

Workers' Compensation

Background

Concern about compensating workers for injuries received on the job developed in the early 1900s as the United States was entering the industrial revolution. With the advent of a mechanized workplace, the need to protect workers from the financial strain suffered in an industrial accident became increasingly evident. Unfortunately, because workers' compensation laws did not exist at this time, only tort actions against an employer or co-employee allowed an injured employee to recover damages. This system often produced animosity between the employer and employee and often left the disabled worker a burden on the community.

By 1920, nearly all of the states had a workers' compensation statute which had these specifics:

- The employer could provide coverage through a private insurance carrier, through a state insurance fund or by self-insuring.
- Failure to provide coverage subjects the employer to penalties and a possible suit by the injured employee without common-law defenses.
- Compensation is awarded without determination of fault.
- Compensation was based on the loss of earning power of the injured employee.
- Compensation was not to exceed a weekly maximum.
- All medical care was provided from the first day of the accident.
- Employees of certain hazardous employments were covered. Workers' Compensation laws, now in full force in every one of the fifty states, cover on-the-job injuries and protect the disabled worker regardless of whether his disability is temporary or permanent. This statement, by itself, shows clearly how great an asset to the employee benefit program workers' compensation legislation is because workmen's compensation protection narrows down employee benefit planning to the field of accidents and sicknesses which are not connected with the job.

The essence of the workers' compensation system today is not unlike the first laws enacted at the turn of the century. Although each jurisdiction has specific differences, several basic goals underlie all workers' compensation systems.

- Provide guaranteed income and medical benefits to victims of a work-related accident-or income to their dependents, in the event of death-regardless of fault.
- Provide a single remedy and reduce litigation time and court workload arising out of personal injury litigation.
- Alleviate the financial burden of private and public charities for victims of uncompensated industrial accidents.
- Eliminate legal fees and time-consuming litigation.

- Promote employer interest in safety and rehabilitation through experience-rating mechanisms.
- Encourage investigation into causes and prevention of accidents and, therefore, reduce human suffering.

Uniform Benefits

Although broad differences exist between the individual compensation laws, principally in their benefit provisions, all of these statutes, of necessity, follow a definite pattern. Every one of them has provisions as to which employments are covered, the benefits provided, the insurance to be available and the like.

In the following paragraphs, attention is centered upon these significant provisions in order to give an over-all view of Workers' Compensation scope and purpose.

Eligibility

Generally all employment is covered by Workers' Compensation with the following exceptions: farm labor, domestic service and casual work which does not occur in the usual course of the employer's business. In those states in which coverage is not compulsory, acceptance of the employees is presumed in the absence of a formal notice of rejection. Employers in those states may elect coverage, and methods are available for the expression of either acceptance or rejection of the plans. However, where this election of coverage is possible, employers who fail to elect coverage are deprived of their important common law defenses--the fellow servant rule, contributory negligence and assumption of risk. This loss of defenses is, of course, a powerful inducement to employers to accept coverage. Acceptance of employees in these states is similarly impelled as, in the usual negligence suit against a covered employer, the rejecting employee has to overcome his employer's formidable defenses.

Funding Of Benefits

The direct financial cost of providing compensation benefits usually rests on employers. This placement of cost is achieved in any one or all of three ways. State insurance funds, created and maintained by required employer premium payments, are available as a source from which benefits may be paid. These premiums are geared in amount to the risk involved. The other two methods allow employers either to act as self-funders or to contract with an approved private insurance company.

Benefits

In almost all of the states compensation benefits are based on the employee's wages. This is usually expressed as a certain percentage of the worker's weekly or

monthly wages, subject further to maximum and minimum limitations. Duration or maximum aggregate amount limitations are similarly imposed in most of the states for both disability and death benefits.

Payments are made generally in installments but may be made in a lump sum depending on the particular state and the type of disability incurred. Disfigurements, where compensable, are usually made in a lump-sum payment. In some states provision is made for dependent children in the case of death benefits. Such payments are continued until the child has attained a certain age. A few states also provide for graduated payments for disabilities in relation to the size of the worker's family. In the case of death benefits, provision is usually made for a certain allowance to compensate for burial expenses of the deceased.

Benefits under the laws of a minority or the states are in fixed amounts without regard to the employee's previous earnings.

Waiting Period For Disability Benefits

The states usually impose a waiting period of approximately a week's time before payment of benefits will commence. Provision is made in most of the states; however, for retroactive payment to the day of the injury if the disability continues over a designated period of time, usually a month.

Covered Accidents

Under all of the workers' compensation acts it is essential that injuries arise out of, and in the course of, employment. Requirements go even further in some instances, providing that the injuries must be accidental. Under these rules, intentionally self-inflicted injuries or those caused by intoxication are not compensable. This particular aspect of the laws has been the subject of numerous court decisions and interpretations in all of the states.

A majority of the states also provide for coverage of occupational diseases. This has been accomplished by one or another of four methods: (1) coverage of certain scheduled diseases, (2) coverage of diseases generally, (3) coverage of certain diseases as defined by the act, and (4) coverage of diseases resulting from certain specified employments.

Administration

With the exception of a few statutes administered by courts, most of the Workers' Compensation laws are administered by boards or commissions. Findings of fact by these agencies are considered to be conclusive and appeals to higher court authorities are generally allowed only on disputed matters of law.