



Fall 2007
Facts for Discussion

Committed to
Quality Research
on Behalf of
New Jersey
Employers

Workers' Compensation in New Jersey

Subject

New Jersey's Workers' Compensation system, as it is currently structured, provides a high level of benefits to injured employees, while keeping costs reasonable for businesses.

Issue

Employers and their employees mutually benefit from a system that is designed to provide quality medical care, wage replacement and permanent disability benefits, when warranted, to injured employees.

The system is designed to try to balance the need to control employer cost without infringing upon employee benefits. This current configuration has served all of the stakeholders well for nearly 100 years.

Background

In 1911, New Jersey became one of the first states to enact legislation creating a Workers' Compensation system. Prior to this statute, the common law principle was that every worker accepted job-related risks as a condition of employment. If injured, a worker had no recourse other than to sue his or her employer in the civil court system for negligence and hope for a favorable verdict. The employer, meanwhile, had to pay legal costs to defend such cases and faced the unpredictable possibility of a very costly judgment. To resolve the risks of both parties, Workers' Compensation was mandated to be the "exclusive remedy" of occupational injuries and illnesses.

Since then, the New Jersey Workers' Compensation system has proven to be a highly successful partnership among employers, employees and insurance companies.

Very large employers sometimes choose to self-insure their Workers' Compensation obligations, but most businesses purchase insurance. The law provides an opportunity for employers and insurance companies to work together for the benefit of employees. Premiums and costs are allocated among employers in a way that promotes safety and accident avoidance, while medical and wage replacement benefits are provided regardless of fault. Benefits are protected against inflation since they are indexed on an annual basis to increases in the State Average Weekly Wage.

Special Workers' Compensation courts throughout the State, separate from criminal and civil courts, deal with disputes efficiently and fairly, reducing contentious and expensive legal proceedings.

The system underwent significant improvements in 1979 that became effective on January 1, 1980. Benefits were enhanced to employees who became seriously disabled, while permanent disability benefit payments for injured workers with only minor or subjective complaints were discouraged. These reforms helped New Jersey avoid the cost increases and inefficiencies experienced by many state workers' compensation systems nationwide during the ensuing years.

How does Workers' Compensation work in New Jersey?

Aside from companies that choose to self-insure, and some other rare exceptions, all New Jersey employers are statutorily required to carry Workers' Compensation insurance.

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Commercial Insurance. Most employers obtain Workers' Compensation coverage from commercial insurance companies approved by the NJ Compensation Rating and Inspection Bureau, an arm of the NJ Department of Banking Insurance (DOBI).

Self-Insurance. Employers that choose to self-insure must demonstrate to the DOBI their financial ability to pay Workers' Compensation benefits. The Commissioner of the DOBI issues a certificate of exemption that authorizes the employer to self-insure.

How are the insurance premiums calculated?

The Compensation Rating and Inspection Bureau (CRIB) under the Department of Banking and Insurance is responsible for the rates, rules and regulations of Workers' Compensation policies. CRIB develops insurance rates that are divided among the approximately 600 different job classifications, based on data provided by insurance carriers. The NJ Commissioner of Banking and Insurance reviews and, if appropriate, approves CRIB's rate recommendation, which is applied uniformly by all insurance carriers. This is why New Jersey is called an "administered pricing state" for purposes of Workers' Compensation.

Throughout the years, CRIB has demonstrated the ability to develop rates that have proven to be fair and adequate.

When a business elects to carry Workers' Compensation

insurance from a commercial provider, the premium is calculated according to:

- **Classification Codes.** These codes are standardized based on the type of industry and the jobs performed within that company. Every position in a company is assigned the code associated with that job. A business is assigned a governing class, which is the classification code with the largest payroll, with some standard exceptions. Typically, the higher the risk of injury associated with a particular class, the higher the corresponding rate will be.
- **Payroll.** The Classification Code is multiplied by the total payroll of each class of employees per \$100 of remuneration.
- **Experience Modification.** Once enough loss experience has been accrued, normally three years, a company is compared to similar businesses in the State and develops an Experience Modification. If the employer has a history of fewer claims and/or less-serious claims than is typical for that class, the company receives a credit modification, which reduces the overall premium. Similarly, when a business has demonstrated a higher risk, it is subject to debit modification, which increases the premium.
- **Pricing.** Insurance carriers are able to compete against one another by offering various alternatives to competitively price the product such as deductible programs, dividend programs, managed care credits, schedule rating and loss-sensitive plans, to name a few. This competitive pricing has resulted in many choices for employers.
- **State-Mandated Surcharges.** If an employer is not in compliance with the New Jersey Workers' Compensation Act, those employees may be entitled to benefits from the Uninsured Employers Fund, which is financed by an annual surcharge on all insured employers and by fees and charges levied on employers who fail to provide Workers' Compensation insurance.

State-mandated employer surcharges also finance the Second Injury Fund, which promotes the hiring of previously injured persons. This fund helps to defray the costs for employers that hire a worker with a pre-existing impairment in the event a subsequent injury is incurred.

What benefits are provided to injured workers?

In the event that an employee is injured in the workplace, New Jersey's Workers' Compensation system provides:

- **Medical Benefits.** An employer is required to provide the employee with all medical care necessary for the appropriate treatment of an injury related to work. Either the insurer or employer can select a medical provider who has demonstrated an ability to effectively treat occupational injuries.
- **Temporary Disability Benefits.** If the injured employee is unable to work for more than seven days, the employee is then eligible to receive payments equal to 70 percent of his or her weekly wage, up to \$711 in 2007, subject to a maximum of 75 percent of the State Average Weekly Wage. The employee receives temporary total disability benefits for up to 400 weeks while under active medical care and while not able to return to work.
- **Partial Permanent Benefits.** An incident that results in a permanent injury, but allows a return to work, makes an employee eligible for benefits to be paid by a statutory schedule, which is calculated to provide proportionately higher benefits for more serious injuries.
- **Permanent Total Benefits.** A claimant may be eligible to receive lifetime paid benefits when a workplace injury is sustained that proves to be so severe it does not permit a return to work.
- **Dependency Benefits.** Wage replacement, up to 70 percent of the deceased worker's salary subject to statutory maximums, along with other death benefits, may be collected by the dependents of someone killed in a work-related accident.

How are claims disputes handled?

Litigation is kept to a minimum in New Jersey's no-fault system. Unlike in auto insurance, which utilizes a trial if necessary to determine liability and money damages for "pain and suffering," fault is not an issue

in Workers' Compensation. Disputes do arise, however. For example:

- Was the employee's injury or health condition related to employment? An investigation of the facts of each case is required.
- Did the physician or therapist selected by the employer render adequate treatment? An employee who challenges the quality of care is entitled to a prompt hearing, usually within a week, to evaluate the complaint and order another treatment provider if necessary.
- What was the extent and permanence of the employee's injury? The benefit amount is larger for a serious or permanent injury. Settling these cases usually requires additional testing or examinations by doctors, and testimony by the employee about pain or loss of function.

All such matters are handled informally and promptly by a special court system within the Division of Workers' Compensation in the New Jersey Department of Labor and Workforce Development. More than 50 Workers' Compensation judges, in 15 locations throughout the State, work to mediate disputes or, if necessary, to issue binding decisions. Such rulings can be appealed to the Appellate Division of Superior Court.

New Jersey's Workers' Compensation law stipulates that an attorney cannot charge a fee to represent a client. Any counsel fee, which can never be more than 20 percent of the benefits received, is set by the judge assigned to the case.

Litigation is kept to a minimum in New Jersey's no-fault system. Disputes do arise, however. All such matters are handled informally and promptly by a special court system.

Why does New Jersey's system work so well?

New Jersey's system is designed to fairly benefit all parties involved in a Workers' Compensation claim. Employees receive medical care and wage replacement when needed. Employers avoid the costs of civil litigation. Since all workplace injuries are covered, most disputes regarding fault are avoided.

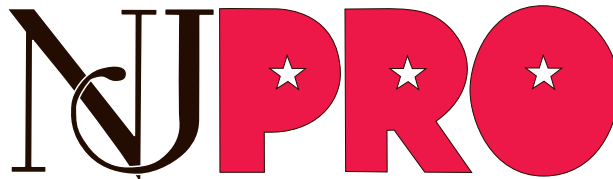
New Jersey's Workers' Compensation system strikes a reasonable balance between providing injured workers with medical care, wage replacement and dependency benefits, and controlling employers' costs. Those costs are controlled in three ways:

- New Jersey is one of 12 states where the employer chooses the physician, providing both appropriate and cost-effective medical attention.
- New Jersey is one of 18 states that cap the length of time a worker can receive temporary disability payments.
- New Jersey caps attorneys' fees at 20 percent of the judgment.

Despite its cost controls and stability today, the system is always subject to court rulings affecting the balance of benefits versus costs. In 1998, the New Jersey Supreme Court permitted the filing of harassment and discrimination claims under the liability coverage of Workers' Compensation. Other cases have challenged the doctrine that Workers' Compensation is the exclusive remedy for work-related injury. Whether by judicial ruling or new legislation, changes to Workers' Compensation in New Jersey could cause much higher costs, confusion and complaints. Proposals to institute employee choice of physicians, carve out certain employee groups from the system, increase benefit levels, or raise the cap on attorneys' fees could substantially increase costs and jeopardize the cooperative relationship among employers, employees, and State government.

New Jersey's Workers' Compensation system is stable, efficient, transparent and fair. While other states have struggled to achieve a balance in Workers' Compensation, New Jersey's system thrives. It is one of the positive items New Jersey has when compared to other states. "Fine-tuning" the system could undermine this delicate balance.

About the



Foundation

The New Jersey Policy Research Organization (NJPRO) Foundation is an independent public policy research affiliate of the New Jersey Business & Industry Association. NJPRO produces innovative, timely and practical research. NJPRO is New Jersey's leading policy organization conducting research on behalf of New Jersey employers. Governed by an independent Board of Trustees, NJPRO is a nonpartisan, tax-exempt organization. NJPRO depends on the support of companies, individuals and foundations for its income.

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