

Overview of Workers' Compensation
By Chairman Mitch Weisz
To The Senate Special Committee On Workers' Compensation
November 29, 2010

MISSION

The Illinois Workers' Compensation Commission resolves disputes between injured workers and their employers regarding work-related injuries. The Commission strives to assure financial protection to injured workers and their dependents at a reasonable cost to employers.

HISTORY

Historically, workers' compensation laws were the first acts of social legislation passed in the United States. At the beginning of the 20th century, employers feared the assumption of liability for work-related injuries would destroy their businesses, while workers feared financial ruin from disabling injuries.

Prior to enactment of the Workers' Compensation Act, an injured worker had to file a lawsuit in court and prove negligence. The employer had a number of legal defenses so that nearly 90% of the time, the employer was found not liable. When a worker did win, though, the benefits were unlimited. The process was prolonged and uncertain, with large risks to both employee and employer.

The high injury and death rates during the Industrial Revolution resulted in uncompensated workers often becoming destitute and turning to general charities for help. Gradually people agreed that work-related injuries should become part of the cost of a good or service, and workers' compensation laws were enacted. Illinois passed its law in 1911, nearly 100 years ago. All states now require workers' compensation coverage.

It's easy to forget the enormous achievement of this law.

Workers' comp is the exclusive remedy against insured employers for work-related injuries. Employers are protected from tort litigation. Their liabilities are limited. No jury will make a huge award for pain and suffering. There are no punitive damages.

Almost all employees (91%) are covered. It covers all injuries arising out of (increased risk—that which is greater than that to which the general public is exposed) and in the course of the injured worker's employment. Employees are assured of medical care, compensation for lost wages and any permanent injuries. Attorneys' fees are limited and workers do not need to pay attorneys out of pocket. Benefits are paid quicker than they would in a tort system.

These important values still exist for both parties.

THE HEARING PROCESS

Each year, there are about 200,000 work-related injuries and illnesses in Illinois. In about 70% of these cases, the employer and employee resolve the matter themselves, and the Commission never gets involved.

If the parties can't resolve their issues, a hearing process is required. When the Act first went into effect in 1912, the courts first administered the act. The volume overwhelmed the courts, however, and the next year the legislature created a quasi-judicial agency—the Commission—to hear the cases.

Employees file about 55,000 cases with the Commission each year. Cases are first heard by arbitrators. Fourteen work in the Chicago office, and 17 others travel downstate to 28 different hearing sites.

The chairman hires arbitrators as state employees. To be hired, they must pass a test on the workers' compensation act, the rules of evidence and medical knowledge. Arbitrators don't have to be lawyers, but currently 75% of them are. These arbitrators follow the standard rules of evidence, and make findings of fact and conclusions of law.

As in most courts, the majority of our cases are settled between the parties. An arbitrator or Commissioner must review and approve the settlement for it to be binding. Parties can settle cases at any time. On average, it takes about 2 years from the time a case is filed to the time it is settled. This is the amount of time it takes for the worker to become medically stationary, for the parties to obtain medical records, etc.

Each year, about 3,500 cases go to hearing. A court reporter takes down the testimony, and the arbitrator issues a decision within 60 days. On average, it takes nearly 3 years from the time a case is filed to the time an arbitrator issues a decision.

About half of the arbitrators' decisions are appealed to the Commission. Cases are then heard by a panel of three commissioners. Commissioners don't have to be lawyers, but currently all of them are. No additional evidence can be introduced at this level. Commissioners read the transcript and the exhibits, and listen to short oral arguments by the attorneys. The same day as the oral argument, commissioners deliberate on how to rule on each case, and hand the cases to their staff to draft the decisions, which are issued within 60 days. On average, it takes 1 year from the time a case is appealed to the time the commissioners issue a decision.

By law, on each panel one commissioner represents the employer, one the employee, and another the public. Despite their opposing positions, most rulings--82% of decisions from June-Oct 2010--are unanimous.

In addition, commissioners agree with the arbitrator most of the time. The petitioner appeals an arbitration decision hoping for an increase in benefits, but of those cases appealed by the petitioner, the commissioners let the benefits stand or decreased the benefits in 76% of these cases. Similarly, the respondent appeals in the hope of a decreased benefit, but of the cases appealed by the respondent, the commissioners did not decrease benefits 73% of the time. These statistics reflect the professionalism of the arbitrators and commissioners.

Commission decisions may be appealed on to the circuit court, but only about 25% are. Parties are also entitled to appeal Circuit Court decisions to the Appellate Court and seek review by the Supreme Court. From a starting point of 200,000 injuries each year, less than 400 cases are still in dispute when they leave the Commission.

The real story is that the Commission provides an effective and efficient process to resolve workers' compensation claims. It is certainly preferable to tort litigation.

ADMINISTRATION

In addition to the hearing process, the IWCC has a number of other functions.

INSURANCE COMPLIANCE PROGRAM

Illinois law requires employers to insure themselves for their workers' compensation liabilities, but some employers fail to comply. These employers enjoy an unfair competitive advantage over law-abiding companies, while leaving their employees vulnerable if accidents should occur.

Since January 2006, we have collected \$5 million in fines from 360 uninsured employers with thousands of workers that were found to be operating without wc insurance. We actually shut down two employers that refused to obtain insurance after repeated communications from us.

The fines are deposited into the Injured Workers' Benefit Fund, which pays awards of injured workers whose employers were not insured. To date, the IWBF has paid \$3 million in benefits to 67 injured workers. Awards are paid annually and if there is not sufficient money in this fund the payments are prorated. Without this fund, those workers might have received nothing.

SELF-INSURANCE

Most employers purchase wc insurance, but employers may obtain approval to insure themselves for their workers' compensation liabilities. Insured employers pay about 74% of benefits, while self-insured employers pay 26%.

The Commission, in consultation with the Self-Insurers Advisory Board, evaluates individual self-insurers and sets the amount of security an employer must post.

If a self-insured employer files for bankruptcy and there is a shortfall between the security and the workers' compensation awards, the Self-Insurers Security Fund will make up the difference. Self-insured employers pay assessments into the SISF based on their indemnity payments, up to a maximum of 1.2% of indemnity benefits paid during the preceding year.

RATE ADJUSTMENT FUND

Individuals who are either permanently and totally disabled or the survivors of fatally-injured workers are eligible for cost-of-living adjustments. Every six months, self-insured employers and insurance companies pay an assessment of 1.25% of all indemnity benefits paid in the preceding six-month period. Approximately 1,400 individuals receive RAF payments which amount to about \$12 million annually.

The RAF ran deficits for years, but thanks to the increased assessments enacted in 2005, the fund ended FY09 with a positive number for the first time since 1994.

In recent years, the Commission has taken a number of steps to improve controls over the RAF program: an attorney and project manager were hired; a database to track cases was created; procedures were set in writing; forms were changed; outreach efforts were made to reach potential recipients, and a RAF web page was created.

SECOND INJURY FUND

The SIF provides an incentive to employers to hire disabled workers. Illinois' SIF is more narrowly constructed than most other states. If a worker who had previously incurred the complete loss of a member or the use of a member (one hand, arm, foot, leg, or eye) is injured on the job and suffers the complete loss of another member so that he or she is permanently and totally disabled (PTD), the employer is liable only for the injury due to the second accident. The fund pays the amount necessary to provide the worker with a PTD indemnity benefit.

Approximately 100 individuals receive SIF benefits. In January and July each year, insurers and self-insured employers pay assessments up to 1/8 of 1% of compensation payments made during the previous six months.

Finally, legislation in 2003 created an independent source of funding for IWCC, making Illinois the 46th state to support its wc agency this way. This relieved pressure on a strained general revenue fund.

Each year, employers pay a 1.01% surcharge on workers' comp insurance premiums, while self-insured employers pay an assessment of 0.0075% of payroll.

We have been able to implement some technologies many of you might take for granted such as; all arbitrators now have laptops. We bar-coded our case files, computerized court reporters' records, and automated certified mail. We have more to do, but we are encouraged by these positive developments..

The Commission is happy to support this committee with whatever information we can provide. We want to help Illinois become a more competitive venue to maintain and create jobs.