Workers’ Compensation:
Early Implementation

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A recap: Before WC

• Working Conditions were dangerous and unregulated
• Many California workers were killed, injured, or made sick by their jobs particularly in industrial facilities, construction, railroads, and agriculture
• Workers had no assurance of coverage for medical care or lost wages if hurt. Employers were not required to carry insurance, and lawsuits against employers were often ineffective
• Insurance available to employers had limited coverage at high cost. Some employers were held liable by courts and paid high settlements to injured workers. Or went out of business because they could not pay. The uncertainty of the arrangement demanded resolution.
1911

"how best can the government be made responsive to the people alone?"
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."

"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."

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
Boynton Act

- Compensation
- Insurance
- Safety

Labor Reaction

- Organized labor regarded the passage of the Workmen's Compensation, Insurance, and Safety Act in 1913 had been "the greatest achievement of the 40th session."

Implementation Raises Questions

- What injury conditions should be covered? What should the level of compensation be?
- How should the state regulate private insurance coverage if competing with it was not sufficient to meet other goals?
- Should the basic philosophy of safety regulation be adversarial or cooperative; should it come through “command and control,” through furnishing economic incentives, or through information and training?
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.

Implementation: Role of 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.

Coverage and Exclusions

• Provide benefits for persons injured by accident 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

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
• No specific injury benefits, all payments related to disability level under IAC schedule
• 40 weeks of benefits for each 10% of permanent disability
• Death benefits up to $5000, with only burial expenses if no dependents

Exclusive Remedy

• Provide a special court and rules for claims by workers against employers for work related injuries
• Workers could choose to sue in cases of gross negligence and willful misconduct.
• Insurers prohibited from offering insurance against gross negligence
Attitudes of Insurance Companies

"It is indeed a surprising thing to men in the big liability and compensation game that the Fund, which is no more nor less than an insurance company, in the first making, not out of the cradle, so to speak, should dare do so hazardous a thing, without rhyme or reason, or any basis in business and surely none in insurance ethics."

"Why the State Fund at all? What the necessity of such a financial scheme and the organization? Could not the large insurance companies, with their great assets and lawful reserve, take care of the situation in a far more efficient manner at a less percentage of expense?"

Average Justice

– IAC raised “fundamentally important” issue that WC was not a trial court.
  • Not enough time for trial with the volume brought by WC
  • Perhaps in 75 percent of the cases, there is no requirement that any attorney be present on either side.
  • “average justice"
  • No doubt that it will reach “substantial justice in practically all cases and do it with a minimum cost in time and money on the part of the state, employer and employee.”

EVIDENCE

• “…the Commissioners expect to keep their minds open until convinced by such evidence as, in the common and practical affairs of every day life, would produce conviction in the minds of reasonable men. This is the standard that the Commission has set for determining all issues brought before it…if the Courts and the Legislature will permit the Commission to continue as it has begun…"

Permanent Disability Rating Department

• Organized July 1913 to assess and determine ways to measure and award benefits for disability severity

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.
Attacks on the Boynton Act in 1914

- Business and Insurance interests seek repeal of act
  - Constitutional challenges mounted
  - Make workers pay the insurance costs
- Accuse State Fund of being politically motivated, only taking preferred risks and being reckless with its assets
- Attempts to undercut SCIF rates to put it out of business

Safety provisions for 1914

- The Boynton act
  - Obligated employers to furnish safe employment for all employees
  - State required to "make and enforce safety rules and regulations, to prescribe safety devices, to fix safety standards, and to order the reporting of accidents."
- Legislature addresses hazards in painting, construction, warehousing, longshoring, railroads and mines
- IAC was authorized to use fines imposed and collected for violations of the Act for the enforcement of safety laws and regulations.
Private Insurers fight State Fund

- Insurer trade journals kept up their attack on the State Insurance Fund, accusing it of being politically motivated, of taking only preferred risks, and of being reckless with its assets in promising to pay dividends to employers. Others began an effort to put the State Fund out of business by undercutting its rates.
- See for example, “State Rate Making” in The Adjuster, v. 50, # 1, January 1915, p. 8.

Issues in 1915

- Compensation for Occupational Disease
- Insurance Rate Regulation
- Safety Regulation
Compensation for Occupational Disease

- As early as 1911, California law required medical practitioners to report patients suffering from occupational diseases to the State Board of Health.
- The emerging public health movement regarded prevention of occupational diseases as having broader implications than simply affecting workers; they were part of a general, and preventable, threat to the health of the populace, "next of kin to the crusade against tuberculosis, infant mortality, hookworm, and typhoid."

Is Occupational Disease Compensable

- Federal Compensation law precluded disease compensation.
  - A Brooklyn Navy Yard worker employed to strip paint from a warship was incapacitated for 37 days from lead poisoning. His claim for compensation under the federal act was denied "because, technically, it is not an accident... under the circumstances, it is a dead certainty."
  - A "folder of heavy paper" at the Government Printing Office developed a tumor in her hand when continuous strain upon her fingers and hand caused a "degeneration of the tendon sheath." Surgery was necessary. When the GPO medical officer found that five other skilled laborers similarly employed manifested the same condition, he determined that since the condition involved "no accidental element" it was "not due to injury."

Boynton Act excluded disease

- Injuries had to occur through "Accidents" only

Lawyers push the envelope

- The case had other interesting aspects. As in the lead poisoning case, the defendant in the wood alcohol poisoning was the Fidelity and Casualty Co., at the time the fourth largest of 30 workers' compensation insurance carriers in California. But, unlike the previous case, where the insurer’s claims adjuster went against an injured worker without counsel, the claimant in the wood alcohol matter was assisted by an attorney, who argued a special type of "accident" had occurred, thus giving the commissioners some leeway. The commissioners ability to be swayed by counsel had significant ramifications for the future; the system had been structured to operate in a relatively nonadversarial manner, but already each side seemed prone to litigate individual cases.
Occupational Disease

- In 1915, Winifred MacDonald, a chambermaid, developed dermatitis from exposure to cleaning materials on her job. The condition worsened and became inflamed, eventually requiring hospitalization. Yet, because “the trouble began with an occupational disease, not ordinarily arising out of employment” her claim for compensation was denied.
- Winifred MacDonald v. Dunn and London Guarantee (January 30, 1915); discussed in Weekly Underwriter, February 20, 1915, p. 237

Making Occupational Disease Compensable

- The IAC used its denials of occupational disease claims as a way of forcing Legislative attention on the issue “There are certain classes of injuries... which deserve to be compensated but which are not caused by anything that can be construed as an accident...The issue as to whether or not a certain injury constituted an accident is extremely difficult to determine.”

Legislative Expansion for Occupational Disease Compensation

Throughout the act the word “injury” has been substituted for the word “accident” or “injury caused by accident.” This will permit the compensation of injured occupational diseases or injuries to health caused by the special conditions of the trade or the employment. This is a distinct improvement of the act. This was suggested by the IAC on the ground that a strict construction of the act as to what constitutes an accident leads to the result of requiring the specificity of an insurance for the condition of the employer... The following suggests that the term “by accident” be stricken out and the special conditions of the trade or the employment which deserve to be compensated but which can be construed as an accident. The percentage charge which the IAC used to cover occupational diseases and give unlimited medical service.

Pricing Occupational Disease Compensation

- If categorizing and pricing for injuries was difficult, disease problems were even more complicated.
- The IAC’s arguments for including occupational disease coverage stressed a small, approximately 3% increase in system cost. After passage, the estimates began to rise. While a 3% increase might cover the cost of “strictly occupational diseases, such as lead poisoning, etc... insurers feared the IAC would open up the system to a wide range of “maladies which are only incidental to the employment.”
- What would happen if colds, pleurisy, eye trouble, hernia, and other conditions “for which the employer has not heretofore been held” would become subject to compensation payments.

Pricing - 2

- A committee of the Casualty Underwriters’ Association was to cooperate with the WCSB in proposing new rates. “The first step will be to determine the classifications in which occupational diseases are found, after which will follow the more difficult work of determining the frequency and cost of such illnesses in California.” The committee was given two months to accomplish its task.
- The law mandating compensation for occupational disease went into effect August 1 without any agreement by the committee as to mandated classifications or surcharges.
Compensation but no added Prevention?

- On the health prevention side, less changed. Labor had sought a "Dust-Proof Containers for Cement" which would allow the Labor Commissioner to shut down a job when containers emitted the harmful dust.
- According to Labor’s report, the cement manufacturers "maintained an expensive lobby to defeat the bill."
- With the amendments on disease coverage, "it will ... be possible to recover for sickness occasioned by cement dust, even if the cause of the sickness cannot be removed by aid of legislation."

The early State Fund

- State Fund was an immediate success, reaching its 4-year goal of market size within first year.
- Fund established an inspection department to implement a merit rating system.

Insurance and Ratemaking

- Competition or Regulating Rates
- Start with Competition
- Politics but move onto regulating, to point of establishment of minimum rate law
- Dispute over whether there should be private, mixed, or exclusive state fund

The Minimum Rate Law


Volume 50, #4, April, 1915, p. 130.
1915 Reduction of Waiting Period

- A Labor-sponsored measure that would reduce the waiting period for benefits from two weeks to one was expected to add to its compensation projects. On the other hand, insurers estimated that the invalidation of "pure" or "accident" claims would be expected to add to the "pure premium." This payments exclusive of "accident" claims was made possible through a change in the law which authorized the deduction of a proportion of the premium for "accident" claims from the total premium. California insurers opposed the idea of reducing the waiting period. The issue of the waiting period was important to both sides. "If, despite the legislative process of adequate benefits among which workers were clearly 'over'insured,' our claim that a change in the law that would reduce the waiting period would mean a rise in our rate, will ever be substantiated," said the Labor Bureau of the American Industrial Association (Aug. 5, 1915). "...the waiting period is one of the major conditions that must be considered in the law." California insurers argued that this condition didn't have to be considered in the law. To California insurers it was expected that the change in the waiting period would result in a rise in their rates.

- Theo, the insurance company, resided in the state to belong to the bureau, including the stock companies, both Bond and non-Bond, the State fund and the national and inter-state insurers.

Social Insurance Commission

- The Social Insurance Commission was intended to complement the Industrial Accident Commission.

- During discussions of OD compensation, social reformers and the IAC expected that workers' compensation would be followed by universal health and eventually unemployment insurance as the three legs of the social safety net stool.

- The eventual recommendations gave the IAC the responsibility to oversee the integrated system of health and disability coverage.
Serious and Willful Misconduct

- In 1915, the Legislature accepted IAC language that restricted some workers’ lawsuits alleging serious and willful misconduct. That same year, however, the issuance of general industry safety orders created specific rules that if not adhered to by employers gave employees the right to sue for damages on the grounds of willful negligence of the employer to install necessary safety devices.

Safety Impact

- **Outcomes**
  - In its first year, the IAC was able to cite an “appreciable monetary savings in insurance loss as well as averting much pain, suffering, and loss of earnings power.”
  - The number of industrial deaths dropped from 691 in 1914 to 533 in 1915, a 23% decrease, with the most striking changes coming in transportation and public utilities, down from 239 to 172 deaths, and construction, down from 165 to 78.
  - There was no evidence that the safety programs had affected numbers of injuries in industry generally, however; temporary injuries actually increased by 9 percent between 1914 and 1915.
  - Nevertheless, in a letter to the governor in late 1915, one commissioner noted that “the Industrial Accident Commission considers its Safety Department the most important of all the departments. The prevention of industrial accidents attracts general attention. Compensation at best is a poor substitute for an injury.”

Compensation and Labor Law Amendments

- Average annual wages to reflect wages at time of injury only
- Payment for Artificial limbs, the first durable medical equipment, allowed for first time.
- Free drinking water for Workers
- Provision for enforcement of labor laws by Labor Commissioner
- Provision for more Labor Camp inspection
- Improvements in law and enforcement authority on child labor
- Giving Commission on Immigration and Housing greater tools to protect exploited and defrauded immigrant workers

**Thank you!**

- Questions?
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