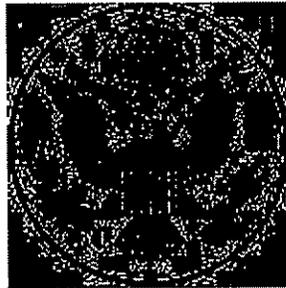


**The Report of**

**The National Commission**  
**on State Workmen's**  
**Compensation Laws**



WASHINGTON, D. C.  
July 1972

## **Introduction & Summary**

# **Major Conclusions and Recommendations**

### **INTRODUCTION**

Congress, in the Occupational Safety and Health Act of 1970, declared that:

the vast majority of American workers, and their families, are dependent on workmen's compensation for their basic economic security in the event such workers suffer disabling injury or death in the course of their employment; and that the full protection of American workers from job-related injury or death requires an adequate, prompt, and equitable system of workmen's compensation as well as an effective program of occupational health and safety regulation . . . .

Congress went on to find, however, that

in recent years serious questions have been raised concerning the fairness and adequacy of present workmen's compensation laws in the light of the growth of the economy, the changing nature of the labor force, increases in medical knowledge, changes in the hazards associated with various types of employment, new technology creating new risks to health and safety, and increases in the general level of wages and the cost of living.

For these reasons, Congress established the National Commission on State Workmen's Compensation Laws to "undertake a comprehensive study and evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt, and equitable

These three parts are summarized below. Many supporting data and analyses are contained in the corresponding sections of the Report. References for factual information in the Report are included in the *Compendium*.

## **PART I. OBJECTIVES FOR A MODERN WORKMEN'S COMPENSATION PROGRAM**

There are five major objectives for a modern workmen's compensation program: four of them basic and an equally important one that supports the others.

The four basic objectives are:

### *Broad coverage of employees and of work-related injuries and diseases*

Protection should be extended to as many workers as feasible, and all work-related injuries and diseases should be covered.

### *Substantial protection against interruption of income*

A high proportion of a disabled worker's lost earnings should be replaced by workmen's compensation benefits.

### *Provision of sufficient medical care and rehabilitation services*

The injured worker's physical condition and earning capacity should be promptly restored.

### *Encouragement of safety*

Economic incentives in the program should reduce the number of work-related injuries and diseases.

The achievement of these four basic objectives is dependent on a fifth objective:

### *An effective system for delivery of the benefits and services*

The basic objectives should be met comprehensively and efficiently.

## **PART II. EVALUATION OF STATE WORKMEN'S COMPENSATION PROGRAMS AND SELECTED RECOMMENDATIONS**

Congress in the Occupational Safety and Health Act of 1970 specified that our study and evaluation should include, "without being limited to," 16 subjects. We believe this evaluation will be most significant if those subjects are discussed in relation to the five objectives cited above. Accordingly the 16 subjects are listed below (Figure A) with reference to the objectives most pertinent and with a citation of the chapter in the Report which deals most extensively with the respective topics.

In addition to the five objectives, another basis for our evaluation is the Congressional directive to determine if State workmen's compensation laws provide an "adequate, prompt, and equitable" system. We use "adequate" to mean sufficient to meet the needs or objectives of the program; thus, we examine whether the resources being devoted to workmen's compensation income benefits are sufficient. We use "equitable" to mean fair or just; thus, we examine whether workers with similar disabilities resulting from work-related injuries or diseases are treated similarly by different States. (See Glossary for full definitions of these and other terms.)

### **1. A Modern Workmen's Compensation Program Should Provide Coverage of Employees and Work-Related Injuries and Diseases**

#### **Coverage of Employees [Section 27(d)(1)(C)]**

Although the percentage of employees covered by workmen's compensation is increasing, State and Federal programs now reach only about 85 percent of all employees. This coverage is inadequate. Inequity results from the wide variations among the States in the proportion of their workers protected by workmen's compensation. Thirteen States that cover more than 85 percent of their workers contain more than half of the nation's labor force, but 15 States cover less than 70 percent. Inequity also results because the employees not covered usually are those most in need of protection: the low-wage

workers, such as farm help, domestics, casual workers, and employees of small firms.

The lack of coverage is due primarily to the statutory exclusion of specific occupations or classes of employers. Another important factor is the persistence in some States of a tradition that coverage be elective.

Our recommendations on coverage are in essence that coverage be extended so as to provide protection to most employees now excluded and that coverage be mandatory.

**Elective coverage** [Section 27(d)(1)(I)]. Despite progress in recent decades, the laws of more than a third of the States retain the elective feature, installed originally in deference to constitutional interpretations that are largely irrelevant now.

**We recommend that workmen's compensation be compulsory rather than elective.** (See R.2.1)

(In this Introduction and Summary, in the interest of brevity, we have abbreviated and reworded some of our recommendations contained in Chapters 2 through 6. Each recommendation in this summary contains a reference to the full text of the recommendations published in these five chapters. R.2.1 is the first recommendation in Chapter 2.)

**Numerical exemptions** [Section 27(d)(1)(C)]. Barely half the States extend coverage to firms with one or more employees, and among these are States which exempt certain classes of employers, such as charitable organizations.

**We recommend that employers not be exempted from workmen's compensation because of the number of their employees.** (See R.2.2)

**Exclusions** [Section 27(d)(1)(C)]. Exclusions include such categories as farmworkers, casual and domestic workers, and employees of State or local governments.

*Farmworkers.* Only about a third of the States cover farmworkers on essentially the same basis as other workers. Because of administrative considerations, we recommend a two-stage approach to coverage for agricultural workers.

As of July 1, 1973, coverage should be extended to agricultural employees whose employer's annual payroll exceeds \$1,000. By July 1, 1975,

coverage should be extended to farmworkers on the same basis as all other employees. (See R.2.4)

*Casual and domestic workers.* Although several States cover some casual household employees, no State covers them on the same basis as all other workers. The transient or casual character of domestic jobs and the large number of households argue against efforts to provide coverage by conventional means.

**We recommend that by July 1, 1975, household workers and all casual workers be covered under workmen's compensation at least to the extent they are covered by Social Security.** (See R.2.5)

*Government employees.* The laws of 44 States require coverage of some or all State employees; 36 States require coverage of employees of local governments; the other laws are elective.

**We recommend that workmen's compensation coverage be mandatory for all government employees.** (See R.2.6)

**Conflicts among State laws** [Section 27(d)(1)(M)]. Employees who are subject to the laws of two or more jurisdictions are often uncertain as to where to file a claim: The claim may be compensable under one State law and invalid under another, or, in the extreme, compensable under neither.

**We recommend that the employee be given the choice of filing a claim for workmen's compensation in any State where he was hired, or where his employment was principally localized, or where he was injured.** (See R.2.11)

#### Coverage of Injuries and Diseases Section 27(d)(1)(D)

Substantial litigation results from efforts to determine which injuries or diseases are work-related and compensable. There are both legal and medical questions in each claim. The medical question is whether there was in fact an impairment or death caused by an injury or disease that was work-related. The legal question is whether the worker has suffered disability, i.e., a loss of actual earnings or earning capacity

*Maximum weekly benefits.* Both the Department of Labor and the Model Act recommend that the maximum weekly benefit should be at least two-thirds of the average weekly wage in the State. The majority of States do not meet this standard: most did in 1940, but since then have not kept pace with the rise in wages. In 32 States as of January 1, 1972, the maximum for a family of four was less than 60 percent of the State's average wage. Such levels of payment are clearly inadequate.

A maximum of two-thirds of the State's average wage, coupled with a provision that purports to provide disabled workers at least two-thirds of their individual wages, produces the anomaly that almost half of all disabled workers—those who had earned more than the State's average wage—would receive less than two-thirds of their lost pay.

We recommend progressive increases in the maximum weekly wage benefit, according to a time schedule stipulated in Chapter 3, so that by 1981 the maximum in each State would be at least 200 percent of the State's average weekly wage. (See R3.8 and R3.9)

*Proportion of lost wages to be replaced*  
The decision fixing the proportion of lost wages to be replaced must balance incentives to employers to improve safety with incentives to the disabled to take full advantage of rehabilitation services and to return to work.

We recommend that cash benefits for temporary total disability be at least two-thirds of the worker's gross weekly wage. The two-thirds formulation should be used only on a transitional basis until the State adopts a provision making payments at least 80 percent of the worker's spendable weekly earnings. (See R3.6 and R3.7)

Each worker's benefit would be subject to the State's maximum weekly benefit.

*Permanent total disability benefits* [Section 27(d)(1)(A)]. A worker is eligible for permanent total benefits when he experiences a complete loss of wages for a prolonged period. In a few States, a worker may receive permanent total benefits merely because he is unable to return to his previous job.

We recommend that our permanent total benefit proposals be applicable only in those cases which meet the test of permanent total disability used in most States. (See R3.11)

Our position on maximum weekly benefits and the proportion of wages to be replaced is identical with our recommendations for temporary total disability. The main issues for permanent total disability benefits concern the total sum allowed and the duration of payments.

Although there is wide agreement that payments for permanent total disability should be paid for life, we found that 19 States in 1972 failed to comply with that recommended standard. In 15 States, duration of payments was limited to 10 years and in 11 States the gross sum payable was less than \$25,000, which is less than the average full-time worker in the United States earns in four years.

We recommend that permanent total benefits be paid for the duration of the worker's disability without limitations as to dollar amount or time. (See R3.17)

*Relationship to other programs* [Section 27(d)(1)(O)]. The variability of benefits provided to disabled workers from sources other than workmen's compensation aggravates the inequities of the system.

If our recommendations for increases in the maximum weekly benefit for permanent total disability and the removal of limitations of time and duration are accepted, we believe that these permanent total benefits should be coordinated with other programs.

We recommend that the Social Security benefits for permanent and total disability be reduced in the presence of workmen's compensation benefits. (See R3.18)

*Permanent partial disability benefits.* The issues arising from benefits for permanent partial disability are so critical to the future of workmen's compensation that the subject warrants the highest priority. Unfortunately, the critical need for corrective action is matched by the elusiveness of the proper remedy, and there is a serious danger that premature or insufficiently detailed recommendations might only worsen

These services need increased attention and coordination.

**Choice of physician** [Section 27(d)(1)(B)]. Among the issues that relate to the quality of medical care is the method of selecting a physician for the injured employee. The recommended standard published by the U.S. Department of Labor would permit the employee to select the physician freely or in accord with rules of the workmen's compensation agency. Half the States use this system. It can be argued that such freedom for the employee is illusory or disadvantageous to one with a work-related disease which may be improperly diagnosed by a physician unfamiliar with a specialized working environment. Conversely it may be argued that any limitation on the freedom of choice is an infringement on access to independent medical services.

We recommend that the worker be permitted the initial selection of his physician, either from among all licensed physicians in the State or from a panel of physicians selected or approved by the State's workmen's compensation agency. (See R4.1)

**Amount and duration of medical benefit** [Section 27(d)(1)(B)]. Limits on the amount or duration of medical care are more prevalent for work-related diseases than for injuries. The trend has been to remove such limits for injuries: 41 States comply with the U.S. Department of Labor standard of full medical benefits for those injured on the job. The trend has been similar with respect to diseases but only 36 States in 1972 provide full benefits. The limitations apply largely to diseases activated by dust.

Where the statutes specify payment of "all reasonable" charges, this language has been interpreted in some States to impose limitations on the types of services used. The wisdom of limiting services according to the merits of an individual situation is not open to challenge, but we oppose arbitrary rules that limit medical or rehabilitation services without regard to their merit. Such limits can be self-defeating if they deny benefits, such as prosthetic devices, which restore a patient to a productive career. For the same reasons we oppose compromise and release agreements which terminate an employee's right to medical benefits. Even when lump sum

payments are offered in exchange for such waiver of rights, we believe the agreements should require approval of the administrative agency.

We recommend there be no statutory limits on the length of time or dollar amount for medical care or physical rehabilitation services for any work-related impairment. (See R4.2)

**Supervision of quality care at reasonable cost.** There are no short cuts to economical delivery of medical care of satisfactory quality. There is no substitute for conscientious supervision by competent professionals in order to insure that a job is done well. Nevertheless, fewer than half the States provide such supervision within the workmen's compensation agency. Supervision can not be effective if limited to a clerical review of case histories. There must be skilled observation and authority to order provision of necessary services, to curb excessive charges, and to recommend or require workmen to seek appropriate consultation.

Fewer than half of the States have a medical-rehabilitation division and only 26 provide such supervision in a manner consistent with recommended standards.

We recommend that each workmen's compensation agency establish a medical rehabilitation division, with authority to effectively supervise medical care and rehabilitation services. (See R4.5)

**Vocational rehabilitation** [Section 27(d)(1)(E)]. Medical care would be far more effective if well coordinated with vocational rehabilitation services. Such coordination would require employers to report promptly to the medical-rehabilitation division on the condition of claimants who are seriously disabled. Simultaneously, the claimant should be informed of his rights and opportunities to use restorative, guidance, and instruction services. Employees of the medical-rehabilitation division would be held responsible for following the course of such services and for assisting in their delivery.

Although some vocational services are provided by insurance carriers and employers, vocational aspects of rehabilitation are handled in most States mainly by agencies that rarely

extended to as many employers as practicable. (See R5.3)

In addition to the built-in stimulus to safety provided by experience rating, workmen's compensation also promotes safety by expending substantial resources on accident prevention services. However, in some States there are so many carriers writing workmen's compensation insurance, it is unlikely that all provide effective safety programs. Likewise, some State-operated insurance funds and some self-insuring employers devote insufficient resources to safety programs.

We recommend that insurance carriers be required to provide loss prevention services and that the workmen's compensation agency carefully audit these services. State-operated workmen's compensation funds should provide similar accident prevention services under independent audit procedures where practicable. Self-insurers should likewise be subject to audit with respect to the adequacy of their safety programs. (See R5.2)

#### **There Should Be an Effective Delivery System for Workmen's Compensation**

The effectiveness of workmen's compensation is to be judged by the program's ability to deliver the benefits and services which fulfill its basic objectives.

**Six obligations of administration** [Section 27(d)(1)(J)]. In this connection, the primary obligations of the workmen's compensation agency are: (1) to take initiatives in administering the act, (2) to provide for continuing review and seek periodic revision of both the workmen's compensation statute and supporting regulations and procedures, based on research findings, changing needs, and the evidence of experience, (3) to advise employees of their rights and obligations and to assure workers of their benefits under the law, (4) to apprise employers, carriers, and others involved of their rights, obligations, and privileges, (5) to assist voluntary resolutions of disputes, consistent with the law, (6) and to adjudicate disputes which do not yield to voluntary negotiation. Adjudication should be the least burdensome of these six obligations if the others are well executed.

**Legal expenses** [Section 27(d)(1)(K)] Originally it was hoped that the compensation program would be self-administering; that employees would protect their interests without need for legal counsel or other outside intervention. The no-fault concept and prescribed benefits, it was assumed, would reduce the need for litigation. The complexities of the law and doubts about the sources and nature of impairments have dashed these expectations, although, given sufficient assistance by administrative agencies, claimants might have relied less on privately retained counsel and the system as a whole might have been spared the concomitant legal expenses.

We recommend that attorneys' fees for all parties be reported for each case, and that the fees be regulated under the rulemaking authority of the workmen's compensation administrator. (See R6.15)

**Administrative organization.** Disputes on claims in five States are assigned immediately to the general courts. Adjudicators who handle workmen's compensation cases exclusively have the primary duty to resolve disputes in 45 States. Only if they fail are the decisions appealed to the courts.

We recommend that each State utilize a workmen's compensation agency to fulfill the administrative obligations of a modern workmen's compensation program. (See R6.1)

In line with their traditional role of providing a laboratory for experimentation, with variations suited to their own experience, needs, or creativity, the States have devised a variety of structures to administer their workmen's compensation programs. It is difficult to evaluate these structures outside the entire political and economic context of each State. The State agencies vary remarkably in their assignment and exercise of responsibilities. Some agencies do little but adjudicate, with small regard for the effective delivery of workmen's compensation services or for their other administrative obligations, cited above. For this reason, we advocate a strong administrative leadership with authority commensurate to the responsibility, empowered to supervise all employees except the members of the appeals board. One person should be

compels us to conclude that State workmen's compensation laws are in general neither adequate nor equitable. While several States have good programs, and while medical care and some other aspects of workmen's compensation are commendable, strong points too often are matched by weak.

In recent years, State laws have improved. In 1971, more than 300 bills were enacted, about 100 more than customary in odd-year legislative sessions. This encouraging burst of activity nevertheless failed to satisfy many basic needs. Of 16 recommendations for workmen's compensation published by the Department of Labor, the average State meets only eight. The wide variation among the States also are disturbing. While 9 States meet at least 13 of the recommendations, 10 States meet 4 or fewer.

An appropriate response to the serious deficiencies of workmen's compensation has been the major concern of our Commission. Are we to conclude that workmen's compensation is permanently and totally disabled, or is there a rational basis for continuing the program?

That fundamental question has obliged us to consider the possible alternatives to workmen's compensation. We have discussed the implications of abolishing workmen's compensation and reverting to the negligence suits, a remedy abandoned some 50 years ago. This option is still inferior to workmen's compensation: its deficiencies include uncertainties for both employer and worker and the substantial costs arising from litigation over the degree and source of impairment. Such litigation also has serious adverse effects on efforts at rehabilitation.

An even more radical option is the proposal to disassemble the program and distribute the components elsewhere. We are convinced that the problems associated with partition are insoluble, and that the injured workingman would be adversely affected. Each of the programs to which the components would be assigned has at least one serious deficiency compared to workmen's compensation. For example, the eligibility requirements of the Disability Insurance program under Social Security preclude benefits until the worker has several quarters of covered employment. In workmen's compensation, in contrast, the worker is eligible from the first day he is employed. Also, we do not believe there is likely to be in the near

future a source of medical care as satisfactory as workmen's compensation. Under most proposals for national health insurance, there are deductibles and other limitations on benefits not found in most workmen's compensation statutes. The ultimate weakness of partition, however, is that there are no well established locations for the two most important components of workmen's compensation: cash benefits for short-term total disabilities and cash benefits for long-term partial disabilities.

Perhaps in another decade or two, an attractive alternative to workmen's compensation will emerge.

For the foreseeable future we are convinced that, if our recommendations for a modern workmen's compensation program are adopted, the program should be retained.

The issue then becomes the final subject assigned to us by Congress: what are the "methods of implementing the recommendations of the Commission?" As we have reviewed the efforts for improvement by the various States, it has become apparent that the answer to this question is the most elusive of all that have been raised. Our recommendations are not fundamentally different from those of earlier investigations; yet previous recommendations have won no strong support.

Several reasons for the indifferent response to previous reform proposals are evident. The lack of interest in or understanding of workmen's compensation by State legislators and the general public is attributable in part to the complexity of the program. Various interest groups, including employers, unions, attorneys, and insurance carriers, have often allowed their specialized concerns to stand in the way of general reform. And State legislators and officials, even when they have been genuinely interested in reform, have too often been dissuaded by the irrational fear that the resulting increase in costs would induce employers to transfer business to States with less generous benefits and lower costs.

In view of these experiences, we have contemplated various strategies for improving workmen's compensation. Among those suggested at our hearings were a complete Federal takeover; retention of present State programs with only voluntary responses to Federal guidance or recommendations; and various methods of combining the basic State-

tection would be required. The normal enforcement method would be the imposition of fines on non-complying employers. Most claims would be handled by existing State workmen's compensation agencies using their regular procedures, except that the scope of protection afforded by the State must include the essential recommendations.

The Commission was unanimous in concluding that congressional intervention may be necessary to bring about the reforms essential to survival of the State workmen's compensation system. We believe that the threat of or, if necessary, the enactment of Federal mandates will remove from each State the main barrier to effective workmen's compensation reform: the fear that compensation costs may drive employers to move away to markets where protection for disabled workers is inadequate but less expensive. There was disagreement concerning the appropriate time for Congressional action, with a majority concluding that States should be given until 1975 to act before Federal mandates are enacted if States have not adopted our essential recommendations. One reason for the delay is the feeling that an

immediate push for congressional legislation would precipitate a confrontation which would delay positive action at the State level pending the outcome. Another reason is that many necessary reforms in the State workmen's compensation programs are not susceptible to Federal mandates. If our mandates immediately were adopted by Congress and made applicable to the States, some States might fail to undertake the thorough review of our recommendations that are not appropriate as Federal mandates.

If the Federal government guarantees the adoption of our essential recommendations, if a new Commission is established to encourage and assist the States, and, most important, if those who control the fate of workmen's compensation at the State level accept responsibility for the program's reform, we believe that soon the protection provided by workmen's compensation to "the vast majority of American workers, and their families . . . in the event such workers suffer disabling injury or death in the course of their employment. . . [will be] adequate, prompt, and equitable."