

WORKERS COMP TURNS 100

a LONG HISTORY AND AN
EVOLVING FUTURE

The first statewide workers compensation law to withstand legal challenge in the United States was adopted in Wisconsin in 1911. It was a simple program that removed worker injuries from the court system, offering both employers and employees more certainty about compensation for lost wages, disabilities and medical care.

As we reach the 100-year mark for this bellwether benefit that eventually spread to all 50 states, the underlying theory of workers compensation remains the same: providing certainty about who pays for injuries. The centennial anniversary seems a fitting time to both look back at the system's historical roots and look ahead to trends that are likely to shape its future.

While today's workers compensation can trace its heritage back to a German system put in place in 1881, scholars have found evidence that the concept of formalizing payments to injured workers existed as early as 2050 BCE. Ancient Sumerian tablets from that era define rewards for specific injuries to body parts, as does the Code of Hammurabi, set out in 1750 BCE.

The early Greeks, Romans, Arabs and Chinese all had compensation schedules for certain losses as well. For example, an Arab who lost a finger received more than someone who lost a thumb; the value of a lost ear was calculated based on its surface area.

By the Middle Ages, feudalism replaced set schedules with the concept that lords would take care of injured serfs because it was the right thing to do (something known as noblesse oblige). In practice, however, workers often went without help. Workers and their families suffered if they were temporarily injured—and sometimes ended up starving if the disability was permanent and they were evicted from the estate because they could no longer work.

The situation hardly improved as industrialization began to take hold and workers moved from farms to factories. **by Nancy Hamlet**



RAMÓN FÉREZ

Under English common law, three general principles emerged around workplace injuries—all designed to shift blame away from the employer. The first was “contributory negligence,” which deemed that if the employee was in any way at fault (by falling into exposed machinery, for example), the employer escaped blame. The second concept was known as “fellow servant” and decreed that if a fellow employee of the worker who was injured contributed to the injury through actions or negligence, the employer was also not liable. The last principle fell under the “assumption of risk” banner. This held that the employer could not be blamed for worker injuries resulting from job hazards that employees were aware of when they took a job.

Not only were the costs of pursuing a court case beyond the means of most injured workers, but these three

allowed to continue sailing and were assigned light duty—a primitive version of today’s return-to-work philosophy.

Otto von Bismarck was likely less interested in being fair to workers than the pirate ship captains. When he created a compulsory workers compensation insurance system in Germany in 1881, many historians feel his goal was to undercut Marxism’s hold on worker loyalty. England adopted the system soon after, drawing the attention of the United States.

Workers Compensation in America

While many people might presume that the push for workers compensation came from unionized employees and was met with opposition from employers, the early 1900s were a time of shifting interests in the United States. Increasingly, workers were winning lawsuits and business were becoming

declared the compulsory workers compensation program unconstitutional. A day later, a fire raged through the Triangle Shirtwaist Company in New York City, killing 146 workers, many of them young women. Eventually, the owners were acquitted of manslaughter, but a civil suit yielded about \$75 in damages for each of 23 families.

Soon after, Wisconsin passed the first workers compensation law to cover private employers that would be deemed constitutional. The first policy written under the law was for the Wausau Sulphate Fiber Company, now known as the Mosinee Paper Mills Company, which has been continuously insured within the system. By 1948, every state in the country had enacted a workers compensation system, including two territories, Alaska and Hawaii, which would soon become states.

In the decades since workers compen-

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defenses also made it almost impossible for them to turn to the legal system to hold employers responsible for compensation.

One segment of the working world, however, developed protections for employees during the 18th century. Pirates operated on a system of sharing the loot they gained from plundering ships with their crews. Because their endeavors were extremely dangerous, with sea battles often involving hand-to-hand combat, they found the best way to hang on to crew members was to promise they would be taken care of if they were injured.

According to piracy experts, a lost eye might result in an award of 100 pieces of eight (a silver coin minted in Spain that was common currency on the high seas), while losing a right leg was worth 500 pieces of eight; the left garnered only 400 pieces of eight. In addition to the award, injured crew members were

perturbed by the uncertainty of courts determining payouts. As a result of the successes in court, unions actually opposed workers compensation, arguing that employees could gain more out of the courts than a system that might set awards at an arbitrarily low value.

The early history of workers compensation in the United States is marked by one step forward and two steps back. Although various commissions recommended the enactment of a no-fault system like that of England and Germany, early efforts in several states were thrown out by courts, which found that the compulsory nature of the programs violated the due-process clause of the 14th Amendment.

The argument might have remained in the hands of legislators and the courts indefinitely, but the timing of a court decision and a stark tragedy brought the issue home to the public. On March 24, 1911, the New York Court of Appeals

sation became universal, even though different on a state-by-state basis, many aspects of the program have changed. But one thing has remained: a continual improvement in worker safety.

As business owners saw the value of reducing accidents and injuries as a way to hold down workers compensation insurance costs, they took steps to make the workplace much safer. In the 1920s, the rate of injury per 100 full-time employees in manufacturing plants was nearly 25. By 2007, it was closer to five.

Emerging Workers Comp Trends

Three trends are emerging that are likely to influence the future of workers compensation. The first is the growing cost of the system. The Insurance Information Institute notes that spending on medical care for workers compensation claims climbed a cumulative 200% between 1993 and 2007. In 1987, medical care represented only

46% of workers compensation claim costs, but by 2007 the share had grown to 59%—and is expected to rise to 70% by 2017.

Adding to the upward pressure on medical care costs is the increasing obesity of Americans and the aging of the nation's workforce. The Insurance Information Institute found that costs for workers compensation medical claims are almost seven times higher when the worker involved is obese. In addition, older workers have a workplace fatality rate that is triple that of those ages 35 to 44, and when they are injured, their time off the job is 50% longer than their younger counterparts.

The second trend that will influence workers compensation is the growing digitization of medical care records. Increasingly, medical records will be accessible to broad-based teams responsible for patient care, speeding

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the utilization review process and helping the patient return to work more quickly. Unlike the first trend, this one may well exert downward pressure on costs by making the delivery of medical care more effective and efficient; both improving the quality of care for patients and reducing the costs that employers pay.

The third trend is the impact of personalized prescription drugs. Today, compounded drugs can have an inflationary impact on medical care costs if they are not carefully managed through pharmacy benefit management processes. In the future, however, efforts to diagnose and treat disease based on

a patient's genetic makeup may lead to targeted treatments that are less costly and more effective.

These trends and their interaction with evolving workplace circumstances may well lead to changes in workers compensation that are not evident today. But as workers compensation turns 100 years old, one thing is clear: policy makers will continue to fine-tune a system that has delivered value to both employers and employees by striving for fair compensation for workplace injuries. ■

Nancy Hamlet is senior vice president of Healthcare Solutions.

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