LABOR CENTER REPORTER

Number 142
March 1985

BERKELEY, CA 94720
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REFORM OF WORKERS' COMPENSATION IN CALIFORNIA—PART III

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Last summer, representatives of Bay Area unions and Northern California COSH groups (community committees on occupational safety and health) came together to form the California Workers' Compensation Reform Coalition. Seeking to develop public understanding and support for improvements needed in our state system, the Coalition developed six basic reform recommendations. LCR 136 (Jan. 1985) reviewed the Coalition's proposals (1) to improve occupational disease protection and (2) to establish an exclusive California state compensation insurance fund. LCR 140 (Feb. 1985) reviewed the Coalition's proposal (3) to require timely processing of workers' claims and timely delivery of wage loss benefits. This article reviews the Coalition's proposals (4) to improve present benefit levels and (5) to extend the right of workers to sue employers in certain cases of occupational injury or disease. Next month, LCR will review the Coalition's sixth and final recommendation, which is addressed to the effort of some employers to establish a strict and limited "wage-loss" system in California.

Compensation for Disability Must Be Related Directly to Workers' Earnings—One historic objective in Work Comp programs, in California and throughout the nation, has been to compensate workers disabled on the job at a rate of two-thirds of the wages lost because of disability (based on the worker's earnings at the time of injury). However, there is a maximum disability benefit which is currently $224 a week in California. What this maximum means is that more than half of all California workers cannot receive compensation for disability which replaces two-thirds of their wage loss. All California workers who earned more than $336 a week in 1984 (or $17,472 a year) were cut off by the maximum—even though the average weekly wage in California in 1984 was $380 (or $19,760 a year).

In 1972, the National Commission of State Workers' Compensation Laws recommended that the maximum for total disability payments should be 200% of the state's average weekly wage (or $760 per week in California in 1984 vs. the actual norm of 59%, or $224 per week, which prevailed in that year). No state in the nation has since achieved this goal, and nearly every state has fallen further behind the time schedule which the National Commission thought would be reasonable for achieving this goal (1981, in the case of permanent total disability).

The Coalition is now urging the state to adopt the 1972 National Commission standard by setting the maximum disability payment at 200% of California's average weekly wage. Since disability benefit levels have consistently lagged behind the rise in average weekly wages in California for at least the past 40 years, there is justification for the Coalition's further recommendation to index future disability benefit increases, so that they would rise automatically in proportion to increases in the state's average weekly wage. There is equal justification to apply the same automatic adjustment to the benefits received by all California workers who have been disabled for a year or longer.

The Coalition also seeks a change in the definition of wages so that it would include the value of fringe benefits. But the employer would have an alternative: he could instead decide to continue his contributions for the fringe benefits of injured or disabled workers, which he now discontinues.

Expanding The Worker's Right To Sue The Employer—When state Work Comp systems were first developed about 70 years ago, workers gave up their right to sue their employers for on-job injuries, in exchange for what were supposed to be swift, certain, and reasonable benefits. But California's Work Comp system today is characterized not only by inadequate benefit levels (the maximum discussed above ranks California 44th in the U.S.), but also by delays, disputes, and litigation—which combine to eat up nearly half of the total payments made by employers to run the system. Occupational disease has increased in California and throughout the nation, but has not been effectively handled in any state Work Comp system—including California's. In fact, employer and insurance company litigation of occupational disease claims is often designed to seal off any workplace liability.

Another important objective of early Work Comp programs has all but disappeared today. Since employers and their insurance carriers can use administrative delays and litigation to insulate themselves from liability, but workers in most cases cannot sue for on-job injury or disability, employers have come to have little or no financial incentive to maintain high standards of health and safety in the workplace. It is no longer surprising that most employers remain content to devote nearly half of their payments for Work Comp "protection" to a system which institutionalizes disputes and delays, and encourages whatever "defensive" litigation the employers may choose to initiate (see LCR 140, Feb. 1985). What this amounts to is a system which functions to protect the employer against any failure of his responsibility to provide a workplace free of health and safety hazards. Such a system negates one of the most important of the original purposes of Work Comp—to protect the worker, who may be injured or disabled in the workplace even in situations involving no fault of any party.

To restore needed balance in the California Work Comp system, the Coalition urges changes in state law to permit a worker to sue his employer when injury or disease is caused by the fault of the employer —specifically, when the injury or disease results from the employer's gross negligence, or criminal negligence, or willful violation of an OSHA rule. Such suits would be brought in civil courts, with the workers having all the rights and duties of other plaintiffs in similar civil actions. Such right to sue would not take the place of workers' compensation, but would provide an additional remedy. In addition, the Coalition has proposed legislation to permit workers to bring civil suits against insurance carriers, claims adjustors or administrators who fail to make required benefit payments, or otherwise fail to adhere to procedures and time limits specified in the Labor Code affecting the rights of disabled workers.

Two Conferences Have Been Scheduled To Support Needed Improvements In Work Comp—As previously reported in this LCR series, the California Labor Federation has adopted some of the Coalition's recommendations, and is seeking to implement them in the current session of the California legislature. The CLF has scheduled a conference to explain and advance its legislative program, to be held in Sacramento on March 5-6. (See the *California AFL-CIO News*, Jan. 25, 1985, or call the State Fed at 415/986-3585 for details.)

The Coalition's reform agenda seeks changes and improvements in Work Comp which many regard as long overdue but which are clearly not achievable in any single legislative session.

The Coalition has therefore organized a second conference to be held in Berkeley on April 19 (an announcement/registration form is enclosed with this mailing of LCR). This conference will include a lunch session update on progress and prospects for reform in current proposals before the California legislature to be chaired by John F. Henning, Executive Secretary of the California Labor Federation. It will also include (1) a more detailed discussion of the Coalition's six basic recommenations for reform, as briefly outlined in this LCR series; (2) further analysis of the interests of employers, insurance companies and attorneys in Work Comp in California, and the political power of these groups, and the consequent difficulties that arise in getting the state legislature to consider the interests and needs of the injured or disabled worker; and (3) further discussion of additional steps and strategies that will be required to achieve basic reforms in our archaic Work Comp system, in terms of educational effort, media attention, and broader public understanding and support.

Next month, LCR will review the Coalition's sixth and final recommendation, which responds to the current campaign organized by some California employers to institute a "wage-loss" system similar to the Florida system.

--Bruce Poyer