

# Trends and Issues in Workers' Compensation in the States

By Gregory Krohm

*By almost any metric, the performance of state workers' compensation systems varies greatly, with large swings in claims, costs and disputes over just a few years. As a result of this dynamic environment, a handful of states "reform" their workers' compensation statutes almost annually.*

## Introduction

Unlike most other social insurance programs, workers' compensation systems change often, sometimes quite radically. States are responding to substantial differences in local interest groups, cost pressures, industrial mixes and labor markets. This review will consider recent changes in coverage law, benefit levels, system cost and program delivery.

It is important to understand that workers' compensation systems in some states are seas of tranquility compared to others where major reform proposals are introduced in almost every legislative session. For example, California, Texas and Florida have been particularly active in making statutory changes in all areas of their workers' compensation law over the past 10 years. At the other extreme, states like Nebraska and Wisconsin have had only minor adjustments/updates in statutes over the same period.

## Coverage of Law

Since workers' compensation's inception in the United States in 1911, there has been a steady expansion of state laws to cover more workers under more situations. According to the National Academy of Social Insurance (NASI), between 87 to 94 percent of the civilian workforce (depending how you measure the workforce) is covered by workers' compensation. Coverage is triggered by injury or disease associated with an increasingly broad set of circumstances surrounding work. The trend may continue by small increments and extensions in most states.

Often, these changes in coverage are triggered by court cases that define or redefine the concept of employment, such as with professional employer organizations or independent contractors. Look for continued flux in coverage in the following areas:

*Professional Employers.* In many states, there is a large and growing portion of the workforce supplied via "Professional Employer Organizations" or "Employment Outsourcing." If not treated correctly under workers' compensation law, such organizations confuse and burden the normal systems for regulating coverage and compliance of employers. This issue will continue to smolder as the number and

market share of PEOs expands.

*Stress and Psychological Injury.* Compensability of claims for work-induced stress has been gradually creeping into workers' compensation. Most jurisdictions recognize claims for stress or psychological injury that ensue directly from a clear or traumatic event. The legal battleground for the future will be on compensating psychological conditions that come from general working conditions rather than from a clear-cut event.

*Non-objective Injury Complaints.* With more effective safety procedures being enforced and the growing importance of office work in the United States, traumatic injury is on the decline. In its place, there is a growing problem with claims of work injury stemming from conditions that are difficult to diagnose and measure. Among the common sources of non-objective injuries are multiple chemical sensitivity and sick building syndrome. Although these constitute less than 1 percent of lost time claims, they are difficult to adjust and resolve.

*Interjurisdictional Claims.* Claims for benefits outside the normal base of operations of an employer and employee are increasingly common. Coverage for cross-border claims is inconsistent and can lead to unwelcome surprises and extra costs for injured workers and their employers. The problem is worsened by international commerce that brings Mexican and Canadian workers into the United States for temporary operations, such as trucking or contract services.

*Repetitive Motion Injury.* Look for a continued trend in claims from repetitive motion induced injury to hands, wrists and arms. While often labeled incorrectly as "carpal tunnel," such claims of discomfort or loss of use involve a variety of diagnoses and job situations. Some experts contend the complaints are unfairly attributed to work; others see a need for major safety improvements to protect workers from these "ergonomic" injuries. While the federal Occupational Safety and Health Administration (OSHA) has put to rest any plans for rule making on ergonomic safety and relief for workers with such complaints, it has launched a voluntary compliance program. The ergonomics issue is still smoldering.

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**Table A: Workers' Compensation Coverage Rates, 2000\***

*Workers' compensation coverage rates*

<i>State or other jurisdiction</i>	<i>Percent of total employment (including self-employed)</i> <i>(1)</i>	<i>Percent of wage and salary employment only</i> <i>(2)</i>	<i>Percent of UI covered wage and salary employment</i> <i>(3)</i>
Alabama .....	84.4	90.5	95.0
Alaska .....	87.3	96.2	100.0
Arizona .....	89.8	95.8	100.0
Arkansas .....	85.1	91.4	96.0
California .....	89.1	97.9	100.0
Colorado .....	89.3	96.4	100.0
Connecticut .....	90.4	97.1	100.0
Delaware .....	89.4	94.0	99.0
Florida .....	87.7	92.9	96.0
Georgia .....	88.1	93.5	96.7
Hawaii .....	90.4	98.1	100.0
Idaho .....	86.1	95.6	100.0
Illinois .....	91.4	96.4	99.3
Indiana .....	89.5	95.3	98.6
Iowa .....	85.8	93.7	99.7
Kansas .....	87.1	94.0	98.8
Kentucky .....	86.8	92.9	99.1
Louisiana .....	89.1	95.3	100.0
Maine .....	84.9	96.0	100.0
Maryland .....	90.8	96.4	100.0
Massachusetts .....	90.7	96.4	99.2
Michigan .....	88.8	94.4	97.8
Minnesota .....	88.7	95.7	100.0
Mississippi .....	83.7	91.0	94.4
Missouri .....	85.2	91.1	94.9
Montana .....	80.4	93.1	100.0
Nebraska .....	82.9	91.5	98.4
Nevada .....	92.5	96.7	99.0
New Hampshire .....	87.4	96.0	100.0
New Jersey .....	91.2	95.7	100.0
New Mexico .....	81.2	89.0	95.2
New York .....	90.4	95.8	99.9
North Carolina .....	87.3	93.7	97.7
North Dakota .....	80.1	90.3	98.8
Ohio .....	91.1	96.7	100.0
Oklahoma .....	86.5	95.4	100.0
Oregon .....	85.7	95.6	99.0
Pennsylvania .....	90.2	96.1	100.0
Rhode Island .....	82.3	86.4	89.3
South Carolina .....	86.6	92.2	95.8
South Dakota .....	82.7	93.0	100.0
Tennessee .....	85.7	92.4	95.6
Texas .....	73.7	79.8	83.5
Utah .....	88.7	94.9	100.0
Vermont .....	86.7	96.5	100.0
Virginia .....	88.6	93.5	97.9
Washington .....	88.8	95.9	100.0
West Virginia .....	86.6	91.8	100.0
Wisconsin .....	85.8	92.4	97.8
Wyoming .....	82.6	93.0	100.0
District of Columbia .....	94.4	96.2	99.2
<b>US Total .....</b>	<b>87.5</b>	<b>93.9</b>	<b>97.6</b>

\*In all columns federal employees are classified in the states where they work.  
 Source: National Academy of Social Insurance, for details see *Workers' Compensation Coverage: Technical Note on Estimates*, available at [www.nasi.org](http://www.nasi.org)

### Benefit Levels

The issue of statutorily required benefits for specific types of injuries has been highly politicized. In most states, benefits have expanded and contracted with the political fortunes of interest groups. There is little logic or objectivity in how some benefits are structured. Benefit payments as a percentage of payroll in each state vary widely, as shown in the following table (Table B). The variation is a result of injury rates, benefits provided in the law, and how benefits are applied in practice.

Indemnification of temporary disability is a quite stable, and relatively uncontroversial, issue. The norm is two-thirds of recent wages (tax free), up to a statutory maximum, after a three to seven day waiting period. Deviations from this norm are minor. The focus of controversy and change is in the indemnification of permanent injury. Payments for permanent total injury and permanent partial injury vary widely from state to state. The controversy stems from two sources. First, when is permanent injury compensable? Second, how should the degree of the permanent injury be measured?

### System Cost

System costs have gone through a regular cycle of ups and downs. The growth phase of the cycle fuels reformers that want to cut benefits. The downside invites expansion benefits. However, pricing cycles, in addition to law changes, stem from the so-called "underwriting cycle." Historically insurance pricing has tended to fluctuate up and down in a seven to nine year cycle. The biggest cost drivers in workers' compensation during the foreseeable future are discussed below.

*Medical Costs.* Since the 1980s, medical costs have risen at much faster rates than all other system costs. Nationwide, the medical cost of treating injured workers now exceeds 45 percent of all benefits paid, according to estimates by the NASI for 2001. After a brief slowdown, the escalation in medical costs is now the number one target for cost containment in workers' compensation. The states are scouring every possible avenue for cost containment. A popular target is cutting provider reimbursement through lowering fee schedules for treatments to injured workers. Other techniques include restricting injured workers to certain providers or managed care programs.

*Loss Adjustment Expense.* The cost of handling claims went up rapidly in the 1990s as claims payers used more investigation and medical containment procedures. The so-called "Allocated Loss Adjustment Expense" now accounts for 11.8 percent of net

premium paid by employers.<sup>1</sup> These high costs for claims handling have begun to decline in the past few years as part of an industry wide drive to reduce administrative expenses.

*Injury Rates.* Interestingly, injury rates per hundred workers are at record low levels. This has helped to abate the rising medical costs of workers' compensation. There are some early indications that this long running trend of decline in injury rates may have bottomed out. Injury rates may begin to inch up in the next few years.

*Catastrophes.* The 9/11 attack produced the largest workers' compensation claims occurrence in history. The National Council on Compensation Insurance estimates the workers' compensation loss arising out of that day's incidents to be between \$1-3 billion.<sup>2</sup>

Regulators and payers have been concerned with the adequacy of funds for covering other such catastrophe situations. Intense lobbying by the insurance industry resulted in the Terrorism Risk Insurance Act of 2002, which provides a temporary reinsurance backstop for the industry in the event of a foreign act of terrorism.

However, it is doubtful that insurers and other government funds are formally reserving for another 9/11 or its equivalent. Estimates of workers' compensation claims costs from terrorist attacks range up to \$100 billion from a single event, such as a "dirty bomb" explosion in a crowded port or a biochemical release.

### Program Delivery

The administration of workers' compensation is immensely more variable and state-specific than other major social insurance programs, such as Social Security, Unemployment Insurance, Medicare or Medicaid. The differences across states are widely regarded by multistate insurers and employers as a high cost of business.

State administrative practices have tended to be unstable. There are at least two reasons:

- Political cycles may change the philosophy of government, e.g., hands off market-driven types versus paternalistic government types. Compounding this change of philosophy cycle is the rapidity of administrative turnover in states.
- Technology has opened vast new possibilities for streamlining some regulatory procedures. Unfortunately, these new regulatory systems are expensive to implement in the short run.

Some recent issues that promise to continue as unsettled and volatile administrative issues are discussed below.

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**Table B: State Worker's Compensation Benefits Per \$100 of Covered Wages, By State, 1997-2001**

State or other jurisdiction	2001	Change (a)	
		2000-2001	1997-2001
Alabama .....	\$ 1.10	.04	-.12
Alaska .....	1.82	.18	.21
Arizona .....	0.54	.19(1)	-.31
Arkansas .....	0.70	.00	-.03
California .....	1.58	.09	-.02
Colorado .....	0.72	-.34	-.74
Connecticut .....	0.86	-.03	-.34
Delaware .....	0.94	-.06	-.26
Florida .....	1.25	-.01	-.29
Georgia .....	0.83	.04	.06
Hawaii .....	1.58	.09	-.26
Idaho .....	1.29	.10	-.01
Illinois .....	0.94	.01	-.03
Indiana .....	0.59	-.02	.00(2)
Iowa .....	0.98	.09	.12
Kansas .....	0.89	-.03	-.13
Kentucky .....	1.04	.06	-.06
Louisiana .....	0.95	-.03	-.03
Maine .....	1.60	-.09	-.56
Maryland .....	0.93	.02	-.18
Massachusetts .....	0.53	-.05	-.17
Michigan .....	0.92	.02	-.07
Minnesota .....	0.97	.09	-.06
Mississippi .....	1.03	.00	.00
Missouri .....	1.39	.00	-.11
Montana .....	1.90	-.07	-.06
Nebraska .....	0.98	.08	-.13(3)
Nevada .....	1.13	.00	-.18
New Hampshire .....	1.01	.13	-.07(4)
New Jersey .....	0.71	-.01	-.10
New Mexico .....	0.86	.04(5)	-.04
New York .....	0.77	-.01	-.11
North Carolina .....	0.74	.00	.00
North Dakota .....	1.05	.02	-.05
Ohio .....	1.27	.07	-.08
Oklahoma .....	1.28	-.03	-.58
Oregon .....	0.88	.08	-.11
Pennsylvania .....	1.29	-.01	-.32
Rhode Island .....	0.79	.01	-.19
South Carolina .....	1.08	-.15	-.07
South Dakota .....	0.84	.06	-.16
Tennessee .....	0.88	.04	.14
Texas .....	0.74	-.02	-.01
Utah .....	0.69	.05(6)	-.03
Vermont .....	1.20	-.15	-.07(7)
Virginia .....	0.58	-.04	-.09
Washington .....	1.68	.11	.04
West Virginia .....	3.92	-.03	.01
Wisconsin .....	1.12	.17	.13
Wyoming .....	1.55	.14	.11
District of Columbia .....	0.39	.00	-.12
Total non-federal .....	1.04	.01	-.10
Federal Employees (b) .....	1.65	.05	.05
Total .....	1.07	.01	-.11

Source: National Academy of Social Insurance estimates based on Tables 3 and 8.

(a) In states with a note, there was a difference in methods between the two years being compared for at least one component of the estimates. Some of the percent change in benefits, therefore, might be due to the differing methods. The notes are below. For more detail on state by state methodologies, see *Sources and Methods: A Companion to Workers' Compensation: Benefits, Coverage, and Costs, 2001 New Estimates* section of the Academy's website at [www.nasi.org](http://www.nasi.org).

(b) Includes FECA only.

(1) Deductible data were not available for 2000. Deductibles were estimated using the average percentage of deductibles for all states where the data were available.

(2) Self-insurance data were not available for 1997 or 1998. The average percentage total benefits paid by self-insurers in the state in 1999 and 2000 was used.

(3) No data were available from the state for 1999. Estimates for 1999 are based on data from A.M. Best. Estimates for 1998 use the same methodology

as those for 2000 and 2001. Estimates for 1997 are also the same as 2000 and 2001 with the exception of the self-insurance estimate which is based on the average percentage of total benefits paid by self-insurers in the state in 1998-2001.

(4) The state agency was able to provide private carrier data for 1997 and 1998 only. The agency also provided

self-insurance data for 1998. The 1999-2001 estimates are based on A.M. Best data and self-insurance imputations as described in Appendix E.

(5) The state agency was unable to provide state fund benefit data for 2001. The 2001 estimates for state fund benefits are based on the percentage of total benefits paid by the state fund in 2000.

(6) The state agency was only able to provide state fund and medical data for 1999 and 2000. For all other years and insurance carriers estimates are based on data received from A.M. Best and self-insurance imputations as described in Appendix E.

(7) The state agency was only able to provide data for 1997 and 1998. Estimates for 1999-2001 are based on data received from AM. Best and self-insurance imputations as described in Appendix E.

*Privacy.* No doubt, Americans are highly concerned about the privacy of their personal medical and financial data. This concern fostered a sweeping new set of privacy protections for medical records under a rule by the federal Department of Health and Human Services, first published in December 1999. This rule, done in compliance with the Health Insurance Portability and Accountability Act (HIPAA), was not supposed to include workers' compensation. However, an indirect effect on workers' compensation is that medical providers' pay increased attention to the need for broad, open-ended records requests by workers' compensation claims adjusters. There were sporadic and isolated problems in the months immediately before and after the implementation of the privacy rule on April 14, 2003. Now it seems that normal functions of the workers' compensation claims process are little affected by HIPAA's privacy requirements.

*Electronic Data Interchange.* In many ways, Electronic Data Interchange (EDI) is linked to the privacy issue. Business and government have been in relentless pursuit of electronic exchange of data, to take the place of paper reporting. The International Association of Industrial Accident Boards and Commissions has invested heavily in developing standards for electronic reports. At present, about 25 states are using EDI in some fashion to receive regulatory reports from payers. This trend will increase as more states adopt and promote EDI. Insurers have complained that the efficiency gains they hoped for from the use of EDI are being dashed by the inconsistent application of EDI across states.

*Alternative Dispute Resolution.* Workers' compensation is supposed to be a frictionless system, at least compared to the tort-based compensation for injury that it replaced. However, litigation or the involvement of administrative hearings in settling cases or determining benefits is regarded by workers, payers, and administrators as a system burden. Many states with high numbers of disputed claims have resorted to varying types and degrees of alternative dispute resolution. Roughly, one-third of the states have some formal system for intervening in disputes to forestall a full administrative hearing. This trend is likely to continue.

*Medicare Set Asides.* The Medicare Secondary Payers Act of 1981 makes Medicare a secondary payer for medical bills where coverage exists under a workers' compensation or general health insurance plan. Medicare, via its administrative arm, the Centers for Medicare and Medicaid Services (CMS), has been aggressive in asserting their rights in settlements

of claims. CMS has been seeking recovery of their payments with liens against payers and beneficiaries to recover funds Medicare incorrectly paid as the secondary payer. This new detection and enforcement program has created anxiety and complaint among attorneys and claims adjusters.

*Agency Budgets.* The dramatic deficits confronting most states during the past two years have caused their workers' compensation agencies to adjust to reduced budgets. Hardest hit are travel and training budgets. Programs that are not directly tied to service delivery have been pared back. For example, research departments have been slashed or eliminated. Major reorganizations and staff reductions have been implemented in California, Florida, and Michigan, among other states.

*Funding Sources.* In response to general purpose revenue shortfalls, several states have elected to fund more of the costs of workers' compensation regulatory agencies through premium taxes and assessments on self insured employers. California and Illinois are the biggest workers' compensation agencies to receive major new funding from "user taxes."

*Benchmarking.* Many states have a strong interest in comparative data to benchmark the performance of their workers' compensation systems against other jurisdictions. This is sometimes instigated by outside stakeholders and sometimes by internal management of the workers' compensation agency. Good premium and injury rate comparisons exist on a countrywide basis. More progress is being made in detailed benchmarks of system administration.

## Conclusion

By almost any metric, the performance of state workers' compensation systems varies greatly. The performance of systems is quite erratic, with large swings in claims, costs and disputes over just a few years. As a result of this dynamic environment, a handful of states "reform" their workers' compensation statutes almost annually. These changes are more the result of interest group fights in the legislature than fact-based public policy analysis. Other states are more incremental and cautious in their system changes, often patterning reforms after other states with successful programs.

The cost of workers' compensation, as measured by insurance rates or benefits paid per worker, undergoes periodic cycles. At present, insurance rates are on an upswing after years of decline. Benefits paid per worker are increasing. Medical cost seems to be the principal cost driver.

States have responded to budgetary pressures in a

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variety of ways. Some agencies have gone through virtually no interruption in their staffing or services. Others have seen substantial cutbacks, which have hurt services and system improvements.

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### Notes

<sup>1</sup> National Council on Compensation Insurance, "2002 Calendar Accident Year Underwriting Results." Data available at: <http://www.ncci.com/media/downloads/cay.xls>.

<sup>2</sup> NCCI, Filing Memorandum, Item B-138, 2002. These workers' compensation losses are especially sobering when one considers the fact that New York has relatively modest death benefits, and that the day and hour of the assault reduced the exposure to losses.

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