State residents for 10 years.  
<sup>5</sup> Covers silicosis, and other pulmonary diseases, anthrax, lead poisoning, dermatitis, venenata, and diseases due to the inhalation of poisonous gases or fumes.  
<sup>6</sup> Full coverage permissible.

known, and to the increasing radiation hazard resulting from the atomic energy developments. This insurance company representative asked:

In view of present-day disease hazards in industry, should not every industrial jurisdiction, if not every jurisdiction, do away with a schedule of compensable diseases, and, under the proper definition, make every occupational disease compensable? Beryllium is mentioned in only two schedules, but a man suffering from beryllium poisoning is as sick as a man with lead poisoning or silicosis or benzol poisoning. Almost all of the States having occupational disease schedules include radiation disease in some fashion. In a number of these laws, however, the description used is so restrictive that some workers in those States who hereafter suffer radiation diseases as a result of work exposures to radioactive isotopes or to other forms of atomic energy will not be entitled to compensation benefits. In short, a schedule of compensable occupational diseases, even a schedule as complete as that of Texas, is an unsatisfactory device. Is there one good reason to give compensation benefits to one man suffering from an occupational disease and deny them to another, merely because the latter is suffering from a disease not known when the schedule was drawn?

One of the main objections presented by the opponents to full coverage is that there would be a flood of occupational disease claims and that the cost would be excessive. However, the records of States with such coverage do not indicate this. In New York, for instance, only 3.3 percent of all compensated cases closed in 1947 involved occupational diseases. The total compensation awarded for occupational disease cases amounted to about \$2,000,000 or 3.5 percent of \$57,000,000, the total compensation cost for all cases. In Wisconsin, over the 6-year period, 1946-51 (see table 2), the occupational disease cases averaged less than 5 percent of the number of all cases and the total cost of benefits awarded in occupational disease cases averaged about 3.8 percent of the cost of all cases. These costs include silicosis cases which represent about 25 percent of the total cost for all occupational disease cases. The Wisconsin experience is especially significant since full benefits are provided for all such cases and have been since the amendment was passed in 1919 providing for coverage of occupational diseases.

In Virginia, the costs for occupational disease coverage have been relatively low also. The amendment which brought occupational diseases in that State under the workmen's compensation act became effective July 1, 1944. Under this amendment, the diseases to be covered were listed, but the employer was also permitted to elect full coverage for all diseases in lieu of the schedule or list of diseases. For the period July 1, 1944, to January 1, 1950, the cost of compensation and medical benefits for occupational disease cases was only about 1 percent of the total cost for all cases. In 1952, Virginia amended its law by making the full coverage provision compulsory for all employers subject to the act.

The Oregon experience over a 5-year period from July 1943 to July 1948, shows that occupational disease claims represented only 1.37 percent of all claims filed. The following extract from the Portland Oregon Journal of November 7, 1948, is pertinent:

Owing to the favorable experience in Oregon, it was not necessary for the Industrial Commission to increase the base contribution rates for the occupational disease coverage for employers under the workmen's compensation act. When the occupational disease law was being considered for adoption, critics declared its terms were much too liberal because it was an all-inclusive law; that there would be a rush

of claims filed, and that the financial reserves of the commission would be seriously impaired. It is particularly pleasing to be able to demonstrate that these predictions were without foundation.

Full coverage in workmen's compensation legislation appears to have justified itself according to the experience of other States. During the 15-year period 1935 to 1949 in Illinois, less than 2 percent of the total industrial injuries reported were occupational disease cases. The Ohio experience since 1939, when it changed from schedule to coverage of all diseases, is noteworthy in regard to the effect on the insurance rates. The basic insurance rates prior to the adoption of this amendment included a general occupational disease rate of 2 cents for each \$100 payroll. This general occupational disease rate was maintained after the adoption of the amendment and has remained unchanged. For a few classifications in which the occupational disease hazards are considered excessive, the rate varies from 20 cents to \$1 on each \$100 payroll. Although it is too early to determine the real measure of the cost of the 1949 New Jersey amendment, it is interesting to note that an increase of only 1.2 percent in the general insurance rate level was adopted to reflect the change from schedule to full coverage.

### Administration

Full coverage of occupational diseases under workmen's compensation legislation has often been opposed on the grounds that many diseases which are not occupational in origin would be compensated and consequently the law would become a health insurance law. Again, the facts do not bear this out. In discussing the full coverage amendment to the New Jersey law, it was alleged that, under the definition suggested, common colds would be classified and compensated for as occupational diseases. However, an inquiry by the New Jersey Consumers' League to the Wisconsin and New York workmen's compensation agencies for information on their experience in this connection resulted in the following replies:

Replying to your inquiry as to whether the Board allows compensation for colds, I am saying that I have no recollection of any such decision during my years of connection with this Board.—Letter from Miss Mary Donlon, Chairman, New York Workmen's Compensation Board, February 23, 1949.

TABLE 2.—Comparison of occupational disease cases and benefits with all types of compensable cases in Wisconsin, 1946–51

Year	Cases		Percent of occupational disease cases to total	Benefits (in thousands)		Percent of occupational disease benefits to all benefits
	Total	Occupational disease		Total	Occupational disease	
1946.....	31,475	1,405	4.5	\$7,369	\$352	4.8
1947.....	34,140	1,575	4.6	7,835	292	3.7
1948.....	32,154	1,384	4.3	9,441	313	3.3
1949.....	26,615	1,157	4.3	9,355	297	3.2
1950.....	25,150	1,087	4.3	9,454	352	3.7
1951.....	26,538	1,229	4.6	10,200	388	3.8

Up to this time, no case of the common cold has been allowed because of the impossibility of proving that the cold resulted because of circumstances of work . . . —Letter from Harry Nelson, Director, Workmen's Compensation Department, Wisconsin Industrial Commission, February 25, 1949.

Objection to full coverage because of abuse of the law can be eliminated through proper administration of the law. The Wisconsin compensation authorities who have had the longest experience with the operation of full coverage, state that the settlement of occupational disease claims is no more difficult than adjudication of accidental injury cases and that no special administrative machinery is needed. Nevertheless, in some States, the administration of the occupational disease provisions has been handicapped by the establishment of elaborate procedures and arrangements, such as medical boards, for settling occupational disease claims. The primary purpose of such machinery was to safeguard against any abuses of the coverage of occupational diseases and to reduce the cost to industry by restricting the number of such cases for which benefits may be paid. Experience has likewise shown that the initial effect of a provision for full coverage has often been to accelerate the existing program of injury prevention or to inaugurate a safety program where such activities have been lacking. Where such preventive measures have been undertaken, the cost of occupational disease has ceased to be a burden.

West Virginia adopted full coverage of occupational diseases in 1949 with provision for special procedures, including an Occupational Disease Medical Board, for handling of such cases. In commenting on his experience in administering the new provision, the West Virginia Compensa-

tion Commissioner stated in his 1951 Annual Report:

The procedure set up for determining nonmedical facts in occupational disease claims is too burdensome to be practical. Furthermore, the Occupational Disease Medical Board has been extremely cautious in classification of diseases, occupational in nature, which meet the requirements of the statute. The prescribed procedure has often proved exceedingly cumbersome, especially in view of the fact that the only issue involved in many claims is the payment of a small medical bill for treatment.

*If the workmen's compensation law is to be effective as an instrument for the compensation of employees who suffer occupational diseases, it would be my suggestion that the procedure set up for determining the compensability of occupational disease claims be abolished, and such claims follow the same administrative procedure as traumatic injury claims. [Author's emphasis.]*

### Time and Benefit-Amount Limitations

A number of the existing occupational disease provisions in various State compensation laws contain time limitations requiring that to be compensable the disease must occur within a certain short period after the last exposure or after the last day of work or similar restrictions. These time limitations were inserted in early laws as safeguards against unwarranted claims. However, the insurance carrier representative, quoted earlier, suggested that these time limitations be reexamined in order to determine whether the time periods can be extended, or in some cases, removed altogether.<sup>3</sup> In citing some examples of the injustices created by these time limitations, he states:

That such limitations are over-harsh is not difficult to demonstrate. Let us consider a case of lung cancer from chrome, developing 30 months after the victim, for one reason or another, left employment in which he was exposed to chrome. In 21 of our States in which occupational diseases are supposed to be compensable, that unfortunate man's right to compensation would be barred by the lapse of time since exposure to employment. Likewise, a worker who suffers disablement from chronic pulmonary poisoning from beryllium 4 years after his last exposure to beryllium has lost his right to compensation in the majority of those States whose compensation laws include occupational diseases. A man suffering from a long-delayed injury—i. e., disablement—from the effects of excessive radiation is in the same boat. Any of these illnesses may be fatal or may develop into permanent

total or permanent partial disability. The workman's right to compensation benefits is barred by the lapse of time. He is not even entitled to medical treatment. Because his disability is industrial in origin, he cannot get himself within the usual group disability benefit plans common in industry. Is there any good reason to deny compensation in such a case, merely because the claimant's disability did not occur within a specified period after exposure or employment? Proof of the cause of his disability is not difficult.

Should not such time limitations either be dropped altogether or made sufficiently long so that only occasional and unusual cases will be barred? The road in this direction is already marked. In most cases where disability is long delayed after exposure, New York requires only that the employee or, in case of death, his dependents file claims 90 days after disablement and after knowledge that the disease is or was due to the nature of the employment. Massachusetts, North Carolina, Michigan, Missouri, Tennessee, and Virginia, all with a large volume of industry, have provisions in their laws under which time does not begin to run against a claimant suffering from an occupational disease until he is disabled from that disease. Experience of employers and carriers in these States has not been so unfavorable as to deter other States from adopting such provisions.<sup>3</sup>

The benefit payments for disability or death or medical care under the existing occupational disease provisions are generally the same as for accidental injuries except with respect to silicosis, asbestosis, or other dust diseases. The fear that the cost of silicosis and other dust diseases would be excessive resulted in 21 States<sup>4</sup> placing limitations on the benefits payable for such diseases. However, Wisconsin, which has paid full benefits for silicosis since the adoption of the 1919 amendment covering all diseases, has not found the cost unreasonable for the industry to bear. Ohio in 1939, New York in 1947, and New Jersey in 1951 removed the limitations on compensation benefits for silicosis. In 1950, Massachusetts eliminated the restrictions on benefits for silicosis and other dust diseases in the granite industry with the exception of a \$5,000 total maximum compensation. The experience of these States indicates that there is no valid reason that compensation for these diseases should be different than for other industrial injuries.

<sup>3</sup> Op. cit.

<sup>4</sup> Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Iowa, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Mexico, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Vermont, and West Virginia.

To avoid the difficulties in administration which occur where restrictive and detailed clauses are provided a provision for full coverage of occupational diseases should be simple and clear. The Federal Longshoremen's and Harbor Workers' Compensation Act accomplishes full coverage by the definition of the term "injury" as follows:

The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.<sup>5</sup>

Wisconsin also uses a simple definition of "injury" to provide for full coverage:

. . . "injury" is mental or physical harm to an employee caused by accident or disease.<sup>6</sup>

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<sup>5</sup> Sec. 2, paragraph (2).

<sup>6</sup> Wisconsin Workmen's Compensation Act, Sec. 102.01, paragraph (2).

The New York law which originally had schedule coverage was amended in 1935 to provide for full coverage merely by adding to the long schedule of diseases covered: "Any and all occupational diseases." Ohio amended its law in 1939 to provide for full coverage by adding to the schedule "all other occupational diseases."

A worker who is disabled by an occupational disease is as much a casualty of industrial production as a worker who loses an arm by an accidental injury. Workers who are injured by industrial accident or disease should be entitled to compensation on the same basis, and the cost should be considered as part of the cost of production. Arguments for compensation for occupational diseases are even more compelling than for accidental injuries. As one labor commissioner says: "A worker may be able to protect himself from dangerous machinery but he may not always be able to identify and control dangerous fumes, dusts, and gases."

## V—Medical Services

BRUCE A. GREENE\*

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EQUAL IN IMPORTANCE to the compensation payments which an injured worker may receive are the medical services to which he is entitled under the workmen's compensation law. The speed of recovery for the injured worker, the degree of his disability, and his restoration to maximum earning capacity are dependent on the effectiveness of the medical-aid provisions of the workmen's compensation law.

### Medical Benefit Provisions

All the compensation acts contain some provision for medical aid to be furnished to injured workers. In the early legislation, the provision for medical aid was narrowly restricted as to the monetary amount, the period of treatment, or both. In the later development of the acts and particularly in recent years, the trend has been toward granting unlimited medical benefits. In July 1953, full medical aid was being provided by 36 of the 54 State, Territorial, and Federal compensation laws. Seventeen of 36 laws specifically provide that medical aid must be furnished without limit as to time or amount. The administrative agency, in the other 19 laws, is authorized to give unlimited medical aid. (See accompanying table.) The remaining 18 laws impose limitations on the cost of the medical aid or on the period of

time during which such aid shall be rendered, or both. All but a few of the medical-aid provisions include the furnishing of artificial appliances wherever necessary.

The efforts to remove any limitations on medical aid are usually related to the experience that adequate medical aid is economical. Most employers and insurance carriers generally recognize that the best medical care reduces their costs by lessening the period during which such care is needed, and in many cases, lessening the degree of permanent disability suffered by the worker. Even in the States with limitations on medical benefits, it is not uncommon for the employer or insurance carrier to provide medical care over and beyond the legal requirements.

Several organizations and conferences have adopted recommendations for medical-benefit provisions. The National Conferences on Labor Legislation have repeatedly recommended unlimited medical benefits as the desirable standard for State laws. The medical committee of the International Association of Industrial Accident Boards and Commissions (IAIABC), in its 1949 convention report, stated:

Your committee agrees that, in the case of the injured workmen, medical aid should not be restricted by legal limitations and costs; that disability resulting from industrial accident or disease should be the responsibility of industry so long as it continues and medical aid should be furnished on this basis.

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A recommendation in support of full medical aid was made in 1952 by a Subcommittee on Industrial Relations of the American College of Surgeons, headed by Dr. Alexander P. Aitken, of Boston.

*Statutory provisions relating to medical benefits*<sup>1</sup>

FULL BENEFITS					
Jurisdiction	By statute	By administrative authority	Jurisdiction	By statute	By administrative authority
Arizona	(2)	(2)	New Jersey		4 x
Arkansas <sup>3</sup>		4 x	New Mexico		4 x
California	x		New York	x	
Connecticut			North Carolina <sup>3</sup>		4 x
Delaware		4 x	North Dakota	x	
District of Columbia	x		Ohio		x
Florida		4 x	Oklahoma		4 x
Hawaii	x		Oregon		4 x
Idaho	x		Puerto Rico	x	
Illinois <sup>3</sup>	x		Rhode Island		4 x
Indiana		4 x	South Carolina		4 x
Maine <sup>3</sup>		4 x	Utah <sup>5</sup>		4 x
Maryland		x	Washington	x	4 x
Massachusetts	x		Wisconsin	x	
Minnesota	x		Wyoming		4 x
Mississippi	x		United States:		
Missouri		4 x	Civil employees	x	
Nebraska	x		Longshoremens	x	
New Hampshire		4 x			

LIMITED BENEFITS

Jurisdiction	Period	Amount	Jurisdiction	Period	Amount
Alabama	90 days	\$500	Nevada <sup>2</sup>	6 mos. <sup>9</sup>	
Alaska	2 yrs.		Pennsylvania	90 days	<sup>10</sup> \$225
Colorado	6 mos.	1,000	South Dakota	20 wks.	<sup>11</sup> 300
Georgia	10 wks. <sup>6</sup>	<sup>6</sup> 500	Tennessee	1 yr.	1,500
Iowa		7 1,500	Texas	4 wks. <sup>9</sup>	
Kansas	120 days <sup>3</sup>	1,500	Vermont <sup>3</sup>	180	<sup>12</sup> 2,500
Kentucky		2,500	days <sup>13</sup>		
Louisiana		1,000	Virginia	60 days <sup>9</sup>	
Michigan	6 mos. <sup>9</sup>		West Virginia		<sup>13</sup> 1,600
Montana	12 mos.	1,500			

<sup>1</sup> Data include 1953 legislation up to June 1, 1953, insofar as available.

<sup>2</sup> Full medical aid, in the judgment of the Arizona Industrial Commission, is authorized through a combination of the medical care and rehabilitation provisions of the law. Medical benefits for occupational diseases are payable for total disability, maximum \$500, and for partial disability due to listed disease, \$250.

<sup>3</sup> In case of silicosis or asbestosis, reduced benefits.

<sup>4</sup> After an initial period or amount, the administrative agency may extend the time or amount indefinitely.

<sup>5</sup> In case of occupational diseases, reduced benefits.

<sup>6</sup> Period may be extended for additional time and amount not exceeding \$250.

<sup>7</sup> \$1,000 maximum for hospital service and supplies and \$500 for medical and surgical services. Commission may authorize an additional \$1,000.

<sup>8</sup> In case of occupational diseases, may be extended an additional 90 days.

<sup>9</sup> May be extended for specified limited period of time.

<sup>10</sup> Hospital services also allowed for 90 days, maximum \$225.

<sup>11</sup> Also hospital benefits not to exceed \$700.

<sup>12</sup> Also hospital charges, 180 days but amount expended for services and supplies shall not exceed \$2,500.

<sup>13</sup> Additional \$800 may be authorized. \$800 may also be paid for vocational rehabilitation. No allowance for medical treatment for silicosis.

This committee agreed that "the need for full medical care, including rehabilitation, under competent supervision is recognized."

## Choice of Physician or Surgeon

The medical-aid provisions of workmen's compensation laws involve the problem of the method in selecting the physician or surgeon to attend the injured worker. Various methods are provided for under the laws. A survey of the provisions for selection of attending physicians made by the statistical committee of the IAIABC in 1949 showed that, in most States, the law provides for the choice to be made directly by the employer or insurance carrier. In a few States, the selection is made by the worker from a panel made up by the employer or carrier. In about one-fourth of the States, the worker has some form of "free choice" but only a few of these authorize unlimited "free choice." In actual practice, it is quite common for employers or insurance carriers to forego their legal rights and allow the worker his choice of a physician.

The National Conferences on Labor Legislation have always recommended that the worker be given the choice of physician. In reporting upon this problem to the 1949 convention, the IAIABC medical committee stated:

Unrestricted free choice as so often advocated is not compatible with the best of care—most people choose their physician or surgeon because of a friend's advice, a liking for his personality, an admiration of his office or equipage, or a report on his charges, if not for his availability and location alone. Thus, the man most skilled in pediatrics may be chosen to treat a fracture—or the man who directed the last family confinement called to treat a spinal-cord injury. The best cannot be thus obtained!

On the other hand, the family physician, the trusted friend of the claimant, can frequently attain results in cases within his competence far beyond those of his more skilled but unknown brother.

Free initial choice retains all of these advantages and, if under advice by a competent, skilled, and unbiased medical officer of the commission, can lead by consultation and reference to the best of surgical care.

*Your committee, as that of last year, believes that the trend is in this direction—that the physician of free initial choice, in conference with a skilled, unbiased medical officer of the commission, can best arrange for the most advanced and adequate medical care. In order to properly accomplish this, the law should place control of medical aid in the compensation authority, and free initial choice be allowed by ruling of the commission. [Author's emphasis.]*

## Supervision of Medical Aid

Supervision of the medical-aid features of workmen's compensation laws includes the duties of ascertaining whether the injured worker is receiving adequate medical care, checking on the promptness and completeness of reports required from attending physicians, regulating charges for medical services, and evaluating medical reports and testimony in relation to the cause and extent of disability. The degree of supervision exercised over these matters varies widely among the States. Lack of medical staff is given by compensation officials as one of the main reasons for failure to provide more adequate supervision. Less than half of the State workmen's compensation agencies have medical personnel and in many of these States, only part-time medical staff is available.

The control provisions of some of the workmen's compensation laws are meager and ineffective. The Utah workmen's compensation act is an example of a law which gives *effective* controls to the Industrial Commission. This law reads in part as follows:

All physicians and surgeons attending injured employees shall comply with all the rules and regulations, including the schedule of fees for their services, adopted by the commission, and shall make reports to the commission at any and all times required by it as to the condition or treatment of any injured employee, or as to any other matters concerning cases in which they are employed. Any physician or surgeon who refuses or neglects to make any report required by this section is guilty of a misdemeanor, and shall be punished by a fine of not more than \$500 for such offense.

In supervising medical care, compensation officials state that one of the main points to guard is that the injured worker is treated by a physician, surgeon, or specialist whose competence to treat the type of injury sustained has been determined by recognized medical organizations. Inexpert medical care often proves expensive and may have a very harmful effect on the rehabilitation of the injured worker. For example, improperly handled amputations can leave too long or too short a stump for effective use of an artificial appliance. In some instances, the choice of physician who treats the injured worker has been determined

not by his excellence as a surgeon, but by his skill as a medical witness. Under proper supervision, such practices do not exist.

## Medical Aid and Rehabilitation

Medical aid includes not only the primary medical or surgical care, but also the rehabilitative, convalescent, or post-operative care. This phase of medical treatment is developing rapidly as the result of World War II experience in returning injured servicemen to their line of military duty.

Very few of the workmen's compensation laws contain any specific provision for the physical rehabilitation of injured workers. However, the medical-aid provisions of many of these laws are interpreted to include such treatment. The National Conference on Workmen's Compensation and Rehabilitation, held in Washington in 1950, recommended that under workmen's compensation laws—

(a) Medical care should be defined to include any treatment and allied medical services necessary to restore the disabled individual to his maximum level of physical capacity. Medical aid should be unlimited, encompass physical medicine as well as definitive medical care and should include the furnishing of prosthetic appliances, and provide for the proper fitting and training in the use of such appliances.

(b) Full supervision and control over the provision of medical care within the scope of the workmen's compensation act should be given to the workmen's compensation agency.

(c) The workmen's compensation agency should have qualified medical consultants.

Four rehabilitation centers, exclusively for injured workers, are operated by workmen's compensation agencies. They are located in Rhode Island, Washington, Oregon, and Puerto Rico. In addition, several similar centers are maintained by private workmen's compensation insurance companies. Also, a number of privately operated rehabilitation centers are open to all types of disabled persons, including injured workers. The experience thus far indicates that these centers are performing a wonderful service for injured workers by speeding their return to their former jobs or to suitable employment. The medical and compensation cost to the employer or insurance carrier is at the same time being reduced in cases handled by these centers by shortening the

period and amount for medical care and by lessening the extent of the permanent disability.

### Improvement of Medical Services

The IAIABC medical committee, in its 1951 and 1952 convention reports, reiterated the recommendations made as the result of the study of medical services conducted by the committee in 1949. It submitted as a basis for working out the details of problems in cooperation with workmen's compensation administrators and members of the medical profession and its organizations, the following recommended principles:

1. A recognition of the necessity for more adequately trained and skilled medical and surgical care of injured workers.
2. A recognition that medical aid to injured workers should not be limited by cost or other legal prohibition.
3. A recognition that the goal of medical aid in compensation cases is prompt recovery, minimum residual disability, maximum physical restoration, and preparation of the injured worker for resumption of gainful employment.
4. A recognition that the law should place direction of medical aid in the compensation administrative authority.
5. A recognition that rehabilitation must begin

with first aid and continue throughout the period of disability; that, in order for a physician to carry out his responsibility under workmen's compensation medical practice, it is basic for him to consider the total medical problem, including preparation for the injured worker's return to work; that the physician, therefore, must bring to bear on these problems all of the skills and disciplines that science and society can offer and utilize all community resources in the accomplishment of such objectives. [Paraphrased from item 5 of Basic Principles for the Rehabilitation of the Injured Worker, in a report of the Subcommittee on Industrial Relations of the American College of Surgeons.]

6. A recognition of the necessity for close association and cooperation between the compensation administrative agency and the State, Provincial, and local medical groups for the purpose of (a) procuring and giving the medical attention recognized in Item 3; and (b) securing written reports and advice necessary for the rehabilitative agency's case records.

7. A recognition of the need for more expertly trained and better informed physicians in traumatic surgery, occupational medicine, and physical medicine, to be achieved by (a) undergraduate specialized courses in medical schools and colleges; and (b) post-graduate review by seminars, meetings, and bulletins.

An adequate and successful workmen's compensation system depends materially on the extent to which these recommended principles are carried out.

## VI—Accident Prevention

WILLIAM L. CONNOLLY\*

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CERTAINLY the primary aim of workmen's compensation—the alleviation of the financial burden imposed upon a worker as a result of injury—is a worthy one. And it has been of direct assistance to millions of workers who would have been unable to obtain relief under the old system of employers' liability. Nevertheless, the greatest contribution which workmen's compensation has made to the economic and physical well-being of workers is the stimulus it has given to accident prevention efforts.

Workmen's compensation, at best, merely lightens the loss sustained by an injured worker. Even the most liberal workmen's compensation law does not make up in full the economic loss suffered by a worker through enforced absence from his job, or by a family through the death of its breadwinner. And *no* rehabilitation program can restore an eye or limb to a worker, or fully replace the function performed by the lost member. However, accident prevention can completely free the worker of suffering and loss from injury, and eliminate economic waste to industry from the cost of accidents.

### Birth of Safety Movement

The cost of compensation is actually but a small part of the total cost of work accidents. Not every accident results in injury to a worker, although it may result in damage to machinery, material, or goods in process. Not every injury involves payment of compensation, although it

may cause some loss of working time and the expense of first aid or medical treatment. And it is generally accepted that the indirect or "hidden" costs of injury—covering such factors as time lost by employees other than the injured, cost of replacing the injured employee, and plant and equipment damage—amount to three or four times the direct cost of compensation and medical benefits under workmen's compensation.

It would not be correct to say that industry had no concept of the indirect costs of accidents before the passage of workmen's compensation laws. Certainly, while the full extent of those costs may not have been appreciated, there was tangible proof of their existence in damaged machinery, equipment, and material.

Nor would it be correct to say that there was no interest in industrial safety before the enactment of compensation laws. Some understanding of indirect costs, a degree of humanitarianism, pressure for safety legislation, and modification of employer defenses under liability laws had already given birth to a safety movement of sorts. But it took the imposition of direct costs upon industry in the form of compensation benefits to give it vigor and to produce the industrial safety movement as we know it today. Whether employers who were to be subject to the various laws were also aware that workmen's compensation would change their attitudes toward safety is a moot point. But the effect of workmen's compensation on industrial safety is beyond question. In 1925, a New England manufacturer, A. L. Emery,

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bluntly admitted before the National Safety Congress that "our first real interest in safety work was forcibly demanded of us by passage in Massachusetts in 1912 of the workmen's compensation act."

### Compensation Administration and Safety

The inevitable relation between workmen's compensation and accident prevention was understood almost unanimously by the various investigating commissions whose studies preceded the introduction and passage of workmen's compensation laws. In some States, too, the relationship was reflected in either the titles or terms of the compensation laws. For example, the Massachusetts act was entitled, "An Act Relative to Payments of Employees for Personal Injuries Received in the Course of Their Employment and to the Prevention of Such Injuries"; and the preamble to the 1917 revision of the California law contained the following statement: "A complete system of workmen's compensation includes adequate provision for the comfort, health, safety, and general welfare of any and all employees . . . also full provision for securing safety in places of employment."

More than half the States recognize this close relationship by placing administrative responsibility for workmen's compensation laws and safety programs in the same department. (In several States the workmen's compensation commission administers both the compensation law and the safety program.) Other States usually provide for reporting of accidents by the workmen's compensation commission to the State labor department, so that the department can make prompt inspections in order to prevent future accidents. A number of States also associate safety with the administration of workmen's compensation by providing that benefits shall be subject to increase if the employer neglects to make available reasonable safeguards or, in most cases, to a decrease if the injured employee ignores or refuses to use the safeguards at his disposal.

### Development of Safety Movement

In addition, workmen's compensation laws have had other major effects upon the development of industrial safety. One of these arises from the

reporting of injuries required of employers under such laws. Prior to their passage, there was no means of gauging the scope or nature of the accident problem. But with the spread of workmen's compensation to State after State, and the extension of reporting requirements within the various States, the scope of injury reporting under workmen's compensation laws has been enlarged steadily until it now covers most employees.

Arthur H. Reede<sup>1</sup> estimates that in 1940, when 47 States had workmen's compensation laws, the employers of 92.7 percent of employees not covered by Federal compensation acts were subject to reporting requirements of State laws. This contrasts with his comparable estimate of 52.8 percent for 1915, based on 23 State compensation laws. Although reporting under some State laws continues to be required only of "subject employers" and, in some cases, after the expiration of the waiting period which must elapse before an injured worker is eligible for benefits, Professor Reede's estimates indicate that these restrictions affected relatively few employees in 1940. For example, 73.2 percent of employees worked in States requiring reports from "all employers," and 64.9 percent worked in States requiring reports for injuries causing absence from work of 1 day or less.

Noting that "the test of any law is administration," Professor Reede adds "there is abundant evidence that with the passing of time the margin of noncompliance with these requirements is narrowing."

This extension of reporting requirements has served to place the facts concerning their own injury experience before an increasing number of employers. More importantly, it has given the safety movement a constantly broadening picture of the extent and nature of the industrial injury problem in the various States and in the Nation, as indicated in a 1952 report<sup>2</sup> to the President's Conference on Industrial Safety:

Since 1948, there has been an increase in the amount of accident data available to the [State] industrial safety agencies and in the use of these data by such agencies in improving their safety programs. Over half of the States reported that current reports of all

<sup>1</sup> See *Adequacy of Workmen's Compensation*, Cambridge, Mass., Harvard University Press, 1947.

<sup>2</sup> Report of the Conference Committee on Laws and Regulations on a survey undertaken at its request by the Bureau of Labor Standards.

disabling injuries (lost time of 1 day or more) are available to the industrial safety staff. Other States reported that more limited reports of accidents were available to their safety staff.

Accident data are used by the safety agencies in a variety of ways. A number of the agencies indicated that accident reports are an essential factor in planning general inspection activities or in the special investigations of accidents of a more serious nature. They are used as a guide by safety staff in making special services available to employers looking to the correction of hazards. In one State each accident report is analyzed and entered in the firm's record with indication as to potential cause and the inspector in the area receives a condensed copy of the record each quarter. Some agencies computed frequency and severity rates for various industries for comparison with the records of individual plants, and to help the employers work out a suitable plant safety program.

The method of assuring payment of benefits under workmen's compensation laws in the United States has also played a major role in shaping the development of our safety movement. In contrast with the prevailing system in Europe and in Canada, which emphasizes group liability, we have placed heavy emphasis on individual performance. Through self-insurance and merit-rating, our system has made it possible for larger employers to realize practically all of the savings in compensation costs achieved by a reduction in work injuries.

The resulting impetus to safety work in larger establishments has helped to produce spectacular reductions in injuries by large employers, including employers in fields which once were considered as highly hazardous. At the other end of the scale, our system of elective coverage and numerical and other exemptions have served to remove from a number of employers the financial urge to prevent accidents. In between the two extremes are the employers who have their compensation obligations underwritten by insurance carriers and do not benefit so immediately or so fully from reduced injuries as do the larger employers. The impetus to safety exists for such employers, but not to the degree that it does in the case of larger establishments.

In general, there is corresponding variation in the safety accomplishments of the different sizes and categories of employers. However, this correlation is not universal since workmen's compensation is but one of the factors underlying the safety

movement. The initial drive and direction furnished by workmen's compensation has been supplemented by such voluntary safety activities as those of the National Safety Council, the National Fire Protection Association, the American Standards Association, and trade associations, and the informational, promotional, and enforcement work of State and Federal agencies.

### Savings From Safety

Safety activities in general are predicated upon the assumption that they are less expensive than accidents. Broadly, considering the human values and the indirect costs of injuries, there can be little doubt of the validity of that assumption. It has been documented, too, in records of the National Safety Council,<sup>3</sup> which contain ample evidence of the savings achieved through safety activity. For example, 1 large company, operating 4 plants, reduced its annual costs for medical examinations, first aid, and compensation from more than \$20,000 to \$1,900 in 4 years; and intensive safety work undertaken by a construction company saved \$33,456 within 6 months of its inception.

Neither savings nor costs of safety programs are limited to compensation. It is difficult if not impossible to obtain comprehensive figures on costs, principally because of the fact that they are so widely distributed that isolation is extremely difficult. Some indication of this, as well as of the vast savings which can be achieved in compensation costs, can be drawn from the recent experience of the Bureau of Ships of the U. S. Department of the Navy.

As a result of an intensive program, the Bureau of Ships succeeded in reducing the number of deaths resulting from work injuries from 100 in 1946 to 4 in 1951. According to the Bureau of Employees' Compensation of the U. S. Department of Labor, the cost of compensation and medical care in fatal injuries to Federal employees averages \$35,000. Thus, had the Bureau of Ships' 1946 death toll persisted, it would have cost the Federal Government \$3,500,000 in 1951, so that the actual reduction in deaths saved \$3,360,000 in

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<sup>3</sup> Published in the 1942 edition of Accident Facts.

the latter year alone. Concurrently, the Bureau reduced its injury-frequency rate from 20 in 1946 to 5 in 1951, thereby considerably increasing the savings.

In reporting on the reduction, the Bureau's Safety Engineer noted that "the most continuously effective part of the Bureau of Ships' program is concerned directly with supervisors and employees. Safety is so much a part of supervision that safety responsibilities and functions are written into the individual supervisor's position description." This quotation points up the difficulty of segregating the cost of even one important segment of the Bureau's safety program. However, since the additional work was imposed upon existing staff, it is safe to say that the cost was negligible compared to the enormous savings achieved.

Similar examples of savings in compensation as a result of safety activities in 7 States and the District of Columbia were reported to the 1952 meeting of the President's Conference on Industrial Safety:

*Arkansas:* 9.9 percent reduction in workmen's compensation insurance rates in 1951 with no change in benefits.

*District of Columbia:* a decrease of 35 percent in the all-injury frequency rate in the 9 years following the passage of industrial safety law, which resulted in a 26 percent reduction in compensation insurance rates in the face of liberalized benefits for injured workers.

*Illinois:* a 10 percent reduction in compensation premiums in the period 1948 to 1951, accompanied by a 30 percent increase in benefit payments.

*Indiana:* compensation rates lowered 20 percent during 1950 and 1951, while benefits were increased by 25 percent.

*Kansas:* a 5 percent decrease in insurance rates during the same period, also with a liberalization of benefits.

*Minnesota:* no specific figures quoted, but report noted that a raise in benefits called for only a slight increase in compensation insurance rates because "of the downward trend in accident frequency and severity."

*Oregon:* compensation rates decreased 30.5 percent from 1944 to 1951, while benefit rates increased nearly 75 percent.

*Rhode Island:* compensable injuries reduced 49.2 percent from 1945 to 1949, with a reduction of 8.5 percent in premiums and 13.3 percent increase in benefits in 1949 and further rate reductions in 1950 and 1951. Combined these changes effected annual savings of \$3,360,000.

The program which accomplished the notable reduction in workmen's compensation insurance costs in Rhode Island was described at the 1949 meeting of the President's Conference by United States Senator John C. Pastore, then Governor of Rhode Island, as follows:

It is 4 years since we in Rhode Island set this cornerstone in our safety foundation. Until . . . 1945, our safety laws were written in terms more or less general, [and their] interpretation . . . was left to the industrial inspectors. . . . Not unnaturally and not infrequently there was . . . a serious deficiency in safety standards.

We recognized the need for more effective accident prevention measures. So our General Assembly created . . . a Special Commission To Study Codes and Rules for Safety and Health in Places of Employment.

The Commission made a competent investigation of facts, exploring the need for codes by the use of all available accident statistics accumulated in our State over a period of years. Their aim was a determination of this question: Was it practical to construct by means of mandatory requirements a "floor" for safety and health—this "floor" to represent the minimum conditions which would be permitted in places of employment? . . .

Out of [the Commission's findings and recommendations] came the act constituting the Industrial Code Commission for Safety and Health which I signed into law on April 28, 1946.

This Commission was duly appointed and immediately activated in the setting up of industrial safety and health codes. Seven codes have already been adopted and put into effect. Four additional codes are in the process of preparation.

Ready acceptance of these codes on the part of management, sincere cooperation in complying with their requirements are highlights in our code-making experience. . . .

A State safety foundation saves lives and money. It is a good investment. It deserves adequate appropriations . . . The 37 States replying to an inquiry by the Bureau of Labor Standards reported that they spent a little less than \$6 million in the last year on safety work . . . an average of 23 cents per worker . . . But almost half of those States spent 10 cents or less per worker. How does that compare with the conservative estimate that last year's industrial accidents cost American industry and labor over \$90 per worker?

The inadequacy of our appropriations is even more evident if we translate them into people and service. The 48 State agencies reporting on this question had a total of 1,018 inspectors. . . . Most of [the States] said they needed double their present staff—or better—to do an effective enforcement job.

. . . I view enforcement as a last resort—not as a first. The purpose of enforcing a safety law is not prosecution but prevention—it is not to punish for violation but to save human life or prevent bodily injury.

Our experience in Rhode Island shows that this can ordinarily be better done by safety promotion. For the majority of accidents today do not arise from a violation of any law but from a variety of other causes. To reach and remedy those other causes, safety promotion, education, and consultation are required. . . .

[Therefore,] to industrial plants our inspection division offers a continuing service in six phases:

- (1) Services in analyzing accident reports and reporting methods.
- (2) Assistance in developing overall safety organizations within the plants.
- (3) Assistance in the development of safety committees.
- (4) Visual education services.

(5) Specialized consulting services on individual problems requiring considerable personal attention or technical knowledge.

(6) Assistance to management in determining accident costs and providing suitable instruction in conducting such cost analysis.

Our pressing need is to sell top management, especially among these smaller firms, on the importance of constant, active direction of the company's safety program. We need, as well, the active cooperation of the workers.

History testifies to the tremendous effect of workmen's compensation upon the stimulus and direction of the safety movement in the United States. Such evidence as is available indicates the enormous savings in compensation costs, as well as in other financial and human values, which accident prevention has made possible.

## VII—Problems of Administration

PAUL E. GURSKE\*

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ALL WORKMEN'S COMPENSATION JURISDICTIONS, whether operating through State funds or private insurance carriers, face essentially the same kinds of administrative problems. These fall into two broad types: the procedures and practices attendant to hearings, and the day-to-day operating matters. While most of the discussion in this article relates specifically to the experience of the Oregon State Industrial Accident Commission, the general applicability to other situations will, I hope, prove useful.

### Authority and General Procedures for Hearings

The authority of the workmen's compensation commission to conduct hearings is usually contained in the general powers given to the commission to administer the provisions of the workmen's compensation act. Under the same grant, the commission can appoint assistant commissioners, experts, clerks, etc. In Oregon, each of the three Commissioners and the assistants is given authority to hold sessions at any place within the State, to administer oaths, and to provide for the service of subpoenas (to which the State circuit courts are empowered to compel obedience and to punish any disobedience), for the attendance of witnesses and the production of papers, accounts and testimony, and also, generally, for taking of testimony and for recording of proceedings.

As in many other States, the Oregon legislation does not prescribe particular rules for hearings,

and the Commission's procedures and practices have been developed under its broad general authority. Simplicity is the essence of good hearings technique, and the Oregon Commission has always adhered to a simplified procedure. We believe that the general law of administrative procedure, which protects the rights of all concerned, gives us ample authority to proceed without prescribing and publishing definite rules of procedure. It is our experience that definite rules only serve to complicate what should be an entirely simplified and orderly procedure. Therefore, we endeavor to eliminate all unnecessary technicalities from our hearings, and this philosophy governs the procedures used in the different kinds of hearings conducted by the Commission.

### Types of Hearings

Whenever a fatal industrial accident occurs in Oregon, we conduct a hearing immediately, not necessarily for the purpose of fixing blame or responsibility, but in order to preserve the facts and to determine the safety factors involved, with a view toward prevention. Similar hearings are conducted in connection with safety factors involved in other injuries to workmen, especially where the circumstances are unusual. In such hearings we usually subpoena the employer and witnesses to the accident, and the testimony is taken under oath.

Compensation hearings are held under the provision of the Oregon law that a workman who is dissatisfied with the Commission's action on his claim may, within 60 days, petition the Com-

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\*Chairman, Industrial Accident Commission, State of Oregon.

mission for a "rehearing." The claimant's application for rehearing must set forth in full detail the grounds upon which he considers the Commission's order, decision, or award unjust or unlawful, and it must include every issue to be considered by the Commission, as well as a general statement of the supporting facts upon which he relies. The claimant shall be deemed to have waived all objections, irregularities, and illegalities concerning the matter upon which rehearing is sought other than those specifically set forth in his application. Pursuant to decisions of the Oregon Supreme Court, such petitions need not be couched in formal legal language, but nearly all are actually prepared by attorneys.

Upon receipt of the petition, the Commission immediately fixes a time and place for the hearing. Notice is sent not only to the workman and his counsel, who usually makes an appearance, but also to the employer.

#### "Rehearing" Procedures

The procedure followed at rehearings reflects the fact that we treat them more as administrative investigations than as judicial trials. Technically, the Oregon Commission has quasi-judicial functions, but it is of the opinion that a board or commission, being an administrative agency, should not act as a court. Therefore, strict rules of evidence, such as are applied in the courts, are not adhered to, and great latitude is given to claimant and counsel in presenting evidence. Further, other than the simplified petition for rehearing already described, no papers are required to be filed by the claimant under Oregon law—no motions or demurrers, nor any written answer. If it should appear that any matter concerning the claim is jurisdictional, this can be stated in the hearing. In short, in striving for a simplified procedure, we try to subordinate the forms and rules to the substance of what should be accomplished. Our rehearings procedure has not been questioned over a period of many years, and we have been continuously advised that it is entirely in accordance with law (and specifically with the Fourteenth Amendment to the Constitution, which provides that no person shall be deprived of life, liberty, or property without the due process of law).

We also realize that our compensation hearings can be conducted fairly only by officers who are

unbiased, experienced, and qualified in administrative hearings procedure, nor will we permit politics to interfere with the impartiality of our rehearings. Hearings officers, selected on the basis of these criteria, are called referees, and they are instructed to conduct hearings in a completely impartial manner and as informally as possible. The commissioners themselves, either individually or as a group, occasionally conduct hearings, especially important ones. Five assistant attorneys general who are assigned to the Commission are available upon request to sit in on cases where it appears that a legal problem is to be presented which would require their immediate advice. Most often, however, the only persons present are the referee, claimant, his attorney, and the reporter. The act does not require the claimant to be represented at hearings by counsel, however, and he may represent himself if he wishes.

In some States, it is deemed entirely proper for the hearings officer to conduct the preliminary examinations of the claimant and other witnesses, giving opportunity to claimant's counsel to question or cross-examine those who testify. Such a procedure does save time and also assures that all essentials of a complete hearing are presented, but it is used only occasionally in Oregon, where it is not generally favored by attorneys. Our more usual procedure is for the referee, at the outset of the hearing, to invite counsel for claimant to state for the record his position on the issues; this is especially helpful to the Commission when there are complicated issues. Counsel for claimant may also introduce as exhibits such medical reports and other documentary evidence as would be of aid, without the need for formal identification or authenticating testimony.

At some hearings, of course, the employer wishes to register objections. Under the Oregon law, employers' contributions vary according to the hazard of the industry in which they are engaged, such as one rate for logging and another rate for construction. (One cent per day is deducted from the workman's wage.) This base rate can be reduced up to 50 percent if the employer has a favorable experience with respect to accident costs over a specified period of time. If, however, his accident costs exceed 70 percent of his contribution, then the favorable experience rating is lost. Hence, the employer is interested in rehearings or appeals for increased compensation. He may

either appear personally or be represented by agent or by counsel and has the privilege of questioning the claimant and his witnesses.

At the conclusion of the hearing, if it appears desirable because of the claimant's physical condition or other circumstances, the referee may arrange for immediate further medical examination. In many cases, too, the hearing is followed by an informal, off-the-record discussion between the referee and the counsel for claimant. This saves unnecessary record and is a great aid to the Commission in resolving the issues and helping the parties to reach a satisfactory agreement. Immediately after the end of the proceedings, the referee dictates to the reporter his recommendations to the Commission and his impressions of the claimant and the entire proceeding. The record is forwarded at the earliest practicable time to the main office of the Commission for review; following this, the petition is either denied, or the claim is reopened for appropriate action, e. g., for further medical care, for increased compensation, or for arranging with claimant's counsel some other amicable adjustment.

### Other Protections for the Worker

If the workman is dissatisfied with the Commission's action upon the rehearing, within 30 days thereof he has the right to appeal to the State circuit court. In that appeal he is limited to such issues of law or facts as were properly included in his petition for rehearing. The appeal is tried *de novo*, and the claimant is entitled to a jury trial, as in other civil actions. The rules of evidence, as in civil actions, apply to these appeals.

Throughout these rehearings or court appeals, fees for attorneys who represent the injured workmen are contingent upon their securing an increase in compensation. Fees are based upon an agreement between the Commission and the Oregon State Bar Association, which calls for 20 percent of the increase, with a maximum of \$750. Fees are payable only as and when compensation is paid to the claimant.

The worker is also protected by the fact that the Commission's simplification of procedures extends to the prehearings stage of claims processing. For instance, if, when an injured workman files his claim with the Commission, we were required to ask him to adhere to strict court rules of evi-

dence, it is conceivable that we would have to hire a huge staff of investigators and legally trained people, as well as asking for the assignment of additional assistant attorneys general. Under such a procedure, the processing of claims would be interminable, and the workman would be sadly neglected at a critical time when he needs aid. We feel that our legislature never intended this to happen, and hence we act on reasonable and reliable information, especially where the employer and the first medical doctor furnish acceptable proof showing the relationship of the accident to employment and of the injury to the accident.

Over and above all these protective measures, the Oregon act provides that an injured workman who has filed a valid claim may, within 2 years of the first closing order, reopen his claim for further benefits in the event his condition becomes aggravated. Following the 2-year period, the Commission may reopen any claim on its own motion for additional benefits if the treating doctor advises the Commission that the workman has developed further disability which has a causal connection with the worker's original accident. Thus, the door of the Commission is always open to the injured workman and to his counsel and to his employer to assist the Commission in accomplishing speedy justice to the injured workman and to his ultimate rehabilitation.

### Operating Problems

For many workmen's compensation administrators the extent of the pay lag is the most persistent and omnipresent problem. Its causes, in turn, embrace many of the problems encountered in the benefits or claims payment section—such as claims flow, filing, accounting procedures, and personnel utilization.

*Pay Lag.* Herbert W. J. Hargrave in Michelsbacher's "Casualty Insurance Principles" (McGraw-Hill Book Co., Inc., New York and London, 1930) states: "The highest duty of the claims man is so to organize his department that compensation benefits will be paid with exact promptitude, as the desired effect of the legislation is lost if the injured does not receive the benefits until a considerable period after the time he is entitled thereto."

This promptitude, or rather, the lack of it, is

called pay lag in the field of workman's compensation and is defined as the period between the date of accident and the date of first payment. Pay lag can be broken down into three periods: (1) from the date of accident to the date of receipt of the claim form; (2) from the latter date to the date upon which enough information is supplied to permit positive action on the claim; and (3) from the time action can be taken to the date of payment. Each contributes to the extent of time lag, and at first glance it would seem that the administrator can do little except reduce the third period. In Oregon, the administrator has little or no direct control over the greater part of the time lag since it occurs prior to actual processing of the claim.

That period between the date of injury and the date of receipt of claim in many cases is unnecessarily lengthy, with the major part of the lag directly traceable to either the employer or the treating physician, each being required, in Oregon, to fill out one section of the workman's claim. Too often, the usual aversion of physicians to "paperwork" is reflected in withheld claims, sketchy and insufficient data regarding type and extent of injury, and tardy reports. Oregon attempted at one time to improve this situation by paying a premium for the first call by a doctor if his report was submitted in 48 hours. However, administrative problems created by the tide of partially completed claim forms, i. e., the doctor's section only, and the attendant confusion created by misspelled names, soon necessitated changes in the procedure under which the premium was paid. Claims are delayed by the employer to a much lesser degree. In those States where a statutory time limit, with penalties for late filing, is placed upon the employer for reporting an injury to a workman, very little time lag is noted.

Because of the utterly impersonal system peculiar to a State fund, proper and complete filling out of the claim forms is vital in the determination of the time-loss payment due the injured worker. Although Oregon's "three way" claim form clearly states that all questions should be answered, nearly 14 percent of all claims presented in Oregon require additional information prior to validation or payment. Workmen are prone to omit such highly important data as date, time, and place of accident, the mechanics of the accident, and other

information which would help the underwriter to establish the validity of the claim. Also the marital and dependency status and period of time loss, both of which are required to determine the rate and amount of compensation, are frequently ignored. These omissions may be due to inadvertence or carelessness, or they may be intentional. Perhaps they can be attributed to the average American citizen's passion for privacy, i. e., a "that's none of your business" attitude, or to fear of an imagined "bureaucracy bent on denying rightful benefits." Correspondence to obtain information which should be contained on the claim form is both time-consuming and expensive, even when confined to form letters, and pyramids an unnecessary addition upon already high costs. This problem is especially complicated in Oregon because of the unique "no waiting period" provision of the law, which generates a greater percentage of time-loss claims than normally found in States that have a waiting period.

An extensive educational program, involving the cooperation of the press, labor and management periodicals, labor organizations, medical professional groups, and the safety committees of employer and employee groups, is essential in eliminating these contributory causes of excessive pay lag.

That part of the time lag which occurs after all information needed to process the claim is in the hands of the Commission, while shorter than the two periods previously discussed, is the most important to the administrator, for it is the one over which he has nearly complete control. Continual scrutiny of the whole claims processing operation can result in many savings of time, and consequently, costs.

*Claims Flow.* As an example, we have found that transportation of claims in the course of processing them, while seemingly insignificant, presents a very real problem, and one which can benefit from minute inspection. The location of sections, and of personnel within the various sections, is dependent upon the flow of claims, and a thorough initial study of the problem must be made and the results perused frequently.

The average employee works most accurately and speedily in the morning. He also works better with a relatively small amount of work

always ahead of him; if his desk is piled high with work, a peculiar feeling of frustration slows him down. Thus, we deliver only moderate amounts of files, and the deliveries are more frequent in the morning than in the afternoon. Further, we have noted that the performance of successive steps in claims processing at adjacent desks eliminates the need of personnel for delivery and actually stimulates employee efficiency when proper supervision is applied. Such a procedure requires stringent personnel screening to insure that employees in the "chain" have nearly equal productive capacity in order to avoid a "pile-up" of claims. In addition, of course, personnel must be selected with a view to eliminating personality conflicts as far as possible and to stimulating a friendly rivalry for attained efficiency among the employees, a condition not difficult to foster in a continuous flow procedure. The one drawback to this procedure—the obvious tendency of employees to engage in excessive extraneous conversation—can be kept at a minimum through careful supervision.

*Filing System.* Filing, regarded by many persons only as a necessary evil, is the very backbone of an administration's efficiency, because without an accurate and easily accessible filing system, the myriad pieces of mail which are received daily on current and closed claims could not be processed properly. Further, under the Oregon law, claim files (or microfilms thereof) must be kept indefinitely, because the Commission may reopen a claim at any time regardless of the period of time which has elapsed since the date of injury, because of aggravation of the worker's physical condition if, in the opinion of medical advisers, there is sufficient causal relationship to the original injury.

After experiencing considerable difficulty because of the unavailability of files, Oregon adopted a procedure which insures that all claims, except those actively being processed, are in file and which, therefore, enables personnel to file mail and other documents and to pull claims for action far faster than formerly. Before the change, department heads, wanting to insure possession of files upon which action was pending, started departmental filing systems as an expedient. The filing system soon was composed of a little-used main file and many small departmental files, which increased the time required for filing and hindered

the free flow of needed claims. Our partial solution of the problem was to move the general files to a more central location in the Claims Division, flatly abolish the little departmental files, and require the department heads to request only those files needed for current processing, which were to be returned to the general file immediately upon completion of processing and not held while action was pending. This prohibition of departmental files aids materially in reducing the time lag.

*Checking and Accounting Procedures.* The actual processing of a claim is a relatively standardized procedure, and very little can be done to speed up the method. Certain questions on the claim form must be answered properly before the claims can be processed. However, the very fact that the same questions—in the same location on all claim forms—must be answered on every claim led us to consider a new system of checking. Why not construct a cut-out card for each claims man to place over the claim form which would blank out all items except those to be checked by him, thus blotting out all distractions for each job in the chain of processing? One minor drawback to this ingenious device is the periodic receipt of claims on forms issued many years ago, which cannot be processed in this way. Application of the procedure is also hindered for a time following any change in the claim form which, in any event, requires that all employers, doctors, and employee groups be circularized explaining the new form, instructed to destroy old forms, and furnished a supply of the new form, which is a somewhat costly operation. This method requires much planning, research, and reallocation of work among processing personnel, but may be a key to attaining greater efficiency.

The production of checks for claimants, doctors, hospitals, and other medical auxiliaries [a problem only for State fund jurisdictions] was very time-consuming until we installed a complete punch-card system, because the allocation of costs to each employer's account, to each rate class, as well as to each claim, created a huge clerical problem. Now, not only does the fund more quickly produce checks for all types of payments, but the accounting department can give more prompt notifications of claim costs chargeable to an employer's account,

of contributions due, or of contributions received. Also, the resummation of all claim costs paid and contributions received and allocation to the various rate classifications and periods involved is a fast, almost automatic process. And, inasmuch as the computations are an adjunct of the cash received and the claim costs paid or awards setup, all statistical byproducts of the system can be balanced. The change also settled the argument between the accounting and actuarial divisions regarding priority of processing and information, because the production for each was nearly simultaneous. It also brought the funds to full use of punchcard equipment for all accounting, both fiscal and administrative. Although the step is a very great one, we would recommend that other State funds investigate the advantages of changing to machine accounting.

*Personnel.* We realize that without proper, well-trained personnel, all the administrative and educational panaceas go for naught. It is a subject about which all administrators can moan in unison.

Much of the difficulty encountered by a State workmen's compensation administrator can be traced directly to relatively low personnel utilization which results from low personnel standards or high personnel turnover, or both. Legislators

are prone to regard workmen's compensation as just another governmental function requiring the usual run of clerical employees, whereas it is a highly specialized field of casualty insurance, requiring experienced, well-trained personnel. In many instances, compensation administrations have become free training schools for private enterprise, because many exemplary workers, after they have become proficient, have been induced to leave public employment for the more adequate salaries paid by private business. Most of those remaining fall into the categories of either dedicated public servants or marginal employees. The solution of this problem also lies in an educational program—one directed to the public and to the legislators who control the purse strings either through appropriation or budget review.

One sidelight of the general problem of personnel utilization is the definite tendency for interviewers who listen to the complaints of injured workmen over a long period of time to become so calloused that they lose their perspective and objectivity in judging the facts presented. Oregon has solved the problem by periodically shifting the interviewers to other jobs for which they are qualified. This policy has improved our public relations with claimants by assuring a sympathetic but objective hearing, and has increased the efficiency of the employees involved.

## VIII—Rehabilitation

JEROME POLLACK\*

WHEN workmen's compensation legislation set out to provide medical care and replace lost income for injured workers, it embarked on a course that could not be complete without a third goal—the rehabilitation of the worker to optimal family, social, and economic life. This goal is potentially the most significant improvement in the concept of workmen's compensation.

The original legislation was based on an essentially static concept of disability. The medical care of the day was relatively limited. When first aid and medical treatment had been rendered there was little to do but accept the residual incapacity as it stood. The medical care required by statute usually ended after the initial healing period and the program thereafter dealt primarily with cash payments. Compensation for permanent partial disabilities was based on indemnities fixed by statute for specified losses. It was assumed, moreover, that the "loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two hereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability."<sup>1</sup> Where further treatment held no promise, the tendency to establish fixed liabilities for fixed losses was both humane and practical.

The rise of rehabilitation, however, has introduced infinitely improved means of regaining lost health and overcoming loss of function. It has narrowed the area of permanent disability so that

today it scarcely has any valid meaning except to the extent that rehabilitation is unsuccessful or not feasible. Certainly it has shattered the notion of *presumptive* permanent and total disability. It has opened the prospect of improved methods of evaluating disability which would overcome some of the deep-seated deficiencies of the system. Rehabilitation cannot, of course, be the sole objective of workmen's compensation, although such assertions are sometimes loosely made. But it offers a set of services essential to the proper functioning of workmen's compensation legislation; the availability of these services to injured workmen is supported by compelling reasons of social and economic policy.

### Nature and Effectiveness of Rehabilitation

In part, rehabilitation is an outgrowth of workmen's compensation experience. Compensation administrators soon recognized the incompleteness of the legislation and gave the movement for vocational rehabilitation "its most direct and substantial support."<sup>2</sup> Their efforts paved the way, when the First World War came, for the first national legislation for rehabilitation of veterans.<sup>3</sup> The war enlarged the need for rehabilitation and stimulated awareness of its potentialities. Reha-

\* Federal Grants for Vocational Rehabilitation. By Mary E. MacDonald. Chicago, University of Chicago Press, 1944 (p. 11).

<sup>2</sup> See Rehabilitation and Employment of the Injured Workman. By Colonel John N. Smith. (*In* Workmen's Compensation Problems, U. S. Department of Labor, Bureau of Labor Standards, 1953. Bull. 167, pp. 222-226.)

<sup>1</sup> Of the Social Security Department, United Automobile Workers (CIO).  
<sup>1</sup> Presumptive permanent total disability is a common provision. Quotation is from the New York law.

bilitation centers began to be established. Legislation followed, providing a financial base and establishing organized programs of rehabilitation successively for veterans, the industrially disabled, and the general population. There emerged the modern concept of rehabilitation made possible by great advances in the general practice of medicine, in orthopedic surgery, physical medicine, and other medical specialties; and by the pioneering of specialized institutions for the care of the disabled, which had served such groups as handicapped children, the ruptured and crippled, the deaf, and the blind, and which had stimulated, concentrated, and coordinated efforts to overcome disability.

Modern rehabilitation has been defined as "the restoration of the handicapped to the fullest physical, mental, social, vocational, and economic usefulness of which they are capable." Its practice has developed in two segments: *medical*, aimed at maximum recovery of health and the fullest possible restoration of lost function; and *vocational*, to promote an optimal economic adjustment, through vocational counseling and training, transitional employment, and placement services. Currently the *psycho-social* elements of evaluation, social service, personal counseling, psychometrics, recreation, and psychiatric service are recognized as a third coordinate segment. Each segment is a composite of many disciplines. In severe cases, the necessary medical specialists may include: "A general surgeon, an orthopedic surgeon, a neurosurgeon, a plastic surgeon, an internist, a urologist, a roentgenologist, a doctor of physical medicine, a psychiatrist, and sometimes others . . . indispensable for the proper handling of a single case . . ." <sup>4</sup> And before rehabilitation is completed, many nonmedical specialists may have to be called upon. Integration of the diverse disciplines, services, and facilities toward a single goal is the crucial administrative problem. The goal is total rehabilitation. The process cannot stop with the best artificial appliance and its most skillful use if the worker is unable to cope with his social environment or his employment. Proper rehabilitation thus necessitates the availability, where needed, of all the component services and of the institutions which house and coordinate their work.

<sup>4</sup> Rehabilitation of the Disabled. Washington, United Mine Workers of America Welfare and Retirement Fund, [1950?] (p. 10).

Of its effectiveness there is hardly room for question. The will to live revealed by many persons despite the most severe afflictions, their courage and resourcefulness, combined with the new ways to achieve restoration, inspires the common designation of "miracles." Many accounts could be cited which recall Biblical passages. A history of the Institute for the Crippled and Disabled is appropriately entitled "Take Up Thy Bed and Walk." <sup>5</sup> Dr. Howard Rusk has given an inspiring account of the rehabilitation of 500 paraplegics <sup>6</sup> under the program sponsored by the United Mine Workers. These were—

. . . the toughest cases that anybody ever saw, bar none. You always like to tell about your worst case, but there were many as bad as this one:

This man was 40 years old and his back was broken 20 years before. How he survived that length of time I don't know. When he was found . . . he . . . had not seen a doctor in 3½ years. There was not even a wagon road to his house and he was carried down in a sling between two bed poles by friends. The man had 11 bed sores from the size of a plate to the size of a dollar; stones in both kidneys and his bladder, and his lower extremities were almost up under his chin.

You might ask, is it worth fooling with a person like that? He thought it was. He wanted to live. And we felt we had an obligation. It took 26 surgical procedures and 13 months before we could even start to train this individual. . . . We trained that man to walk, swing through a gait on crutches in 90 days, and in control of automatic bladder and automatic bowel. And during the last 3 months of his stay in the institute he ran for sheriff in his county . . . and he has been the sheriff there for more than 3 years.

New ways of rehabilitation hold promise of still newer ways and broader applications. Rehabilitation is being extended to mental illness, heart disease, epilepsy, blindness <sup>7</sup> and aging. <sup>8</sup> Its horizons are expanding and the hope it holds for tomorrow makes it all the more important to perfect the institutional arrangements to bring rehabilitation to the disabled.

<sup>5</sup> By David Hinshaw. New York, G. P. Putnam's Sons, 1948.

<sup>6</sup> Hope for paraplegics is in itself a startling innovation. "Until the last 10 years," as Dr. Rusk has pointed out, "paraplegics had been no problem because the mortality rate was 90 percent the first year. There were 400 paraplegics in World War I. Only two are living today . . . In this war it was a different story. We had 2,500 and they didn't die because you could control their infection and we knew about the management of their bed sores." (*In Application of Rehabilitation to Workmen's Compensation, Medical Aspects of Workmen's Compensation, Commerce and Industry Association of New York, Inc., 1953, p. 62.*)

<sup>7</sup> See Annual Report of the Federal Security Agency, 1952. Washington, Office of Vocational Rehabilitation (pp. 251-275).

<sup>8</sup> See Rehabilitation of Older Workers. Edited by Wilma Donahue. Ann Arbor, Mich., 1953.

### Provision for Medical Rehabilitation

From the beginning, workmen's compensation legislation accepted, at least in part, a responsibility for restoring health which often extended into medical rehabilitation as it then existed. True, restrictions on the total cost or duration of care were the rule. Nevertheless, more than a third of the laws enacted by the end of 1919 defined medical care to include such items as "crutches and apparatus," "artificial limbs," "mechanical appliances," and the like and it is probable that other States also furnished them under the general provision that "all necessary" or "reasonable" services, medicines, and supplies were to be provided.

Although medical rehabilitation was partly anticipated, it was largely an unforeseen development requiring a greater emphasis on medical care, a broader scope of services, and possibly a reexamination of the arrangements for medical care.

Progress toward adequate medical care, however, has been slow. One authority poses the problem as follows: "Those laws which should have restored the disabled worker to gainful employment failed to provide even adequate medical care by the statutory limitation of the cost and duration of such care. It should be obvious that no true rehabilitation can possibly be afforded if medical benefits are to be so restricted."<sup>9</sup> Such restrictions still exist in as many as 17 States. The practice is sometimes more enlightened than the legislation, but this does not establish a satisfactory financial base for medical rehabilitation.

Modern rehabilitation involves the total medical practice as it affects the injured. It begins with the attending physician—and even with the medical school. In order for the physician to carry out his responsibility as defined by the American College of Surgeons, ". . . it is essential for him to recognize the total medical problem of the patient in addition to his injury, as well as his personal problems. The physician must bring to bear on these problems all the skills and disciplines that science and society can offer, and

utilize all community resources which can assist him in the accomplishment of these objectives."<sup>10</sup>

The community resources bearing closest on medical rehabilitation are the community hospital and the rehabilitation center. The President's Commission on the Health Needs of the Nation has underscored the need for establishing departments of physical medicine and rehabilitation in general hospitals. The Commission concluded that the average community hospital of 200 beds could profitably assign perhaps 20 percent of its beds for rehabilitation and convalescent care. However, only 19 of 1,600 general hospitals replying to a questionnaire by the Commission on Chronic Illness had any bed allocation for rehabilitation services; and very few of these actually offered comprehensive service. The President's Commission found, moreover, that: "All told, there are less than a dozen comprehensive rehabilitation centers in existence . . ." and that they meet only a small fraction of the need. To make the miracles of medical rehabilitation a reality for most of the Nation's disabled workmen, a great expansion in hospital and center facilities is obviously needed.

### Provision for Vocational Rehabilitation

A few States were prompt to amend their laws to bring vocational rehabilitation within the scope of the compensation system. Massachusetts was the first to establish, in 1918, "a division for the training and instruction of persons whose capacity to earn a living has in any way been destroyed<sup>11</sup> or impaired through industrial accident."<sup>12</sup> The following year California, North Dakota, and Oregon adopted similar measures. Oregon's compensation law set a high standard:

One purpose of this act is to restore the injured person as soon as possible to a condition of self-support and maintenance as an able-bodied workman, and final settlement shall not be made in any case until the commission is satisfied that such restoration is probably as complete as can be made . . . the commission is authorized to expend money from the accident fund to accomplish this purpose in each case and the amounts so spent shall not be charged against the compensation allowed by this act to the injured workman . . .<sup>13</sup>

<sup>9</sup> Rehabilitation in Workmen's Compensation. By Dr. Alexander P. Aitken. (*In* Workmen's Compensation Problems, U. S. Department of Labor, Bureau of Labor Standards, 1953. Bull. 167, p. 212.)

<sup>10</sup> *Ibid.*, p. 207.

<sup>11</sup> General Acts of 1918, chapter 231.

<sup>12</sup> Workmen's Compensation Law of 1913, Ch. 112, sec. 23 (as amended by Ch. 238, acts of 1919).

But rehabilitation was also developing in a broader direction. Support was growing for the idea that it should be made available to all of the disabled regardless of the origin of disability. This idea was embodied in the Federal Vocational Rehabilitation Act of 1920 which provided for technical and financial assistance from the Federal Government for State-operated vocational rehabilitation programs serving the general population. There had been some resistance to the inclusion of vocational rehabilitation under workmen's compensation; within that framework, rehabilitation faced uncertain financing and restrictive standards of eligibility. The Federal-State program, on the other hand, was readily accepted as the means of providing vocational rehabilitation for the occupationally disabled, and the drive to bring rehabilitation under workmen's compensation generally abated.

As a result, only 17 States have made any statutory provision whatsoever under their workmen's compensation laws to provide, promote, or facilitate rehabilitation. Fifteen States facilitate rehabilitation by providing limited maintenance allowances during its course; a few among them, probably five, finance or help pay for rehabilitation services as a direct part of workmen's compensation. Four States and Puerto Rico directly operate rehabilitation facilities for injured workers under the workmen's compensation program.

There thus exist in America today two basic patterns in providing rehabilitation services for injured workers: in a few States the services are directly provided by the workmen's compensation agency; overwhelmingly they are furnished through cooperation with the Federal-State program.

*Direct Provision of Services.* The few States which directly operate rehabilitation facilities under workmen's compensation—Ohio, Oregon, Rhode Island, and Washington—offer potentially the most complete integration of the two programs. There are evident benefits in centers concentrating on traumatic disabilities; there is greater specialization; the cases tend to be relatively recent in origin and can be processed before despair patterns become confirmed. The patients generally retain employment ties that may be reactivated and have a job orientation that is often helpful. The rehabilitation is financed as a workmen's compen-

sation cost. To the injured worker it comes as an insured right without any means test or any implication of public assistance. Such centers have been performing excellent services for the injured employees under their jurisdiction.

The success of workmen's-compensation-operated centers, however, requires an administrative agency with considerable authority, empowered not only to establish the necessary facilities and provide the services, but also with clear authority to refer cases for rehabilitation. Such agencies are the exception rather than the rule in present American compensation practice. The fact that so few States have taken this course during four decades does not inspire much hope for a major trend for the direct provision of rehabilitation services under workmen's compensation.

*Cooperation With Federal-State and Voluntary Community Centers.* A plan of rehabilitation geared to State, local government, and community centers offers a number of advantages. Community centers tend to be broader in scope than centers dealing exclusively with work injuries. They represent an investment in services and facilities available also to the worker's family and to the worker injured off the job. Community centers can make for fuller utilization of scarce resources by avoiding the duplication of personnel and facilities performing the same functions for different population categories. Local arrangements, moreover, can bring rehabilitation closer to the workers' communities—an important factor in inducing workers to accept rehabilitation. Such arrangements can provide for better integration of rehabilitation with the sources of medical education, medical service, placement agencies, and other community services.

Considering its vast responsibilities and chronically limited budgets, the Federal-State program has achieved remarkable results, especially since the Barden-LaFollette Act of 1943 broadened its scope to embrace the full range of rehabilitation including medical and psychiatric services. Nevertheless, examination of the volume of rehabilitation of injured workers, the delays in securing service, the weaknesses in the referral system, the shortages of personnel, the inadequate financing, and other serious shortcomings, revives the question as to whether it was proper for

workmen's compensation to have transferred, largely or entirely, the responsibility for rehabilitation to another program without at least sharing in the cost and without taking definitive responsibility for following its cases through to complete rehabilitation. The question persists whether the responsibility to purchase or provide rehabilitation services must not be made an integral part of workmen's compensation, just as medical care is.

The volume of rehabilitation is critically inadequate. The Labor Department and the Office of Vocational Rehabilitation have estimated that at least 200,000 of the nearly 2,000,000 workers injured each year could benefit from rehabilitation. By this standard of eligibility, "only 3 percent of the injured workers in the United States are receiving the type of service needed."<sup>13</sup> About 6,000 injured workers annually receive rehabilitation services under the Federal-State program, but each year fully twice as many sustain serious permanent disabilities and are in acute need of rehabilitation. Most of the rehabilitation is received, not by those currently becoming disabled, but by a portion of the vast, and growing, backlog of persons needing rehabilitation.

Authorities are unanimous in stressing the crucial importance of promptness. Nevertheless, the Task Force on the Handicapped has made public the fact that, while the Rehabilitation Center of the Liberty Mutual Insurance Co. in Boston reported an average lag of 6.4 months from injury to admission, under the Federal-State program it had taken 7 years on the average for occupationally disabled workers to find their way to the rehabilitation agencies in 1951.<sup>14</sup>

The tendency has been to approach the matter of referrals superficially. The problem is far too deeply rooted to be overcome by merely urging more prompt action or even through improvements in the mechanics for referral. One important cause of delay is built into some of the statutes; rehabilitation is not authorized until the worker qualifies by becoming entitled to an award for major permanent disability. Claim settlement procedures

which require the worker to maximize his disability in order to secure fair compensation also interfere with rehabilitation—and this is one of the deep-seated evils of present compensation practice that may prove exceedingly difficult to overcome.

Far greater access to facilities is needed. Injured workers usually must travel to the large urban centers at considerable hardship and expense. In most States, travel and maintenance expenses are not provided under the compensation law and, indeed, the regular cash benefits themselves are insufficient for this purpose.

Rehabilitation is not only grossly underfinanced but, partly as a consequence, seriously understaffed. As Mary E. Switzer, Director of the Office of Vocational Rehabilitation, recently testified: ". . . the urgent need for more trained personnel is not limited to the field of medicine. The need for physical therapists, occupational therapists, speech and hearing therapists, rehabilitation counselors, special class teachers, social workers, psychologists, and other specialists is even greater."<sup>15</sup>

### Trends and Developments

The conquest of disability is one of the most constructive achievements of our time. Notwithstanding the many remaining lags, the merits of rehabilitation are gaining recognition. In 1951, the Industrial Commission of Ohio was authorized to advance \$300,000 to establish a rehabilitation center. Puerto Rico appropriates \$50,000 annually for the rehabilitation of injured workers. Numerous community rehabilitation facilities are being planned and built.

Two of the more significant attempts to extend rehabilitation for injured workers have come from a labor union and an insurance company. The union is the United Mine Workers, which concluded that "the problems which the severely disabled face in making a recovery are created in great measure by the present inadequacies of our workmen's compensation, relief, and rehabilitation programs."<sup>16</sup> The union's Welfare and Retirement

<sup>13</sup> See Report of Rehabilitation Committee to 1950 Annual Convention of the IAABC. (*In Workmen's Compensation Problems*, U. S. Department of Labor, Bureau of Labor Standards, 1950. Bull. 142, p. 173.)

<sup>14</sup> See Report of the Task Force on the Handicapped to the Chairman. Washington, Office of Defense Mobilization, Manpower Policy Committee, 1952<sup>2</sup> (p. 31).

<sup>15</sup> Hearings, Special Subcommittee, House Committee on Education and Labor, pursuant to H. Res. 115, 1953, pp. 49-50.

<sup>16</sup> Rehabilitation of the Severely Disabled: UMW Welfare and Retirement Fund Experience. By Kenneth E. Pohlmann. (*In American Journal of Public Health and the Nation's Health*, New York, April 1953, p. 451.)

Fund set out to supplement and coordinate the rehabilitation of disabled miners in conjunction with the Federal-State and other public and community agencies. The signal contribution made by this program has been to demonstrate the effectiveness of rehabilitation and to improve screening and referral procedures for its members. Other unions are now studying the possibility of promoting rehabilitation through collective bargaining.

The insurance company is Liberty Mutual, one of the major insurers of workmen's compensation liabilities. It observed the slow progress in bringing modern rehabilitation to injured workers. It was concerned with the rising cost of workmen's compensation and saw rehabilitation as one constructive method for controlling cost. Since 1943 it has operated a center in Boston which has produced excellent results, having derived many of the advantages of a program closely integrated in the workmen's compensation process. Its contribution is the demonstration that rehabilitation pays. The savings in reduced medical and compensation costs are difficult to measure by rigorous standards, although many specific cases can be cited in which very substantial amounts were saved. Stanwood L. Hanson, in evaluating the center's work, has stated the case with candor: "Although we still have many failures, the successes outweigh our failures, and our gains in human values and in

dollars far exceed the cost of providing these services of rehabilitation."<sup>17</sup>

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Sweeping changes are needed to modernize the Nation's workmen's compensation laws. There is probably no better place to start than with the establishment of a definitive program of rehabilitation for occupationally disabled workers. Rehabilitation should be as firmly established under workmen's compensation as the responsibility for medical care. Whether the services should be directly provided by the workmen's compensation board or purchased from community centers is not the basic issue. The need is for the assumption of responsibility for comprehensive rehabilitation and for a vast expansion in its availability. The medical care provisions should be broadened to cover the cost of medical restoration in full. The administrative agency should be given clear authority to make rehabilitation services and income-maintenance benefits available to all who need them. The administrative reforms which are urgently needed in workmen's compensation generally—in the direction of a clinical rather than a forensic system—can most logically and appropriately begin with rehabilitation. Once rehabilitation becomes a definitive part of workmen's compensation, further improvements will become possible, such as the revision of the much-criticized disability rating system. This is the most promising prospect for workmen's compensation as it stands today.

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<sup>17</sup> Disabled Men Work Again. (*In American Journal of Public Health and the Nation's Health*, New York, July 1952, p. 790.) See also *The Rising Cost of Workmen's Compensation Cases and New Methods of Control*, published by the Liberty Mutual Insurance Co.