The Origins of Workers Compensation in California

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Commemorating 100 years of Workers’ Compensation
Why study the past?

- Review core principles
- Understand the factors leading to policy shifts
- Evaluate progress and challenges
- Understand conditions of present day contrasted with program origins

- Look for similarities and differences over time
Beginnings of the Safety Net

• Chancellor Bismarck established the German Employers’ Liability Law of 1871 to provide a modicum of social protection for workers in key industries such as railroads, mining, quarries and factories.

• Bismarck went on to create Workers’ Accident Insurance in 1884, followed by Public Pension Insurance – for workers incapacitated due to non-job related illnesses, and Public Aid, providing a safety net for those who were never able to work due to a disability.

• Franz Kafka was an early administrator in that plan.

   http://www.getmedlegal.com/articles/articles0111/wc_history_p1.html

1884 California

• One of the greatest changes in the principles of law, which the factory system has wrought, is in relation to the liability of employers for injuries received by their workmen.

• “Except where special legislative restriction exists, (the employer) is not liable for injuries... unless by special contract he assumes to become liable, but the employer never, or rarely, suggests such contract; this must come from the workman.
• Waiver of all liability, California 1884

• “In consideration of my employment... I hereby release, forgive and waive any all claims against said firm for damages or injuries sustained or suffered by me... by reason of the acts of my employers, or of any of my co-employees in and about such business or resulting from the use of any of the presses, elevators, machinery or appliances... in use during my employment... regardless of the question whether such damage or injury result from carelessness or otherwise.”

The Commissioner suggested an alternative:

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• “when personal injury is caused to a workman by reason of any defect in the works.. Or by reason of the negligence of any person in the service of the employer, or by reason of the act or omission of any person or in obedience to (delegated) instructions...in all these cases the workman shall have the same right of compensation and remedies against the employer as if he had not been a workman or in the service of the employer.”
The Origins and Evolution of Workers’ Compensation in the U.S.

- Industrial Revolution and Urbanization
  - From Farms and Craftsmen to Factories and Construction
- Employers Liability
  - Assumption of Risk
  - Fellow Servant Doctrine
  - Contributory Negligence
- Pittsburgh Survey and Triangle Fire
- Workers’ Compensation and Health and Safety
  - First thread of the safety net
  - Insurance incentives: prospective and retrospective
- Failure of WC and the Development of OSHA
- From manufacturing to service sector

Lochner era

- *Lochner v. New York, 198 U.S. 45 (1905)*, was a landmark United States Supreme Court case that held that "liberty of contract" was implicit in the Due Process Clause of the Fourteenth Amendment.
  - The case involved a New York law that limited the number of hours that a baker could work each day to ten, and limited the number of hours that a baker could work each week to 60.
  - By a 5–4 vote, the Supreme Court rejected the argument that the law was necessary to protect the health of bakers, deciding it was a labor law attempting to regulate the terms of employment, and calling it an "unreasonable, unnecessary and arbitrary interference with the right and liberty of the individual to contract."
It was also the Progressive Era

• The Progressive Era and the growth of mass circulation newspapers and national magazines helped forge a national movement for workers' safety and health.

• Upton Sinclair, William Hard, Lewis Hine, and Crystal Eastman drew attention to those laboring in hazardous industries and jobs.

“I aimed at the public's heart, and by accident I hit it in the stomach.”
— Upton Sinclair
• William B. Hard, a muckraking journalist, published, "Making Steel and Killing Men," based on firsthand investigations of a Chicago mill. He calculated that every year, out of a work force of 10,000 workers, 1,200 were killed or seriously injured. He urged the steel industry to use its technical knowledge to reduce this casualty rate.

•
REPORT

EFFECT OF THE CHILD LABOR LAW
OF 1913

TO THE

STATE BOARD OF LABOR AND INDUSTRIES.

MARCH 27, 1914.
A Social Investigation is Justified

- When there are grounds for belief that wrong exists in certain relations between individuals, a wrong of sufficient importance and extent to warrant concerted interference on the part of the community... With respect to the work-accident problem, such a belief and conviction has long existed. This investigation should give us facts, not isolated and unrelated, but massed and classified.
  - Crystal Eastman 1910
Statistics about Injury and Illness Incidence and Prevalence

• “These facts were gathered: the circumstances of the accident, the nature and extent of the injury, the family responsibilities of the killed or injured worker, how large his income, what provisions he had made for misfortune, how great the financial loss suffered by his family, what share of this was shouldered by his employer, and by what means it was adjusted. What was the effect of the accident on the economic life of his family?”
  
  – Crystal Eastman, Pittsburgh Survey, 1910
Factory Inspection Laws

• Under California’s factory inspection laws, passed in 1889 and amended in 1901, 1903 and 1909, Employers of more than five workers were expected to keep their workplaces clean, with sufficient water closets within reasonable access and separated by gender, and ventilated sufficiently so that the “air would not become injurious to health.”

Eaves 1910

• Such suggestions were not adopted. By 1910, one observer noted that instead of altering liability, California’s legislators had enacted sham safety laws.

• The California legislators have always manifested a great willingness to enact laws suggested as necessary for the safety of workmen. ...However they have always been carelessly enforced...

• It will be necessary, as the industrial life of the state becomes more highly organized, to give more careful attention to the matter of regulating injurious trades... and afford her citizens every possible guarantee of health conditions of labor.
Despite some agreement on the direction of reform, the movement stalled

- Many states ran into constitutional challenges to the reform ideas.
- In New York, on March 24 1911, the state's highest court ruled the new workmen's compensation law as plainly revolutionary and struck it down.
- Tragedy struck that altered the debate.

The fire at the Triangle Waist Company factory in New York City on March 25, 1911 killed 146 workers.
THE THREE ESSENTIALS FOR ACCIDENT PREVENTION

By Crystal Eastman,
Secretary New York Commission on Employers' Liability and Causes of Industrial Accidents, Unemployment and Lack of Farm Labor.

When I read in the newspaper the day after that terrible fire in Washington Place two weeks ago, that a relief fund had been started, that so and so and so and so had contributed so and so much, and the Red Cross had opened an office in the Metropolitan Building to "administer the fund," it turned my soul sick. When I read in the Bulletin of the New York Department of Labor, among particulars of fatal accidents in 1908 such records as this: "Helper—flooring factory—age 18—clothing caught by set-screws in shafting; both arms and legs torn off; death ensued in five hours," my spirit revolts against all this benevolent talk about workingmen's insurance and compensation.

When great unforeseen disasters like the San Francisco earthquake come upon humanity by act of God, we can be thrilled and

After the Triangle Fire

- "The first thing we need is information, complete and accurate information about the accidents that are happening. It seems a tame thing to drop so suddenly from talk of revolutions to talk of statistics. But I believe in statistics just as firmly as I believe in revolutions. And what is more, I believe statistics are good stuff to start a revolution with."

— Crystal Eastman, The Three Essentials for Accident Prevention, April, 1991. AAPSS, v 38, July 1911
• “We must know not only how many are killed, but how many are killed in proportion to the number employed – the relative danger of the occupation. About each of these accidents we must find out all we can, not only how it happened and what machinery was involved, but what time of day it happened, how long the injured man had been working, what were his regular hours. We must try to get every fact that will enable us to analyze accidents with a view to prevention.

— Crystal Eastman, AAPSS, p. 99, 1911

In California Before 1911

• “the state had been rather backward in legislating for the welfare of its workers” – Ira Cross
• Conditions “have been such as to permit of remarkably few recoveries by injured workers.” Rates for California liability policies have “been rated lower than practically any other State in America” - Aetna Insurance Co.
ELECTION NOVEMBER 8, 1910.

Political parties—Republican, Democratic, Socialist, Prohibit

Governor—Hiram W. Johnson (Rep.), 177,191; The
154,835; J. Stitt Wilso (Soc.), 47,819; Simeon Pease Me
lent Governor—Albert J. Wallace (Rep.), 168,145; Tit
153,364; Fred C. Wheeler (Soc.), 45,830; W. W. Atwood (of State—Frank C. Jordan (Rep.), 202,546; Simeon S. F
Edward A. Cantrell (Soc.), 41,200; Lucius C. Dale (Pro
A. B. Nye (Rep.), 308,196; W. S. Deeds (Soc.), 41,097; (Treasurer—W. R. Williams (Rep.), 204,902; Tup
103,426; A. E. Briggs (Soc.), 41,124; W. F. Fassett (Pro
eral—U. S. Webb (Rep.), 211,431; J. E. Pemberton (De
Ford (Soc.), 41,158; Wallace M. Pence (Pro.), 6,925; Sm
S. Kingsbury (Rep.), 199,500; E. W. Nolan (Dem.), 107,29
40,637; Harry V. Wheeler (Pro.), 6,933. Clerk of the Co
Taylor (Rep.), 197,278; Hiram A. Blanchard (Dem.), 186,4
Inaugural Address, 1911

• The problem first presented to us, therefore, is **how best can the government be made responsive to the people alone?**

• I take it, therefore, that **the first duty that is mine to perform is to eliminate every private interest from the government, and to make the public service of the State responsive solely to the people.**

• A just and adequate employers' liability law is needed.

• “The risk of the employment shall be placed not upon the employee alone, but upon the employment itself.”

Onset of Workmen’s Comp in California

• Problem stated by Commissioner of Labor Statistics as early as 1884

• 1911 – In inaugural address, Governor calls for Employers’ Liability Bill,

• April, 1911 – two weeks after Triangle Fire, California legislature adopts Roseberry Act, effective September 11

• October 10, 1911, Constitutional Amendment abolishing liability system and allowing mandatory workers’ compensation passes with 82,000 majority.
1911 – passage of Roseberry Act

- Voluntary system
  - Employers elect coverage, workers confirm
- Benefits
  - Medical care up to $100 or 90 days
  - Income benefits up to $21 per week, max $5000
- Employers defenses somewhat abrogated
  - Contributory negligence not complete bar
- Exclusion of Agricultural workers
- No provision for insurance regulation
- No safety provisions

Factory Inspection Laws

1912 - Finding that California’s factory inspection law of no value

the supplying of pure drinking water and the maintenance of good sanitary conditions in labor camps

Commissioner McLaughlin reported in 1912 that California had no adequate legislation for the protection of persons working in factories. He stated that the commonly known factory inspection law was practically of no value. Its provisions were too indefinite, there were no precise standards erected by law and the Bureau’s authority to insist upon right regulations was limited.
Four Goals

- Mixed system of social regulation and economic incentives to reduce hazards and injuries
- Living wage during disability and coverage of medical expenses
- Mixed system of public and private insurance
- Information systems to continually evaluate the nature of problem and economic consequences, and assess program
Jurisdiction of IAB/IAC 1913

• “The accident, the injury, disability, compensation, adjudication of controversy, insurance and prevention of similar accidents all constitute practically one problem.
• The functions to be performed are administrative and judicial and are inextricably interrelated, and require that something of both powers vest in the same body.”
California

- "The most necessary forward step... is in the direction of making places of employment safe. In this direction California has done little or nothing..."

- (Industrial Accident Board of California, Report to the Legislature, “Program for Workmen’s Compensation Legislation”, 1913, pp. 1, 8.)

- “The prevention of industrial accidents attracts general attention. Compensation at best is a poor substitute for an injury”. (Correspondence from Industrial Accident Commissioner WJ French to Governor Hiram Johnson, December 18, 1915)

- A complete system of workers’ compensation includes... full provision for securing safety in places of employment... (California Constitution, Article XIV, section 4, adopted November 5, 1918.)
Workmen's Compensation, Insurance and Safety Act of 1913 (Boynton)

- The Boynton Act required the state to combine three missions: social welfare, public health and risk-sharing.
- The act contained three main parts.
  - The first part contained provisions relating to compensation, including both medical care and lost income replacement.
  - The second part gave the State power to make and enforce safety rules and regulations, to prescribe safety devices to be used by employers, and to order the reporting of accidents.
  - The third provided for a state insurance fund, to compete with private insurers, for the purpose of insuring employers against liability for compensation under the Act.
- The act also created an independent Industrial Accident Commission with broad administrative, regulatory, judicial and quasi-legislative powers to implement the provisions of the law.

Boynton Act – role of the IAC

- Design and Administer a statistical system to quantify the problem
  - To allow policymakers to amend the law “with intelligence and justice”
- Coordinate a safety department through promulgating rules (“safety orders”) and assessing penalties for noncompliance
- Provide oversight and direction to a state-run public enterprise insurance company
- Sit as judge and jury in the adjudication of disputed work injury cases.
Benefits

• Temporary total disability at 65% of average wages after a two week waiting period
• Medical benefits with no maximum amount, but limited to 90 days after injury
• 40 weeks of benefits for each 10% of permanent disability
• No specific injury benefits, all payments related to disability level under IAC schedule
• Death benefits up to $5000, with only burial expenses if no dependents

Exclusive Remedy

• Except workers could choose to sue in cases of gross negligence and willful misconduct.
• Insurers prohibited from offering insurance against gross negligence
Safety regulation

- Boynton Act gave state power to make and enforce safety rules and regulations without further legislation
- Also, to prescribe safety devices to be used by employers, and establish standards through public hearing process
- Ordered the reporting of occupational injuries and illnesses.
- All fines collected for safety infractions to be deposited in Accident Prevention Fund, used for further enforcement efforts

Coverage and Exclusions

- Provide benefits for persons injured on job, regardless of fault
- All employees, except those engaged in farm, dairy, agriculture, viticulture, or horticulture, stock or poultry raising or in domestic household service
- Denial of compensation for injuries caused by intoxication or willful misconduct of employees
Insurance

• All employers required to carry insurance, or secure permission to self insure
• State run nonprofit public enterprise insurance company in competition with private carriers
• IAC responsible for establishing premium rates

1911-1914

• Between 1911 and 1914, 15 states passed laws requiring all physicians to report any cases of occupational disease to the state labor or health department.

  » Silent Victories: The History and Practice of Public Health in Twentieth-Century America, note 31, page 233
Employer and Doctor Report, California, 1912
California in 1914

- 50,787 industrial injuries
- 11,086 occasioned disability of two weeks or more
- 560 fatalities

- Of 11,086 lost time injuries, disputes arose in 800 cases, all handled by IAC.
First IAC Report: Causes of Permanent Disability

<table>
<thead>
<tr>
<th>Causes of Accidents That Resulted in Permanent Injury.</th>
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<tbody>
<tr>
<td>The following table of causes of accidents that resulted in permanent injury has been abbreviated to accommodate the text. A more detailed statement of causes is found in the appended table, No. 16.</td>
</tr>
<tr>
<td>Power-driven machines</td>
</tr>
<tr>
<td>Shopwork, handling heavy objects, flying fragments, and falling bodies</td>
</tr>
<tr>
<td>Collisions, falls from ladders and on stairs, jammed in doors</td>
</tr>
<tr>
<td>Tools</td>
</tr>
<tr>
<td>Elevators, derricks, winches</td>
</tr>
<tr>
<td>Animals</td>
</tr>
<tr>
<td>Unknown</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

It is easily seen from the foregoing table that power-driven machinery is responsible for a large share of the accidents, while shopwork and flying fragments lead by one. The classification, "Power-driven ma..."
Founding of California’s workers’ compensation programs intertwined with other developments in 1914

• Early workers’ compensation implementation in other jurisdictions
• Formation of the National (later International) Association of Industrial Accidents Boards and Commissions
• Papers on Industrial Medicine of the American Academy of Medicine (precursor of AMA?)
• Formation of Industrial Hygiene section of the American Public Health Association

Industrial Accidents Commission from 1911-1921

• The most frequent issues raised are:
  – denial of liability,
  – allegations of wilful misconduct and insufficient evidence
  – invocation of the statute of limitations,
  – cessation of disability before termination of the waiting period,
  – allocation of lump sum awards,
  – loss of wage earning capacity,
  – nature and rating of disability,
  – amount of compensation,
  – verification of eligible dependents for receipt of death benefits,
  – jurisdiction in cases involving interstate commerce and farm labor
Those who can’t remember the past are doomed to repeat it

Triangle Factory, 1911

Bangladesh, 2013

Sources

• UC Berkeley Libraries
  – Bancroft Library
  – Documents Library
  – Public Health Library
  – NRLF
• Harvard University
  – Schlesinger (Radcliffe) - Alice Hamilton collection
• American Public Health Association archive
• California State Library
• Department of Industrial Relations
  – Cal-OSHA library/archive
  – DWC Research Library
• US Department of Labor – Wirtz Labor Library
• Personal collection
• World Wide Web

• Comments: gshor@dir.ca.gov