

Happy 100th Birthday Workers' Compensation

by Chuck Eckert

2011 marks the 100th anniversary for the workers' compensation system in several states across the country. Over the past century, the program has drastically evolved from its fundamental beginnings in the early 1900s to meet the expanding needs of laborers.

To celebrate 100 years of workers' compensation progress, we have decided to take a look back at its initial stages, while also exploring what the future holds for this invaluable program.

Glancing back...

During the 19th century, German statesman Otto Von Bismarck (appropriately dubbed the "Iron Chancellor" for his commanding political legacy) introduced a social system for the protection of injured workers. By 1884, Bismarck had phased in "Workers Accident Insurance," a system that ultimately became the model for workers' compensation programs in Europe and the United States. While England followed Germany's lead and implemented its own workers' compensation act in 1897, America did not join this social revolution until the early 1900s. During the first decade of the 20th century, states including Maryland, Massachusetts, Montana and New York introduced workers' compensation statutes, all of which were denied on the grounds that the laws were a violation of due process. Wisconsin eventually became the first state to successfully pass workers' compensation legislation in the year 1911.

Prior to the enactment of such laws, the only source of compensation for an injured employee was through the courts. Employees had to prove their employer was negligent to gain any compensation for lost wages or medical bills. At that time, employers were able to utilize unreasonable defense strategies to dispute charges of negligence, including:

Assumption of risk: This line of defense required an employee to prove a duty-of-care was owed. Employers could argue that if an individual assumed the risk of a dangerous activity, the employer's liability was lifted.

Contributory negligence: This particular doctrine of defense argued that if the injured person was even partially responsible for causing his or her own injury, he or she would be barred from seeking recovery from their employer.

Fellow servant rule: This defense tactic asserted that if an employee's injury was caused by a fellow employee, the blame could not fall upon the employer.

The majority of individuals could not afford the cost of bringing a suit against their employer. Furthermore, due to the accepted defense strategies, it was incredibly difficult for an employee to win a case. In the unlikely event that they did win, the damages awarded were oftentimes too small to warrant the cost or effort of a trial in the first place.

As injured workers were left broken and uncompensated, and their families consequently struggled to make ends meet, the demand for an adequate workers' compensation system exploded. Lawmakers across the country were finally forced to recognize the value of the American worker. In 1908, President Taft signed the first viable workers' compensation statute into law. The Federal Employers Liability Act was designed to protect interstate commerce railroad workers and it is still in existence today. From that point, states began taking a hard look at the intrinsic worth of implementing social programs that protected their workforce, culminating with Wisconsin's successful enactment of the first workers' compensation law. The last state to join the workers' compensation movement was Mississippi when they passed their own workforce protection bill in 1948.



Peeking ahead...

Although the workers' compensation program has made tremendous strides over the past 100 years, the National Council of Compensation Insurance (NCCI) has identified a number of issues that industry experts are now monitoring closely. The council believes the following factors could have dramatic impacts on the program's future design:

Escalating healthcare costs: General healthcare costs are making an upward climb. Advancements in medical technology are creating higher costs as new and expensive treatments are being developed for conditions that have been previously untreatable. Pressure to control costs through the use of fee schedules will consequently increase the number of treatment sessions medical providers prescribe in an attempt to offset the fee reductions. It is uncertain how well the system will be able to sustain the rise in healthcare costs.

Federal vs. State control: Since its inception, workers' compensation has been a state-based system of insurance containing rules and regulations dictated by localized authorities. The future of workers' compensation, however, could see a more active role from the federal government in an effort to create equal benefit levels, system rules and requirements across all states.

Changing nature of the workforce: The workforce in this country is rapidly changing. Trends show less manufacturing employment and a noticeable shift toward service industries. This reallocation ultimately results in a reduced amount of employees exposed to high-risk employment situations.

Stifled compensation benefits: Economic problems at the state level, coupled with greater political influence from employers, could possibly prevent benefit improvements. We will likely see a stronger effort to terminate compensation benefits at normal Social Security retirement age in an attempt to prevent individuals from "double dipping" into benefits.

Claims frequency: One of the most significant issues facing employers and workers' compensation insurers is whether or not the large decline in claims frequency that began in the 1990s will continue. The NCCI has stated that this decline is a result of the advancements made in automation, technology and production, as well as the continued emphasis on creating a safer workplace.

Up for the challenge

The American worker's compensation system has dramatically evolved over the past century. Although it was initially met with resistance, it has become an invaluable asset, protecting our nation's workforce from the exposures they encounter every day when they punch the clock. Despite the number of obstacles the insurance program currently faces, its successful 100-year history gives us every reason to believe that it will continue to meet each new challenge and benefit workers, employers and the American economy for a long time to come.

Information for this article was accessed at <http://www.insurancejournal.com/magazines/mag-features/2011/02/21/187259.htm>, Boggs, Christopher and Donald DeCarlo, "Workers' Compensation - Now What?" Insurance Journal website, Feb 2011.

