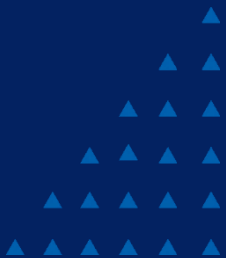


# Construction Management and Project Engineering

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# Workers' Compensation



is

- nation's first social insurance scheme
- a state responsibility, organized by state
- a compromise
- mostly for industrial workers
- funded by employers through premiums



is not

- a welfare scheme or entitlement program
- a federal government responsibility
- a single plan
- required for very small employers
- tax supported

# Objectives of WC

- Replacement of income for injured employees
  - At least 2/3 of income even after the employer goes out of business
- Rehabilitation of the injured employee
  - Medical care until he is pronounced fit to return to work
- Prevention of accidents
  - Discounted insurance premiums as the payoff of prevention efforts
- Cost allocation
  - Spread the WC cost appropriately among industries, based on risks

# Historical Aspects

- Proving employer negligence is costly, difficult, and time-consuming
  - Took 6 months to 6 years for legal determination
  - Workers cannot afford legal fees and court cost
  - Fear factor: Retribution by their employer
- Legal defenses for employers insurmountable:
  - “assumption of risk” = worker voluntarily accepts risk of a dangerous job
  - “fellow servant doctrine” = employer is not responsible if injury due to action of another employee
  - “contributory negligence” = if any action by injured worker can be construed to have contributed to risk

# Historical Aspects

## ➤ Example:

- An employee contracted tuberculosis while working under clearly hazardous environment (e.g., wet, drafty basement in the overflow of a septic tank; no sunlight; dead rats)
- She was denied compensation as follows:

➤ “We think that the plaintiff, as a matter of law, assumed the risk attendant upon her remaining in the employment (217 N.Y. Supp. 173)”

# WC Legislation

- Prussia passed WC law in 1838
- The first WC in US enacted in 1908; only for federal employees in especially hazardous jobs; Driven by Theodore Roosevelt, the Governor of NY.
- Montana firstly passed a compulsory WC law; soon overturned.
- NY State passed a compulsory WC law in 1910; declared unconstitutional soon.

# WC Legislation

- In 1911, Triangle Shirtwaist Factory building caught fire and burned; 149 of the company's 600 workers were dead; Found that unsafe conditions created by the company prevented victims from escaping the fire.
- The tragedy did focus nationwide attention; the NY state legislature passed a WC law
- In 1917, the US Supreme Court ruled that WC laws were acceptable.
- In Texas and Oklahoma, WC is noncompulsory.

# Noncompulsory WC in Texas

- Employers may opt-out of the WC system.
- Nonsubscribers (22% of Texas employers) have the option of establishing their own benefit system; 23% of nonsubscribers have such plans and cover 72% of employees who work for nonsubscribers.
- Nonsubscribers forfeit their protection from lawsuits related to occupation injuries, illnesses, and deaths.



# Determinants of WC rates

- Number of employees
- Risk involved in types of work performed
- Accident history of the employer
- Potential future losses
- Overhead and profits of the employer
- Quality of the employer's safety plan
- Estimates by actuaries

# Method for determining the rates

- Schedule rating: use baseline safety conditions
- Manual rating: pre-defined rates for occupations
- Experience rating: based predictions of average loss for a given type of employer.
- Retrospective rating: pay an established rate and an appropriate monetary adjustment is made after the assessment of the actual experience
- Premium discounting: for large employers.
- Combination method

# Resolution of WC disputes

- Usual disagreement on the compensation owed (e.g., weekly pay, length of benefits, degree of disability)
- Arbitration board is used in some states: no attorney is necessary
  - In some states, attorney fees are added to the compensation

# WC & injuries

- Injured in on-the-job accidents: sudden and unexpected characteristics
  - Trend change: the gradual onset of a disease (e.g., MSDs, stress)
- Arises out of employment (AOE) or Course of employment (COE): Work prescribed in the job description, assigned by supervisor, or normal work.
- Employee is on the company's payroll, receives benefits, and has a supervisor. (contractor X)

# The WC “Compromise”

- Workers would reliably receive care and benefits
  - Medical care
  - Lost wages
- Employers would be shielded from litigation
  - No fault
  - No additional liability, even for negligence
- Administration would be fair and efficient
  - Insurance model (actuarial rating, costs passed to consumers/employers)
  - Intended to allow employers to anticipate costs
  - Rapid, no-fault processing of claims
  - Exclusive remedy: no appeal outside system, no alternative system

# Permanent disability benefits

- Two-thirds of WC disability benefits
- Wide variation in adjudication, criteria
- Ratings are based on:
  - Impairment assessment (medically discernable injury)
  - Actual wage loss
  - Permanent loss of earnings potential (considering job market)
- Scheduled awards for specific impairments are trend (since NJ 1911)
  - Covers future wage loss
  - Unjust for injured workers to forgo benefits even if little wage loss at the time

# Administration and Case Management

- Filing injury notice.
  - The company's insurer, the state agency, and the state's federal counterpart should be notified in case of serious injuries.
- Filing claim notice
- Arriving at settlements
  - Direct settlement (by employer or insurer)
  - Agreement settlement (between employee and employer/insurer)
  - Public hearing (when contested)
- Handling disputes

# Cost Allocation

- Spread the cost across an industry
  - Bank: 0.5 %, Construction: 3~4 %
- By experience rating, or schedule, manual & premium discounting....
- No hard research exist...



# Problems with WC

- Stress claims
- Not functioning well
  - Low compensation for medical cost and income
- Fraudulent claims: e.g., the person filing the claim
  - is never home or available
  - Is active in sports or has another job
  - Is about to be fired or in line for early retirement
  - Has relocated out of state or out of the country.
  - No witness to the accident
  - Accident occurred during hunting seasons.

# Facts regarding WC (worldwide)

- Today there are Workers Compensation programs in 136 countries.
- 89 of the nations with Workers Compensation laws have made their workers' compensation program part of a general social insurance system.
- Over 54% of the nations cover all employees.
- 79% of the 136 nations Workers Compensation programs cover all of the medical expenses arising out of an occupational injury or disease.
- Employers contribute to the cost of all Workers Compensation programs throughout the world. In 96 nations, 71% of the total, employers pay the entire cost. Employees contribute in 16% of the nations; the government, in 26%.
- Over half of the nations either have no waiting period or require the employer to continue all or part of the workers' wages or salaries during the specified waiting period.
- Almost half the nations require all employers to pay the same rate regardless of their industry or individual firm's loss experience. The remaining nations vary the rate according to the employers industry, the employer's individual loss experience, or both.
- Each year work related injuries & diseases kill an estimated 1.1 million people worldwide.
- Only 5 to 10% of workers in developing countries and 20 to 50% of workers in industrialized countries are estimated to have access to adequate occupational health services.

# WC in other developing countries

## ➤ Bangladesh

- If you die from a safety accident, your family will get \$1000~2000 or nothing

## ➤ Saudi Arabia

- Employers are obliged to provide monetary support to injured or occupationally sick workers depending on the worker's while being treated. Additionally, where a worker dies or has been permanently disabled, the employer must provide compensation equal to 3 years' wage provided that this is not less than SAR 45,000.

