

ployment funds. There seems general agreement that these funds are more than sufficient to withstand the reconversion period; that they are sufficient for a more adequate program in the immediate post-war period. For the few States that may run into difficulty, the provision for loans to the States incorporated in

the George bill is one step forward in provision for financial security to the State funds. There is every reason, therefore, why the States should examine their unemployment compensation programs now and make such changes as are desirable. Despite any differences of opinion concerning the best way of making

this program effective, we all know that improvements are necessary. An attempt has been made to outline those important aspects of the program which need primary attention. If these aspects are given attention now, the program will be in a far better position to make its maximum contribution in the post-war period.

## New Developments in Workmen's Compensation

By Verne A. Zimmer\*

IT IS NOW 33 YEARS since the first State workmen's compensation law became operative. The casual observer might point with pride to the fact that 47 States<sup>1</sup> now have workmen's compensation acts—the Mississippi legislature has again defeated the most recent of the long series of attempts to secure a compensation law in the forty-eighth State—but the serious analyst may well be somewhat discouraged by the relatively slow progress in developing anything approaching adequate protection under the acts in many of the States. Indeed, in many jurisdictions the acts are little changed from the original laws of 30 years ago.

For example, 28 of the acts are still of the elective type, and only 19 are compulsory. Under the elective form, employers can accept the workmen's compensation act or reject it, as they see fit. True, under most of these elective acts the rejecting employer loses certain common-law defenses if an injured employee brings action for personal injury. This legal device, intended as a potent means for persuading "acceptance" of workmen's compensation protection by management, however, is no particular threat to the little employer, who is judgment-

proof, or to the large employer, on the other hand, who rejects the act and then insures his common-law liability under a so-called Lloyd's of London protective plan. This stubborn adherence to the elective system is a hang-over of an outmoded theory that compulsory State laws are unconstitutional, but a trend to the compulsory form is already under way. Within the past 2 years, Delaware, Massachusetts, and Michigan have changed from elective to compulsory compensation laws.

### *Size-of-Firm and Industry Exemptions*

Of perhaps more concern to the American workman, however, is another defect in the workmen's compensation structure common to many State acts. That is the device of exempting small employers from workmen's compensation liability. Today 29 jurisdictions exempt employers of less than a stipulated number of employees. The exemptions range from employers of not more than 2 in Oklahoma to employers of 15 or less in South Carolina. The new Massachusetts law exempts employers of 6 or less from the compulsory feature of the act.

There is no logical justification for these numerical exemptions other than legislative expediency. Actually the injured worker or his widow has a much better chance of redress in court action against the noninsuring large employer, who is generally solvent, than against the little employer, who frequently is unable to pay a judgment that is entered against him. To put the matter bluntly, I believe that an employer engaged in business for pecuniary gain, who is un-

able to meet the expense of workmen's compensation coverage for even one employee as a charge against his product or service, should keep out of business.

This exemption by size of firm, in conjunction with another device of exempting specific industries, means that today, in 1944, probably not more than half of the gainfully employed workers in the United States actually are protected against loss of earnings occasioned by work injuries. In appraising the present protective status of our workmen's compensation laws it should be kept in mind that almost all States exempt agricultural employees from coverage, and yet, in 1942, deaths from accidents in agricultural employment greatly exceeded those in manufacturing industries (4,400 to 3,100).

### *Court Administration*

In an appraisal of workmen's compensation statutes, the important factor of administrative methods and facilities is too often overlooked. It can be accepted as axiomatic that no compensation law is better than its administration. Unfortunately, a realistic survey of the situation reveals that, in this factor too, some early unfortunate concepts and errors which had their origin in lack of experience have been carried over. Six States still adhere to court administration of workmen's compensation, which in effect means no administration. This statement is no reflection on the integrity of the courts. It is a simple recognition of the fact that courts are neither equipped nor organized to carry out effectively the multitude of details incident to the proper administration of workmen's compensation laws. There is no more reason for using courts of law for administration of workmen's compensation acts than there is for the administration of unemployment insurance acts. As a matter of fact, court administration

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<sup>1</sup>Laws are also in operation in the District of Columbia, Alaska, Hawaii, Puerto Rico, and the Philippines. This discussion is limited to the 47 State laws.

of workmen's compensation is a contradiction of principle, because the major objective of such laws was to eliminate court practice with its attending delays, formalities, and fees.

### *Direct Settlement Procedure*

Some other serious defects in our workmen's compensation laws persist despite the fact that experience points to a need for change. One of the most outstanding of these, in my opinion, is the direct settlement or agreement procedure still common in many State laws. This procedure was born of inexperience and the understandable difficulty of the original framers in visualizing the potential dangers of the device. The plan was seemingly based on the naive assumption that the extent of the disability and the amount of compensation due could be determined simply and without controversy and that, once the employer or his insurance carrier had been handed a schedule of benefits adopted by the legislature, the administrator needed only to put the seal of approval on the agreements as submitted. The system has one virtue, and only one. It is cheap. That is to say, it is cheap for the State. That it is expensive for the worker was unquestionably proved to the satisfaction of the legislature of the State of New York, after an investigation and a scrutiny of the settlement agreements in that jurisdiction.

What the originators of the plan did not envision were such practical points as these:

1. Very few injured workmen know the provisions of the workmen's compensation act or what they are entitled to under its terms.

2. The system takes no account of the fact that the determination of extended disability is a matter of judgment and appraisal by a physician, whose estimates, particularly in measuring permanent injuries, are of extreme importance. An underestimate by an examining physician can and does mean underpayment to the worker for his permanent partial disability. That fact was disclosed pointedly and painfully in the New York investigation of direct settlements, when a reexamination of permanently injured workers who had signed agreements and accepted settlements disclosed underpayment ag-

gregating many thousands of dollars in less than 200 cases.

Despite this reliance upon agreement settlements through which a large percentage of the claims are closed with nothing more than perfunctory scrutiny or review by the administrative office, most of the State compensation agencies are understaffed and underequipped to handle their work promptly and properly. Legislatures have been consistently restrictive in appropriating funds for workmen's compensation administration. In some States, the practice of levying assessments on premium income to supply administrative funds has greatly helped in securing adequate staff and facilities. Today, however, nearly all the State compensation agencies lack the one most important facility for equitable adjudication of disability claims—a full-time medical staff to measure disability and resolve the ever current and difficult questions of causal relation. Experienced administrators know that in 95 out of every 100 cases the major issue hinges on a medical finding. Yet the only medical findings on which settlements are effected in hundreds of thousands of workmen's compensation cases in this country are those of physicians employed by employers and insurance companies.

### *Scale of Benefits*

A major factor to consider in appraising the status of workmen's compensation acts is, of course, the scale of benefits incorporated in the law—not only the monetary payments to the disabled workers or their dependents but also the important provision of medical service. I have pointed out that the form and quality of administration greatly influence the actual benefits that reach the workers, and it is impossible to over-emphasize that point. At the same time, it is clear that liberality of interpretation and diligence in administration cannot, for example, increase a widow's benefits which are fixed by statute at a low level. No administrator can go beyond the fixed statutory weekly limit in awarding compensation to a disabled worker. Not only do we find today wide variations in benefits among the different State acts, but in many instances unfortunately there has been little change

from the standards established a generation ago.

Simply to illustrate this point, and without any critical inference whatever, let us take the theoretical case of two widows whose husbands met death in industrial accidents—one in Vermont and the other across Lake Champlain in New York. Let us say that each of these men was earning \$40 a week and each widow was left with five small children to care for. The Vermont widow gets an award for death benefits payable weekly for a maximum of 260 weeks, or exactly 5 years following the death of her husband. No matter how high her husband's weekly wage had been or how many children or dependents she has to support, the total amount of compensation payable to her during that 5-year period must not exceed \$3,500. That is the maximum that the employer or his insurance carrier is obliged to pay for this industrial fatality under the Vermont compensation law.

Over on the other side of the lake, the New York widow receives an award of about \$36 a month for herself, and an additional allowance for each child until he reaches 18 years of age. Her own allowance would continue for life or until she remarried. The actuarial money value of the New York widow's claim would be somewhere around \$18,000 to \$20,000.

Another example will illustrate the variations in medical benefit provisions, again as between these two adjoining jurisdictions. A workman in upper New York sustains a fractured pelvis, an injury usually requiring an extended healing period and expensive surgical care. Since he was injured on the New York side of the line, he receives medical and hospital service without limit as to either time or cost; whether it means a year in the hospital or \$10,000 in medical service makes no difference. But if this worker lived and worked in Vermont, he would be entitled to medical service only for a period of 60 days and at a cost not exceeding \$75. He would also be entitled to hospitalization for a period of 60 days, but not to exceed \$300 in cost. With a light touch of liberality the Vermont law provides that if the \$75 doctor allowance is not used up, the balance may be applied on the hospital bill.

Similar illustrations could be made between many other States having close kinship geographically and industrially, and with comparable standards of wages and living costs. Only 9 State laws place no limitation upon medical service, either as to length or cost. In 14 other States, however, the administrative agency is given authority to extend medical service indefinitely.

### *Occupational Disease Coverage*

While some progress has been made in recent years with respect to workmen's compensation benefits for occupational diseases, only 15 States cover all diseases incident to work exposures, and some of them only if the employer specifically elects to be covered under the act. Twelve others provide partial coverage through

scheduling or listing specific diseases. In 1 of the 12, this schedule consists of just one industrial disease—silicosis. There are at this time, therefore, 21 States, including Mississippi, in which workers disabled by diseases or health exposures in their employment are wholly without workmen's compensation protection.

I mentioned that in many jurisdictions the benefit levels have remained about as they were set 25 years ago, when wages and living costs were far below what they are today. In 21 States the maximum weekly compensation payable to disabled workers is less than \$20. In one State it is \$13.85.

This picture of the present inadequacies in our workmen's compensation structure is by no means overdrawn. A more detailed study would reveal other important shortcomings. Workmen's compensation laws were

designed primarily for the benefit of the workers. It is the workman and his widow and dependents who suffer most through low-scale benefits, delayed payment of claims, restricted coverage, and indifferent administration of workmen's compensation acts. It seems to me that the best investment a State labor organization can make would be the full-time employment of a workmen's compensation specialist, detailed to the job of analyzing the State act, studying its administrative methods and procedures, and observing and appraising performance of administrators. It should then supply the membership with clearly stated and basic information about their compensation rights, and about the specific features of the compensation acts that fail to afford decent protection to injured workers and their widows.

## War Mobilization and Reconversion Act of 1944: An Analysis of the "George Bill"

By Wilbur J. Cohen and Jessica H. Barr\*

THE WAR MOBILIZATION and Reconversion Act of 1944—the "George Bill"—became law with the President's signature on October 3. The act (Public Law 458) sets up an Office of War Mobilization and Reconversion, comparable to the Office of War Mobilization, which it supersedes. The Director of the new Office has authority for unifying and coordinating all governmental programs relating to war mobilization and peacetime reconversion. Placed within the Office and under the Director's general supervision are the Office of Contract Settlement, created by the Contract Settlement Act of 1944; the Surplus Property Board, created by the Surplus Property Act of 1944;<sup>1</sup> the Retraining and Reemployment Administration, established by title III of the reconversion act; and the Surplus War Property and Retraining and Reemployment Administrations, both created by Executive orders, if these

administrations are in existence after the Office of War Mobilization ceases to exist.

The act also amends the Social Security Act by establishing a Federal unemployment account in the unemployment trust fund, and by adding a title XII to the Social Security Act, which sets forth provisions under which funds may be advanced to the States from this account. Finally, the act authorizes the Federal Work Administrator to make loans or advances to States and other non-Federal public agencies to aid in financing the cost of investigations and studies, surveys, and other preliminary activities relative to the construction of public works.

In signing the act, the President declared that while it was satisfactory so far as it went, "I feel it my duty to draw attention to the fact that the bill does not adequately deal with the human side of reconversion. When I signed the G. I. Bill on June 22d last, I expressed the hope that 'the Congress will also take prompt action, when it reconvenes, on necessary legislation which is now pending to facilitate the development of unified programs for the demobilization of

civilian war workers, for their reemployment in peacetime pursuits, and for provision, in cooperation with the States, of appropriate unemployment benefits during the transition from war to peace.' The bill is not adequate to obtain these ends.

"Provisions, which were in the bill as it passed the Senate, to provide transportation for war workers from the place of their employment to their bona fide residence or to the location of new employment arranged by the workers were omitted in conference. So also were the provisions, in the bill as it passed the Senate, ensuring appropriate unemployment compensation to Federal workers.

"Moreover, the bill fails to prescribe minimum standards to govern the amount and duration of unemployment benefits which should be paid by the States to all workers unavoidably out of a job during the period of transition from war to peace.

"We have rightly committed ourselves," the President added, "to a fair and generous treatment of our G. I. men and women . . . to a prompt and generous policy of contract settlement to aid industry to return to peacetime work . . . to support farm prices at a fair level during the period of reconversion. We should be no less fair in our treatment of our war workers.

"I am glad to know," he concluded, "that the Chairman of the House Ways and Means Committee has announced

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<sup>1</sup> The Surplus Property Act of 1944 also was approved by the President on October 3 (Public Law 457).