

Does Texas Need a Workers' Compensation System?

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Beginnings of Workers' Compensation

Liability and Litigation in the 19th Century

- The problem of industrial accidents was generally handled by the courts
- Prevailing legal doctrine made recovery hard for injured workers
 - Assumption of risk
 - Contributory negligence
 - Negligence of fellow employee

Legislative and Judicial Action

- Legislatures began to restrict employer defenses around 1850
- By 1910, most states had abolished or modified at least 1 defense
- Judges began to interpret defenses more narrowly

Outcomes of Changes

- Employees more likely to win in court – by 1908 employees won 15% of cases
- Companies became more willing to purchase private accident insurance
- Litigation rapidly increased and in many cases created delays for workers
- Treatment of injured workers varied

Workers' Compensation Systems


- First attempts to pass mandatory WC systems, c. 1900, were declared unconstitutional
- Next round, c. 1910, were voluntary and more successful – 42 states had WC laws by 1920
- Compulsory laws declared constitutional in 1917

The Great Trade Off

- Increase in WC statutes attributable to two main factors:
 - Series of accidents fueled pressure on state legislatures to act
 - Success of litigation fueled companies' desire to participate
- Employers agreed to provide medical and indemnity benefits in return for making WC the exclusive remedy for injured employees

Summary

- Tort system was responding to changes brought about by industrial revolution
- Political pressure made it difficult for legislators to rely on courts to resolve problems
- Economic pressure caused businesses to seek relief from legislatures



The Texas Workers' Compensation System

Texas History of WC

- State regulation of compensation for injured workers first introduced in 1913
- State system constructed in 1917
- System remains voluntary, unique among the 50 states

Findings of the 1987 Joint Select Committee

- Work-related fatality rates in Texas were among the highest in the nation
- Texas work-related injury rates were widely believed to be among the highest in the nation
- Texas benefit rates and payment durations, especially those for seriously injured workers, were low compared with other states
- Almost 50 percent of all compensable lost-time claims in Texas were filed with the help of attorneys, regardless of whether or not the claim was disputed

Findings of the 1987 Joint Select Committee

(continued)

- Workers' compensation-related medical costs were higher in Texas than in other states and had increased faster than medical costs outside the system and faster than indemnity costs
- A higher percentage of claim disputes in Texas were resolved in the courts, and, settlements were sometimes inequitable or inappropriate for the injury
- Insurance rates in Texas had more than doubled over the previous five years and were among the highest in the nation
- Texas was one of only three states that did not allow private employers to self-insure

Provisions of SB 1 – 1989

- Created new dispute resolution process that mandated informal and then administrative proceedings before a dispute could move to the courts
- Established a new benefits system, raised basic benefit levels, set tight deadlines for employers and carriers to improve benefit delivery and limited lump sum payments
- Required the development of medical fee and treatment guidelines
- Limited attorney fees
- Permitted self-insurance for large employers who meet established criteria and are certified by the TWCC

Impact of SB 1

- Injury and illness rates declined and remained below the national level
- Rate of occupational fatalities declined
- Costs decreased
- Benefits increased
- Disputes decreased
- Percentage of employers and employees in the WC system increased

The Tide Turns

- SB 1 not fully implemented until 1991
- By 1998, concerns were once again being expressed that the Texas WC system was experiencing high costs and poor outcomes
- Legislatively mandated study, produced by TDI in January 2001, confirmed concerns

Costs on the Rise - Again

- Cost per claim rose from \$2,228 in 1999 to \$3,078 in 2003, a 34% increase
- Texas cost per claim 2nd highest among 12 largest states
- Texas employers pay third highest rates in nation
- Indemnity payments increased 38.4% from 1997 to 2001, 4th highest increase in nation

Cost Drivers

- Medical payments per claim the highest – 78% higher than median, despite
 - Provider fees in line with other states
 - PPD/LS payments 2nd lowest
- Over-Utilization a major factor
 - Visits per claim 64% high than median
 - Visits per claim 94% higher for chiropractors
 - Longest duration of temporary disability

Outcomes Poor

- Texas lowest in nation on median disability durations
- Lowest in the nation on recovery from back strain
- Lowest in the nation on recovery from carpal tunnel syndrome
- More Texas workers missed at least a week of work and stayed out longer once they did
- Texas workers reported worst physical recovery in four state study

Comparison of WC

- Worker Injury Rates
 - 1989: Above national average
 - 2005: Below national average
- Worker Benefits
 - 1989: Below national average
 - 2005: Slightly above national average

Comparison of WC

(continued)

- Medical Costs
 - 1989: Among highest in nation
 - 2005: Among highest in nation
- Insurance Costs
 - 1989: Among highest in nation
 - 2005: Among highest in nation
- Cost Drivers
 - 1989: Lawyers file 50% of lost time claims
 - 2005: Medical visits 64% > than median

Conclusions

- Most workers better off today with fewer on-the-job injuries – but is this because of WC reforms?
- Injured workers often worse off – better benefits, but poor recovery rates
- After a brief respite, employers no better off – costs still among the highest in the nation
- WC system easily exploited - again



Market-Based Occupational Benefits

Market-Based Participants

- In 2004, 38% of Texas employers were nonsubscribers – up from 35% in 2001
- 24% of Texas employees were employed by nonsubscribers – up from 16% in 2001
- August 2004 TDI study suggests that biggest shift has been among large employers

Participants by Size - 2004

Source: TDI WC Research Group, August 2004

Employment Size	Nonsubscription Rate
1-4 Employees	46%
5-9 Employees	37%
10-49 Employees	25%
50-99 Employees	20%
100-499 Employees	16%
500 + Employees	20%

Market-Based Benefits Coverage

- 58% of Texas nonsubscribers pay medical and/or wage replacement benefits
- Majority select MD or offer approved list
- Only 3% of employers sued over injuries
- Only 3% of Texas workforce works for employers who offer no apparent occupational injury benefits

Motivations for Market-Based Coverage

Source: TDI's ROC on WC 2001

Reasons for Not Carrying WC Coverage by # of employees	1-49	50-99	100+
Quoted premiums were too high	60%	82%	87%
Company had too few injuries	61%	36%	34%
Occupational benefits plan was a better value than WC	39%	59%	80%
Medical costs too high in WC	44%	51%	54%
Wanted more control over choice of medical providers	28%	32%	78%
Felt company could do better job	36%	38%	58%
Concern about fraud in WC	23%	35%	47%

Motivations for WC Coverage

Source: TDI WC Research Group 2004

Reasons for Carrying WC Coverage	Percent
Concern of lawsuits	30.1%
Industry considered high risk and employees require WC	11.4%
Need WC to get government contracts	11.0%
Confidence in Texas WC system	9.2%
Able to self-insure or receive other discounts	8.9%

Benefits of Market-Based Programs

- WC medical costs six times higher per worker than for TX group health plan – \$3,463 vs. \$578
 - Neck soft tissue - \$3,698 vs. \$425
 - Low back soft tissue - \$4,319 vs. \$401
 - Knee - \$5,552 vs. \$1,379
- Group health advantages
 - Lower utilization
 - Negotiated discounts
 - Less coverage of work hardening/conditioning

Benefits of Market-Based Programs

(continued)

- Large manufacturer w/ 1500 employees at 5 locations saved \$900,000 in 2003
- Small manufacturer w/ 150 employees saved \$183,000 in 2002
- Large food service company w/ 40,000 employees estimates \$70 million in savings over 15 years

Trends: WC vs. Market-Based

Source: TDI WC Research Group

- 37% of nonsubscribers say they would never purchase WC regardless of cost
- 21% would require a premium reduction of 50% to purchase WC
- 18% would require a 20% premium reduction to purchase WC
- 53% of subscribers would consider leaving WC if premiums increased 20%

Conclusions

- Market-based programs attractive because they meet employer/employee needs
- WC used out of concern over lawsuits, because of government mandate or because it is easier for employers
- More employees than ever before are covered by market-based programs
- Large employers leading exodus

Conclusions

(continued)

- 97% of Texas workers covered
- Employers seeking to meet needs, not escape responsibility
- WC fraud/exploitation cause for concern
- Real potential for movement out of WC
- Market-based programs reduce costs and improve care



Moving from WC to Market- Based Occupational Benefits

Why?

- The Texas pilot program has worked
- Market-based programs reduce costs for employers and improve care for employees
 - Cost savings mean better care
 - 2005 reforms sought to model private sector
 - Employer/employee relationship improved: 2001 survey reported that more nonsubscribers (80%) than subscribers (71%) provided safety training
 - Private sector better suited for handling fraud
- Reforms to WC system don't last
- Could save state tens of millions per year

How?

- Remove biases that encourage use of the state WC system
 - Remove WC mandate for government contracts
 - Provide similar liability standards for employers inside and outside the WC system
 - who provide occupational benefits
 - who comply with occupational standards

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