

LABOR CENTER REPORTER

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JUL 10 1985

UNIVERSITY OF CALIFORNIA
BERKELEYNumber 136
January 1985

REFORM OF WORKERS' COMPENSATION IN CALIFORNIA

by Bruce Poyert

Representatives of unions and Northern California "COSH" groups (community committees on occupational safety and health) recently formed the California Workers' Compensation Reform Coalition, for the purpose of educating and mobilizing broader support for long overdue improvements in California's Workers' Compensation system. Last summer, Coalition representatives worked cooperatively with a group of Bay Area unions to develop the following reform resolutions, which were then presented to the September convention of the California Labor Federation. The CLF passed five of these resolutions, making them a part of its legislative program, and referred the sixth (number two in the following list) to its Executive Committee for further consideration:

- (1) Improving standards, data, education, and compensation for occupational diseases;
- (2) Replacing private insurance companies and private claims adjusting organizations with an exclusive California state compensation insurance fund;
- (3) Providing for the timely delivery of Workers' Compensation benefits, by reforming current provisions which lead to delays and add to the stress and anxiety of injured workers;
- (4) Enlarging the right of injured workers to sue employers in civil actions for gross negligence, criminal negligence, or wilful violations of OSHA rules;
- (5) Insuring that the interests of injured workers are identified and protected in any wage-loss system that may be recommended to the California legislature; and
- (6) Improving benefit levels, especially for total disability, by increasing maximums, indexing benefit amounts, and adding compensation for fringe benefits lost because of occupational injury or illness.

Together with several other organizations interested in the same goals, the California Workers' Compensation Coalition will sponsor a one-day conference, with these resolutions forming the heart of the agenda, to be held in Berkeley on April 19, 1985. This LCR report describes the first two resolutions listed above; the others will be covered in February and March issues, which will also contain the conference registration forms.

The Coalition and CLF proposals on occupational disease—About 10,000 Californians die each year, and many thousands more are disabled as a result of work-related diseases. Many workplace substances are known to have adverse health effects, and it is well established that workers in certain hazardous industries and occupations suffer much higher rates of disease than the population at large.

Yet the California Workers' Compensation system is not structured to recognize or to deal adequately with occupational diseases. Only asbestos-related diseases are specified as compensable; nearly all other occupational disease claims are challenged by employers, and the burden of proof is left with the worker-claimant, to demonstrate the "work-relatedness" of the health problem. Thus a worker's benefits for occupational disease will be long-delayed even in the minority of cases which result in an award of benefits. In addition, many workers do not file claims for occupational diseases because they are not educated on the potential relationship between workplace exposure and adverse health effects. As a result other income support systems (Social Security disability, SSI, and welfare) pick up the costs of occupational health impairments, thus shifting legitimate employer costs to the workers and to the general public.

Necessary steps to confront the occupational disease problem in Workers' Compensation—The Coalition and the California Labor Federation are asking the California legislature to establish a Division of Occupational Disease Compensation in the state government. The most important function of the Division would be to develop "presumptive standards" for occupational disease, and to establish a mechanism for the regular updating of these "presumption" schedules. Thus when sufficient evidence is available to confirm that a health hazard exists in the workplace, a worker suffering the established

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health or disease effects associated with this hazard would be presumed to have a legitimate Workers' Compensation claim (as firefighters are presumed to have, with respect to heart attacks).

The Division would also be required to collect, maintain, and analyze statistical information pertinent to occupational disease compensation. Thus the Division would be able to develop the data necessary to keep the "presumption" standards up to date. And the Division would also have new and continuing responsibility for educating both workers and employers about occupational diseases, and the legal rights of workers to compensation for such diseases.

Finally, the Coalition and the CLF have proposed that a neutral administrative body should make all initial reviews of all occupational disease claims. In this procedure, in cases where the evidence of a work relationship is equally balanced with evidence of other causes of disease or health impairment, the benefit of the doubt would be given to the worker who presented the claim. An important result of this approach would be the development of additional data for use in the establishment of the Division's presumption standards.

The Coalition's proposal to establish an exclusive state fund—Exclusive state funds have been utilized in a number of states with great success and economy. In Ohio, for example, the administrative overhead cost of the exclusive state fund averages only 10% of the total annual cost of the Workers' Compensation program; in California, with primary reliance on private insurance and claims adjusting companies, administrative overhead expense averages 40% of the total annual costs of Workers' Compensation--and in some years has exceeded 50%. An exclusive state fund in California would also eliminate the current cost of the Workers' Compensation Insurance Rating Bureau, and commissions to insurance agents (which now approximate 10% of total premium charges), and all costs of marketing which are now incurred by more than 400 private insurance companies, and the claims adjusting agencies, and the employers' defense attorneys.

At this writing, the California Labor Federation has not decided whether it will seek to establish an exclusive state fund. This recommendation has been advanced by the California Workers' Compensation Reform Coalition, for the following additional reasons:

First, litigation of occupational disease claims is the chief source both of expense and of delay in the Workers' Compensation system as it functions in California. Most of the chief causes of litigation are eliminated under an exclusive state fund--in particular, the determination of which employer has responsibility in cases of disabled workers who have had several or many past employers. In addition, it is possible to establish and utilize a single, more efficient physician evaluation system under an exclusive state fund--and thus to eliminate more delays and litigation resulting from the multiple medical evaluations which now plague the California system.

Second, with the proliferation of insurance and claims adjusting companies operating in California, it has proven all but impossible to establish and maintain high standards of performance in the Workers' Compensation claims process. With the centralized management of an exclusive state fund, uniform administrative standards can be both established and enforced, to result in both prompt and equitable treatment of injured workers.

Third, the private insurance industry and the employers' defense attorneys currently fulfill self-serving roles as the middle-men administrators of California's Workers' Compensation system. They have also developed effective political power to protect and enhance these roles. Establishment of an exclusive state fund would give more political power and an equal voice in the administration of Workers' Compensation in California both to business and to labor, who should be the primary parties.

Fourth, there is enhanced financial security for injured workers in the universal underwriting pool of an exclusive state fund. No worker would assume the risk of underwriting errors, or insolvency, or even bankruptcy--as these risks are occasionally associated with individual private companies. Further, it would not be necessary for an exclusive state fund to set up huge reserve accounts against such potential risks--a practice which private companies justify because of risk, but which they use primarily to enhance their investment income.

Fifth, private companies which compete for the employers' Workers' Compensation business have to be concerned about their marketing positions, and therefore are not assertive enough in getting employers to establish workplace health and safety standards which successfully reduce claims. An exclusive state fund can respond less to competition and marketing considerations, and more to initiatives which reduce claims and improve health and safety.

Finally, an exclusive state fund would eliminate the prospect of making profits from the injuries and diseases and health impairments of workers. Profit motivation is simply counterproductive to the social goals of Workers' Compensation, which must be concerned with decent protection and benefits for injured workers, with costs which are acceptable to employers, with efforts to improve health and safety standards in the workplace, and with administrative systems which are efficient and expeditious.

-- Bruce Poyer

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